

7 August 2015

Ms Deborah Jeffrey  
The Research Director  
Finance and Administration Committee  
Parliament House  
George Street  
BRISBANE QLD 4000  
By email: [fac@parliament.qld.gov.au](mailto:fac@parliament.qld.gov.au)

RECEIVED  
10 August 2015  
Finance and  
Administration Committee

Dear Ms Jeffrey

**Workers Compensation and Rehabilitation and Other  
Legislation Amendment Bill 2015**

Please find attached the United Firefighters Union of Australia submission with annexures for consideration by the Finance and Administration Committee in the Inquiry into the Workers Compensation and Rehabilitation and Other Legislation Amendment Bill 2015.

We note that the Committee is also inquiring into the Workers Compensation and Rehabilitation (Protecting Firefighters) Amendment Bill 2015 at the same time and within the same process. The UFUA has also lodged this submission in relation to into the Workers Compensation and Rehabilitation (Protecting Firefighters) Amendment Bill 2015.

This submission includes the UFUA commentary on both Bills and is solely in relation to the amendments to provide a presumption of specific cancers as occupational cancers for firefighters.

Please do not hesitate to contact my office should you require any further information or assistance.

We would welcome an opportunity to appear before the Committee to discuss the UFUA submission and answer any questions.

Yours sincerely



Peter Marshall  
National Secretary

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**THE UNITED FIREFIGHTERS UNION OF AUSTRALIA**

**SUBMISSION**

**TO QUEENSLAND PARLIAMENT**

**FINANCE AND ADMINISTRATION COMMITTEE**

**ON THE**

**WORKERS' COMPENSATION AND REHABILITATION  
(PROTECTING FIREFIGHTERS) BILL 2015**

**AND THE**

**WORKERS' COMPENSATION AND REHABILITATION  
AND OTHER LEGISLATION AMENDMENT BILL 2015**

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## **1.0 EXECUTIVE SUMMARY**

- 1.1 This Committee is considering two separate Bills introduced for the purpose of presuming specific cancers are occupational diseases for Queensland firefighters.
  - i. The Member for Kawana introduced the *Workers' Compensation and Rehabilitation (Protecting Firefighters) Amendment Bill 2015* into the Queensland Parliament on 3 June 2015.
  - ii. The Treasurer, Minister for Employment and Industrial Relations and Minister for Aboriginal and Torres Strait Islander Partnerships introduced the *Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2015* into the Queensland Parliament on 15 July 2015.
- 1.2 This submission by the United Firefighters Union is for the consideration of both Bills. As the two Bills have been listed on the Queensland Parliament website as two separate inquiries by this Committee the UFUA has submitted the same identical submission to both inquiries. Each identical submission includes the UFUA submissions on both Bills.
- 1.3 Both Bills provide a presumption of occupational cancer for firefighters to remove barriers that currently prevent, or discourage, firefighters from accessing entitlements to treatment, assistance and compensation for the 12 listed cancers.
- 1.4 Presumptive legislation is accepted as an appropriate method to address injustices in common law for the recognition of occupational illness and disease.
- 1.5 The presumption does not create new entitlements; it accepts the scientific basis of the nexus between firefighting and exposures to carcinogens and the resulting contraction of cancer. It reverses the onus of proof so that provided the firefighter meets the requirements in the legislation, it is presumed that the cancer is an occupational disease unless otherwise proven. It is a rebuttable presumption in that the employer/insurer/compensation scheme must prove that the cancer did not substantially result from the employment as a firefighter.
- 1.6 It is known and accepted that firefighters are exposed to a range of toxins and carcinogens through their duties of firefighting. The toxins in structural fires including residential fires are not country-specific. Construction materials, fabrics, furniture and electronics are universal.
- 1.7 The risk of exposure to toxins and carcinogens cannot be completely eliminated. It is the inherent nature of firefighting, and the protective equipment, that firefighters will be exposed to toxins while performing firefighting duties. It is impossible to fully protect a firefighter from exposure to toxins as the fire fighting Personnel Protective Clothing (PPC) in combating structural fires and motor vehicle fires, must be able to breathe. As a result firefighters absorb the toxins and carcinogens through their skin.

- 1.8 Firefighters and the incidence of cancer has been the focus of many studies. It is now accepted internationally that there is a nexus between firefighting and the incidence of some cancers.
- 1.9 Studies have shown that there is an elevated risk for each of the cancers listed in the Bill for firefighters as a result of firefighting duties. Other jurisdictions have accepted those studies and enacted similar presumptive legislation as a result.
- 1.10 **The Federal “Fair Protection for Firefighters” Act was unanimously passed in 2011** after a robust Australian Senate inquiry into the basis, application and operation and in doing so performed the due diligence on the international research, scientific basis and international experience including any costs implications.
- 1.11 In doing so the Australian Parliament acknowledged that presumptive legislation is the necessary legislative mechanism to enable firefighters to access assistance and entitlements for occupational cancer as they would for any other work-related injury or illness.
- 1.12 The Australian Federal model has been followed by the Tasmania, West Australian, South Australian and Northern Territory Parliaments in respect to employed career firefighters.
- 1.13 The same 12 cancers are included in the Australian Parliament, Tasmanian, West Australian, South Australia and Northern Territory presumptive legislation for firefighters.
- 1.14 Both Bills being considered by this Committee go further than the Federal legislation in that the intention is to provide the protection of presumptive legislation to volunteer firefighters. While there is not the same scientific basis or rationale for the application of the presumption for occupational cancer for volunteer firefighters, the inclusion of volunteer firefighters has been accepted in other Australian jurisdictions.
- 1.15 In order to ensure the presumption is an effective mechanism for volunteer firefighters the Tasmania Government introduced legislation that required evidence of exposure to the hazards of a fire scene. That legislation has been replicated in the Northern Territory.
- 1.16 The inclusion of a requirement to demonstrate exposures to a fire scene is necessary as the scientific basis for the presumption is that the firefighter was exposed to the carcinogens at a fire scene.

## **2.0 BACKGROUND**

- 2.1. **The United Firefighters Union of Australia (“the UFUA”) is a registered federal union for career firefighters in Australia.**
- 2.2. The UFUA has eight branches in Tasmania, South Australia, Victoria, ACT, New South Wales, Western Australia, Queensland and an Aviation sector branch. Each branch has very high level of union membership with the majority of branches averaging around 95 to 100 percent membership of the relevant workforce. The UFUA represents firefighters employed on a permanent full time basis and permanent part time basis.
- 2.3. The Queensland Branch of the United Firefighters Union of Australia represents 2500 career firefighters employed full time and part time who would be covered by either Bill being considered by this Committee.
- 2.4. In 2011 the UFUA embarked on a campaign to have occupational cancer recognised for Australian firefighters through presumptive legislation. Over the past 15 years the UFUA has become increasingly aware of international studies that had shown an increased risk of the incidence of some cancers for firefighters. Through the global alliance of firefighters unions, the UFUA has had the benefit of examining and learning from firefighters in Canada and the United States of American where firefighters have the protection of presumptive legislation recognising occupational cancer.
- 2.5. Firefighters are one of the most studied occupations in relation to occupational cancer and there is now a wealth of scientific evidence that demonstrates the link between firefighting and specific cancers, including studies of Australian firefighters.
- 2.6. Firefighters are exposed to carcinogens, known and unknown at fires. Firefighters take every precaution available to limit their exposure to carcinogens, including Personal Protective Equipment (PPE) such as breathing apparatus and Personal Protective Clothing (PPC). But the firefighter can never be fully protected as the uniform has to breathe to prevent metabolic heat-build up. As a result firefighters cannot be fully protected from absorbing toxins and carcinogens through their skin at fires.
- 2.7. Despite the accepted scientific link between firefighting and the increased risk of specific cancers, firefighters have been unable to access their entitlements and assistance under workers compensation schemes as they are unable to prove the specific fire or fires they attended, or identify the specific carcinogen or carcinogens which resulted in the contraction of the cancer. In short, due to the nature of firefighting, firefighters are unable to meet the standard of proof required for acceptance of claims.

- 2.8. As a result the firefighter is left without assistance and compensation, or must undertake expensive and stressful litigation at a time when the firefighter to access treatment and compensation for the occupational cancer.
- 2.9. The mechanism necessary to remedy this inherent and unintended injustice in workers compensation is presumptive legislation. Presumptive legislation does not create a new entitlement. It is a legislative mechanism to presume specific cancers are occupational cancers for firefighters so that the firefighters can access assistance and compensation as they would for any other work-related injury or illness.
- 2.10. It is a rebuttable presumption. The presumption shifts the onus of proof from the firefighter proving which fire/fires the exposure resulted in the contraction of cancer to that of the employer/insurer/compensation scheme to disprove that the cancer was a result of firefighting.
- 2.11 In the last 15 years Canada and the United States have introduced presumptive legislation to enable firefighters to access compensation and assistance for up to 14 cancers that are presumed to be occupational diseases.
- 2.12 In 2011, the UFUA launched a campaign to ensure Australian firefighters were afforded the protection of presumptive legislation. After a comprehensive Senate Inquiry, the Australian Federal Parliament unanimously passed and introduced presumptive legislation recognising 12 occupational cancers for Federal career firefighters (Airservices Aviation Rescue Firefighters and firefighters employed by Australian Capital Territory Fire and Rescue).
- 2.13 **The Senate Committee inquiring into the "Fair Protection for Firefighters" Bill in 2011** undertook a robust 6 month inquiry and in doing so performed the due diligence for the application of presumptive legislation for Australian Firefighters.
- 2.14 The Senate Inquiry included:
- i. Hearings conducted in Melbourne, Canberra and Perth;
  - ii. Inspections of firefighting activities at Tullamarine Airport in Melbourne and Geelong Fire Station
  - iii. Senators undertaking hot fire training and witnessing flash-over at the Queensland Combined Emergency Services Academy at Whyte Island
  - iv. The consideration of 27 submissions including submissions from:
    - Experts in firefighting exposures, toxins and uniform and equipment
    - Firefighters who had been diagnosed with cancer including the family of a deceased firefighter
    - Government Department officials
    - Workers Compensation legal specialists
    - International witnesses:
      - Edmonton Fire Chief Ken Block
      - Winnipeg Fire Fighters Union President Alex Forrest who is considered an international expert in presumptive legislation and firefighters' occupational cancer. Mr Forrest is a firefighter

and lawyer and has recently been included in a meeting of the World Health Organisation International Agency for Research on Cancer (IARC) Committee evaluating the carcinogenic risk to humans.

2.15 The resulting Senate Education, Employment and Workplace Relations Legislation Committee Report is attached as Appendix A.

2.16 The UFUA campaign to educate governments on the need and basis for presumptive legislation to recognise occupational cancer for firefighters continues. The following States and Territories have now introduced presumptive legislation recognising the same 12 occupational cancers for firefighters:

- In September 2013 the Tasmania Government enacted presumptive legislation modeled on the Federal Legislation for career firefighters and included the protection for volunteer firefighters who can demonstrate 150 exposures to a fire scene.
- In October 2013 the Western Australian Government enacted presumptive legislation modeled on the Federal Legislation for career firefighters
- In March 2014 the South Australian Government enacted presumptive legislation modeled on the Federal Legislation for career firefighters and did not cover volunteer firefighters. Later that year the legislation was amended to include volunteer firefighters. The amendment did not follow the Tasmanian model as did not include minimum exposure requirements.
- In 2015 the Northern Territory enacts presumptive legislation modeled on the Federal Legislation for career firefighters with exposure provisions for volunteer firefighters modeled on the Tasmania legislation.



### 3.0 FIREFIGHTING

3.1. State and Territory governments provide a range of emergency management activities through fire service organisations, including prevention/mitigation, preparedness, response and recovery.

The role of the Queensland Fire and Emergency Service includes involvement in an expanding range of activities including:

- developing building fire safety codes and inspecting fire safety equipment and practices
- training and educating the community to achieve community awareness and behavioral change in relation to fire and road safety issues
- assisting individuals and communities to prepare for bushfires and other hazards
- responding to structure, bush, vehicle and other fires
- providing rural land management advice on the role and use of fire
- providing road crash rescue and other rescue services
- managing hazardous material incidents
- chemical, biological and radiological incidents
- administering legislation relating to fire safety, hazardous materials facilities and hazard mitigation
- investigating fire cause and origin
- wide ranging industry research activities
- a number of specialist rescue capabilities, including Urban Search and Rescue, swift water rescue, high rise and trench rescue

#### Training

3.2. Career firefighters undergo extensive training via an initial recruit course which is approximately 17 weeks followed by a probationary period of 12 months. The time period necessary for the recruit course varies from fire service to fire service.

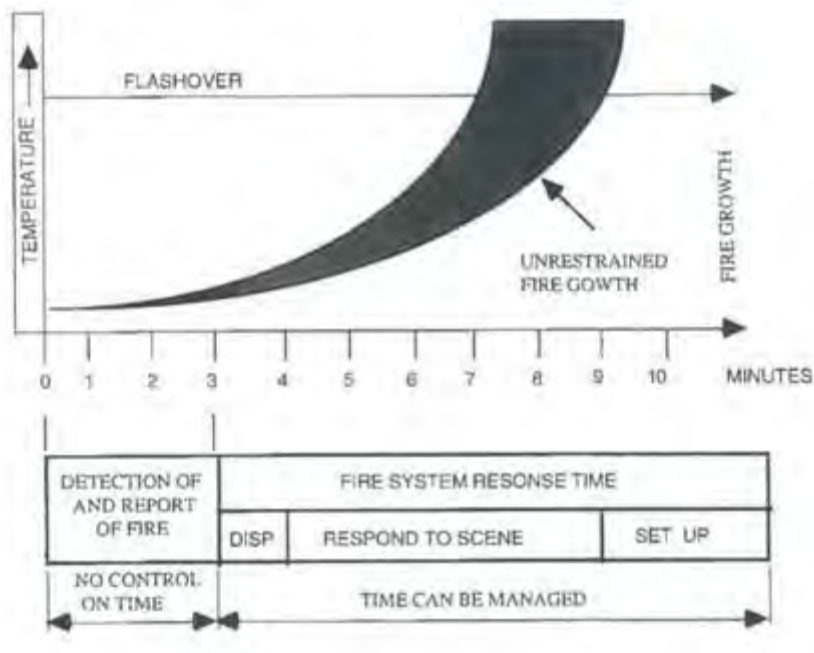
3.3. After approximately four years, and upon satisfactory completion of the required training, a career firefighter obtains the rank of qualified firefighter. This qualification is referred to as Certificate III in Public Safety (Firefighting in Emergency Operations). Firefighters also undertake additional required and specialist training in accordance with relevant agency specific requirements. The four year requirement to become qualified as a firefighter is similar to that of an apprenticeship for a trade. Again, there are some differences from service to service as to the specific requirements and timeframes.

3.4. After the initial recruit course, successful candidates are deployed to fire stations for operational experience where they perform emergency response duties under supervision. This includes, but is not limited to, responding to emergencies such as chemical spills, structure fires, car fires, building collapse and non-structure fires.

3.5. Firefighters also perform a wide range of fire safety and public awareness initiatives including structured programmes delivered to primary school children. These programmes are commonly referred to as "Fire Ed".

## Emergency response

- 3.6 To maximize the prevention of loss of life and minimize damage to property, fire services mandate a quick response by applying standards for their firefighters to respond to emergencies. The response time standard is crucial to maximize the potential for saving life by performing a successful rescue whilst also minimizing damage to a structure and interruption to business.
- 3.7 Underpinning fire service response time standards is scientific research that dictates that a fire must be suppressed within five to 10 minutes of ignition. The physical characteristics of fire cause the temperature in a building to rise extremely rapidly, and a sudden and dramatic simultaneous ignition of most combustible materials and gases is called flash-over. The time required for flash-over to occur varies according to building construction and furnishing materials and usage. The fire spreads quickly once flash-over has occurred. In order to maximize the potential of saving life and minimizing damage to property, firefighters must enter the building to commence suppression activities to avoid flash-over. In short, firefighters must enter the toxic environment.



- 3.8 As can be seen by the above graph, it is not an option for a firefighter to delay entering a structure to commence rescue operations and suppression activities.
- 3.9 The Australian Senate Committee recognised the uncontrolled environment that firefighters work in:

*"The committee holds a deep respect and gratitude for those who serve to protect and assist. If we are honest, however, along with this respect and gratitude comes a generous dose of expectations. We expect firefighters to*

*come to our assistance when our homes, schools, hospitals and businesses are ablaze. We expect that firefighters will enter a building when every human instinct tells us to leave.*

*We expect they will search for those trapped inside and bring them out alive. We expect them to do what they can to minimize loss of life and damage to property. While everyone else is fleeing danger, it is the firefighter's duty to tackle it head-on, to enter an extreme and dangerous environment, armed with the best protective gear available."*

## **The toxic workplace**

- 3.10 It is globally accepted that firefighting is a dangerous occupation and that not all risks and hazards can be eliminated due to the primary objective of saving lives and property. There are obvious dangers to firefighting but the biggest risk is the exposure to gases and toxins.

*"Firefighters exposures include not only gases, but also smoke particles that may be inhaled or contaminate the skin or clothing, with subsequent absorption of chemicals through the skin at the fire scene. Later exposure from particulates **contaminating firefighting garments may also occur.**"<sup>2</sup>*

- 3.11 There is a raft of literature that link toxins, (for example benzene, formaldehyde, carbon monoxide and cyanide) with cancers.

- 3.12 In the 1992 study "Occupational Health Concerns of Firefighting"<sup>3</sup> Tee Guidotti relied on a range of studies and literature and found:

*"Firefighters on the scene of a fire are frequently exposed to carbon monoxide, hydrogen cyanide, nitrogen dioxide, sulphur dioxide, hydrogen chloride, aldehydes, and such organic compounds as benzene. Before arriving, and on return, firefighters are exposed to diesel exhausts at the fire station"*

*"The toxic products of polymeric, plastic materials have come under increasing scrutiny. Since the 1950s, these materials have been used in building construction and furnishings in large amounts. They were soon found to combust into particularly hazardous products. Acrolein, formaldehyde, and volatile fatty acids are common in smoldering fires of several polymers, including polyethylene and natural cellulose."*

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<sup>1</sup> Senate Committee Report, paragraph 4.37, page 45.

<sup>2</sup> Firefighter Exposure to Smoke Particulates, Final Report 1 April 2010 by Thomas Fabian, Jacob Borgerson, Stephen Kerber, Pravinray Gandhi, Stuart Baxter, Clara Sue Ross, James Lockey and James M Dalton.

<sup>3</sup> Occupational Health Concerns of Firefighting, Tee L Guidotti and Veronica Clough as published in the Review of Public Health 1992 13:151-71

- 3.13 It is estimated there are more than 70,000 toxins and chemicals in the average household fire.<sup>4</sup> Fabrics, furniture and construction materials give off a range of toxic gases when burning. These toxins include acetic acid, phenol, formaldehyde, PAHs (petroleum based products), hydrocarbons (benzene), styrene, arsenic, vinyl chloride, ammonia, carbon monoxide, metals (lead, barium, cadmium, chromium, nickel, zinc) and cyanide. In a fire, the combination of these chemicals increases the toxicity significantly.
- 3.14 Attached as Appendix B is the Submission of Victoria MFB Commander Brian Whittaker to the Australian Senate Inquiry which sets out:
- Fireground Hazards
  - Lists some of the toxic chemicals present in fire
  - Hazard Control
  - Exposure
  - Personal Protective Equipment and Clothing
  - Respiratory Protection.
- 3.15 Firefighters take every precaution available to protect themselves from physical injury during the course of firefighting, but by the inherent nature of the job not all risk can be eliminated.
- 3.16 The risk of exposure to toxic chemicals cannot be eliminated either. The Personal Protective Equipment required to be worn in structural firefighting has to be able to breathe in order for the firefighter to sustain the excessive temperatures of fire. As a result the firefighter is not completely protected from absorbing toxins through the skin. A fully encapsulated suit can only be worn in incidents that do not involve fire.
- 3.17 Attached as Appendix C is the Submission of Victoria MFB Commander Philip Taylor to the Australian Senate Inquiry which sets out:
- The 5 levels of firefighter protective clothing
  - Hierarchy of controls to mitigate hazards
  - Personal Protective Clothing
  - Respiratory protections – Breathing Apparatus/ masks
- 3.18 Both Commander Whittaker and **Commander Taylor's evidence was** accepted and relied upon by the Senate Committee and is referenced throughout Chapter Two: The Science from page 14-19.
- 3.19 The Senate Committee determined:

*"An average structure fire can expose firefighters to temperatures approaching 1000 degrees Celsius. This means that the protective clothing firefighters wear in fire incidents must be able to breathe in order for them to be able to operate in these extreme temperatures. If the clothing did not*

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<sup>4</sup>Occupational Cancer in New York Firefighters, Mount Sinai School of Medicine. This study is included in the attached Appendix D which is the Submission of Alex Forrest to the Federal Senate Inquiry)

*breathe, firefighters would suffer heat stress and could quickly perish from metabolic heat buildup damaging their internal organs”<sup>5</sup>*

*“The requirement for breathability in protective clothing prevents firefighters from wearing fully encapsulated suits designed to seal all routes of chemical entry.*

*The protective clothing they wear when fighting fires protects them from flames, but leaves them exposed to toxins through inhalation or absorption through eyes, skin, or wounds.”<sup>6</sup>*

*“Therefore the very nature of the environment firefighters operate in prevents the design of protective clothing and equipment which could offer complete protection and isolation from toxic smoke.”<sup>7</sup>*

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<sup>5</sup> Senate Committee Report, paragraph 2.46, page 18

<sup>6</sup> Senate Committee Report, paragraph 2.47, page 19

<sup>7</sup> Senate Committee Report, paragraph 2.48, page 19.

#### **4.0. THE CANCERS AND THE STUDIES**

4.1. Both Bills being considered by this committee provide for a rebuttable presumption in respect of the following 12 primary site cancers:

- Brain cancer;
- Bladder cancer;
- Kidney cancer;
- **Non-Hodgkin's lymphoma;**
- Leukemia;
- Breast cancer;
- Testicular cancer
- Multiple Myeloma
- Prostate cancer;
- Ureter cancer;
- Colorectal cancer;
- Oesophageal cancer

4.2. There is a wealth of scientific research and credible studies demonstrating the increased risk of specific cancers and career firefighting, including studies and meta-analysis of studies that have included Australian firefighters.

4.3. The Australian Senate Committee was provided with the most significant studies and had the benefit of hearing the expert evidence of Alex Forrest in relation to the Canadian experience of presumptive legislation and the studies demonstrating the link between firefighting and specific cancers. Attached as Appendix D is Alex **Forrest's submission** to the Senate Committee:

- **Alex Forrest is a firefighter, the President of the Winnipeg Fire Fighters' Union**, a lawyer and is considered an expert in presumptive legislation recognising occupational cancer for firefighters.
- Alex appeared before the Senate Inquiry on two occasions; he presented the case for presumptive legislation to many Federal Members and met with the relevant Government Departments. His evidence was accepted and relied upon by the Committee and is referenced throughout the Senate Committee Report.
- He was a member of the Technical Reference Group for the Monash **University Australian Firefighters' Health Study**.
- He has recently been included in the committee meeting of the World Health Organisation International Agency for Research on Cancer (IARC).

4.4. The Bill being considered by the Senate Committee included seven specific cancers. The Committee was provided with evidence of the North American jurisdiction and the progression to presumptive legislation to recognise up to 14 specific cancers in some Canadian provinces and United States.

- 4.5. After considering the studies provided, and all the evidence before it, the Senate Committee was not only confident presumptive legislation should be enacted to recognise the seven cancers, but determined that the scientific evidence warranted the inclusion of the 12 listed cancers, accepting the predominant and prevailing scientific opinion of the increased incidence and risk of cancer for career firefighters.

*"The committee is confident in the quality of the studies it has seen and considers them to be compelling evidence in support of the Bill"<sup>8</sup>*

*"The committee also notes that the body of scientific evidence has expanded since presumptive legislation was first introduced to cover five cancers in Canada in 2002. Researchers have since demonstrated that firefighters are at risk of a greater range of occupational cancers"<sup>9</sup>*

*"The committee is concerned that, even if passed, the proposed legislation would only serve to bring Australian commonwealth law into line with outdated jurisprudence. Considering that similar legislation has been in place overseas for nearly a decade, and has in fact been strengthened to cover more cancers as a result of growing scientific evidence, the committee would prefer to see Australia enact legislation in step with the most advanced jurisprudence available.*

*The committee sees no reason to ignore scientific evidence demonstrating a link between firefighting as an occupation and a greater number of cancers than seven listed in this Bill."<sup>10</sup>*

- 4.6 The UFUA can provide the Committee with a range of studies regarding the specific listed cancers as required.
- 4.7 A brief list of the key relevant to the inclusion of the 12 cancers listed in the two Bills is below. These are not the only studies that demonstrate an increased incidence of the specific cancers but is a selection including studies considered by the Senate Committee as well as more recent studies.

i. **2002 Tee Guidotti and David Goldsmith<sup>11</sup>**

*"That it is reasonable given the available scientific evidence to adopt a policy of presumption for **brain** cancer, **bladder** cancer, **kidney** cancer, **non-Hodgkin's lymphoma** (lymphatic cancer) and **leukemia** (hematopoietic cancer) for claims association with occupation as a firefighter.*

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<sup>8</sup> Senate Committee Report, paragraph 2.15, page 12.

<sup>9</sup> Senate Committee Report, paragraph 2.17, page 12.

<sup>10</sup> Senate Committee Report, paragraph 2.18, page 12.

<sup>11</sup> Report to the Workers Compensation Board of Manitoba on the Association Between Selected Cancers and the Occupation of Firefighter, 28 March 2002, prepared by Tee L.Guidotti and David F. Goldsmith

- ii. **Bates (2001 NZ)<sup>12</sup>** demonstrated an increased risk of **testicular** cancer in career NZ firefighters even when previously identified testicular cancer cluster cases were excluded.
- iii. **Baris (Philadelphia 2001)<sup>13</sup>** study of career Philadelphia firefighters reported statistically significant excess risks for colon, **multiple myeloma and non-Hodgkins lymphomas**
- iv. **Breast** cancer has not been studied to the same extent as the majority of those with breast cancer are women and there are a limited number of women firefighters. The smaller the study sample, the more difficult it is to have a conclusive result. Underpinning the inclusive of breast cancer, research has demonstrated the link between exposures to specific chemicals demonstrating a higher risk of breast cancer. Such studies have demonstrated a higher risk of developing breast cancer for women working in occupations exposed to formaldehyde and benzene.<sup>14</sup> The Monash University **Australian Firefighters' Health Study (detailed below)** showed an elevated risk of the incidence of breast cancer for male career firefighters.
- v. **2006 LeMasters et al<sup>15</sup>**
  - A Meta-analysis of 32 studies of firefighters and cancer incidence and mortality that included approximately 110,000 full time career firefighters over the 32 studies from Australia, NZ, USA, Canada, Britain, France, Denmark which found increased cancer incidence for **multiple myeloma, non-Hodgkin lymphoma, prostate, testicular, stomach, colon, rectum, skin, malignant melanoma, brain and leukemia.**
  - Identified that the toxins are inhaled and absorbed.  
*"There is a direct correlation between chemical exposures firefighters encounter on their job and the increased risk of cancer"*
  - LeMasters also discussed there may be a tendency to underestimate due to the comparison with general population groups. The Healthy Worker Effect is phenomenon considered in occupational disease studies where workers of an occupation exhibit lower overall death rates than the general population due to the active employment.

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<sup>12</sup> Is Testicular Cancer an Occupational Disease in Firefighters? Michael N Bates, Jackie Fawcett, Nick Garrett, Richard Arnold, Neil Pearce and Alistair Woodward

<sup>13</sup> Cohort Mortality Study of Philadelphia Firefighters, Dalsu Baris, Thomas Garrity, Joel Leon Telles, Ellen Heineman, Andrew Olshan and Sheila Hoar Zahm, 2001

<sup>14</sup> Cornell University Sprecher Institute for Comparative Cancer Research "Alert for Women Firefighters" brochure.

<sup>15</sup> Cancer Risk Among Firefighters: A review and Meta-analysis of 32 Studies, Grace LeMasters, Ash Genaidy, Paul Succop, James Deddens, TarekSobeih, HeribertoBarriera-Viruet, Kari Dunning and James Lockey as reported in JOEM, volume 48, number 11, November 2006



Firefighters have been found to have a strong Healthy Worker Effect due to the stringent physical requirements at the time of recruitment and necessary for duty.

*"These general population comparison groups raise concern that the actual risk of cancer may be underestimated due to the healthy worker effect related to the strict physical entry requirements, maintenance of better physical fitness, and good health benefits."*

- vi. **NIOSH (2013)**<sup>16</sup> was a mortality and cancer incidence study of a cohort of approximately 30,000 career firefighters in San Francisco, Chicago and Philadelphia which demonstrated an excess cancer mortality rate and incidence for **mesothelioma, respiratory, digestive and urinary system cancers**

*"Our results provide evidence of a relation between firefighting and cancer."*

- vii. **NIOSH (2015)**<sup>17</sup> examined the relationship between the level of exposures and the incidence of cancer among the 2013 cohort of approximately 30,000 career firefighters in San Francisco, Chicago and Philadelphia in the above 2013 study.

*"Significant positive associations between fire-hours and lung cancer mortality and incidence were evident. A similar relation between leukaemia mortality and fire-runs was also found."*

4.8. The wealth of scientific evidence has repeatedly confirmed the causal link between career firefighting and specific cancers; however, there is not the same scientific evidentiary basis for volunteer firefighters.

- 4.9. **The Monash Australian Firefighters' Health Study**<sup>18</sup> was the first study to include a significant volunteer cohort within the context and meaning of "volunteer" in the Australian fire services. While the study was consistent with international research when finding an overall rate of increased incidence of cancer for career firefighters, there was no overall increased risk for volunteers.

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<sup>16</sup> Mortality and cancer incidence in a pooled cohort of US firefighters from San Francisco, Chicago and Philadelphia (1950-2009) National Institute for Occupational Safety and Health (NIOSH), 2013

<sup>17</sup> Exposure-response relationships for select cancer and non-cancer health outcomes in a cohort of US firefighters from San Francisco, Chicago and Philadelphia (1950-2009), National Institute for Occupational Safety and Health (NIOSH), 2015

<sup>18</sup> Australian Firefighters' Health Study Final Report Monash Centre for Occupational and Environmental Health, December 2014

- 4.10. The Monash study, commissioned by the Australasian Fire and Emergency Service Authorities Council (AFAC), was a retrospective cohort assembled from past and present career, part time and volunteer firefighters identified through HR agencies and incident reports provided by seven Australian fire services.
- ACT Fire and Rescue
  - Air Services Australia
  - CFA & MFB (Victoria)
  - Department of Fire and Emergency Services Western Australia
  - Fire and Rescue New South Wales
  - Queensland Fire and Rescue Services
  - Northern Territory Fire and Rescue Service
- 4.11 The study investigated the rate of cancer and the overall death rate for specific causes of death of Australian firefighters compared to the general Australian population. The study also examined:
- cancer incidence in specific categories – career, part time and volunteer and genders compared to the general Australian population
  - considered other health outcomes which firefighters may be at risk for example cardiovascular disease, suicide and death in the line of duty.
- 4.12. The firefighters studied totaled 232,871 firefighters in the study – including
- 18,035 career firefighters,
  - 13,704 paid part time (retained/auxiliary) firefighters; and
  - 201, 132 volunteer firefighters
- 4.13 The initial records sent from the fire agencies to Monash included 305,000 volunteer firefighters. Approximately 45,000 volunteer firefighters were eliminated from the study as they had never been at an incident or fire scene in any capacity. A further 55,000 volunteers were then eliminated from the study as did not meet the criteria of attending one fire in a year.
- 4.14 The key findings of the Monash study were:
- The overall the cancer incidence for career firefighters was significantly raised compared to the Australian general population
  - No overall increased cancer risk for volunteers
  - The incidence of cancer is significantly raised for male career firefighters who work for 20 years or more.
  - Trend of increasing incidence of cancer for career firefighters with the increasing attendance at fires
  - Too small a cohort female career/paid part time/volunteers for meaningful analysis
- 4.15 Specific findings in relation to the male career full time firefighters were:
- Statistically significant increase in prostate cancer
  - Significant trend of increase in prostate cancer with duration of employment and incidence attendance

- Significant increased risk of melanoma for firefighters with more than 10 years employment
- Significantly higher risk of kidney cancer for firefighters with more than 20 years employment
- Elevated risk of kidney cancer for firefighters 10-20 years employment
- Significantly elevated risk of lympho-haematopoetic cancers for firefighters more than 10 years employment
- The incidence of mesothelioma was significantly significant for firefighters employed for more than 10 years. As the latency period for mesothelioma is 30-40 years, it is expected that the rate will increase in the next 10-20 years.
- High attendance at fires directly linked to increased risk of circulatory-caused death
- Male breast cancer elevated for firefighters more than 20 years employment but not statistically significant
- More cases of testicular cancer than were expected but the numbers still small so not statistically significant
- The incidence of stomach cancer was significantly raised for firefighters who had worked before 1985
- Incidence of lung cancer not raised compared to general Australian population but did not have individual smoking data and assuming few firefighters smoke the incidence is likely to be more significant.

4.16 Specific findings in relation to the male career part time firefighters were:

- Significant increase in incidence of prostate cancer for those employed more than 10 years.
- Significant increase in incidence of melanoma for those employed more than 20 years.
- Cancers of the digestive system raised for those employed more than 20 years.

4.17 Specific findings in relation to the male volunteer firefighters were:

- No overall increase of risk of cancer when compared to the general population
- No trend of an increase of cancer incidence with increasing duration of service
- The risk of prostate cancer was increased for those that had volunteered as a firefighter for 10-20 years
- Kidney cancer was not elevated
- Volunteers who attended fires had greater incidence of testicular than those **that didn't but that did not equate to an elevation when compared to general population**
- Lip cancer incidence was raised for those who had volunteered for more than 20 years and were first recorded as a volunteer pre 1970.
- Melanoma does not appear to be related to volunteer firefighting
- No increase in the risk of digestive cancers
- Significantly higher risk of death at a fire (attributed to the deaths of volunteer firefighters in bushfires)

## **5.0 PRESUMPTIVE LEGISLATION - THE AUSTRALIAN EXPERIENCE**

- 5.1 In accordance with the current provisions of the **Workers' Compensation and Rehabilitation Act 2003**, if a firefighter is injured or killed at an incident or fire while undertaking his or her duties as a firefighter, it is accepted that the firefighter suffered a work-related injury and treatment, assistance and compensation follows.
- 5.2 If a firefighter contracts a disease as a result of his or her attendance at a fire or incident, then it should also be accepted that the firefighter has suffered a work-related disease and treatment, assistance and compensation should follow.
- 5.3 However, in reality, when it is work-related illness such as cancer, it has been more difficult for the firefighter to access the treatment, assistance and compensation for the work-related disease. It has inevitably required the firefighter to commence legal proceedings which are adversarial and protracted.
- 5.4 To litigate takes time, energy and money. It is extremely stressful. At a time when a firefighter has been diagnosed with cancer, is required to take time off to undergo treatment, the firefighter is often not in a position emotionally or financially to commence a legal case. Often the firefighter is advised by medical practitioners to reduce the stress in their lives and focus on the treatment. Litigation is stressful and not viable for a firefighter when they are focused on trying to get well.
- 5.5 Historically it has been difficult for firefighters to successfully make a claim for cancer-related illness. The firefighter would be required to show not only the nexus between the duties of a firefighter and the contraction of the cancer but additionally which incident or fire during their career was the causation of the illness.
- 5.6 It is very difficult for a firefighter to be able to pinpoint the specific fires or incidents where the toxic exposure occurred as it is exposure to toxins over a period of time which has placed the firefighter at risk.
- 5.7 When the personal circumstances are taken into account, along with the inherent difficulties in being able to demonstrate the exposure to specific fire(s), it is not surprising that many firefighters with cancer are advised not to pursue a claim. As a result they do not access their entitlement to cover treatment and compensation. They are left to fund their own leave from work and in many cases their treatment. Their families cannot access compensation if the firefighter dies as a result of contracting cancer.
- 5.8 Therefore, the ability for a firefighter to successfully succeed with a claim for cancer-related illness under the current workers compensation scheme as an occupational disease is highly unlikely if not impossible for the above reason.

5.9. The Senate Committee heard evidence from workers compensation lawyers as well as personal experiences of firefighters who had contracted cancer, including the family of a deceased firefighter. Chapter 4 of the Senate Report (pages 37-46) details the evidence of those firefighters.

5.10 The Senate Committee accepted the current onus of proof was preventing firefighters from accessing their entitlements for occupational cancer:

*"Canada and the United States have responded to science and moved away from the system currently in place in Australia. Here the onus is on firefighters with cancer to pinpoint a single event, or fire which caused their illness and if they seek to obtain compensation for their illness. For reasons to be discussed later on in this report this requirement is very difficult to satisfy and has to date served as an almost insurmountable obstacle to firefighters seeking compensation. In many cases this has left sick firefighters and their families struggling not only physically and emotionally, but also financially, at their time of greatest need. It has meant that firefighters who put their health and lives at risk to help the community are let down when they themselves are in need of assistance."<sup>19</sup>*

5.11 Presumptive legislation is also the accepted method of identifying and providing for occupational disease for the occupation of fire fighting and has proven to have been the effective mechanism in Canada and the United States of America.

5.12 In the Report to the Workers Compensation Board of Manitoba on the Association between Selected Cancers and the Occupation of Firefighter<sup>20</sup> the use of presumptive legislation was explained:

*"A presumption assumes that, all other things being equal, most cases of a certain type of cancer will be associated with occupational exposure, even though it is not possible to determine which case is actually caused by the occupation. A presumption is a way of being inclusive in the acceptance of such claims given that it is not possible to distinguish among them. "*

*"A presumption is also appropriate when the condition is rare and there is a pattern or strong suggestion of strong association with an occupation that may be concealed by other factors that complicate interpretation of the risk estimate."*

5.13 The Senate Committee agreed it was also the appropriate mechanism for Australian workers compensation legislation.

*"The committee is confident in the quality of the studies it has seen and considers them to be compelling evidence in support of this Bill."<sup>21</sup>*

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<sup>19</sup> Senate Committee Report, paragraph 1.34, page 6.

<sup>20</sup> Report to the Workers Compensation Board of Manitoba on the Association Between Selected Cancers and the Occupation of Firefighter, 28 March 2002, page 8, prepared by Tee L. Guidotti and David F. Goldsmith

*"On the weight of considerable evidence supplied to the committee supporting a likely causal link between firefighting and certain cancers, as well as the understanding that claims for compensation would be legally contestable, the committee is confident that rebuttable presumption is a solid – and fair – foundation for workers' compensation policy for career firefighters"<sup>22</sup>*

*"The committee acknowledges the volume of evidence received – particularly from Slate and Gordon Lawyers – pointing out that the ultimate effect of this Bill would be to merely shift, not scrap, the evidentiary burden. The committee recognizes that the opportunity will exist for employers and insurance agencies to overcome claims for compensation in cases where such claims were not warranted."<sup>23</sup>*

- 5.14 **The Federal "Fair Protection for Firefighters" Bill was enacted in December 2011** having been unanimously passed in both the House of Representatives and the Senate. Under a Labor Government it was introduced by Greens Member Adam Bandt, Seconded by Independent Bob Katter and Co-Sponsored by Labor Member Maria Vamvakinou and Liberal Member Russell Broadbent.
- 5.15 The Hansard records of the Senate hearings and the passage of the Bill through both Houses demonstrates the non-partisan manner in which the Bill had traversed the parliamentary processes.

- Liberal Senator Eric Abetz and the then Leader of the Opposition in the Senate:  
*"From time to time I have been known to be critical of certain elements of the Australian Greens and of union leadership. But, of course, the great exception to that is Senator Gavin Marshall, who is smiling in the chamber. As I have been talking about other exceptions that prove the rule, I believe that on this occasion, with the legislation that was introduced by Mr Adam Bandt in the other chamber along with Mr Russell Broadbent, the Liberal member for McMillan, and Ms Maria Vamvakinou, the member for Calwell, the Australian Greens, who were there at the front, did a good job—as did Mr Russell Broadbent and other members of the Senate Standing Committee on Education, Employment and Workplace Relations, from all sides, who participated."<sup>24</sup>*
- Greens Senator Penny Wright:  
*"Legislation of this type to provide proper protection for firefighters for the cancers they contract at a far greater rate than the ordinary population has been a long time coming.*

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<sup>21</sup> Senate Committee Report, paragraph 2.15, page 12.

<sup>22</sup> Senate Committee Report, paragraph 2.51, page 19.

<sup>23</sup> Senate Committee Report, paragraph 3.35, page 30.

<sup>24</sup> Australian Parliament The Senate Hansard, Thursday 24 November 2011, Safety, Rehabilitation and Compensation Amendment (Fair Protection for Firefighters) Bill 2011, Second Reading Speech

*I feel fortunate that I have been able to participate in a process whereby we can pass groundbreaking legislation like this in Australia. In an environment where politics too often trumps the rightness of the decisions we should be taking, this process has been an exception.*

*I pay tribute to my colleagues on the Senate Standing Committees on Education, Employment and Workplace Relations that inquired into the original version of this bill. In particular, I pay tribute to the chair, Senator Gavin Marshall, and his colleagues from the government and the deputy chair, Senator Chris Back, and his colleagues from the opposition. Through a process of careful listening with open minds to the evidence—both the science and the human stories of the consequences of not having adequate legal protection—we were all able to appreciate the rightness of the approach taken by this legislation. Senators Marshall and Back then advocated for the bill and set about convincing their colleagues, and the end result is one we can all be proud of. It will be a significant change to the law brought about through a process of negotiation and collaboration in the national interest, which will bring benefits to those who need them. It is a triumph of policy and propriety over politics. The Australian people would be justly pleased to see their parliament operating in this way.<sup>25</sup>”*

- 5.16 The Federal presumptive legislation provided a requirement of review and was accordingly reviewed in 2013 under the newly elected Abbott Government. A copy of the Review of the Safety, Rehabilitation and Compensation Amendment (Fair Protection for Firefighters) Act 2011 is attached as Appendix F.
- 5.17 An independent Reviewer was appointed by the new Minister for Employment Eric Abetz to inquire and report on:
- how effective and efficient the firefighter provisions have been in providing streamlined determination of claims made by those firefighters seeking compensation for the prescribed cancers and consideration of the appropriateness of the prescribed cancers;
  - what (if any) issues have emerged in the operation of the firefighter provisions, including whether the date of manifestation should be maintained;
  - whether there are other ways to enable the streamlining of the determination of claims made by firefighters consistent with **contemporary workers’ compensation principles; and**
  - the affordability of any proposed recommendations.

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<sup>25</sup> Australian Parliament The Senate Hansard, Thursday 24 November 2011, Safety, Rehabilitation and Compensation Amendment (Fair Protection for Firefighters) Bill 2011, Second Reading Speech

5.18 The Reviewer made the following 8 recommendations:

- 1 *I recommend that, consistent with recommendations made by Mr Hanks QC, claim determination time frames should be established under the SRC Act.*
- 2 *I recommend that Comcare modify the information initially requested from employers to ensure the request is directed only to the key elements of the firefighter provisions, namely:*
  - *the employment of the claimant, including whether firefighting was a **substantial portion of the employee's duties**,*
  - *whether the employee meets the qualifying period,*
  - *whether the employee was exposed to the hazards of a fire scene during that period, and*
  - *whether the employer sees any reason to rebut the presumption that **the employee's employment contributed, to a substantial degree, to the disease.****If those factors are not made out, Comcare should then request further information to determine whether the claim should be accepted under other provisions of the SRC Act.*
- 3 *I recommend that Comcare and relevant employers, with input from the relevant unions, jointly develop education programs to improve the awareness of the firefighter provisions.*
- 4 *I recommend that employers consider the feasibility of targeted medical assessments for the prescribed cancers for serving firefighters.*
- 5 ***I recommend the current list of prescribed cancers in the Firefighters' Act be maintained.***
- 6 *I recommend the Government conduct a further review of the firefighter provisions in five years, with an emphasis on developments in the relevant science, and to ensure that these provisions continue to streamline the determination of claims made by firefighters consistent with contemporary **workers' compensation principles.***
- 7 *I recommend that a term of reference of the recommended review of the firefighter provisions (**Recommendation 6**) be to consider whether lung cancer in non-smokers should be included in the list of prescribed cancers.*
- 8 *I recommend the current date of manifestation be maintained.*

5.19 Recommendation two above resulted from concerns about the time Comcare was taking to determine the claims and the unnecessary information Comcare was seeking to apply the presumption.

***"Stakeholders were positive about the firefighter provisions. Employees have been able to rely on the presumption to assist in their claims for compensation, claims that might have otherwise been hard to establish. However, the time taken to determine those claims is concerning. A protracted consideration process would be stressful for claimants, and it was precisely what the Firefighters' Act was seeking to avoid."***



*When considering the Bill in 2011, the Committee was acutely aware of the burden of proof that firefighters were faced with when seeking compensation or coverage for medical expenses. The Committee was informed that in the absence of the kind of presumptive mechanism created by the firefighter provisions, firefighters had to go through adversarial, costly and often protracted proceedings to establish a link between their illness and their firefighting and causation between a specific fire incident and their illness.*

*The Committee also cited submissions from the UFUA and Slater and Gordon Lawyers that highlighted the disincentive to access entitlement or compensation because of the emotional and financial cost of litigation. Typically medical advice at these times is to minimise stress and focus on cancer treatment.*

***Efficient and effective claims determination was one of the goals of the Firefighters' Act.***<sup>26</sup>

- 5.20 The Reviewer considered a previous review of the Act generally which promoted an efficient claims administration to eliminate or minimize administrative delays in claims processing and the application of the Act. In doing so, the Reviewer of the firefighter presumptive provisions set out the specific process for determining firefighter cancer claims:

*The firefighter provisions are simple in form. There are only four factors that need to be considered. They are whether the employee:*

- (a) was a firefighter (ie whether they were a Commonwealth employee who had the substantial duties of a firefighter): ss 7(8)(b), 7(9)(a) and 7(9)(c) of the SRC Act;*
- (b) was exposed to the hazards of a (single) fire-scene during that employment: s 7(8)(c) of the SRC Act;*
- (c) suffers one of the prescribed cancers diagnosed after 4 July 2011: s 7(8)(a) of the RC Act and Item 3, Schedule 1 of the Firefighters' Act; and*
- (d) prior to sustaining the disease was employed as a firefighter for the qualifying period stipulated for that cancer: s 7(8)(d) and s 7(9)(b) of the SRC Act.*

***If each of those matters is made out, the employee's employment is taken to have contributed to a significant degree to the contraction of the cancer, unless the contrary is established.***

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<sup>26</sup> Review of the Safety, Rehabilitation and Compensation Amendment (Fair Protection for Firefighters) Act 2011, paragraphs 2.18-2.21, page 12

*Assuming that for any claim that the diagnosis of the disease (and date of that diagnosis) is **clear, it only remains to verify information about the employee's duty profile, all of which would come from the relevant employer. For the three premium paying employers of firefighters covered by the SRC Act, confirming that information should be relatively simple.***

*Assuming the employer confirms all of those factors, decisions about whether a firefighter can rely on the presumptive test should be made within a very short time of receiving the relevant information.*

***Comcare's current workers' compensation claim form is generic and is not well suited or efficient for establishing the kind of claim that is likely to be made relying on the firefighter provisions.<sup>27</sup>***

- 5.21 The Reviewer was clear that in determining whether to apply the presumption, the only information required was the information that demonstrate that the firefighter met the listed requirements for the presumption to be then applied.

*As detailed at [2.3] above, Comcare currently requests specific information from employers about the factors which determine whether a claim can be approved pursuant to the firefighter provisions, but it also requests information that is not required to make that decision. The firefighter provisions require that an employee be exposed to "the hazards of a fire scene" during the relevant qualifying period. Neither hazards nor fire scene is further defined. However, Comcare currently requests from employers "where [the employee is] exposed to the hazards of a structural fire, as much information as possible regarding possible exposure to any chemicals".*

*The extent to which that information materially assists Comcare to establish the eligibility of a claim against the firefighter provisions is unclear (over and above the inherent confirmation that the employee had been exposed to "a fire scene" by identifying the various chemicals the employee had been exposed to).*

*That information would generally be used to investigate claims considered against the criteria in s 7(1) of the SRC Act. Airservices Australia was the only current employer that commented on this requirement. It indicated that a significant administrative effort was required to compile the information requested by Comcare and that (at least in relation to the initial claims) it took quite some time.*

*As the determining authority, Comcare has a responsibility to assess and determine claims in accordance with the relevant legislative criteria. It is not, and should not, simply be a rubber stamp for providing compensation.*

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<sup>27</sup> Review of the Safety, Rehabilitation and Compensation Amendment (Fair Protection for Firefighters) Act 2011, paragraphs 2.30-2.36, pages 14 & 15.

*However, in a situation where the eligibility criteria are clearly made out based on information provided by the employer, and the employer's position is also clear in that it does not include any indication that it will seek to rebut the presumption that **the employee's cancer was caused by her or his employment, it is difficult** to see the need for Comcare to obtain extra information at the outset, or to take such a long time in determining the claim.*

*Any claim received by Comcare that is identified as a claim by a firefighter in relation to one of the prescribed cancers should be tested against the firefighter provisions (and only those provisions) as a priority.*

*If a claim fails to meet any of the criteria required by the firefighter provisions, Comcare can then test a claim against other injury or disease criteria defined by the SRC Act. Clearly, additional hazard information that is currently gathered at the outset of the claim is necessary in order to **determine an employee's eligibility** pursuant to s 7(1).<sup>28</sup>*

- 5.22 The Review clearly sets out the considerations as the scientific basis for the presumption is to be relied upon.
- 5.23 It was the intention of the Federal Parliament that similar presumptive legislation be enacted throughout Australia for the protection of firefighters.
- 5.24 Upon accepting the scientific basis and the proposed operation and application of the presumptive legislation for specific cancers for career firefighters, the Senate Committee was cognizant that the protection should be awarded to firefighters across Australia.

*"The committee has conducted its analysis in the hope that similar legislation will be introduced across state jurisdictions in future as part of the harmonization of workers' compensation laws. If this Bill is passed, the committee encourages state jurisdictions to engage in a dialogue which will eventually see a positive, and fair, outcome for firefighters across Australia."<sup>29</sup>*

- 5.25 In 2013 the Tasmanian Parliament was the first state to introduce presumptive legislation to recognise occupational cancer for firefighters.

### **The Tasmanian Model**

- 5.18 The Tasmania State presumption legislation is modeled on the Australian federal legislation in respect to career firefighters but also provided the protection for volunteer firefighters in circumstances where the volunteer firefighter met the qualifying period of service for the relevant cancer and was able to demonstrate 150 exposures to fire scenes during the 5 years (for brain cancer and leukemia) and during 10 years for the other cancers.

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<sup>28</sup> Review of the Safety, Rehabilitation and Compensation Amendment (Fair Protection for Firefighters) Act 2011, paragraphs 2.25-2.29, pages 13 & 14.

<sup>29</sup> Senate Committee Report, paragraph 4.42, page 46.

- 5.23 The Australian Senate Committee considered the application of the presumptive legislation to volunteers but they were not included as the definition being employed as a firefighter under the Federal Fair Protection for Firefighters Bill **was "an employee is taken to have been employed as a firefighter if firefighting duties made up a substantial portion of his or her duties"**.

*"This definition means that volunteer firefighters would not be covered by the legislation because firefighting does not comprise a substantial portion of their duties, nor would they be able to satisfy the requirements of the qualifying periods.*

*During the course of its inquiry the committee sought clarification as to why the proposed legislation did not seek to cover volunteers, who are covered in certain jurisdictions overseas. In response to its questions, the committee heard that the definition of volunteer firefighter differs between Australia and overseas.<sup>30</sup>*

- 5.24 The Tasmanian Bill was first introduced to provide protection to both career and volunteer firefighters. It included with the same 12 cancers and same qualifying periods for those cancers with a requirement for both career and volunteer firefighters to demonstrate 520 exposures over any 10 year period of employment, or 260 exposures over any 5 year period of employment.
- 5.25 The legislation that was ultimately enacted was significantly different to the Bill as first introduced with the requirement to demonstrate exposures reduced to 150 exposures and only applicable to volunteer firefighters. The Tasmania Parliament Hansard record of **the Minister for Workplace Relations David O'Byrne's Second Reading Speech<sup>31</sup>** in the Legislative Assembly sets out the basis for and application of the presumption, and the amendment to remove the exposure requirement from career firefighters.

*"Mr Deputy Speaker, appropriate restrictions to limit the operation of the presumption have been included in the bill. These restrictions will ensure that the presumption only applies in cases where there is genuine evidence of significant exposure to hazardous materials during employment as a firefighter. The criteria which must be met include a requirement that the worker must be suffering from one of the diseases listed in schedule 5 of the bill. At this point in time, the list includes 12 primary site cancers which have been identified in a number of research papers and which are recognised in the Safety, Rehabilitation and Compensation Act of the commonwealth.*

*The second criterion which must be met is that the disease must occur during a period in which the worker is employed as a firefighter or, alternatively, it must occur within the 10-year period after the worker retires or resigns. For*

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<sup>30</sup> Senate Committee Report, paragraph 3.50 -3.51, page 32

<sup>31</sup> Tasmania Parliamentary Hansard, Tuesday 20 August 2013, Workers Rehabilitation and Compensation Amendment (Fire-Fighters) Bill 2013 (no 27) Second Reading, Mr O'Byrne (Franklin – Minister for Workplace Relations).

*the purposes of this bill a person is employed as a firefighter if the person is employed as a career firefighter or engaged as a volunteer firefighter.*

*It should be noted that while the commonwealth model has no limits on the presumption applying post-retirement, the 10-year limit has been included, as it is seen to be an appropriate compromise and will ensure that the presumption is applied in a fair but cost-effective manner.*

*The third criterion that must be met is that before the disease occurred the firefighter must have been employed as a firefighter for a certain period. This is known as the qualifying period.*

*The bill makes provision for different qualifying periods depending upon which type of cancer is suffered. For example, in the case of primary leukaemia, the qualifying period is five years while in the case of primary site oesophageal cancer, the qualifying period is 25 years. The qualifying periods included in this bill mirror the qualifying periods in the Safety, Rehabilitation and Compensation Act of the commonwealth.*

*Mr Deputy Speaker, the fourth and final criterion is that the worker must have experienced a certain number of exposure events during their employment as a firefighter. As drafted, the obligation applies to both career and volunteer firefighter. However as a result of representations made to me by the United Firefighters Union, I agreed to remove the exposure requirement for career firefighters and will be seeking to amend this aspect of the bill.*

*Data provided by the Tasmania Fire Service indicates that almost all career firefighters that satisfy the qualifying period have the required number of exposures, therefore applying this criterion to career firefighters is considered unnecessary. However the exposure requirement remains a relevant consideration for volunteer firefighters, many of whom have experienced much lower numbers of exposure events compared to career firefighters.*

*A worker is considered to have an exposure event if they attend an incident as a firefighter that is recorded on the Tasmania Fire Service incident recording system. Avoidable call-outs such as false alarms, false calls, good-intent calls and other incidents where there is not likely to be exposure will not be counted as exposure events. The number of exposure events required to meet this criteria is 520 exposures over any 10-year period of employment, or in the case of primary site brain cancer or leukaemia, 260 exposures over any five-year period. The shorter exposure period for brain cancer and leukaemia recognises that these cancers have a shorter latency period than most other cancers. The reference to 520 exposures is a drafting error and an amendment has been prepared to reduce this figure to 260 exposures.*

*A further safeguard is included in the bill which provides that the presumption is rebuttable if there is evidence to the contrary. This is a standard feature of **presumptive legislation.**"*

- 5.26 The legislation ultimately enacted in Tasmania required volunteer firefighters to demonstrate attendance at 150 exposure incidents during the qualifying period for the listed cancer.
- 5.27 Later in 2013 the Western Australian Parliament enacted presumptive legislation mirroring the Federal legislation with the same 12 cancers and qualifying periods and applying only to career firefighters. At the time Members of the Government indicated it was considering a separate scheme for volunteer firefighters but to date that has not occurred.
- 5.28 The Federal model was followed by the South Australian Parliament in 2014 and did not cover volunteer firefighters. Later that year the South Australian legislation was amended to extend the coverage to volunteer firefighters but did not follow the Tasmanian model as it did not include the minimum exposure requirement.
- 5.29 The Northern Territory legislation was enacted in 2015 and it too followed the Tasmanian model with the requirement to demonstrate 150 exposures in 5 years for brain cancer and leukemia and in 10 years for any of the other listed cancers.
- 5.30 The Second Reading speech for the Northern Territory Bill clearly explains the reasoning for this requirement for volunteers”

*“The proposed legislation establishes a rebuttable presumption that particular forms of cancer developed by career and volunteer fire fighters are work related. This new provision will make the process of claiming workers compensation less cumbersome. Under the presumption, if a fire fighter is diagnosed with one of the 12 cancers identified in the bill and served as a fire fighter for the relevant qualifying period, it will be presumed that the cancer is an occupational disease and is therefore compensable.*

*For volunteer fire fighters an additional requirement is proposed so the person must have attended at least 150 exposure events within any five year period for brain cancer and leukaemia, and within 10 years for the remaining 10 cancers. This requirement ensures that the presumption only applies to volunteers who have had some measurable exposure to the hazards of fire.”<sup>32</sup>*

- 5.31 Therefore throughout Australia the application and operation of the presumption has been consistent in regards to career firefighters. The Federal Senate Report recorded the scientific basis for the provision of the presumption for the specific cancers.

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<sup>32</sup> Workers Rehabilitation and Compensation Legislation Amendment Bill 2015, Second Reading Speech [http://www.austlii.edu.au/au/legis/nt/bill\\_srs/wraclab2015602/srs.html](http://www.austlii.edu.au/au/legis/nt/bill_srs/wraclab2015602/srs.html)

*"The committee recognizes that cancer is an illness that touches many fit, healthy people in the non firefighter population as well. In many cases it is unpredictable and incomprehensible, due to genetics, or factors we do not yet understand. But when the science tells us that a particular group of people who are routinely exposed through their service to the community to known and unknown carcinogens are at a higher risk of developing certain types of cancer, then the response becomes clear."<sup>33</sup>*

- 5.32 In the absence of the scientific evidence of the nexus between volunteer service and the increased risk of cancer, not all states have included volunteer firefighters in the coverage of the presumptive.
- 5.33 The Tasmanian legislation and model was enacted prior to the publication of the **Monash Australian Firefighters' Health Study** which found there was no overall increased risk of cancer for volunteer firefighters. The Tasmanian Government had elected to include firefighters and in doing so required volunteer firefighters demonstrate the specified minimum exposure to the hazards of a fire scene. This was a safeguard for volunteer firefighters to provide a basis for the presumption to apply. Without such a safeguard it is likely that volunteer firefighters would continue to be challenged to prove the cancer resulted from and therefore negate the operation of the presumption. That safeguard also protects the integrity of the application of the presumption to operational firefighters as volunteers can serve the community in many ways that does not necessarily include being exposed to the hazards of a fire scene.

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<sup>33</sup> Senate Committee Report, paragraph 4.40, page 46.

## 6.0. SCOPE OF THE BILLS BEING CONSIDERED

- 6.1 Both the **Workers' Compensation and Rehabilitation (Protecting Firefighters) Amendment Bill 2015** and the **Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2015** intend to provide for a rebuttable presumption that specific cancers are occupational cancers for firefighters:
- Both Bills model the Australian Federal Legislation in that each Bill provides a rebuttable presumption
  - Both Bills model the Australian Federal legislation listing the same 12 cancers
  - Both Bills model the Australian Federal legislation for career firefighters by requiring the same qualifying period for each of the specific cancers
  - Both Bills differ from the Australian Federal legislation as they provide for the rebuttable presumption to apply to career firefighters and volunteer firefighters and rural firefighters.
- 6.2 The Australian Federal legislation does not provide the presumption for volunteer firefighters. The coverage of volunteers was canvassed during the Senate Inquiry.
- 6.3 The operation of the rebuttable presumption is to presume that the specific cancers are contracted as a result of firefighting due to established evidence and facts. There is a wealth of accepted scientific studies that have demonstrated the increased incidence of specific cancers for career firefighters. There is not the same evidence or studies for volunteer firefighters. The studies have only included full time career firefighters in the cohort or part time paid firefighters (referred to as volunteers in **North America**). **The Monash Australian Firefighters' Health Study is the first to** include specific analysis on a volunteer cohort and it did not find an overall increased incidence of cancer for volunteer firefighters.
- 6.4 In the context where there is not the research or science to underpin the basis for presumptive legislation for volunteer firefighters, a requirement for volunteers to demonstrate they have been exposed to the hazards of a fire-ground during the required qualifying period is in reference to the understanding that carcinogens and toxins are absorbed as a result of the exposure to a fire scene. This requirement would enable volunteer firefighters who could demonstrate such exposures access to the presumptive; otherwise it is likely any claim from a volunteer would be challenged as firefighting does not comprise a substantial portion of their working lives.
- 6.5 As outlined above Tasmania was the first state to include volunteer firefighters in presumptive legislation to recognise occupational cancer.



- 6.6 The **Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2015** includes the same requirement for volunteer firefighters to demonstrate attendance at 150 exposure incidents during the required periods.
- 6.8. The **Workers' Compensation and Rehabilitation (Protecting Firefighters) Amendment Bill 2015** does not include any requirement for volunteer firefighters to demonstrate attendance/exposure to the hazards of a fire scene.
- 6.7 The UFUA respectfully submits that based on the international and Australian experience there is a sound basis for the enactment of presumptive legislation that promotes the following policy:
- That the 12 cancers currently included in the Federal legislation are included with the provision to add additional cancers or diseases as the research and science develops.
  - That the qualifying periods included in the Federal Legislation be applied.
  - That in accordance with the international acceptance of the research that has demonstrated the link between career firefighting and the increased incidence of specific cancers that the only considerations for the application of the presumptive mechanism for career firefighters is:
    - That the claimant was/is employed as a firefighter;
    - That during that employment the firefighter was exposed to the hazards of a fire ground.
    - That the claimant is diagnosed with one of the listed cancers;
    - That prior to diagnosis with one of the listed cancers, the firefighter had been employed for the corresponding qualifying period. That period can be made up of 1 or more periods of employment.
  - In acknowledging that there is not the scientific basis or research demonstrating the link between volunteer firefighting and the increased incidence of cancers, but in order to provide a workable and applicable presumption, that specific provisions for volunteers be included.
  - The most common application for volunteer firefighters is the Tasmanian model which applies the presumption to volunteer firefighters where:
    - That the claimant was/is a volunteer firefighter;
    - That the claimant is diagnosed with one of the listed cancers;
    - That prior to diagnosis with one of the listed cancers, the claimed had volunteered as a firefighter had been employed for the corresponding qualifying period. That period can be made up of 1 or more periods of volunteer service.

- That the claimant can demonstrate that during the qualifying period for the specific cancer the volunteer firefighter attended 150 specified number of exposure incidents.

6.8 In applying the above principles to the current Bills being considered by this Committee the UFUA makes the following observations:

**i. The *Workers' Compensation and Rehabilitation (Protecting Firefighters) Amendment Bill 2015* :**

- This Bill is modelled on the Federal Bill to apply the presumption for the same cancers with the same qualifying periods for career firefighters.
- The Bill does not replicate the Federal Bill in that it omits to provide for the adding of additional cancers as the science develops. The Senate Inquiry clearly indicated the need to amend as the science and research develops and other cancers are demonstrated to be occupational cancers for firefighters.
- The Bill does not replicate the Federal Bill in that it provides for the qualifying period to be calculated combining service as a career firefighter and a volunteer firefighter.
- The Bill does not replicate the Federal Bill in that it provides for the presumption to be applied when a volunteer firefighter who is not a career firefighter.
- The Bill does not replicate the Tasmanian model as it does not make any distinction between the presumption being applied for career firefighters and volunteer firefighters. The presumption for career firefighters is based on accepted credible scientific evidence. There is no such scientific basis for volunteer firefighters. The presumption therefore should only be applied to volunteers who have contracted the cancer as a result of their exposures to fire scenes while serving as a volunteer firefighter. Without such a qualifier there is a risk that the presumptive legislation may be ineffective for volunteers as without demonstration of likely exposure through firefighting the claims would be challenged.
- The current drafting does not include any requirement for exposure to the hazards of a fire scene.
- The current drafting of proposed s32A (4) (a) includes rural firefighters performing the duties as a member of a rural fire brigade.
  - The current drafting does not require evidence that the rural firefighter has attended fires or been exposed to the hazards of a fire scene as a firefighter.
  - There may be rural brigade members who do not perform operational firefighting.
  - The current wording may give rise to claims to the presumption from members of a rural fire brigade who have not been exposed to the hazards of a fire ground.

- The current wording therefore may open the flood gates which would have a direct impact on the credibility of the presumption.
  - The current wording therefore may open the flood gates which may have significant cost implications.
- The current drafting of proposed s32A (4)(b) includes volunteers attending a fire as a volunteer firefighter or fire warden.
  - The current drafting does not require evidence that the volunteer firefighter has been exposed to the hazards of a fire scene as a firefighter.
  - The current wording may give rise to claims to the presumption from volunteers who have not been exposed to the hazards of a fire ground.
  - The current wording therefore may open the flood gates which would have a direct impact on the credibility of the presumption.
  - The current wording therefore may open the flood gates which may have significant cost implications.
- Other comment on the this Bill is as follows:
  - **The Bill's current drafting** of proposed new section 32A (7) arguably only applies the presumption in respect of career firefighters who have been employed under the Fire and Emergency Services Act 1990. This distinction excludes firefighters employed under previous legislation, authorities or instrument.
  - **The Bill's current drafting arguably only applies the presumption** in respect of rural firefighters who are or have been a member of a rural fire brigade registered under the Fire and Emergency Services Act 1990. This distinction excludes rural firefighters who were members of rural fire brigades registered under previous legislation, authorities or instrument.
  - **The Bill's current drafting does not limit the application to** volunteer firefighters as it does for career and rural firefighters outlined above.

**ii. The *Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2015* into the Queensland Parliament on 15 July 2015:**

- This Bill is modelled on the principles of the Federal Bill to apply the presumption for the same cancers with the same qualifying periods for career firefighters.
- The Bill does not replicate the Federal Bill in that it omits to provide for the adding of additional cancers as the science develops. The Senate Inquiry clearly indicated the need to amend as the science and research develops and other cancers are demonstrated to be occupational cancers for firefighters.

- The Bill does not replicate the Federal Bill in that it provides for the qualifying period to be calculated combining service as a career firefighter and a volunteer firefighter.
- The Bill does not replicate the Federal Bill in that it provides for the presumption to be applied to a volunteer firefighter who is not a career firefighter.
- The Bill is modelled on the Tasmanian model as it applies to the presumption to a volunteer claimant who can demonstrate that during the qualifying period for the specific cancer the volunteer firefighter attended 150 specified number of exposure incidents.
- The current drafting does not include any requirement for exposure to the hazards of a fire scene.
- Other comment on the this Bill is as follows:
  - **The Bill's current drafting of proposed section 36B arguably only** applies the presumption in respect of career firefighters who have been employed under the Fire and Emergency Services Act 1990. This distinction excludes firefighters employed under previous legislation, authorities or instrument.
  - **The Bill's current drafting arguably only applies the presumption in** respect of rural firefighters who are or have been a member of a rural fire brigade registered under the Fire and Emergency Services Act 1990. This distinction excludes rural firefighters who were members of rural fire brigades registered under previous legislation, authorities or instrument.
  - **The Bill's current drafting does not limit the application to** volunteer firefighters as it does for career and rural firefighters outlined above.
  - In proposed section 36C the meaning of exposure incident is **currently confined to** "*the firefighter participates in extinguishing, controlling or preventing the spread of the fire at the location.*"
    - This definition is applied in the provisions for volunteer **firefighters in determining the number of year's service** (proposed section 36E) as well as determining the attendance at the required 150 exposure incidents (proposed section 36D).
    - This definition is also to be applied for career firefighters in determining the firefighter has met the qualifying period (proposed section 36E).
    - This definition omits other exposures to a fire scene such as fire investigation, post fire when firefighters can be exposed to embers and off-gassing, training, undertaking a demonstration, competitions etc.
    - The Federal legislation threshold for career firefighters is "**exposed to the hazards of a fire scene**" which encompasses all circumstances of exposures.

- The UFUA submits proposed section 36(c) be omitted and insert instead ***"the firefighter has been exposed to the hazards of a fire scene"***
  - Proposed section 36D (1) (b) and (c) appears to differentiate to provide a requirement for volunteers to attend 150 exposures during any qualifying period. For the avoidance of doubt the UFU recommends the addition of a **new section 36D (2) "Where the employee has not been engaged as a volunteer during this period, the sub paragraph (1)(c) does not apply."**

### iii. General comments regarding both Bills

#### ○ Dated of application

- Currently the presumption for the same cancers and same qualifying periods already apply to aviation firefighters employed by Airservices by virtue of **the Federal 2011 "Fair Protection for Firefighters" Act**. The Aviation firefighters in Queensland have had this protection since 9 July 2011.
- Therefore any aviation firefighter who has been diagnosed with one of the listed cancers on or since 9 July 2011 and who has been employed as a firefighter for the required qualifying period for that cancer would have the protection of the presumption.
- It would therefore be just and reasonable to apply the presumption for Queensland state firefighters for any such cancer diagnosis from 9 July 2011 that meets the requirements under the Bill to ensure that all firefighters in Queensland have the protection from the same date.
- To omit to do so may give rise to circumstances where a state firefighter is denied the application of the presumption only due to the manifestation date whereas that same firefighter would have had the protection of the presumption had that firefighter been employed by Airservices working at a Queensland airport.

#### ○ Employer reporting requirements

- The Act be amended to include the requirements for the employer to provide the necessary information to Workcover Queensland so that the presumption can be applied. The UFUA submits proposed **new section 133B:**

**(1) Upon notification of a claim made in relation to a specified disease in schedule 4A, any current or previous employers of the firefighter as defined in section 36B (a) must provide WorkCover Queensland with the following records:**

- (i) Confirmation that the claimant was/is employed as a firefighter;**
- (ii) The period or periods of employment as a firefighter;**

- (2) Upon notification of a claim made in relation to a specified disease in schedule 4A, any current or previous authority responsible for the management of the State's fire services must provide WorkCover Queensland with the following records of volunteer firefighter as defined in section 36B (b) and (c):**
- (i) Confirmation that the claimant was/is a volunteer firefighter**
  - (ii) The period or periods of service as a volunteer firefighter**
  - (iii) The number of attendance at exposure incidents**

## 7.0 COSTS

- 7.1 The **costs of implementing either the Workers' Compensation and Rehabilitation (Protecting Firefighters) Amendment Bill 2015** or the **Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2015** will be considered.
- 7.2. The Explanatory Memorandum for the latter Bill states that any additional cost as a consequence of the introduction of deemed occupational cancers for firefighters would be an impact on the Queensland Rescue Fire Service annual WorkCover Premium.
- 7.3 The provision of presumptive legislation to recognise occupational cancer for firefighters does not create new entitlements; it is a mechanism to ensure firefighters can access their entitlements as they would for any other work-related illness or injury.
- 7.4 Additionally, there may be cost savings where unnecessary expensive litigation is avoided through the application of the presumption for the occupational disease.
- 7.5 The Australian Senate committee undertook due diligence as to costs. As there was yet to be presumptive legislation recognizing occupational cancer for Australian firefighters, the Senate was provided with costs analysis from Canada.
- 7.6 Edmonton Fire Rescue Services Fire Chief Ken Block provided a submission detailing the costs implications of occupational cancer for the Alberta Workers Compensation Board. Attached as Appendix E is the submission Fire Chief Block provided to the Senate Inquiry.
- There are approximately 13 500 firefighters in Alberta, Canada of which 3500 were full time firefighters and 10,000 part time/on call firefighters (referred to as volunteer).
  - In 2003 Alberta was the second province in Canada to enact presumptive legislation initially listing 7 cancers – brain, bladder, ureter, kidney, colorectal and non-Hodgkins lymphoma.
  - In 2005, lung cancer in non-smokers was added, in 2010 testicular and esophageal cancer was added and in 2011 prostate, skin, breast and multiple myeloma cancers were all listed in the presumptive legislation resulting in 14 cancers being included.
- 7.7 In the period 2006-2010 there were 19 occupational cancer claims.
- 7.8 The total cost of claims for all work injuries and illnesses for firefighters (such as strains, back injuries, burns and the cancer claims) was less than 2 percent of the Edmonton Fire Rescue Budget reoccurring operational budget.
- 7.9 Due to the low level of cancer claims, and privacy provisions, Chief Block was unable to provide the specific costs for only the cancer claims. However, from 2003 the Workers Compensation Board costs for the Edmonton Fire Rescue Services increased

an average of \$202,295 per annum for all work cover cost, not just the occupational cancer claims.

- 7.10 The evidence provided by Fire Chief Block was accepted and relied upon by the Senate Inquiry.

*"The committee notes the experience-based evidence provided by Fire Chief Ken Block. The committee also notes the very small number of claims lodged in Alberta Canada, and has no reason to believe that the introduction of presumptive legislation here would lead to a flood of claims. Evidence suggests otherwise, as only a small number of firefighters will be in the unfortunate position of having to make a claim for occupational cancer."*

*"On the basis of this evidence, the committee is confident that the cost impact of the proposed legislation would be as insignificant in Australia as it has been elsewhere."<sup>34</sup>*

And further confirmed and recorded in the Australian Senate Hansard by the Deputy Chair of the Senate Committee Senator Chris Back:

*"On behalf of the coalition I join the spirit of the comments made by the Chair of the Education, Employment and Workplace Relations Legislation Committee and the inquiry, Senator Marshall, relating to the protection of firefighters as it relates to cancers. The committee heard evidence and was particularly impressed by the balance with which those presenting to the committee conducted themselves and presented their evidence."*

*Early in the inquiry, as Senator Marshall has indicated, the committee was concerned to address itself to the cost impacts on employers in the event that we were able to move to a circumstance in which easier and better availability of and access to workers compensation would be afforded. That led to the Fire Chief of Edmonton Fire Rescue Services, in Alberta, with the goodwill of his minister, addressing the committee at its hearing in Perth."*

*Some interesting points came out of Mr Block's evidence to the committee. The first was that there had been no significant or discernible increase in workers compensation costs to the service as a result of the inclusion of the cancers that were mentioned in his evidence. I think more important was his report on the advice that, as a result of wellness and health awareness programs, there is generally an increase in awareness by firefighters of the importance of their work and their need to protect themselves, their work colleagues who do not go to fires and are not exposed to the chemicals and, equally, their families. We saw in the past, for example, instances in which contaminated clothing came back to fire stations and was laundered in domestic laundries along with household laundry, only for people to learn that the carcinogens that they had picked up in those incidents were quite often still on the clothing."<sup>35</sup>*

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<sup>34</sup> Senate Committee Report, paragraph 3.45 & 3.46 page 30

<sup>35</sup> Australian Senate Hansard, Committees, Thursday 15 September 2011, Education, Employment and Workplace Relations Legislation Committee Report, Senator Chris Back, page 6196.



- 7.11 In 2013 Fire Chief Ken Block updated his information when the issue of costs of presumptive legislation was being considered by the Victorian Parliament. The updated evidence demonstrated that for the four year time period between 2009 and 2012 the percentage of Edmonton Fire Rescue Services annual operating budget allocated to Workers Compensation Board of Alberta premiums ranged between 1.18% and 1.74%, with the average over the four years being 1.43%.
- 7.12 The Canadian evidence and analysis by the Senate Committee has proven to be comparable in the Australian context.
- 7.13 The Federal presumptive legislation provided a requirement of review and was accordingly reviewed in 2013 under the newly elected Abbott Government. A copy of the Review of the Safety, Rehabilitation and Compensation Amendment (Fair Protection for Firefighters) Act 2011 is attached as Appendix F.
- 7.14 As at December 2013 there were approximately 1250 firefighters covered by the federal presumptive legislation:
- 350 in the ACT Government
  - 800 at Airservices Australia
  - 100 at the Department of the Environment
- 7.15 The reviewer found that since 5 December 2011 and December 2013 there had been a total of 8 claims for compensation for occupational cancers made by firefighters:
- Three claims were accepted on the basis of the presumption
  - Two claims that did not qualify for the presumption were accepted under other provisions as occupational disease
  - Three claims were rejected as they did not meet the criteria for the presumption and were not accepted under other provisions of the Act.

*"The SRC Act experience, in particular low claim numbers since the enactment of the firefighter provisions, is consistent with the number of firefighters covered by the provisions and the actual experience in Canada."<sup>36</sup>*

- 7.16 The Reviewer recommended the maintenance of the legislation included the continued inclusion of all cancers:
- "I recommend that the current list of prescribed cancers in the Firefighters' Act be maintained."***
- "I recommend the Government conduct a further review of the firefighter provisions in five years, with an emphasis on developments in the relevant science, and to ensure that these provisions continue to streamline the determination of claims made by firefighters consistent with contemporary workers' compensation principles."<sup>37</sup>***

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<sup>36</sup> Review of the Safety, Rehabilitation and Compensation Amendment (Fair Protection for Firefighters) Act 2011, paragraph 2.9, page 11.

<sup>37</sup> *Ibid*, Recommendations 4 and 5, page iv.

## 8.0 CONCLUSION

- 8.1. There is a wealth of credible and accepted research of firefighters internationally and in Australia that demonstrates the nexus between career firefighting and the exposure and absorption of toxins and carcinogens and the increased risk and incidence of specific cancers - occupational cancer.

*"The committee understands that firefighters work in uncontrolled environments which make it necessary for their protective gear to breathe, therefore leaving them vulnerable to toxins and carcinogens.*

*On the weight of considerable evidence supplied to the committee supporting a likely causal link between firefighting and certain cancers, as well as the understanding that claims for compensation would be legally contestable, the committee is confident that rebuttable presumption is a solid – and fair – **foundation for workers' compensation policy for career firefighters.**"<sup>38</sup>*

- 8.2. There is an unintended inherent injustice in workers compensation systems where the onus of proof acts as a barrier for firefighters to access assistance and entitlements for occupational cancer as they cannot prove the specific events of exposure or the specific carcinogens that resulted in the contraction of the cancer.

*"The committee is convinced that this legislation removes, at least for some firefighters, the unreasonable impediment to compensation that currently exists. It is the committee believes, legislation which finally recognizes the scientifically demonstrated link between firefighting as an occupation and certain forms of cancer."<sup>39</sup>*

*"On the weight of evidence the committee believes presumptive legislation is the most appropriate protective policy response to recognise the personal risk that firefighters take in the course of their careers and the sacrifices some of them will make."<sup>40</sup>*

- 8.3. In doing so, the presumption does not create new entitlements, it merely reverses the onus so that the firefighter can access the assistance and compensation as the firefighter would for any other work-related illness or injury.
- 8.4. In 2011 the Australian Parliament undertook due diligence of the basis, operation and application of presumptive legislation through a robust Senate Inquiry. As a result of that inquiry the Fair Protection for Firefighters Bill was unanimously passed by both the House of Representatives and the Senate.

*"The committee recognizes that when a person spends their professional career inhaling and absorbing known and unknown - and probably some as yet unknown – carcinogens in the course of public service, it is the moral duty of the community to*

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<sup>38</sup> Senate Committee Report, paragraph 2.51, page 19.

<sup>39</sup> Senate Committee Report, paragraph 3.67, page 35.

<sup>40</sup> Senate Committee Report, paragraph 3.68, page 36.

*enable them to seek compensation should they fall ill as a consequence. For this reason the committee believes this Bill needs to be passed after being improved upon through the incorporation of the committee's amendments.*<sup>41</sup>

8.5 On the basis of the Senate Report, and the presumptive legislation since introduced by other State Governments, this committee can be confident in the Federal model of the application and operation of the presumption for the cancers listed and qualifying periods for career firefighters. There was not the same foundation or scientific basis to apply the same model of presumptive legislation to volunteer firefighters.

8.6 Since the federal legislation, four state jurisdictions have implemented presumptive legislation. All four have applied the federal model for career firefighters.

8.7 Three of those states have elected to provide a protection to volunteer firefighters with Tasmania leading the way.

- The Tasmania Government unanimously passed legislation that included a requirement for volunteer firefighters to demonstrate a specified number of exposures to the hazards of a fire scene.
- The Northern Territory legislation is modeled on the Tasmania legislation.
- The South Australian legislation initially did not include firefighters and was later amended to extend to volunteer firefighters but without the requirement for volunteer firefighters to demonstrate exposures to the hazards of a fire scene.

8.8 In the absence of research that demonstrated the link between volunteer firefighting and the increased risk or incidence of cancer, and in fact in the absence of specific research for volunteer firefighters, the requirement to demonstrate repeated exposure to the hazards of a fire scene provided a logical basis for the presumption to apply.

8.9 This committee is now considering two Bills post the release of the Monash **Australian Firefighters' Health study**. **The Federal Senate committee was cognizant** that research would develop and that presumptive legislation should reflect the most advanced jurisprudence available.

*"The committee is concerned that, even if passed, the proposed legislation would only serve to bring the Australian commonwealth law into line with outdated jurisprudence. Considering that similar legislation has been in place overseas for nearly a decade, and has in fact been strengthened to cover more cancers as a result of the growing scientific evidence, the committee would prefer to see Australia enact legislation in step with the most advanced jurisprudence available."*<sup>42</sup>

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<sup>41</sup> Senate Committee Report, paragraph 4.41, page 46.

<sup>42</sup> Senate Committee Report, paragraph 2.18, page 12.

- 8.10 The Monash study is the only research to date which comprehensively studied a significant cohort of volunteer firefighters and found no overall increased risk of cancer. It has now been demonstrated that there is a difference between volunteer and career firefighters that impacts on the increased risk or incidence of cancer. Therefore the scientific basis relied upon by the Australian Parliament in enacting the federal model of presumption legislation for career firefighters is not applicable for volunteer firefighters.
- 8.11 The Tasmania model for extending the protection for volunteer firefighters was enacted prior to the release of the Monash study. However, the basis for requiring a demonstration of repeated exposures to the hazards of a fire scene is in reference to the contraction of cancer through exposure and absorption of toxins and carcinogens when firefighting.
- 8.12 The requirement to demonstrate a baseline of exposures is not a detriment to volunteer firefighters. It is a mechanism that provides credibility to ensure the presumption is applied to volunteer firefighters who have been exposed to the hazards of a fire scene. Without such a baseline it is likely that compensation claims by volunteer firefighters will be challenged and therefore negates the application of the presumption.
- 8.13 In addition there are a number of other drafting issues with each of the two Bills being considered by this Committee as have been outlined earlier in this submission.
- 8.14 Therefore the UFUA respectfully submits that neither Bill be enacted in its current form but that a Bill be enacted that provides the following:
- (i) **Replicates the Federal "Fair Protection for Firefighters" Act 2011 for the application of the presumption in respect of career firefighters.** That is that the presumption is applied where:
- The employee/firefighter is diagnosed with one of the listed cancers; and
  - That prior to diagnosis the employee/firefighter was employed for the qualifying period listed for that particular cancer. The qualifying period can include more than one period of employment as a firefighter; and
  - Was exposed to the hazards of a fire scene during that qualifying period.
  - That where those three pre-conditions are met the presumption that the employment contributed to a significant degree to the contraction of the cancer.
  - The practical effect is that the employee/firefighter will be entitled to the assistance/compensation coverage under the Act.
  - The presumption can be rebutted if it can be proven that the employment was not a significant factor in the contraction of the cancer.

(ii) In the circumstances where the committee recommends that the protection of the presumption is extended to volunteer and rural firefighters that the following criteria be applied.

- That the volunteer/rural firefighter is diagnosed with one of the listed cancers;
- That prior to diagnosis was a volunteer/rural firefighter or the qualifying period listed for that particular cancer. The qualifying period can include more than one period of service as a volunteer/rural firefighter; and
- That during the qualifying period the volunteer/rural firefighter attended a specified minimum of exposure incidents (150) where the volunteer/rural firefighter was exposed to the hazards of a fire scene.
- The practical effect is that the volunteer/rural firefighter will be entitled to the assistance/compensation coverage under the Act.
- The presumption can be rebutted if it can be proven that the service as a volunteer/rural firefighter was not a significant factor in the contraction of the cancer.

8.15 This committee has the benefit of the robust Senate Inquiry, the enactment of similar legislation in four state jurisdictions and the developing science that underpins the basis and application of presumption legislation. The UFUA has applied that benefit and knowledge in presenting the proposed basis for presumptive legislation for career firefighters and volunteer firefighters above.

8.16 The UFUA respectfully submits that the committee can be confident that the above proposed basis for presumptive legislation for career and volunteer firefighters is consistent with the scientific evidence and the international and Australian experience and application of presumptive legislation to recognise occupational cancer for firefighters.

Thank you for this opportunity to provide a submission. Please do not hesitate to request any additional information if that would assist

We would appreciate an opportunity to appear before the Committee.

Dated this 7<sup>th</sup> day of August 2015



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Peter Marshall  
UFUA National Secretary