Speech By

# Patrick Weir

## MEMBER FOR CONDAMINE

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## WORKERS' COMPENSATION AND REHABILITATION AND OTHER LEGISLATION AMENDMENT BILL; WORKERS' COMPENSATION AND REHABILITATION (PROTECTING FIREFIGHTERS) AMENDMENT BILL

**Mr WEIR** (Condamine—LNP) (11.13 pm): As a member of the Finance and Administration Committee, I rise tonight to make a contribution to the Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2015. The amendments proposed in this bill would reinstate common law claims for claims under six per cent, provide additional compensation for claims not eligible for common law claims between 15 October 2013 and 31 January 2015, and introduce provisions for firefighters diagnosed with one of 12 diseases related to their period of active firefighting service.

I turn to clause 6 and the amendment of section 237. This amendment would remove the requirement for a worker needing to have an assessed degree of permanent impairment of more than five per cent to pursue compensation under the common law. The amendment was supported by the submissions provided by the unions. However, it was opposed by business industry groups concerned about the rising costs to WorkCover. Some of the union submitters cited cases of workers who have an impairment of less than five per cent and are unable to continue in the workplace. The Queensland Nurses' Union stated that, even where the impairment is assessed at zero, some members remain unable to continue in their role as inherent requirements of nursing work include manual handling.

The Australian Lawyers Alliance spoke of injured workers with impairments assessed at five per cent who are no longer able to work due to their injury. There have been instances where these workers have had to change careers because of their injury, have had extended time off to recover or have returned to work in a part-time capacity or with restricted duties. The Australian Lawyers Alliance position is that all Queensland employees deserve access to common law rights.

The Civil Contractors Federation considers that claims in the zero to five per cent category are more appropriately dealt with through the statutory no-fault system instead of through the courts. They believe this would ensure that the focus for injured workers and employers is on rehabilitation and getting workers back to work as soon as it is safe to do so rather than how much they can be compensated for their injury. The Australian Industry Group stated that the ability to access common law damages often leads to employers experiencing difficulties with engaging injured workers in the rehabilitation process and returning to work in a timely manner.

The Chamber of Commerce & Industry Queensland advised that, when surveyed in 2012, 81 per cent of Queensland businesses supported the introduction of a threshold to reduce access to common law. Some submitters had concerns that WorkCover costs will be increased because of these changes. The department advised that reinstating common law provisions for injuries of five per cent and under would result in an estimated 1,800 additional injured workers with access to common law with an average payment of $110,000.

Industry submitters expressed concern about the behaviour of some legal companies which advertise a no-win, no-fee provision and were apprehensive about the five per cent impairment compared to the five per cent disability. The non-government members do not support this amendment as it will inevitably lead to premium rises which in turn increase the cost to business and will not encourage employers to engage one more worker. In fact, it would discourage employment.

I turn to clause 11. This amendment would insert a new chapter 32 with regard to workers injured before 31 January 2012. The department advised this amendment would establish the ability to provide additional compensation to workers impacted by the common law threshold between 15 October 2013 and 31 January 2015. The department stated that there were 5,912 claims that were assessed below six per cent for the period and approximately 2,700 claims that could go before common law, with a cost to the scheme of approximately $90 million. Any worker who has accepted a lump sum payment in this period would be deemed to have finalised their claim.

The Queensland Law Society in its submission stated it believes the retrospective aspects in the bill should be increased to cover workers in this position. A number of the industry submissions expressed concern regarding the retrospectivity features of this bill, stating that no business can operate competitively when laws can be brought in designed to catch up for the past. The non-government members do not support this amendment, believing that it is unfair to impose a financial burden on any business retrospectively.

Clause 30 would remove section 571D which allows employers to apply to the regulator for a copy of a prospective worker's claims history. The union submissions once again strongly supported this amendment. The Queensland Nurses' Union suggested that the information was being misused by some employers and had resulted in some nurses and midwives being reluctant to pursue a workers compensation claim for fear they may damage future employment prospects. The CFMEU stated that it had received complaints from some of its members stating that they had been unsuccessful in gaining employment due to information provided to a prospective employer indicating the worker was unsuitable because of having submitted a workers compensation claim.

Hall Payne Lawyers were supportive of the amendments. A number of industry groups provided submissions opposing the removal of section 571D. The Civil Contractors Federation acknowledged that removing this section would leave an employer once again subject to workers moving from employer to employer and making claims for what may have been a pre-existing injury. The Ai Group stated that the existing provision had allowed employers to employ and manage their new employees with the best work health and safety practice by having access to appropriate information about pre-existing health issues. The Chamber of Commerce & Industry Queensland expressed a similar view. The department advised that it has received a total of 26,977 requests up to June 2015, with the vast majority of these coming from labour hire companies. The non-government members, whilst acknowledging that there are some unscrupulous employers out there, are of the view that employers should have access to prior claims history information to ensure that new employees are not placed in a role where there is a risk of aggravating a pre-existing injury.

I now turn to the cognate debate on the Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2015 and the private member's bill introduced by Jarrod Bleijie, the shadow minister for police, fire, emergency services and corrective services—the Workers' Compensation and Rehabilitation (Protecting Firefighters) Amendment Bill 2015. I intend to address the two bills broadly and emphasise the main points that the committee identified during the committee process.

The committee has recommended a number of amendments which I will speak about and which were supported by the whole committee. The central difference in the two bills was a recommendation in the government bill that required rural firefighters to attend a minimum of 150 events over a five-year period to be eligible for compensation for identified cancers as a result of firefighting. Auxiliary and full-time firefighters are protected by presumptive legislation to cover the 12 identified cancers that firefighters are at a higher risk of developing above the average population. This legislation will be broadened to cover our rural and volunteer firefighters. Presumptive legislation has been developed primarily for those diseases where there is a gradual or long-term onset of illness or disease and where the causal link may not be clear-cut. These presumptive laws were developed in order to relieve the employee of a lengthy process, particularly when the employee is in immediate need of benefits and compensation.

Under the general workers compensation arrangements, the onus is on firefighters with cancer to pinpoint an event which caused their illness. This means that the burden of proof moves from the employee to the employer to demonstrate that the condition was not as a result of the claimant's occupation. Employers still have rebuttal provisions which enable them to deny benefits if it is proven

the illness was not employment related. The federal Senate report as part of its fair protection for firefighters bill in 2011 stated—

> Given the quantity and quality of evidence presented, the committee is confident that a link between firefighting and an increased incidence of certain cancers has been demonstrated beyond doubt.

The government's amendment would see rural firefighters have to attend 150 events before becoming eligible for compensation whilst full-time firefighters are covered from the first event—as opposed to the private member's bill, which allows all firefighters equal conditions from the first event. All submitters apart from the United Firefighters Union of Australia were supportive of the private member's bill. The majority of these submissions considered that the additional requirement for attendance of at least 150 exposure incidents by volunteer firefighters was discriminatory.

The Rural Fire Brigades Association of Australia advised that it considered that the proposed amendments are based on pay status and not upon service delivery. It further stated that attracting and retaining volunteers is one of its greatest challenges and if the value of volunteers is seen as less than that of a paid firefighter it is a guaranteed way to discourage new members. The Rural Fire Brigades Association also noted that the South Australian government had proposed to include 150 exposures in its legislation. However, this had been reduced to one exposure. It went on to state that there were no scientific facts to support the 150 exposure amendment and believed it is based on a willingness to pay rather than fact. The Firefighter Cancer Foundation of Australia also stated that it has been unable to find any science that supports a threshold of 150 or more exposure events.

Record keeping across the rural fire brigade was raised many times and appears to vary from average to almost nonexistent and it would be very difficult to prove that many rural firefighters had attended the required 150 events, and indeed many events seemed to go unrecorded. The department advised that the rural fire brigades' manual business rule relating to reporting of incidents is being changed to reflect the requirement of rural fire brigades to submit the previously optional form, naming individual volunteers who attend an incident.

To ensure that claims are not rebutted, record keeping will have to improve to prove that the claimant is an active firefighter. Simply being a member of the brigade will not be enough, as there are many members of the rural firefighters who have never actually attended a fire but act in a support role, whether it be in communications or making cups of tea and sandwiches. This would also ensure that some members of the public do not simply join the rural brigade as a cheap form of insurance just in case they contract cancer later on in their lives. The committee notes that this was a recommendation in the Malone review conducted by the former LNP government. One would hope that this insurance is not called upon very often, but we owe it to our volunteers to make the process as flawless as possible and not easily rebutted.

The role of a rural firefighter is not just about putting out grassfires. There are many old farm rubbish dumps across the country and they can contain old poison drums, batteries and even asbestos and a firefighter could find themselves fighting a fire and being exposed to very toxic smoke. In this day and age, unfortunately it is hard to predict what may be in that old abandoned car or that old lean-to shed that is hidden away in the bush. It may well have a meth lab in it. The rural brigades in country areas are often the first on the scene at car accidents and house and shed fires. They do not have the protective clothing and oxygen masks that the auxiliary brigades have access to. The least we can do is to provide them with the comfort of knowing that, should the worst happen, we have made provisions that give them and their families some comfort and support.

The committee also believes that an independent committee should be established comprising representatives from the Rural Fire Brigades Association, WorkCover and the medical profession to consider exposures and assist in determining whether rebuttal of claims are warranted. The committee has recommended a number of amendments to the government bill and I would urge all members to support these recommendations. Rural firefighters and the general public have been very supportive of these changes. Let them know that their voices have been heard. In closing, I want to thank the research director and staff for all of the work they did in helping to prepare this report.