

## **United Firefighters' Union of Australia, Union of Employees, Queensland**



## **Personal Injuries Proceedings and Other Legislation Amendment Bill 2022**

### **Submission**

**22 April 2022**

**Contact:**

**John Oliver  
General Secretary**

## 1. Publication of this submission:

The United Firefighters' Union of Australia, Union of Employees, Queensland (the UFUQ) provides this submission regarding the *Personal Injuries Proceedings and other Legislation Amendment Bill 2022* (the Bill) to the Legal Affairs and Safety Committee (the committee) on behalf of all UFUQ members.

The UFUQ advises that we intend to (in the near future) publish this submission (or parts of it) for the information of our members, interstate firefighter unions, and Queensland unions affiliated with the Queensland Council of Unions.

Should the committee not wish for this submission to be published, please promptly advise the UFUQ.

We authorise the publication of this submission by the committee.

## 2. United Firefighters' Union of Australia, Union of Employees, Queensland

The UFUQ is an industrial organisation of employees (union) registered under the *Industrial Relations Act 2016*, providing representation and coverage to professional and auxiliary firefighters employed by Queensland Fire and Emergency Services.

The UFUQ have over 2600 members who are affected by the Bill.

In the course of their firefighting duties, our members are frequently exposed to toxins and carcinogens that epidemiological evidence has clearly demonstrated puts them at an elevated risk of being diagnosed with cancer. This nexus between firefighting and the incidence of cancer is acknowledged in Queensland. In 2015, the Palaszczuk Government amended the *Workers' Compensation and Rehabilitation Act 2003* (the WCRA) to introduce presumption of injury claims for firefighters who are diagnosed with one of 12 prescribed cancers ('specified diseases').

Our members have greatly benefited from these laws. Firefighters who have been diagnosed with a terrible disease because of the job they do thankfully do not have to navigate an overwhelming and lengthy claims determination process at a time when they are battling for their lives. But sometimes, by the time of diagnosis and commencement of treatment, that battle is already lost.

Too often, our members are told that this insidious disease is going to take their life.

## 3. Statement of opposition to clauses 58, 65 and 66 of the Bill

The UFUQ makes this submission to inform the committee of our opposition to the inclusion of clauses 58, 65 and 66 in the Bill regarding workers' compensation entitlements for terminal conditions.

In our view, the proposed significant reduction in a workers' compensation entitlement should not be so hastily introduced.

## 4. Further consultation required

We are not satisfied that the timetable for consultation about the proposed amendments to s 39A of the WCRA, and the associated transitional provisions, provides adequate time for the

committee to fully consider the views of all stakeholders and the detrimental impact this will have on relevant injured workers, including firefighters.

We believe a more considered approach should be taken by Government rather than the apparent urgent reaction to the December 2021 decision in *Blanch v Workers' Compensation Regulator* [2021] QIRC 408. It appears the only concern of Government is to mitigate the financial impact on the workers' compensation scheme as quickly as possible rather than carefully considering the fair and appropriate response to these circumstances.

In our view, the proposed amendments are inconsistent with the objects of the workers' compensation scheme.

They fail to maintain an appropriate balance between “*providing fair and appropriate benefits for injured workers...and ensuring reasonable cost levels for employers*”. Rather, the amendments appear to seek to “*protect the financial sustainability of the workers' compensation scheme*” (as stated on page 2 of the Bill's Explanatory Notes) with little thought as to how this objective can be balanced with ensuring injured workers with a terminal condition are provided with fair and appropriate benefits.

When considered from the perspective of a firefighter who has been told their illness is terminal, there is nothing fair or appropriate about the reintroduction of an arbitrary time limit within which a benefit may be obtained.

Further genuine consultation with relevant stakeholders is required.

For example, the UFUQ was not offered the opportunity to be consulted about this Bill despite it having significant ramifications for our members (they are a cohort of workers within the scheme most likely to be diagnosed with a terminal condition). Further, it does it appear from the Bill's Explanatory Notes that any medical experts were consulted who may have been able to provide expert advice and/or opinion on matters relating to terminal conditions (which would assist in developing a rational basis for a fair and appropriate benefit).

We have no doubt that following further consultation, a fair and appropriate benefit, with a rational basis, can be designed that reasonably protects the financial sustainability of the workers' compensation scheme and aligns with the policy intent of previous amendments in 2019 (which public record demonstrates was to remove an arbitrary time limit so that workers diagnosed with a terminal condition with a life expectancy greater than two years were not excluded).

## **5. Amendment of s 39A of the Workers' Compensation and Rehabilitation Act 2003**

Clause 58 of the Bill seeks to reintroduce an arbitrary time limit for workers' compensation entitlements for injured workers with a terminal condition. The UFUQ opposes this amendment.

In her Explanatory Speech on 22 August 2019, in relation to the *Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2019* (which removed the arbitrary time limit), Minister for Education, Minister for Industrial Relations and Minister for Racing, the Honourable Grace Grace (at the time, Minister for Education and Minister for Industrial Relations) clearly articulated the importance of the entitlement to lump sum compensation for injured workers with a terminal condition:

*“The payment of this lump sum allows the worker to be provided with palliative care and support and ensures that the worker can plan and attend to the financial needs of their family and dependents. The worker retains their rights to seek common law damages for negligence contributing to the worker's terminal condition, however, for some workers the prompt*

*assessment and payment of this statutory entitlement may alleviate the need of the worker to seek common law damages and allow the worker to spend more time with their family.”*

This importance remains the same whether a worker is diagnosed with a condition that is expected to terminate their life within 3 years or within a period greater than 3 years, and this is no different to, and is in fact particularly relevant to, firefighters diagnosed with terminal cancer.

The implementation of an arbitrary time limit does not appropriately consider the comments of the Minister of 22 August 2019.

A fair and appropriate benefit should have a rational basis for determining eligibility for lump sum compensation and should consider an injured worker’s specific needs and circumstances.

The impact of anticipatory grief on the injured worker’s life (and their family’s life), their need for palliative and other care and support, the financial needs of their family and dependents, and their ability to spend time with their family before their condition deteriorates their capacity to complete or participate in activities of daily living, irrespective of the years of life expectancy they have been diagnosed with, should all be relevant to any determination.

## **6. Proposed transitional provisions relating to s 39A of the Workers’ Compensation and Rehabilitation Act 2003**

Clause 66 of the Bill seeks to retrospectively apply the amended s 39A of the WCRA to latent onset injuries sustained by a worker on or after 31 January 2015. This amendment effectively reverses the previous amendments in 2019 that were designed specifically to address our members’ circumstances as described in the Explanatory Notes for the *Workers’ Compensation and Rehabilitation and Other Legislation Amendment Bill 2019* (on page 27):

*“Section 732 provides that the new requirement for certification of a terminal condition (see clause 34) will apply for injuries that were sustained on or after 31 January 2015. This date aligns with the changes for deemed diseases for firefighters with certain cancers and will ensure that this beneficial provision will have application for those firefighters”.*

The UFUQ opposes this amendment. We also seek to inform the committee that we are aggrieved about our exclusion from the consultation on the exposure draft of the amendments and during preparation of the Bill.

Our members represent a cohort of workers within the scheme that are most likely to be diagnosed with a terminal condition and they deserved to have their interests represented in that process.

For firefighters diagnosed with a terminal condition with an estimated life expectancy greater than 3 years, the amendment creates an inequity between those firefighters who have received terminal compensation prior to the passage of the Bill and those that may receive it after the passage of the Bill. Our members have a reasonable and legitimate expectation under the current legislation that they will be entitled to the same benefits as other firefighters who have found themselves in the same or similar circumstances. This expectation will not be met should the amendment be passed.

The amendment may very well create a situation where two firefighters – on the same shift, at the same station, with the same years’ service, diagnosed with the same cancer and the same estimated life expectancy of 4 years (albeit on a different date), who have worked together for 30 years and share similar circumstances with respect to the impact of anticipatory grief on their life, their need for palliative and other care and support, the financial needs of their family and dependents, and their ability to spend time with their family before their condition deteriorates their capacity to complete or participate in activities of daily living – are entitled to terminal compensation at differing times.

The practical effect of the Bill should it pass in its current form gives rise to a circumstance that cannot reasonably be perceived as fair, because it is not fair. One firefighter is prevented from accessing terminal compensation for a year, while the other was not.

The retrospectivity of the amendment is not beneficial for any worker within the scheme, it is only beneficial to the Government. This amendment should be rejected by the committee, or at least should be considered further for its appropriateness and be reasonably scrutinised by the committee with further consultation, prior to any decision being made.

A handwritten signature in black ink, appearing to be 'JO' followed by a long horizontal stroke.

**John Oliver**  
**General Secretary**