




Speech By  
**Michael Berkman**

**MEMBER FOR MAIWAR**

---

Record of Proceedings, 11 May 2021

**WORKERS' COMPENSATION AND REHABILITATION AND OTHER  
LEGISLATION AMENDMENT BILL**

 **Mr BERKMAN** (Maiwar—Grn) (6.50 pm): I rise to make a contribution on the Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill. This is a bill that I support. It is very important legislation. It is an issue that has been on my radar for some years now. As far back as July 2019 I had a constituent get in touch with me and I wrote on their behalf to the then minister for fire and emergency services about the need for a presumptive provision in workers compensation legislation specifically relating to PTSD for firefighters in that instance.

There is much in the bill to applaud and it deserves our support, but there is much more to be done. I want to use my contribution this evening to put on the record some of those concerns raised by submitters on the bill. A number of submitters pointed out the need to extend presumptive workers compensation to a much broader range of mental illness or to all trauma related psychological injury. Submitters included the EWU, the firefighters union, QCU and the Together union.

Concerns were also raised that it is unclear how long a claimant needs to have worked in the role to be eligible for the positive presumption to apply. Brian Ranse—a veteran, a firefighter, a first responder in various roles, who has accessed treatment for PTSD via DVA—pointed out that one need only have worked one day in these roles to be affected. I think we have heard that as well in some of the accounts from members here in the House. Brian says that the law should clearly state that they are eligible in that case, as I understand it.

Others have said there needs to be a stronger requirement for the rebuttal of the presumption so only demonstrable and reasonable evidence can be relied upon. Together and the firefighters union raised this in their respective submissions, noting the trend to point to unrelated personal or unsubstantiated circumstances. The EWU explicitly noted divorce or separation or the loss of a loved one as an example. The department says it will prepare guidance materials for employers and insurers to inform them about the strength of evidence required to be presented to prove that employment was not a significant contributing factor to a PTSD injury. A legislative requirement for reasonable evidence would be even stronger.

I am somewhat disappointed by the government's refusal to include a schedule of eligible workers in legislation rather than in regulation, despite the committee finding that this is inconsistent with FLPs and recommending otherwise. This was raised in various submissions including the firefighters union, QCU and Together. It may be something of a concerning pattern of government, or legislation broadly, to shift decision-making power to the executive exercise of power without proper scrutiny or input from the parliament. This brings into play a potential future narrowing of the scope of eligible employees. The list of eligible workers could be included in legislation consistent with existing presumptive legislation. Just like we do in other legislation, this could include a provision to add to a schedule in regulation. Thereby we could protect those workers from easy amendment out of the presumption but allow future expansion.

I want to raise some concerns that the government has decided to go ahead with a requirement for claimants to be diagnosed with PTSD by a psychiatrist in accordance with DSM-5 given the number of concerns that were raised in submissions about the appropriateness of this code. Even the Royal Australian and New Zealand College of Psychiatrists said in their submission that, while diagnostic manuals and tests like the DSM are useful to support a diagnosis, they do not make a diagnosis. They suggest that to better allow for the complexity of patients' presentations the law should instead allow psychiatrists to make PTSD diagnosis based on their own training and experience.

Others without a vested interest in psychiatry point out that the requirement for diagnosis to be performed only by a psychiatrist could be prohibitive for some claimants, with significant up-front costs, waiting times and access issues in rural communities. Both the firefighters union and the Queensland Council of Unions said in their submissions that the laws should at least allow for diagnosis by either a psychiatrist or a psychologist with suitable training and expertise. Dr Lynda Crowley points out that one of the problems with the DSM diagnosis—and this is actually enshrined in these laws—is the suggestion that PTSD is limited to exposure to death, serious injury or sexual violence. In this day and age it is well acknowledged and accepted that trauma related mental health issues are far more varied and complex in both cause and manifestation.

The government's response to these concerns is, in essence, that DSM-5 is used all around the world so we will just stick with that. In doing so, I am concerned that we are proceeding with a restrictive and potentially problematic pathway for diagnosis that does not properly account for the complexity of trauma and mental health. As is perhaps becoming all too common, this legislation does not address what appear to be legitimate concerns from a number of experts.

The same is true in some respects in relation to the limited eligibility proposed in this bill. A number of submitters called for a greater scope of employees to be included. The AWU pointed to disability services workers and carers working in high-risk areas. The Services Union I think pointed to not-for-profit, social and community service sector workers who provide counselling and direct support to victims of domestic and family violence or other trauma. The ETU talked about frontline electrical workers and control centre operators who deal with serious accidents. The QNMU spoke of midwives.

The CFMMEU spoke of a broader range of coalmine workers who are required to respond to serious accidents. The AMA referred to GPs. Together put forward that the definition of eligible worker should 'include all workers who are exposed to trauma by either a single traumatic event or the cumulative effect of repeated trauma as a direct result of the nature of their work'. Cynicism around Labor's need to please the CFMMEU aside, I agree that all of those workers deserve to be covered under the bill, rather than just the slight expansion that we have seen in these amendments.

I want to turn briefly to the important role that fires play. The trauma experienced by some first responders often cannot be mitigated. In the case of firefighters, there are vitally important steps that we could and must take. The climate crisis has already made fire seasons longer and bushfires more severe. The black summer bushfires were confronting enough for many of us in our lounge rooms—seeing the smoke in the sky, watching the catastrophe unfolding on the news and checking the map to see how close our loved ones were to the danger. That experience cannot even remotely be compared to the way these fires impact on those on the front lines.

Firefighters, both paid fires and volunteers, are the ones confronting the heat and the flames and the devastation up close. They are making incredibly tough decisions under extreme pressure. No matter how hard they fight, they will still have to reckon with what has been lost after the flames have gone. That is never going to be an easy job. We have heard from countless firefighters that it is even harder when you know things are only going to get worse.

During the black summer bushfires former heads of the New South Wales, Queensland, Victorian and Tasmanian fire services all called for urgent action on the climate crisis. They pointed out that just a one-degree increase has placed more lives at risk including firefighters. Former New South Wales fire and rescue chief said explicitly that climate change has 'supercharged' the bushfire problem. Meanwhile the big parties back in fossil fuels driving this very same crisis. Just this week we have seen another self-congratulatory media release from the Labor government talking about how wonderful it is to have approved 10 new gas-prospecting authorities in the last year and releasing 80,000 square kilometres of Queensland land to gas companies.

This bill is a good step and I agree with its intent, but in this respect we are effectively parking ambulances at the bottom of the cliff as we continue to pander to the interests of coal and gas donors.

**Mr DEPUTY SPEAKER** (Mr Kelly): Member, I would bring you back to the long title of the bill, please.

**Mr BERKMAN:** There is more the government could and should be doing to limit exposure of this kind in the first place. I do not mean any disrespect in making these observations, Mr Deputy Speaker. These are the brutal facts we are dealing with when we look at climate change and the impacts it will have on first responders.

**Mr DEPUTY SPEAKER:** I ask you to come back to the long title of the bill please, member.

**Mr BERKMAN:** I will use the last few moments I have to put on the record my deep appreciation to all of our first responders. They do tough, very often thankless and deeply traumatic work. I do want to thank the members who have given us their own personal accounts of their experience on the front lines. In this debate it is very important for us to hear it.