Parliamentary Committees

Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2015

Report No. 8, 55th Parliament
Finance and Administration Committee
September 2015

Finance and Administration Committee

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Acknowledgements

The Committee thanks those who briefed the Committee, made submissions, gave evidence and participated in its inquiry. In particular the Committee acknowledges the assistance provided by Queensland Treasury and the Queensland Fire and Emergency Services.

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Abbreviations

ALA	Australian Lawyers Alliance
AMWU	Australian Manufacturing Workers' Union
AWU	Australian Workers' Union
ASIEQ	Association of Self-Insured Employers of Queensland
BA	Breathing Apparatus
CCF	Civil Contractors Federation
CCIQ	Chamber of Commerce and Industry Queensland
CFMEU	Construction, Forestry, Mining and Energy Industrial Union of Employees, Queensland
CLA	Committee of the Legislative Assembly
FAC	Finance and Administration Committee
FCFA	Firefighter Cancer Foundation Australia
FLP	Fundamental Legislative Principles under the *Legislative Standards Act 1992*
HIA	Housing Industry Association
IEU-QNT	Independent Education Union Queensland and Northern Territory
LGAQ	Local Government Association of Queensland
OFSWQ	Office of Fair and Safe Work Queensland
OQPC	Office of the Queensland Parliamentary Counsel
PPE	Personal Protection Equipment
QAFA	Queensland Auxiliary Firefighters Association
QCU	Queensland Council of Unions
QFES	Queensland Fire and Emergency Services
QLS	Queensland Law Society
QNU	Queensland Nurses' Union
RFBAQ	Rural Fire Brigade Association of Queensland
SLC	Former Scrutiny of Legislation Committee
UFUA	United Firefighters Union of Australia
UFUQ	United Firefighters' Union of Australia, Union of Employees, Queensland

Glossary

Acts	All Acts referred to in this report refer to Queensland Acts unless otherwise specified.
the Bill	*Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2015*
the department	Queensland Treasury

All webpage references used in this report are current as at 7 September 2015.

Chair's Foreword

This report presents a summary of the Committee's examination of *Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2015.*

The Committee's task was to consider the policy outcomes to be achieved by the legislation, as well as the application of fundamental legislative principles – that is, whether it has sufficient regard to rights and liberties of individuals and to the institution of Parliament.

The public examination process allows the Parliament to hear views from the public and stakeholders, which should make for better policy and legislation in Queensland.

The aims of the Bill are to:

- reinstate common law rights for injured workers who were affected by changes made in 2013 and establish the ability to provide additional compensation to particular workers impacted by the operation of the common law threshold;
- provide greater certainty of entitlement and accessibility to compensation for firefighters by introducing deemed disease provisions for firefighters with prescribed diseases; and
- prohibit prospective employers from continuing to access an individual's claims history as they have been able to following other changes made by the 2013 Amendment Act.

In respect of the amendments relating to firefighters, the Committee considered this Bill at the same time as the *Workers' Compensation and Rehabilitation (Protecting Firefighters) Amendment Bill 2015* which provides for an alternative method of achieving similar policy objectives.

The Committee heard from many rural firefighters in regard to the issues raised in the Bill and has made six recommendations which the Committee considers responds to the concerns raised.

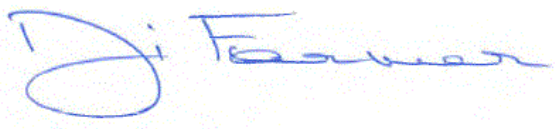
The Committee was unable to reach consensus agreement on the other issues raised in the Bill.

On behalf of the Committee, I would like to thank those who took the time to provide submissions, who met with the Committee and provided additional information during the course of this inquiry. The Committee is particularly thankful to all those rural fire brigades and individual rural firefighters who took the time to provide the Committee with their personal experiences of fire fighting in their local communities. The Committee very much appreciates all of the valuable assistance provided.

I would also like to thank the departmental officers for their cooperation in providing substantial additional information to the Committee on a timely basis.

The Committee would like to thank the Member for Lytton her participation in one the Committee's meetings due to the absence of a Committee Member.

Finally, I would like to thank the other Members of the Committee for their determination to critically address the quite complex issues which the Bill examines.



Di Farmer MP
Chair

September 2015

Recommendations

Standing Order 132 states that a portfolio committee report on a Bill is to indicate the Committee's determinations on:

- whether to recommend that the Bill be passed
- any recommended amendments
- the application of fundamental legislative principles and compliance with the requirements for Explanatory Notes.

The Committee has made the following recommendations:

Recommendation 1 **83**

The Committee recommends that amendments be made to allow for the inclusion of additional diseases that may be identified in the future.

Recommendation 2 **84**

The Committee recommends that the requirement for rural volunteer firefighters to have attended 150 exposure incidents be omitted from the legislation.

Recommendation 3 **84**

The Committee recommends that the legislation be amended to include the appointment of an independent committee or panel to be established to consider exposures and assist in determining whether rebuttal of claims are warranted.

Recommendation 4 **85**

The Committee recommends that the department seek and incorporate additional scientific studies of exposures by firefighters, including volunteer rural firefighters.

Recommendation 5 **85**

The Committee recommends that as a matter of priority, Queensland and Emergency Services, implement a system of record keeping for firefighters, including volunteer rural firefighters, that tracks individual firefighter's exposure to incidents.

Recommendation 6 **85**

The Committee recommends that the Minister reconsider the definition of an exposure included in proposed new section 36F.

1 Introduction

1.1 Role of the Committee

The Finance and Administration Committee (the Committee) is a portfolio committee established by the *Parliament of Queensland Act 2001* and the Standing Orders of the Legislative Assembly on 27 March 2015.[1] The Committee's primary areas of responsibility are:

- Premier, Cabinet and the Arts; and
- Treasury, Employment, Industrial Relations, Aboriginal and Torres Strait Islander Partnerships.

Section 93(1) of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for examining each Bill and item of subordinate legislation in its portfolio area to consider –

a) the policy to be given effect by the legislation;

b) the application of fundamental legislative principles to the legislation; and

c) for subordinate legislation – its lawfulness.

Standing Order 132(1) provides that the Committee shall:

a) determine whether to recommend that the Bill be passed;

b) may recommend amendments to the Bill; and

c) consider the application of fundamental legislative principles contained in Part 2 of the *Legislative Standards Act 1992* to the Bill and compliance with Part 4 of the *Legislative Standards Act 1992* regarding Explanatory Notes.

Standing Order 132(2) provides that a report by a portfolio committee on a Bill is to indicate the Committee's determinations on the matters set out in Standing Order 132(1).

Standing Order 133 provides that a portfolio committee to which a Bill is referred may examine the Bill by any of the following methods:

a) calling for and receiving submissions about a Bill;

b) holding hearings and taking evidence from witnesses;

c) engaging expert or technical assistance and advice; and

d) seeking the opinion of other committees in accordance with Standing Order 135.

1.2 Referral

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* (the Bill) to the Legislative Assembly on 15 July 2015. The Bill was referred to the Committee. The Legislative Assembly agreed to a motion requiring the Committee to report to the Legislative Assembly by Friday 4 September 2015.

The Committee sought and was granted an extension to report to the Legislative Assembly by Tuesday 8 September 2015.

[1] *Parliament of Queensland Act 2001*, s88 and Standing Order 194

It should be noted that the *Workers' Compensation and Rehabilitation (Protecting Firefighters) Amendment Bill 2015* was introduced by the Member for Kawana on 3 June 2015. This Bill was initially referred to the Legal Affairs and Community Safety Committee (LACSC). The Parliament agreed to a motion that that this Bill be referred to the Finance and Administration Committee (FAC) and that the Committee report by 4 September 2015. The issues considered in this Bill were also considered as part of the *Workers' Compensation and Rehabilitation (Protecting Firefighters) Amendment Bill 2015*.

1.3 Committee process

The Committee's consideration of the Bill included calling for public submissions, two public departmental briefings and five public hearings. The Committee also sought additional written advice from the department and stakeholders.

The Committee considered expert advice on the Bill's conformance with fundamental legislative principles (FLP) listed in Section 4 of the *Legislative Standards Act 1992*.

1.4 Submissions

The Committee advertised its inquiry into the Bill on its webpage on 15 July 2015. The Committee also wrote to stakeholder groups inviting written submissions on the Bill.

The original closing date for submissions was Thursday 6 August 2015. The Committee subsequently agreed to extend the closing date for submissions to Monday 10 August 2015. The Committee received 156 submissions, including one confidential submission. A list of those who made submissions, excluding the confidential submission, is contained in Appendix A. Copies of the submissions, excluding the confidential submission, are published on the Committee's website and are available from the Committee secretariat.

1.5 Public departmental briefing

The Committee held a public departmental briefing on the Bill with officers from Queensland Treasury and the Queensland Fire and Emergency Services (QFES) on Thursday 6 August 2015. A list of officers who gave evidence at the public departmental briefing is contained in Appendix B. The transcript of the briefing has been published on the Committee's website and is available from the committee secretariat. The Committee also sought additional written information from the department subsequent to the briefing.

The Committee held a second public departmental briefing on the Bill with officers from Queensland Treasury, WorkCover Queensland and QFES on Monday 24 August 2015. A list of officers who gave evidence at the public departmental briefing is contained in Appendix C. The transcript of the briefing has been published on the Committee's website and is available from the committee secretariat. The Committee also sought additional written information from the department subsequent to the briefing.

1.6 Public hearing

On Thursday 13 August 2015, the Committee held four public hearings on the Bill with representatives from organisations which provided submissions. A list of representatives who gave evidence at the hearing is contained in Appendix D. The Committee also held a public hearing on the Bill on Monday 17 August 2015 with representatives from the Rural Fire Brigades which provided submissions. A list of representatives who gave evidence at the hearings is contained in Appendix E. A transcript of the hearings has been published on the Committee's website and is available from the committee secretariat.

1.7 Policy objectives of the Bill

The Bill introduces amendments to the *Workers' Compensation and Rehabilitation Act 2003* (the Act).

The Explanatory Notes outline that the Bill implements a number of policy proposals made by the current Queensland Government in its pre-election policy document *Restoring the rights of Queenslanders injured at work*.

The aims of the Bill are to:

- reinstate common law rights for injured workers who were affected by changes made by the *Workers' Compensation and Rehabilitation and Other Legislation Amendment Act 2013* (the 2013 Amendment Act) and establish the ability to provide additional compensation to particular workers impacted by the operation of the common law threshold;
- provide greater certainty of entitlement and accessibility to compensation for firefighters by introducing deemed disease provisions for firefighters with prescribed diseases; and
- prohibit prospective employers from continuing to access an individual's claims history as they have been able to following other changes made by the 2013 Amendment Act.[2]

Specifically, the Bill aims to:

- remove the current limitation on the entitlement to seek damages that requires a worker to have a degree of permanent impairment as a result of the injury greater than five per cent to access common law since the date of the Queensland State election;
- establish the ability to provide additional compensation to particular workers impacted by the operation of the common law threshold, between 15 October 2013 and 31 January 2015;
- introduce provisions for firefighters diagnosed with one of 12 specified diseases that will deem their injury to be work related if they meet the required qualifying period of active firefighting service; and
- remove the entitlement prospective employers have to obtain a copy of a prospective worker's compensation claims history from the Workers' Compensation Regulator; and
- clarify certain procedural aspects of the claims process and reduce regulatory burden through a number of minor miscellaneous amendments.[3]

The Explanatory Notes also state that the Bill makes a number of other miscellaneous amendments that will improve the day-to-day operation of Queensland's workers' compensation scheme.[4]

The department advised:

> *The Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2015 implements a number of election commitments made by the government to restore Queensland's workers compensation scheme to its proper place as the nation's leading scheme. The bill will achieve the government's stated policy objectives by amending the act to, firstly, reinstate the rights of injured workers to take common law damages actions against negligent employers where they are injured at work. This will be achieved by removing the greater-than-five-per-cent threshold for injured workers to access common law damages. The greater-than-five-per-cent threshold will be removed for all injuries that occur on or after 31 January 2015.*

[2] Explanatory notes, *Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2015*: 1
[3] Explanatory notes, *Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2015*: 1 - 2
[4] Explanatory notes, *Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2015*: 1

> *Secondly, it will establish the ability to provide additional compensation to those injured workers who were adversely impacted by the operation of the common law threshold between 15 October 2013 and 31 January 2015. Thirdly, it will remove the ability of prospective employers to obtain a copy of a prospective worker's claims history. The ability to access this information is removed on assent of the bill but includes applications that are on hand but have not been decided. The other major point is that it will deem 12 specified cancers to be work related for firefighters who meet the required qualifying period of active firefighting service. It will also allow volunteer firefighters who contract one of these cancers to access common law damages. These amendments will apply from the date the bill was introduced into parliament.*[5]

1.8 Outcome of Committee deliberations

Standing Order 132(1)(a), requires that the Committee examine the Bill and determine whether to recommend that the Bill be passed. During its consideration of the Bill it became apparent that the Committee would be unable to reach agreement on whether to recommend that the Bill be passed.

The government Members accepted the Bill should pass with amendments. The non-government Members considered that the Bill should not be passed unless significant amendments were made.

2 Examination of the *Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2015:* Background

2.1 History – Changes to the Act

The *Workers' Compensation and Rehabilitation Act 2003* (the Act) establishes the workers' compensation scheme in Queensland. The scheme provides the following for those workers who sustain an injury in their employment and in some cases for people other than workers:

- compensation;
- regulation of access to damages;
- employers' liability for compensation;
- employers' obligation to be covered against liability for compensation and damages either under a WorkCover insurance policy or under a licence as a self-insurer;
- management of compensation claims by insurers;
- injury management, emphasising rehabilitation of workers particularly for return to work;
- procedures for assessment of injuries by appropriately qualified persons or by independent medical assessment tribunals; and
- rights of review of, and appeal against, decisions made under the Act.

The Act also established WorkCover Queensland to provide workers compensation insurance for employers and the *Workers' Compensation and Rehabilitation Regulation 2003* to regulate the scheme.[6]

[5] Mr Goldsborough, Queensland Treasury, Public Hearing transcript 6 August 2015: 1-2

[6] Queensland Government, WorkCover Queensland, *Workers' Compensation and Rehabilitation Act 2003* https://www.worksafe.qld.gov.au/laws-and-compliance/workers-compensation-laws/laws-and-legislation/workers-compensation-and-rehabilitation-act-2003

In 2010 the then government amended the Act in part to address the increasing cost of common law claims, in particular a disproportionate increase in common law claims numbers and payments when compared to statutory claims numbers and payments. These amendments were made while maintaining unfettered access to common law damages. The amendments also included a requirement for a five yearly review of the operation of the scheme.[7]

The former FAC (54th Parliament) conducted an inquiry into the Queensland's workers' compensation scheme (Report No. 28). The Committee made 32 recommendations and of those, 18 recommendations were supported by the former Government. A copy of these recommendations and government responses are included as Appendix F.

In October 2013, the then Attorney-General and Minister for Justice introduced the *Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2013*. The then Attorney-General stated in his introductory speech that the structure of the Queensland's Workers Compensation Scheme was the most complex in Australia and that at the time, the scheme operated under three separate agencies. The 2013 Bill encompassed the following changes:

- replace the Workers' Compensation Regulatory Authority (the Authority) with the Workers' Compensation Regulator (the Regulator);
- amend the requirements to appoint a rehabilitation and return to work coordinator;
- require insurers to mandatorily refer injured workers to an accredited return to work program;
- require a worker to provide an employer with a notification of previous injuries, if requested;
- allow for access to a prospective worker's claims history in particular circumstances;
- change the measure for determining statutory lump sum compensation from work related impairment (WRI) to degree of permanent impairment (DPI);
- close the potential loophole caused by *Foster & Anor v Cameron [2011] QCA 48*;
- introduce a more than 5 per cent degree of permanent impairment threshold to access damages at common law;
- increase the onus of proof for compensable psychiatric or psychological injuries;
- provide that WorkCover refer all allegations of fraud-related offences to the Regulator for investigation and if necessary prosecution; and
- increase penalties for persons who defraud or attempt to defraud insurers.[8]

In relation to the common law threshold, the then Attorney-General stated:

> *In 2009-10 the board of WorkCover Queensland, under former chairman Ian Brusasco, recommended that the government introduce a 10 to 15 per cent threshold on common law claims. Under our proposed changes, we believe we have the balance right in implementing a five per cent common law threshold. Since 2010, the number of lower-end common law claims has remained constant or increased in certain work related impairment bands, which is of significant concern to the government. These claims accounted for around half the common law payouts in the scheme in 2011-12. Left unchecked this would increase pressure in the long term on the ongoing viability of the scheme.*[9]

[7] Correspondence from Queensland Treasury to FAC dated 14 August 2015: 3

[8] Explanatory Notes, *Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2013*: 2

[9] Queensland Legislative Assembly, Attorney-General and Minister for Justice, the Hon Jarrad Bleijie MP Introduction, *Parliamentary Debates (Hansard)*, 15 October 2013: 3145

The Bill was declared urgent by the then Attorney-General and was passed with amendment on 17 October 2013.

In October 2013, WorkCover Queensland issued a fact sheet detailing the arrangements following the legislative amendments. This fact sheet clarified that for workers injured from 15 October 2013, injuries will be assessed using the new Guide to the Evaluation of Permanent Impairment (GEPI), which references the American Medical Association (AMA) guides to the evaluation of permanent impairment, 5th edition (AMA5). Injuries sustained prior to 15 October 2013 will continue to be assessed using the Table of Injuries and AMA4 and those workers would still receive an offer of lump sum compensation based on their degree of permanent impairment (DPI).[10]

The factsheet also explained that disclosure of pre-existing conditions must be made in writing to the Office of Fair and Safe Work Queensland (OFSWQ). The request for a prospective worker's claims history must be made on an approved form, with an application fee and the prospective worker's consent.[11]

2.2 Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2015

The department advised that the Bill:

> *…implements a number of election commitments made by the government to restore Queensland's workers compensation scheme to its proper place as the nation's leading scheme.*[12]

The pre-election document '*Restoring the rights of Queenslanders injured at work'* outlined that Labor will restore Queensland's proper workers' compensation scheme, including:

- *Removing the retrograde denial of access to legal rights for injured workers, through the imposition of a threshold on whole-of-person impairment. Labor will remove this arbitrary and discriminatory threshold, and reinstate the common-law rights that existed before the LNP made legislative changes.*
- *Reversing the breaches of privacy that are involved in the LNP's legislation which allows a worker's compensation history to be used against them in future career prospects. This especially impacts on older workers in physical occupations who could have to rely on disability pensions because the LNP changes allow future employers to discriminate against workers injured by their employer.*
- *Introducing legislation for firefighters who contract a scheduled respiratory disease so that they do not bear the burden of proving that it was contracted during their duties.*
- *Ensuring rehabilitation and return to work are a priority for workers and employers.*
- *Working with industrial organisations and the legal community to seek a swift and calm transfer to the new system, with consideration of the rights of injured workers and the timing of workers' compensation payments.*[13]

[10] Queensland Government, WorkCover Queensland Factsheet, *Legislative amendments October 2013*, November 2013: 1 https://www.worksafe.qld.gov.au/__data/assets/pdf_file/0006/47661/Legislative-amendments-October-2013-factsheet.pdf

[11] Queensland Government, WorkCover Queensland factsheet, *Legislative amendments October 2013*, November 2013: 2 https://www.worksafe.qld.gov.au/__data/assets/pdf_file/0006/47661/Legislative-amendments-October-2013-factsheet.pdf

[12] Mr Goldsbrough, Queensland Treasury, Public departmental briefing transcript 6 August 2015: 1

[13] Queensland Labor, *Restoring the rights of Queenslanders injured at work*, May 2014 http://qldcampaign.ml.net.au/portals/qldcs/Policies/Restoring-the-rights-of-QLDers-injured-at-work.pdf

2.3 Alternative ways of achieving policy objectives

The Explanatory Notes indicate that the policy objectives could only be achieved by legislative amendment.

2.4 Stakeholder consultation

The Explanatory Notes detail that the Government had established a stakeholder reference group to advise the government on appropriate arrangements to reinstate common law rights for injured workers under the Act. The Stakeholder Reference Group was required to give consideration to the following:

- the rights of injured workers;
- the sustainability of the workers' compensation scheme;
- the timing of the reforms and any transitional arrangements;
- ensuring that the reforms emphasise rehabilitation and return to work for workers and employers; and
- ensuring that the reforms contribute to Queensland's employment growth.[14]

The department confirmed that the Stakeholder Reference Group was established to consider the government's election commitments to reinstate common law rights for injured workers and work with industrial organisations and the legal community to seek a swift and calm transfer to the new workers' compensation system, with consideration of the rights of injured workers and the timing of workers' compensation payments.[15]

They advised that the advantage of using a stakeholder reference group is that the group has broad representation and provides the opportunity for representatives to play a critical role in shaping the policy development process by bringing a diverse range of views into the debate.[16]

The Explanatory Notes also outline that the membership of the group consisted of employer representatives including the Chamber of Commerce and Industry Queensland (CCIQ), the AiGroup and Housing Industry Association (HIA). The group also consisted of employee representatives from the Queensland Council of Unions (QCU), the Queensland Nurses' Union (QNU), the Construction, Forestry, Mining & Energy Union (CFMEU) and Australian Workers' Union (AWU). In addition, the group was also attended by legal representatives from the:

- Queensland Law Society (QLS);
- the Bar Association of Queensland; and
- the Australian Lawyers Alliance (ALA).

WorkCover Queensland and the Association of Self-Insured Employers Queensland (ASIEQ) were also included in the membership of the group.[17]

The QNU confirmed that their organisation was included in the Stakeholder Reference Group and advised that they considered it was an open and transparent process and a process they found to be very worthwhile.[18]

[14] Explanatory Notes, *Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2015*: 3
[15] Correspondence from Queensland Treasury to FAC dated 14 August 2015: 7
[16] Correspondence from Queensland Treasury to FAC dated 14 August 2015: 7
[17] Explanatory Notes, *Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2015*: 3
[18] Ms Mohle, Queensland Nurses' Union, Public hearing transcript 13 August 2015: 5

The ALA confirmed that they were an active participant in the Stakeholder Reference Group established to consider the legislation and in their view the consultation process was inclusive, fair and thorough.[19]

The Committee asked the department for general feedback from their meetings with self-insurers. The department explained:

> *There are differing views between self-insurers. Certainly, their representation on the stakeholder reference group was an acknowledgement that the proposal to reintroduce the threshold was a government election commitment, and that is accepted. The concern that the self-insurers had relates to the proposed statutory adjustment scheme that will see some compensation for people injured between 15 October 2013 and 31 January 2015.*[20]

In relation to the deemed disease provisions, the Explanatory Notes detail that the Government had met with internal and external stakeholders, including meeting with representatives of Queensland Fire and Emergency Services (QFES), the United Firefighters Union Queensland (UFUQ), the Firefighter Cancer Foundation Australia (FCFA), the Queensland Fire and Rescue Senior Officers Union of Employees and Rural Fire Brigades Association Queensland (RFBAQ).[21] The department confirmed that the Stakeholder Reference Group did not consider the proposed changes in regard to firefighters.[22]

2.5 Estimated cost of government Implementation

The Explanatory Notes detail that the removal of the common law threshold and the introduction of deemed disease provisions for firefighters will have cost impacts for Queensland's workers' compensation scheme.[23]

The Explanatory Notes also outline that it is estimated the impact of removing the common law threshold for all injuries on or after the date of the State election and providing additional compensation to particular workers impacted by the operation of the common law threshold prior to the Queensland State election, can be achieved without an increase in the average premium rate of $1.20 per $100 wages paid.[24]

The department advised the Committee that Queensland's average premium rate is currently the lowest in the country. The following table shows the state comparison of average premium rates is as follows[25]:

Table 1: State comparison of average premium rates

	Centrally funded					Privately underwritten			
Year	QLD	NSW	VIC	SA	Comcare	WA	TAS	ACT	NT
2015-16	$ 1.20	$ 1.40	$ 1.27	$ 1.95	$ 2.04	$ 1.48	$ 2.30	$ 2.65	N/A
2014-15	$ 1.20	$ 1.40	$ 1.27	$ 2.75	$ 2.12	$ 1.55	$ 2.30	$ 2.46	N/A

Source: Correspondence from Queensland Treasury to FAC dated 27 August 2015: 8

[19] Australian Lawyers Alliance, Submission No. 99: 7
[20] Mr Goldsbrough, Queensland Treasury, Public departmental briefing transcript 6 August 2015: 3
[21] Explanatory Notes, *Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2015*: 3 - 4
[22] Correspondence from Queensland Treasury to FAC dated 14 August 2015: 7
[23] Explanatory Notes, *Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2015*: 2
[24] Explanatory Notes, *Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2015*: 2
[25] Correspondence from Queensland Treasury to FAC dated 27 August 2015: 8

The Committee sought additional information regarding how the proposed amendments can be achieved without increasing the average premium rate. WorkCover Queensland explained:

> *The WorkCover premium rate of $1.20 is set on an annual basis, or the average premium rate is set on an annual basis, taking into account all of the costs associated with the scheme, which are the statutory claims, the common law claims and the underwriting costs, coupled with the investment return that we receive on our funds under management, which are managed by QIC. Taking all of those things into account at the time, we build and develop a premium rate—an average premium rate, I might add—that is set. From that average premium rate the respective industry rates are set for each of the particular industries for which we seek a premium. In doing so, that rate is set for 12 months and is reviewed annually.*
>
> *Depending on the amount of money that is surplus at the end of the year, or may be a deficit, that is then covered through the reserve that we hold. We have a reserve that is required, a mandatory reserve of 100 per cent as per the act. Treasury advises a further 20 per cent, and that is what called 120 per cent solvency. Anything that is in excess of that is in what is called the investment fluctuation reserve, primarily for things that are vagaries of the investment market. As you can appreciate, back in 2008 and 2009, with the global financial crisis, we had a substantial investment fluctuation and it was quite fortuitous that we had that reserve. The issue of how long that $1.20 can be maintained depends on how much is basically absorbed from the reserves that are excess to requirements.*[26]

WorkCover Queensland advised that the current break-even premium rate, based on all of the underlying assumptions, is around $1.36.[27] They explained that this breakeven would be the figure required if all things were at break-even now and if the 120 per cent solvency was maintained and with the assumption of five per cent investment return.[28]

When questioned about the return on funds under management, WorkCover confirmed that returns on the funds under management can be affected by volatilities in the market, both positive and negative.[29]

The department explained that any surplus or deficit at the end of the year is covered through the reserve that WorkCover holds. They explained that the mandatory reserve that is required under the Act is 100 per cent. Queensland Treasury requires a further 20 per cent, and that is what called 120 per cent solvency. Anything that is in excess of that is in what is called the investment fluctuation reserve, primarily for things that are vagaries of the investment market.[30]

[26] Mr Hawkins, WorkCover Qld, Public departmental briefing transcript 24 August 2015: 2
[27] Mr Hawkins, WorkCover Qld, Public departmental briefing transcript 24 August 2015: 4
[28] Mr Hawkins, WorkCover Qld, Public departmental briefing transcript 24 August 2015: 14
[29] Mr Hawkins, WorkCover Qld, Public departmental briefing transcript 24 August 2015: 2-3
[30] Mr Hawkins, WorkCover Qld, Public departmental briefing transcript 24 August 2015: 2

The department further explained:

> *The way we have done solvency in Queensland is to have the legislated 100 per cent plus a Treasury imposed buffer of 20 per cent that allows for some smoothing and then, as Tony*[31] *said, anything over and above that is in the investment fluctuation reserve, which you would see has been quite healthy. In terms of other states and territories, how they set that solvency level differs. New South Wales does not have a publicly stated arrangement. Victoria has a range and, again, that is to allow for smoothing. Theirs is 90 to 110 per cent. South Australia is 90 to 110 per cent and Queensland is, of course, 120 per cent. The funding ratio of the other schemes as at 30 June 2014, because everybody is still finalising the accounts from this year, was that New South Wales was 102 per cent, Victoria was 116 per cent, South Australia was 100 per cent and Queensland at that time was 157 per cent. The solvency level is substantially above the others at that point in time.*[32]

The following table shows the targets and funding ratios for the centrally funded workers' compensation schemes in Australia[33]:

Table 2: Targets and funding ratios for the centrally funded workers' compensation schemes in Australia

Jurisdiction	Funding ratio	Board target	Funding ratio as at 30 June 2015
New South Wales	$\frac{\text{Total Assets}}{\text{Total Liabilities}}$	Not stated	102%
Victoria	$\frac{\text{(Assets - Other Liabilities)}}{\text{Outstanding Claims Liabilities}}$	90-110%	116%
South Australia	$\frac{\text{Total Assets}}{\text{Total Liabilities}}$	90-110%	100%
Queensland	$\frac{\text{Total Assets}}{\text{Total Liabilities}}$	120%	157%

Source: Correspondence from Queensland Treasury to FAC dated 18 August 2015: 5

The department advised that WorkCover Queensland is the best performing centrally funded workers' compensation insurer in Australia. WorkCover's unaudited accounts show total equity at 30 June 2015 is $1,758 million and the balance of its investment fluctuation reserve is $1,234 million, representing excess equity above 120 per cent.[34]

The department advised that while the WorkCover Queensland sets the premium annually, WorkCover in consultation with its actuary modelled the impacts of the removal of the threshold out to 2019/20 with the objective to see if WorkCover's substantial equity reserves could be used to maintain the average premium rate following removal of the greater than five per cent common law threshold. The department also advised that Queensland sets a 120 per cent solvency target and has attained funding ratios in excess of this target.[35]

[31] This reference refers to Mr Tony Hawkins from WorkCover Queensland
[32] Mr Goldsborough, Queensland Treasury, Public departmental briefing transcript 24 August 2015: 2
[33] Correspondence from Queensland Treasury to FAC dated 18 August 2015: 5
[34] Correspondence from Queensland Treasury to FAC dated 14 August 2015: 4
[35] Correspondence from Queensland Treasury to FAC dated 14 August 2015: 4

The Committee sought additional information on the projected annual cost of removing the greater than five per cent threshold under the proposed amendments. The department advised that the projected annual cost of removing the greater than five per cent degree of permanent impairment threshold is $184 million.[36]

The Committee also sought information regarding the cost of removing the threshold for claims from 31 January 2015 and was advised that the modelling for removing the threshold for the five month period would be approximately $90 million.[37]

The Explanatory Notes further state that the removal of the threshold for all injuries on or after the date of the State election will have some financial impacts for self-insured employers. At present, self-insured employers make up an estimated 9.5 per cent of claims within the Queensland scheme (2014-15).[38]

In regards to the deemed disease provisions for Queensland firefighters, the Explanatory Notes outline that those amendments will have a cost impact on the Queensland Fire and Rescue Service (QFRS). Any additional cost as a consequence of the amendments will impact on QFRS annual WorkCover premium, which is able to be met within existing QFRS resources.[39]

The United Firefighters Union of Australia (UFUA) advised the Committee that the provision of presumptive legislation to recognise occupational cancer for firefighters does not create new entitlements but is a mechanism to ensure firefighters can access their entitlements as they would for any other work-related illness or injury. They further advised that there may be cost savings where litigation is avoided through the application of the presumption.[40]

2.6 Consistency with legislation of other jurisdictions

The Explanatory Notes outline that the Bill is specific to Queensland and is therefore not uniform with or complementary to Commonwealth or other jurisdiction legislation.[41]

2.7 Commencement (Clause 2)

The Bill specifies the following commencement dates:

1) Part 2, divisions 1 and 2 are taken to have commenced on 31 January 2015.
2) Part 2, division 3 is taken to have commenced on the day the Bill for this Act was introduced into the Legislative Assembly.
3) Part 2, division 5 commences on a day to be fixed by proclamation.[42]

The Committee sought clarification from the department regarding the reasons for the various commencement dates contained in the Bill. The department responded that:

> *The Bill includes four groups of amendments: those which will commence from the date of the Queensland State election, those that will commence on the date of introduction, those that will commence on assent and those that will commence on a date to be proclaimed.*

[36] Correspondence from Queensland Treasury to FAC dated 28 August 2015: 2
[37] Mr Goldsborough, Public departmental briefing transcript 24 August 2015: 4
[38] Explanatory Notes, *Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2015*: 2
[39] Explanatory Notes, *Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2015*: 2
[40] United Firefighters Union of Australia, Submission No. 103: 38
[41] Explanatory Notes, *Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2015*: 4
[42] *Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2015*, clause 2

> *Following consideration by the Stakeholder Reference Group on the transfer to the new workers' compensation system in line with the Government's election commitments (which included considering the rights of injured workers and the timing of workers' compensation payments), the decision was made to remove the greater than 5% threshold from the date of the Queensland State election. In the case of the deemed disease provisions for firefighters, commencement on the date of introduction means that no firefighter would be treated unfairly if they were diagnosed with a specified cancer between the amendments being introduced into Parliament and their commencement. The amendments commencing on assent are technical matters relating to the operation of the Act. The amendment to introduce a payment of additional lump sum compensation to particular workers was required to be commenced on proclamation to allow for alignment with the timing of a supporting regulation.*[43]

In its submission, the Bar Association of Queensland noted that the legislation with respect to restoration of common law rights would be retrospective in operation from 31 January 2015. They advised that in general they do not support retrospective legislation. However, in light of the particular circumstances that the amendment is to restore common law rights rather than to remove or restrict such rights and the extent of the retrospectivity does not exceed what might have been expected as a result of an election promise and a change of government, they support the retrospectivity.[44]

2.8 Queensland's workers' compensation scheme

Queensland has a centrally funded scheme, which means there is a single public insurer which performs most of the workers' compensation insurer's functions including underwriting the scheme. The Queensland government is the sole provider of workers' compensation insurance through WorkCover Queensland. The Act establishes the statutory framework for both employers and employees.

Queensland's workers' compensation scheme is a short tail scheme. This means that entitlement to payment of weekly benefits stops when:

- the incapacity because of the work-related injury stops; or
- the worker receives weekly payments for five years (however, if the worker's injury is not stable and stationary at two years, the insurer can make a redemption payment to the worker which discharges the insurer's liability to continue making weekly payments); or
- weekly benefits reach the maximum amount (currently $314,920); or
- after the worker receives an offer of lump sum compensation following assessment of the degree of permanent impairment due to the injury.[45]

The short tail nature of statutory workers' compensation benefits in Queensland is offset by the ability of injured workers to seek damages at common law.[46]

[43] Correspondence from Queensland Treasury to FAC dated 14 August 2015: 4
[44] Bar Association of Queensland, Submission No. 114: 1
[45] Correspondence from Queensland Treasury to FAC dated 19 August 2015: 23
[46] Correspondence from Queensland Treasury to FAC dated 19 August 2015: 23

While other jurisdictions have higher common law thresholds or do not allow access to common law, Queensland is the only jurisdiction with a centrally funded short tail scheme. Most Australian jurisdictions operate long tail schemes that pay benefits for the duration of a worker's incapacity, with heavily restricted or no access to common law remedies. Due to variations in the structure of different jurisdictions' schemes, it is not possible to make a direct comparison between the different common law thresholds applied.[47]

In setting of workers' compensation premiums Queensland uses previous claims experience and wage information to determine likely cost of claims. The calculation takes into account:

- claims cost experience (past three years of claims cost and the next two years of damages claims);
- business size relative to the industry; and
- industry's claims cost performance.

Employer premiums in Queensland are based on the calculation which multiplies employer's wages with their premium rate. The actual premium paid by an employer in Queensland is dependent on the size, claims experience and industry of the employer. The smaller the employer, the more their premium is based on their industry rate and the larger the employer, the more their premium is based on their own experience.

The claims experience includes the statutory claims costs arising from injuries incurred in the past three financial years and common law claims costs arising from injuries that occurred in the two financial years prior to that up to a maximum of $175,000 for each claim. For example an employer's 2015-16 premium will be affected by statutory claims arising in 2012-13, 2013-14 and 2014-15; and, common law claims arising from injuries that occurred in the 2010-11 and 2011-12 financial years.

Premium calculations use industry codes which are based on the workers' compensation insurers' coding of industry to the divisions from the Australian and New Zealand Standard Industry Classification (ANZSIC 2006). Industries are given an alphabetical code and a corresponding number for sub-classification.

The employer pays the premium provisionally i.e. the insurance is paid at the beginning of a period and adjusted at the end. Estimated wages are used for the current financial year to calculate the provisional premium. On renewal, the actual wages for the past financial year are used to calculate actual premium. The provision premium paid for the past financial year is subtracted from the actual premium for that year.

3 Examination of the *Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2015 – Amendment of Workers' Compensation and Rehabilitation Act 2003*

3.1 Clause 3 – Act amended

Clause 3 amends the *Workers' Compensation and Rehabilitation Act 2003*.

[47] Correspondence from Queensland Treasury to FAC dated 19 August 2015: 22

3.2 Clause 4 – Amendment of section 132A (Applying for assessment of DPI before applying for compensation)

The Explanatory Notes detail that Clause 4 amends section 132A of the Act to specify the decisions the insurer must make in determining the application, the time the decision must be made within, and that the decision of an insurer is reviewable. The amendment also clarifies that the decision of the insurer to accept the application does not entitle a worker to compensation for the injury.[48]

3.3 Clause 5 – Insertion of new section 132B

Clause 5 inserts a new section 132B in the Act to provide for a dependant of a deceased worker to apply for a certificate of dependency to support amendments made by clause 6 of the Bill to reinstate an injured worker's entitlement to seek damages.[49] Proposed new schedule 132B is as follows:

132B Applying for certificate of dependency

(1) This section applies to a person who -
  (a) wishes to seek damages as a dependant of a deceased worker; and
  (b) has not made an application under section 132.

(2) The person may apply to the insurer for the issue of a certificate stating the person is a dependant of the deceased worker for the purpose of section 237(1)(b)(ii).

(3) An application under subsection (2) must be -
  (a) lodged with the insurer; and
  (b) in the approved form; and
  (c) accompanied by -
    (i) a certificate in the approved form given by a doctor who attended the deceased worker; and
    (ii) any other evidence or particulars prescribed by regulation.

(4) The insurer must, within 40 business days after the application is made, decide to allow or reject the application.

(5) The insurer may reject the application only if satisfied -
  (a) the person is not a dependant of the deceased worker; or
  (b) the deceased worker was not a worker when the injury was sustained; or
  (c) the deceased worker did not sustain an injury; or
  (d) the injury did not result in the worker's death.

(6) The insurer must notify the person of its decision on the application.

(7) If the insurer rejects the application, the insurer must also, when giving the person notice of its decision, give the person written reasons for the decision and the information prescribed by regulation.

(8) If the person is aggrieved by the insurer's decision on the application, the person may have the decision reviewed under chapter 13.

(9) If the insurer does not decide the application within the time stated in subsection (4) -
  (a) the insurer must, within 5 business days after the end of the time stated in subsection (4), notify the person –
    (i) of its reasons for not deciding the application; and
    (ii) that the person may have the insurer's failure to decide the application reviewed under chapter 13; and
  (b) the person may have the insurer's failure to decide the application reviewed under chapter 13.

(10) To remove any doubt, it is declared that a decision of the insurer to allow the application does not entitle the person to compensation for the injury.

[48] Explanatory Notes, *Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2015*: 5
[49] Explanatory Notes, *Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2015*: 5

The Bar Association of Queensland identified their concern that the amendments contained in section 132A and 132B include matters to be prescribed by regulation which are not yet detailed.[50]

The department advised that currently section 132A enables workers who have not applied for statutory compensation under section 132 to apply to the insurer to have their injury assessed for degree of permanent impairment. If the insurer decides to have the injury assessed and issues a notice of assessment, workers may be entitled under section 237 to seek damages for the injury, provided the assessed degree of permanent impairment is greater than five per cent. Under section 548 and 548A, workers are able to appeal an insurer's decision.[51]

The proposed amendments in section 132A and section 237 retain this avenue for workers to apply to have their injury assessed without applying for statutory compensation, in order to be entitled to seek damages. The department advised that the amendments provide a more robust decision-making framework for insurers, which clarifies the basis on which an insurer must determine an application to have the injury assessed, the timeframe for an insurer to decide the application, and the requirement for an insurer to give the notice of the decision. The amendments also allow a worker to apply to the Workers' Compensation Regulator for a review if aggrieved by an insurer's decision or failure to make a decision about the application. The amendments also clarify that the insurer's decision about the application does not create an entitlement for the worker to receive statutory compensation for the injury.[52]

The department advised that proposed section 132B has been inserted as a new provision which complements the amendments to section 237 to reinstate access to common law damages for injured workers and dependents. It is based upon the requirements of the previous section 262 which was in force prior to the 2013 amendments. Section 132B allows a dependant of a deceased worker to apply to an insurer to issue a certificate of dependency, to enable the dependant to seek damages where the injury results in the worker's death and the dependent has not applied for statutory compensation for the worker's death under section 132.[53]

3.4 Clause 6 – Amendment of section 237 (General limitation on persons entitled to seek damages)

The Explanatory Notes detail that section 237 is amended to remove the requirement that a worker must have an assessed degree of permanent impairment of more than five per cent arising from their injury in order for that worker to be entitled to seek damages for the injury under the Act. The Explanatory Notes outlined that the clause 6 amendment reinstates an injured worker's entitlement to seek damages. This entitlement was removed by the *Workers' Compensation and Rehabilitation and Other Legislation Amendment Act 2013* (the 2013 Amendment Act).[54]

Submitters from employer groups considered that the current provisions relating to access to common law provide for a balance between providing benefits for injured workers and ensuring reasonable cost levels for employers. The amendments made in 2013 resulted in workers, who have sustained an injury on or after 15 October 2013 and are assessed with a degree of permanent impairment of five per cent or less, not being entitled to seek common law damages for their injuries (the common law threshold).[55]

[50] Bar Association of Queensland Submission No. 114: 1
[51] Correspondence from Queensland Treasury to FAC dated 14 August 2015: 7
[52] Correspondence from Queensland Treasury to FAC dated 14 August 2015: 7
[53] Correspondence from Queensland Treasury to FAC dated 14 August 2015: 7
[54] Explanatory Notes, *Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2015*: 5
[55] Correspondence from Queensland Treasury to FAC dated 19 August 2015: 22

The department advised that the introduction of the common law threshold was previously forecast to reduce common law claims by up to 60 per cent by 2016-17 or from 4,200 to around 2,000 claims. Reinstating common law entitlements for injured workers has the potential to provide an estimated additional 1,800 injured workers a year with access to common law damages, with an average common law payment of $110,000.[56]

The department considers that the proposed amendments will restore the balance in Queensland's short-tail workers' compensation scheme by allowing access to common law damages to injured workers with low degree of permanent impairment assessments, especially those whose ability to return to work may be impacted by their injury. All workers who have had their degree of permanent impairment assessed are offered lump sum compensation. This offer is a percentage of legislated maximum lump sum compensation (currently $314,920) based on the worker's degree of permanent impairment. This offer is designed to compensate the worker for the loss suffered as a result of an injury on a no-fault basis. It does not take into account a worker's specific circumstances or account for their individual future economic loss or medical or care needs.[57]

Employers Mutual submitted that removing the threshold retrospectively will place unnecessary financial burden on the scheme and more specifically on the 26 self-insured employers and if the government elects to remove the threshold this should be applied to claims with a date of injury after the date of assent.[58]

The Committee asked the department to elaborate on the financial impacts on self-insured employers. The department advised that the cost for self-insured employers may vary, for example costs for those in the white-collar type industry with lower injury rates will differ to those self-insurers in very high risk injuries.[59] The department explained:

> *They vary in size and their claims history and claims experience also vary in size, so it is very difficult to determine an overall impact on them as a group when I think the amendments proposed will have more individual impacts on self-insurers.*[60]

The department also advised:

> *It is estimated that the cost of removing the common law threshold from 31 January 2015 can be absorbed without impacting on the overall solvency of the workers' compensation scheme. Retrospective application of the legislation to 31 January 2015 meets the Government's pre-election commitment to reinstate common law rights for injured workers by removing the common law threshold. Limiting retrospective application to this date is beneficial in that it restores the entitlement to seek common law damages for a greater number of injured workers, while minimising the impact on scheme financial viability and employers' costs.*[61]

The fact that the 2013 amendments having only been in place for 18 months was highlighted in submissions. They noted it is difficult to determine the extent of any savings to employers.

[56] Correspondence from Queensland Treasury to FAC dated 19 August 2015: 22
[57] Correspondence from Queensland Treasury to FAC dated 19 August 2015: 22
[58] Employers Mutual, Submission No. 45: 1
[59] Mr Goldsbrough, Queensland Treasury, Public departmental briefing Transcript 6 August 2015: 3
[60] Ms Hillhouse, Queensland Treasury, Public departmental briefing Transcript 6 August 2015: 3
[61] Correspondence from Queensland Treasury to FAC dated 19 August 2015: 22

The Civil Contractors Federation (CCF) considers that claims in the zero to five per cent category are more appropriately dealt with through the statutory no fault system instead of through the courts. They suggest that this would ensure the focus of injured workers and their employers is on rehabilitation and getting injured workers back to work as soon as it is safe for them to do so, rather than how much they can get for their injury.[62]

The Australian Industry Group (AiGroup) highlighted that the major concern of their members was the removal of the greater than five per cent threshold applying to the access to common law damages claims. They consider that this ability to access common law damages often leads to employers experiencing difficulties with engaging injured workers in the rehabilitation and return to work process.[63]

The department noted that, under the Act, insurers must take the steps considered practicable to secure the rehabilitation and early return to suitable duties of workers who have an entitlement to compensation. They also take the steps considered practicable to coordinate the development and maintenance of a rehabilitation and return to work plan in consultation with an injured worker and the worker's employer and treating doctor.[64]

Other submitters who were opposed to the removal of the threshold for access to common law included: Australian Meat Industry Council (AMIC), Australian Country Choice Group, Housing Industry Association (HIA), Master Grocers Association, Association of Self-Insured Employers of Queensland (ASIEQ), Australian Sugar Milling Council, Local Government Association of Queensland (LGAQ), National Retailers Association, JBS Australia Pty Ltd, AWX Group, Master Electricians Australia and Chamber of Commerce and Industry Queensland (CCIQ).

CCIQ advised that when surveyed in 2012, 81 per cent of Queensland businesses supported the introduction of a threshold to reduce access to common law, with the statutory process considered the most appropriate method for achieving compensation for genuine work-related injuries within the range of zero to five per cent degree of permanent impairment.[65]

Some submitters identified that allowing access to common law claims will impact on the claims history portion of their workers' compensation premiums. The Committee was advised:

> *The base rate is predicted not to change, only because just at the moment WorkCover has a significant surplus of funds. Inevitably, that will have to go up because of these changes. I think the observation that David[66] was making was that the penalty rates that he may have to pay, as he might incur a loading on his premiums because he gets claims in the under five per cent category that he otherwise would not get, is where the big jump in premiums will come from for an employer.*[67]

The Motor Trades Association of Queensland (MTAQ) cited Auditor-General's report No. 18: 2014-15 tabled on 2 June 2015 which states that workers' compensation premiums have reduced on average by 17 per cent as a result of the 2013 reforms. MTAQ advised that their members welcome the trend in premiums which helps them to remain competitive and reduces the burden of employing new staff. They advise that they consider it should be made a priority to preserve the competitive premium rates. They consider that limiting access to common law to more serious claims has played a significant role in keeping Queensland's premiums at a competitive level.[68]

[62] Civil Contractors Federaton, Submission No. 87: 3
[63] Australian Industry Group, Submission No. 83: 2
[64] Correspondence from Queensland Treasury to FAC dated 19 August 2015: 51
[65] Chamber of Commerce and Industry Queensland, Submission No. 137: 3
[66] This reference refers to Mr David Foote from Australian Country Choice Meats
[67] Mr Temby, Housing Industry Association, Public hearing transcript 13 August 2015: 12
[68] Motor Trades Association Queensland, Submission No. 32: 3

MTAQ indicated their concern that the proposed amendments will see a reversal of the current trend and a return to rising premiums.[69]

The department noted in response to this issue that the reforms implemented in 2010 have been successful in placing downward pressure on common law claims and reducing the average cost of claims. Common law claims have remained stable since 2011-12 and the average annual cost of a common law damages claim has reduced by approximately 10 per cent from 2009-10 to 2013-14.[70]

The following table depicts the new common law claims and average common law claim cost for the period 2010-2014:

Table 3: New common law claims and average common law claim cost, 2010-2014

New common law claims and average common law claim cost, 2010-2014		
Year	New common law claims	Average common law claim cost
2009-10	4,988	$144,147
2010-11	4,508	$148,055
2011-12	4,313	$137,696
2012-13	4,299	$124,743
2013-14	4,215	$129,940

Source: Correspondence from Queensland Treasury to FAC dated 19 August 2015: 23

The department advised that Queensland has also recorded a 15.4 per cent reduction in incidence of serious work-related injuries between 2009-10 and 2013-14, and a significant reduction in the number of new statutory claims since 2011-12. This reduction in statutory claim lodgements is likely to continue to have a similar flow-on effect on common law lodgements.[71]

The department considers that a sustained focus on injury prevention and enhancing rehabilitation and return to work strategies will maintain this reduction in serious work injuries which will be the key driver in minimising WorkCover's premiums.[72]

Submissions supporting the return to the pre-2013 amendments in relation to access to common law for those workers with less than six per cent impairment included QNU, AMWU, ALA, UFUQ, United Voice, CFMEU, QCU and IEUA-QNT.

QCU advised:

> *In terms of the amendments that we can commend, clearly the removal of the common law threshold is a significant step forward in making sure that people who are injured as a result of the negligence of their employer are treated the same way as people who are injured elsewhere. Many of our members suffer further injuries as a result of the original work related incident, such as adjustment disorders and injuries resulting from unsuccessful treatments, so the reinstatement of the capacity to ensure the consequential injuries are not disregarded in the common law process is also significant.*[73]

[69] Motor Trades Association Queensland , Submission No. 32: 4
[70] Correspondence from Queensland Treasury to FAC dated 19 August 2015: 23
[71] Correspondence from Queensland Treasury to FAC dated 19 August 2015: 23
[72] Correspondence from Queensland Treasury to FAC dated 19 August 2015: 23
[73] Ms Wilson, Queensland Council of Unions, Public hearing transcript 13 August 2015: 3

The Committee received a confidential submission from a woman whose husband injured his back at work. He has undergone medical treatment, however, he continues to suffer pain and is therefore unable to return to his previous employment. His injury has been assessed as having a zero per cent impairment. WorkCover payments have ceased and they have suffered financial hardship because he is unable to work in his previous employment. This case highlights the issue where an assessment of less than six per cent impairment is not an indicator of disability.[74]

The QNU advised the Committee:

> *The QNU regularly assists members with assessments of work related impairment. Since the introduction of thresholds, the real concern to the QNU has been the loss of common law claims for individuals assessed as having 0%-5% whole person impairment. The QNU has assisted nurses and midwives whose employers have terminated their employment after an assessment of 0% work related impairment when the employer became aware of a pre-existing condition aggravated in the workplace.[75]*

They noted that:

> *In our experience, nurses and midwives who do enter into common law claims have often experienced poor treatment in rehabilitation such that they are no longer able to carry out their duties effectively. Even where impairment is assessed at 0%, some members remain unable to continue in their role as the inherent requirements of nursing work include manual handling.[76]*

The Australian Lawyers Alliance (ALA) advised:

> *The ALA welcomes the introduction of the Bill, and most specifically the removal of injury impairment thresholds. It is the position of the ALA that the removal of thresholds through the Bill will help to ensure that Queensland once again has the best workers' compensation scheme in the country – a scheme that is fair for injured workers and employers.*
>
> *The ALA's position has always been that all Queensland workers deserve access to common law rights when injured on unsafe worksites where there is negligence on the part of an employer. Indeed, such rights have existed for the better part of a century in Queensland.[77]*

They advised that their membership has had experience in advising clients who have been injured in negligent circumstances and are precluded from pursuing a damages claim and recovering any of their ongoing losses caused by their injury. They advised:

> *An injury assessed at 5% or less impairment in accordance with the Guides to the Evaluation of Permanent Impairment may not sound significant, but the reality for workers with such injuries could not be further from the truth. Indeed, ALA members have reported many instances of injured workers with injuries assessed at 5% or less whom:*
>
> - *Are no longer able to work due to their injury;*
> - *Have had to change careers entirely on account of their injury;*
> - *Have had extended periods of time off to recover from their injury in order to return to work; and*

[74] Confidential Submission No. 14
[75] Queensland Nurses' Union, Submission No. 65: 7
[76] Queensland Nurses' Union, Submission No. 65: 7
[77] Australian Lawyers Alliance, Submission No. 99: 3-4

- *Have returned to work in a part-time capacity only or on limited duties on account of their injury.*[78]

3.5 Committee comments

The Committee was unable to reach agreement on the issue of whether workers who sustain a permanent impairment of less six per cent should have access to common law.

The Committee noted that the former FAC (54th Parliament) recommended that the provisions relating to access to common law at that time be retained, however, this recommendation was not accepted by government. Amendments were passed in October 2013 which prevented those with assessed permanent impairment of less than six per cent having access to common law.

The non-government Members also noted that the former FAC also made recommendations in relation to 'no-win-no-fee' legal fee arrangements and the advertising of such services.

The non-government Members of the Committee considered that there was a need to reduce the costs to business of workers' compensation. They considered that the imposition of these common law thresholds have successfully achieved this aim. They consider that evidence of this is the reduction of average premium rates of $1.42 per $100 of wages at the time of the former FAC's report to the current level of $1.20 per $100 of wages. They considered that the former FAC's report included recommendations that would have counter balanced the retention of the common law access arrangements and one recommendation cannot be actioned in isolation of the other recommendations contained in the report.

The non-government Members of the Committee note the advice provided by CCIQ that the cost to business of every one cent increase in base premiums is $10 million. Further, the non-government Members note the evidence provided at the second departmental briefing that business in Queensland dislikes premium volatility.

The Treasurer, in introducing the Bill, made a commitment to maintain the base premium of $1.20 and WorkCover provided the Committee with actuarial advice detailing how this commitment could be honoured. The non-government Members were concerned that this information was provided 'commercial-in-confidence' and cannot be disclosed to the community.

The non-government Members are also concerned about a jump in the base premium as indicated in the actuarial advice. The non-government Members consider the estimated annual cost, in the order of $184 million, will put significant pressure on the scheme premium rate. It is the non-government Members view that this is proof that a significant increase in premium, above the breakeven rate of $1.36, will occur sooner rather than later.

The government Members considered that the imposition of a permanent impairment threshold to determine whether workers' have access to common law was arbitrary. They considered that the permanent impairment assessment did not reflect a workers' disability or ongoing work capacity. The government members also considered it unfair and inconsistent to exclude one class of person of person i.e. those injured in work places who suffer an impairment of less than six per cent, when those injured in other circumstances have the ability to seek damages through access to common law for those injuries.

[78] Australian Lawyers Alliance, Submission No. 99: 5

The Government Members noted the department's advice that 2010 reforms have been successful in placing downward pressure on common law claims and reducing the average cost of those claims. The department also advised that there has been a 15 per cent reduction in the number of common law claims lodged to around 4,200 per annum (from 4,900 in 2009-10), which has remained stable since 2011-12. Total annual common law claim payments have reduced around 10 per cent from $627.3 million in 2009-10 to $566.0 million in 2013-14. The average annual cost of a common law damages claim has similarly reduced by 10 per cent over this period from $144,147 in 2009-10 to $129,940 in 2013-14. They noted that new common law claims are not necessarily finalised in the same financial year as the average common law claim cost.[79]

Further, Queensland has recorded a 15.4% reduction in incidence of serious work-related injuries between 2009-10 and 2013-14, and a significant reduction in the number of new statutory claims since 2011-12. This reduction in statutory claim lodgements is likely to continue to have a similar flow-on effect on common law lodgements.

Government members also noted that with WorkCover's solvency forecast to be 124% in 2019-20, it will still make WorkCover Queensland one of the most solvent funds of any of the centrally funded workers' compensation schemes in Australia. WorkCover's actuary has been undertaking the Queensland the Queensland scheme analysis and the Government members are satisfied with WorkCover's actuarial analysis that while their reserves will reduce substantially, WorkCover will maintain its required solvency target of 120% and its solvency is expected to remain above the level of other centrally funded workers' compensation schemes in Australia.

3.6 Clause 7 – Insertion of new section 239A

Clause 7 inserts a new section 239A to the Act. The Explanatory Notes state that this new section is to:

> *…provide the provisions required to be satisfied for a worker to add injuries to a claim for damages that have not been assessed for a degree of permanent impairment under chapter 3, part 10.*[80]

The Explanatory Notes also state that this new section supports amendments made by clause 6 to reinstate an injured worker's entitlement to seek damages.[81]

Proposed new schedule 239A is as follows:

239A Worker with more than 1 injury from an event

(1) This section applies to a claimant who is a worker mentioned in section 237(1)(a)(ii).

(2) The claimant can not have, and the insurer can not decide to have, the injury assessed under chapter 3, part 10 to decide if the claimant has sustained a DPI.

(3) The insurer can not decide the claimant's notice of claim does not comply with section 275 only because the claimant has not received a notice of assessment for the injury.

(4) However, the claimant may seek damages for the injury only if the insurer decides the claimant has sustained an injury.

(5) The insurer must make a decision for subsection (4) within 40 business days after -

(a) the claimant gives, or is taken to have given, a complying notice of claim; or

(b) the claimant gives a notice of claim for which the insurer waives compliance with the requirements of section 275 with or without conditions; or

(c) a court makes a declaration under section 297.

[79] Department of Justice and Attorney-General, Workplace Health and Safety Queensland, *Workers' Compensation Regulator 2013-14 Statistics Report*

[80] Explanatory Notes, *Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2015*: 5

[81] Explanatory Notes, *Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2015*: 5

(6) The insurer must -
(a) notify the claimant of its decision for subsection (4); and
(b) if the insurer decides the claimant has not sustained an injury - give the claimant written reasons for the decision; and
(c) if the insurer is WorkCover - also give the information mentioned in paragraphs (a) and (b) to the claimant's employer.
(7) If the insurer does not make a decision for subsection (4) within the time stated in subsection (5) –
(a) the insurer must, within 5 business days after the end of the time stated in subsection (5), notify the claimant -
(i) of its reasons for not making the decision; and
(ii) that the claimant may have the insurer's failure to make the decision reviewed under chapter 13; and
(b) the claimant may have the insurer's failure to make the decision reviewed under chapter 13.
(8) A person aggrieved by the insurer's decision may have the decision reviewed under chapter 13.

The department advised that the inclusion of proposed section 239A is required as a result of the amendments to section 237 (clause 6). Proposed section 239A sets out administrative provisions for the insurer to manage the inclusion of the unassessed injury in the notice of claim for damages. The department advised that proposed section 239A is substantially similar to a previous provision, section 245, which was omitted by the 2013 amendments.[82]

The Bar Association of Queensland identified their concern that there are no prescribed consequences in the event of default by WorkCover, although an aggrieved worker can activate the rights of review and appeal for a failure to make a decision.[83]

The department responded that there are instances throughout the Act where an insurer's failure to make a decision attracts no prescribed consequence but triggers the aggrieved party's right to an administrative review of the failure to make a decision. They advised that if incorporating consequences, such as an automatic review, financial penalty or licence condition, be prescribed, it may jeopardise the general efficiency of the scheme.[84]

3.7 Clause 8 – Amendment of section 296 (Claimant to have given complying notice of claim or insurer to have waived compliance)

The Explanatory Notes detail that clause 8 amends section 296 of the Act as a result of the amendment of section 302 (see clause 9).[85]

3.8 Clause 9 – Amendment of section 302 (Alteration of period of limitation)

Clause 9 amends section 302 of the Act to allow for the extension of the period of limitation in specified circumstances. The Explanatory Notes outline that the specified circumstances include if a workers application for compensation is the subject of a review or appeal, or if the claimant has applied for a certificate of dependency under the new section 132B. This amendment supports amendments made by clause 6 of the Bill to reinstate an injured worker's entitlement to seek damages.[86]

[82] Correspondence from Queensland Treasury to FAC dated 14 August 2015: 7-8
[83] Bar Association of Queensland, Submission No. 114: 2
[84] Correspondence from Queensland Treasury to FAC dated 19 August 2015: 76
[85] Explanatory Notes, *Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2015*: 5
[86] Explanatory Notes, *Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2015*: 5

3.9 Clause 10 – Amendment of section 540 (Application of part 2)

The Explanatory Notes detail that Clause 10 amends section 540 of the Act to specify that a decision by an insurer to allow or reject an application made under section 132A, section 132B or section 239A of the Act is a reviewable decision under the Act. This supports amendments made by clause 6 of the Bill to reinstate an injured worker's entitlement to seek damages.[87]

3.10 Clause 11 – Insertion of new chapter 32

Clause 11, proposed new Chapter 32 provides transitional arrangements for claims where a worker's injury was sustained before the 31 January 2015.[88] Proposed new Chapter 32 is as follows:

Chapter 32 Transitional provisions for Workers' Compensation and Rehabilitation and Other Legislation Amendment Act 2015

Part 1 Preliminary

707 Definitions for ch 32

In this chapter -

amendment Act means the *Workers' Compensation and Rehabilitation and Other Legislation Amendment Act 2015*.

former, for a provision, means the provision as in force from time to time before the repeal or amendment of the provision by the amendment Act.

Part 2 Amendments commencing on 31 January 2015

708 Definitions for pt 2

In this part -

pre-amended Act means this Act as in force before 31 January 2015.

transitional period means the period starting on 31 January 2015 and ending on the date of assent of the amendment Act.

709 Injuries sustained before 31 January 2015

(1) This section applies if a worker sustained an injury before 31 January 2015.

(2) The pre-amended Act continues to apply in relation to the injury as if the amendment Act had not been enacted.

(3) Without limiting subsection (2) -

(a) the amount of compensation payable in relation to the injury must be worked out under the pre-amended Act; and

(b) chapter 5 of the pre-amended Act applies in relation to damages, or a proceeding for damages, for the injury.

(4) Also, if an insurer made a decision on an application in relation to the injury under former section 132A during the transitional period, a worker aggrieved by the decision may apply to have the decision reviewed under chapter 13.

710 Application under s 132A during transitional period

(1) This section applies if, during the transitional period -

(a) an injury was sustained by a worker; and

(b) an application was made under section 132A to have the worker's injury assessed under section 179 to decide if the worker's injury has resulted in a DPI.

(2) Former section 132A applies to the application, despite its amendment by the amendment Act.

(3) However, if the worker is aggrieved by the insurer's decision on the application, the worker may apply to have the decision reviewed under chapter 13.

(4) Nothing in this section affects another provision of this Act about deciding -

(a) whether a person was a worker; or

(b) whether a worker sustained an injury; or

(c) the date an injury was sustained.

[87] Explanatory notes, *Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2015*: 6

[88] Explanatory notes, *Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2015*: 6

711 Decision under s 189 not affected

(1) This section applies if -

(a) a decision was made, or taken to have been made, by a worker under section 189 before the date of assent of the amendment Act; and

(b) the injury to which the decision relates was sustained during the transitional period.

(2) The enactment of the amendment Act does not affect the decision.

The department explained that clause 11 inserts transitional provisions for the amendments reinstating access to common law for those workers who sustain injuries between 31 January 2015 and the date of assent. Where a worker makes a decision under section 189 about an offer of lump sum compensation from WorkCover, the amendments will not affect the decision.[89]

Under sections 189 and 190, if a worker accepts or rejects an offer of lump sum compensation, this has the effect of ending the workers' entitlement to further statutory compensation and finalising the workers' claim for their injury. Workers who have made a decision about the offer before the amendments commence will have finalised their claims in accordance with the legislation in force at the time of their decision.[90]

The transitional provisions clarify that the Bill does not seek to reverse or attempt to alter any decisions that a worker has made in relation to the finalisation of their statutory claim under the Act, which has been relied upon by the insurer.[91]

The Committee noted that during the period 15 October 2013 and 31 January 2015, any worker who had a diagnosis of permanent impairment of less than six per cent was not eligible to apply for common law damages and had access to statutory lump sum compensation. The Committee was advised that the difficulty with this is that the permanent impairment measure assigned does not measure the actual disability suffered by the worker. The inability to access common law damages meant that there was no recognition of this and so in some cases people could be disadvantaged.[92]

The Committee sought from the department the number of individuals who would be affected by the proposed amendment that will establish the ability to provide additional compensation to workers impacted by the operation of the common law threshold between 15 October 2013 and 31 January this year. The department stated that they anticipate there to be an estimated 4,600 people who are able to demonstrate negligence between 15 October 2013 and 31 January 2015.[93]

The Committee also asked the department how many claims they estimated there would be in the under six per cent category. The department explained that 5,912 claims were assessed under the six per cent for the period between 15 October 2013 and 31 January 2015.[94] The department stated that there are also around 2,700 claims that could go to common law.[95]

[89] Correspondence from Queensland Treasury to FAC dated 19 August 2015: 38
[90] Correspondence from Queensland Treasury to FAC dated 19 August 2015: 38
[91] Correspondence from Queensland Treasury to FAC dated 19 August 2015: 38
[92] Mr Goldsbrough, Queensland Treasury, Public departmental briefing transcript 6 August 2015: 11
[93] Mr Goldsbrough, Queensland Treasury, Public departmental briefing transcript 6 August 2015: 5
[94] Mr Goldsbrough, Queensland Treasury, Public departmental briefing transcript 6 August 2015: 11
[95] Ms Hillhouse, Queensland Treasury, Public departmental briefing transcript 6 August 2015: 11

The Committee sought additional information from the department regarding the projected cost of any claims covering this period. They advised that the original cost estimate of 4,600 claims will result in an additional cost to the scheme of approximately $90.0 million, covering the period 15 October 2013 to 31 January 2015. They further advised that the estimate of 4,600 claims is based on current scheme trends over the past few years and as such it can be affected by the proposed amendments in relation to additional compensation. They advised that this estimate does not allow for behavioural changes as a result of the potential removal of the threshold as they have no data available to make additional assumptions.[96]

A number of stakeholders had concerns about the retrospectivity arising from this amendment. The Australian Country Choice Group stated that no business can operate competitively when 'laws can be brought in that are a catch-up for the past'. They emphasised that businesses do not budget for such retrospectivity as they were operating under the laws of the state at that time.[97] The HIA concurred and stated:

> *There has been no cogent argument put to us to suggest that the group under five per cent impairment warrants any special treatment over and above other people that have missed out on changes because of government policies in the past.*[98]

CCIQ objected strongly to these amendments and considered the retrospectivity would set a very dangerous precedent for the future. CCIQ stated:

> *…from the perspective of administration of a statutory adjustment scheme it will be inefficient, complex, costly, give rise to both distortion and high administration costs and the impact of a statutory adjustment scheme will have a further significant negative impact on premiums.*[99]

The Queensland Law Society (QLS) stated in their submission that the transitional provisions will have the effect of preventing any worker who has accepted a lump sum for injury since 31 January 2015 from accessing common law remedies. The submitted that the retrospective provisions included in the Bill should be increased to cover workers in this situation.[100]

The submission from United Voice supports the provisions to provide additional lump sum compensation to be paid to those workers who sustained an injury during the period 15 October 2013 and 31 January 2015 resulting in a degree of permanent impairment of five per cent or less. They consider that this group of workers have been unfairly impacted by the 2013 amendments. They noted:

> *The government has not yet confirmed how the additional lump sum compensation will be calculated and/or paid to this group of injured workers. United Voice is concerned for this group of injured workers that any additional lump sum compensation must adequately compensate for the improper removal of their common law right.*[101]

The department advised that to allow this would be inconsistent with the operation of sections 189 and 190.[102]

[96] Correspondence from Queensland Treasury to FAC dated 28 August 2015: 2
[97] Mr Foote, Australian Country Choice Group, Public hearing transcript 13 August 2015: 12
[98] Mr Temby, Housing Industry Association, Public hearing transcript 13 August 2015: 13
[99] Mr Behrens, Chamber of Commerce and Industry Queensland, Public hearing transcript 13 August 2015: 24
[100] Queensland Law Society, Submission No.75: 1
[101] United Voice, Submission No. 140: 2
[102] Correspondence from Queensland Treasury to FAC dated 19 August 2015: 38

3.11 Committee comments

Refer also to comments included in section 3.25 of this report.

The non-government Members of the Committee are very concerned about the impact of the transitional provisions and the retrospectivity. A number of submitters provided evidence that businesses in Queensland were operating, in good faith, under legislative framework at the time and they do not budget for such retrospectivity. The non-government Members have significant concerns about the impact this will have on premiums and the resultant cost to Queensland businesses. At a time where business confidence is lagging, the non-government Members are particularly concerned with and, on behalf of employers and employees in Queensland, aggrieved by this breach of trust and faith by the Palaszczuk government.

The non-government Members are concerned that the $90 million estimated cost for claims for injuries between 15 October 2013 and 31 January 2015, combined with the estimated cost of a further $90 million for claims for the period 31 January 2015 to 30 June 2015 could be a significant underestimate of the actual cost. This concern is based on the department's advice that annual costs going forward will be in the order of $184 million. The non-government Members note that the actual period from 15 October 2013 to 30 June 2015 is, in fact, 20.5 months or 1.7 years. This suggests that the actual cost could be $314 million ($184 million times 1.7 years). This $314 million combined with the $184 million estimated for the 2015/16 financial year totals $498 million. If proven, this is a significant reduction in the reserves of the fund. Current (2014/15) fund reserves of $1,758 million would reduce by 28.3 per cent to $1,260 million in 2015/16. The non-government Members note that such a reduction was not considered when the premium rate of $1.20 per $100 was struck.

The department advised that the reserves are held in what would be regarded as a balanced fund. We are presently experiencing significant volatility in world stock markets. Combined with this is the historically low interest rates. The combination of these two factors puts into question the assumed average rate of return of five per cent over the next five years.

A combination of a lower rate of return and a higher than indicated claims experience would put significant pressure on the reserve levels. This in turn, would mean the fund would need to significantly increase premium rates to maintain acceptable reserve levels in the short term.

Government Members noted the adjustment scheme to provide ex-gratia payments to eligible injured workers impacted by the common law threshold is estimated to have a total cost of $75 to 105 million (mid-point $90 million). WorkCover will remain fully solvent but the combined effect of the adjustment scheme and the removal of the common law threshold will reduce solvency from an estimated 170 per cent to 124 per cent, over the five year period to 2020. While WorkCover's reserves will reduce substantially, it will maintain its required solvency target of 120 per cent and its solvency is expected to remain above the level of other centrally funded workers' compensation schemes in Australia.

Government Members also noted that with WorkCover's solvency forecast to be 124 per cent in 2019-20, it will still make WorkCover Queensland one of the most solvent funds of any of the centrally funded workers' compensation schemes in Australia. As of June 2015, the New South Wales scheme solvency was 102 per cent, Victoria 116 per cent and South Australia 100 per cent.

The Government Members note this forecast is based on a specific set of criteria and as WorkCover advised the Committee the break-even premium will change based on a range of factors impacting on the scheme. These include investment returns, injury rates and the duration of claims. To illustrate this point WorkCover and their actuary used an investment return of five per cent to forecast the impact of removing the threshold out to 2019-20. It is the view of Government Members that the reality is that between 2009-10 and 2014-15, WorkCover averaged a return of 8.7 per cent, which will if this continues to be achieved bring in substantially more investment revenue.

3.12 Clause 12 – Insertion of new chapter 5

Clause 12 inserts new schedule 5 into the Act to support amendments made to section 302 of the Act (see clause 9) by providing for the extension of the period of limitation in specified circumstances.[103] New schedule 5 is as follows:

Schedule 5 period of limitation

(section 302 (1)(b)

1 Worker who requests or is given notice of assessment

(1) This section applies if -

(a) less than 6 months before the end of the general limitation period, an insurer gives a worker a notice of assessment for an injury; or

(b) before the end of the general limitation period -

(i) a worker asks an insurer to have the worker's injury assessed to decide if the injury has resulted in a DPI; and

(ii) the insurer has not given the worker a notice of assessment for the injury.

(2) A proceeding for damages for the injury may be brought -

(a) within 6 months after the insurer gives the notice of assessment for the injury; or

(b) if, before the end of the period mentioned in paragraph (a), the worker advises the insurer that the worker does not agree with the DPI stated in the notice of assessment for the injury—within 6 months after a tribunal decides the DPI.

2 Application for compensation subject to review or appeal

(1) This section applies if, before the end of the general limitation period -

(a) a claimant lodges an application for compensation for an injury; and

(b) the application is or has been the subject of a review or appeal under chapter 13; and

(c) the application has not been accepted.

(2) A proceeding for damages for the injury may be brought -

(a) within 6 months after the claimant's application is accepted; or

(b) if, before the end of the period mentioned in paragraph (a), the claimant asks the insurer to have the injury assessed to decide if the injury has resulted in a DPI -

(i) within 6 months after the insurer gives a notice of assessment for the injury; or

(ii) if, before the end of the period mentioned in subparagraph (i), the worker advises the insurer that the worker does not agree with the DPI stated in the notice of assessment for the injury - within 6 months after a tribunal decides the DPI.

3 Application for certificate of dependency

(1) This section applies if, before the end of the general limitation period, a claimant applies for a certificate under section 132B stating the claimant is a dependant of a deceased worker.

(2) A proceeding for damages for the deceased worker's injury may be brought by the claimant within 6 months after the insurer issues the certificate.

(3) Subsection (2) applies whether or not the certificate is issued following a review or appeal under chapter 13.

[103] Explanatory Notes, *Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2015*: 6

3.13 Clause 13 – Amendment of schedule 6 (Dictionary)

The Explanatory Notes state that clause 13 inserts into the dictionary in schedule 6 a new definition as a result of amendment to section 302 (clause 9).[104]

3.14 Clause 23 – Amendment of section 43 (Meaning of *workplace rehabilitation*) & Clause 24 - Amendment of s 44 (Meaning of workplace rehabilitation policy and procedures)

The Explanatory Notes detail that clauses 23 and 24 amends sections 43 and 44 respectively to align with previous changes made the 2013 Amendment Act.[105]

3.15 Clause 25 – Amendment of section 186 (Worker's disagreement with assessment of permanent impairment)

Clause 25 amends section 186 to clarify the application of this provision.[106]

3.16 Clause 26 – Amendment of section 192 heading (Additional lump sum compensation for certain workers)

Clause 26 amends the heading of section 192 to clarify the application of this provision.[107]

3.17 Clause 27 – Amendment of section 327 (Functions of the Regulator)

The Explanatory Notes outline that clause 27 amends section 327 to clarify the existing functions of the Workers' Compensation Regulator.[108]

3.18 Clause 28 - Amendment of section 542 (Applying for review)

Clause 28 amends section 542 to clarify that the Workers' Compensation Regulator has discretion to grant extensions of time to lodge review applications if the applicant can satisfy the Workers' Compensation Regulator that special circumstances exist. The Explanatory Notes state that this amendment is a consequence of the decision of the Industrial Court in the matter of Blackwood v Pearce. The amendment also provides that the applicant can only ask the Workers' Compensation Regulator once to allow further time to apply for review.[109]

The ASIEQ does not support the amendment of section 542 on the basis that to adopt such a concession would give no certainty to the review process which currently allows a worker three months to lodge a review and the ability to extend the date to lodge a review with prior approval from the Regulator. They consider that the amendment gives no guidelines as to what "*special circumstance*" would allow the Regulator to consider a review lodged beyond the three months review period. They consider that such an approach is contrary to the objects of the review process set out in section 539 which aims to provide a *"non-adversarial system for prompt resolution of disputes".*[110]

[104] Explanatory Notes, *Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2015*: 6
[105] Explanatory Notes, *Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2015*: 7
[106] Explanatory Notes, *Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2015*: 7
[107] Explanatory Notes, *Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2015*: 7
[108] Explanatory Notes, *Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2015*: 7
[109] Explanatory Notes, *Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2015*: 7
[110] Association of Self-Insured Employers of Queensland, Submission No. 130: 6

The Independent Education Union Queensland and Northern Territory (IEU-QNT) also raised concerns that the proposed amendment is an unnecessary administrative provision which will prevent the regulator from exercising justice to an injured worker. They consider that while employers can be applicants in the review process, any restriction on the authority to issue extensions is more likely to prejudice injured workers.[111]

The department responded to this issue stating:

> *Historically, the Regulator has relied on a line of case law authority which interpreted this section as giving the Regulator a wide discretionary power to allow a review application to proceed, and the ability to consider whether there had been compliance in substance or special circumstances existed to justify the late lodgement of the application.*
>
> *In the matter of Blackwood v Pearce, the Industrial Court determined that the Regulator does not have the power to consider a review application lodged outside the three month time limit. This means that the Regulator will no longer be able to examine the reasons for a late lodgement and any review application lodged outside the three month period will automatically be rejected if an extension is not requested within the three month period.*
>
> *This will adversely impact applicants who have a genuine reason for not being able lodge their application or request an extension of time within the three-month period. For example, if a worker's incapacity because of their injury prevented them from taking steps to make an application until after the period had expired, the Regulator will be unable to consider these special circumstances and will not be able to allow the application to proceed.[112]*

3.19 Clause 29 - Amendment of section 550 (Procedure for appeal)

The Explanatory Notes state that clause 29 amends section 550 to allow a respondent the right to allow further time for the appellant to appeal on consent of the parties. This is consistent with the amendments made in relation to review applications under clause 28.[113]

3.20 Clause 30 – Omission of section 571D (Prospective employer entitled to obtain particular documents)

3.20.1 Proposed amendments contained in the Bill

Existing sections 571A, 571B, 571C and 571D are as follows:

Chapter 14 Miscellaneous

Part 1 Access to documents and information

Division 1 Information and documents about pre-existing injuries and medical conditions of prospective worker

571A Definitions for div 1

In this division—

employment process means any process for considering and selecting a person for employment.

false or misleading disclosure means any disclosure that would lead a prospective employer to reasonably believe that the duties the subject of the employment would not aggravate the prospective worker's pre-existing injury or condition.

pre-existing injury or medical condition, for an employment process, means an injury or medical condition existing during the period of the employment process that a person suspects or, ought reasonably to suspect, would be aggravated by performing the duties the subject of the employment.

[111] Independent Education Union-Queensland and Northern Territory, Submission No. 152: 6

[112] Correspondence from Queensland Treasury to FAC dated 19 August 2015: 95

[113] Explanatory Notes, *Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2015*: 7

prospective employer means a person conducting an employment process to select a prospective worker for employment.

prospective worker means a person subject to an employment process for selection for employment.

571B Obligation to disclose pre-existing injury or medical condition

(1) If requested by a prospective employer, a prospective worker must disclose to the prospective employer the prospective worker's pre-existing injury or medical condition, if any.

(2) Subsection (1) applies only if the request is made in writing and includes the following information—

(a) the nature of the duties the subject of the employment;

(b) that if the prospective worker knowingly makes a false or misleading disclosure, under section 571C, the prospective worker or any other claimant will not be entitled to compensation or to seek damages for any event that aggravates the pre-existing injury or medical condition.

(3) However, subsection (1) does not apply if the prospective worker is engaged, as a result of the employment process, by the prospective employer before the worker has had a reasonable opportunity to comply with subsection (1).

571C False or misleading disclosure

(1) This section applies if a prospective worker—

(a) has a pre-existing injury or medical condition; and

(b) knowingly makes a false or misleading disclosure under section 571B in relation to the injury or medical condition; and

(c) is employed under the employment process.

(2) The prospective worker or any other claimant is not entitled to compensation or to seek damages for any event that aggravates the pre-existing injury or medical condition.

571D Prospective employer entitled to obtain particular documents

(1) A prospective employer may apply to the Regulator for a copy of a prospective worker's claims history summary.

(2) The application must be—

(a) in the approved form; and

(b) accompanied by the application fee; and

(c) endorsed with the prospective worker's consent.

(3) If the Regulator provides a copy of a worker's claims history summary to the prospective employer, the prospective employer must not do any of the following—

(a) disclose to anyone else the contents of or information contained in the summary;

(b) give access to the document to anyone else;

(c) use the contents of or information contained in the summary for any purpose other than for the purposes of the employment process.

Maximum penalty—100 penalty units.

(4) In this section—

application fee means the fee specified and published by the Regulator by gazette notice and that is not more than the reasonable cost to the Regulator in providing a copy of the claims history summary.

claims history summary, for a person, means a document issued by the Regulator that states the number and nature of the person's current or previous applications for compensation or claim for damages under this Act or a former Act.

Clause 30 omits section 571D. The Explanatory Notes detail that the entitlement given to prospective employers under section 571D of the Act to apply to the Workers' Compensation Regulator for a copy of a prospective worker's claims history summary will be removed under clause 30.[114]

The Committee received submissions from a number of organisations supporting the removal of this section on the basis that it has had impacts on their members.

[114] Explanatory Notes, *Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2015*: 7

The QNU submitted case studies where disclosure information had been misused by employers. The QNU also explained that they were concerned that the then changes had resulted in nurses and midwives being reluctant to pursue workers' compensation claims for fear they may damage future employment prospects.[115]

They advised:

> *Aside from the invasive character of these changes, there were a number of implications for our members, particularly around the requirement that the 'nature' of their duties be included in the request for disclosure by the prospective employer when there was no guidance as to how prescriptive this might be. Pre-employment disclosure of an existing condition could invariably lead to discrimination against an employee without recourse. We recognise that employees still had access to discrimination laws and general protections under the Fair Work Act 2009 where relevant, however it would be very difficult to prove the employer did not take the prior worker's compensation claims into account.*[116]

The Australian Manufacturing Workers Union (AMWU) advised that the previous introduction of what they considered to be unfair permanent impairment thresholds had stripped away the legal rights of up to 60 per cent of injured workers in Queensland.[117]

Hall Payne Lawyers also advocated for the removal of sections 571B and 571C.[118]

The CFMEU advised the Committee that they have received complaints from their Members that they have been hindered in their efforts to obtain employment in the resource construction sector because of the information obtained and provided through databases and in some instances have been advised by prospective employers that the reason they were unsuccessful in gaining employment was because information provided to the prospective employer was to the effect that the worker was unsuitable because of their history of having made a worker's compensation claim.[119]

The CFMEU also identified that these types of provisions have been considered in other jurisdictions. They advised:

> *Between April 2013 and March 2015, the UK House of Commons Scottish Affairs Committee conducted an extensive inquiry into the problem of blacklisting in the building and construction industry in the UK. Notably, the Committee identified multinational construction companies with a presence in Australia (and indeed in Queensland) as having engaged in active blacklisting via a subscription-based database, including Balfour Beatty and Skanska (the former a major contractor on the Gold Coast Light Rail Project).*[120]

The submission from the Anti-Discrimination Commission Queensland (ADCQ) supports restoring the limitation on access to claims histories by removing the right of prospective employers to obtain from the Regulator the claims histories of job applicants.[121]

[115] Queensland Nurses' Union, Submission No. 65: 9
[116] Queensland Nurses' Union, Submission No. 65: 9
[117] Australian Manufacturing Workers' Union, Submission No. 84: 3
[118] Hall Payne Lawyers Submission No. 144: 1-2
[119] Construction, Forestry, Mining and Energy Union of Queensland, Submission No. 143: 6
[120] Construction, Forestry, Mining and Energy Union of Queensland, Submission No. 143: 6
[121] Anti-Discrimination Commission Queensland, Submission No. 2: 3

The ADCQ advised that under section 124 of the *Anti-Discrimination Act 1991*, it is unlawful to request information on which discrimination might be based. Before the 2013 amendments to the Workers' Compensation Act, it was settled at law that applicants should not be asked in a blanket way about their medical history, however, it was lawful to enquire whether any special services or facilities might be required and whether any medical condition might impact their ability to perform the essential components of the position.[122]

In 2005, amendments to section 572A of the Workers' Compensation Act were introduced. These amendments provide that it is offence for a person to seek to obtain or use a workers' compensation document in an employment selection process or in deciding whether the employment of a worker is to continue. The prohibition on access to documents was strengthened by an amendment to section 572 (572(3)(d)) which allowed the insurer to refuse to provide a document if it suspected on reasonable grounds that the document was required for a purpose prohibited by section 572A.[123]

As part of the amendments in 2013, sections 571A to 571D were introduced and section 572(3)(d) was omitted. Sections 571A to 571C impose an obligation on job applicants to disclose, if asked by the employer, any existing medical conditions or injuries that might be aggravated by performing the duties of the position. Section 571D enables an employer to obtain a job applicant's claims history.[124]

The ADCQ advised the Committee that the claims history has limited use and value to an employer in the recruitment process and the limited use is far outweighed by the potential misuse of the information to detriment of the applicant.[125]

Submissions from a number of employer groups were opposed to the removal section 571D.

The AiGroup expressed their disappointment with the proposal to remove the ability of an employer to see the claims history of a prospective worker. They considered that this provision, combined with section 571A, B and C, has provided employers with the opportunity to employ and manage new employees with reference to best work health and safety practice by having access to appropriate information about pre-existing health issues. They considered that employers have been able to realistically manage, avoid and/or minimise the risk of work related aggravation injury claims and workers have been more personally accountable in this regard. They also advised that this was a very important development for many industries where aggravation injury claims have been, and continue to be, a constant and serious work health and safety risk management challenge.[126]

The CCF stated:

> *To remove this provision will leave an employer once again subject to workers moving from employer to employer and making claims for injuries that may have resulted from pre-existing injuries rather than new injuries. Noting that if the employer was aware the employee had a pre-existing injury the employer could ensure appropriate safeguards in place to ensure the worker can undertake the tasks safely without fear of injury.*[127]

[122] Anti-Discrimination Commission Queensland, Submission No. 2: 4
[123] Anti-Discrimination Commission Queensland, Submission No. 2: 4
[124] Anti-Discrimination Commission Queensland, Submission No. 2: 5
[125] Anti-Discrimination Commission Queensland, Submission No. 2: 7
[126] Australian Industry Group, Submission No. 83: 2
[127] Civil Contractors Federation, Submission No. 87: 4

CCIQ also opposed the removal of this section and stated:

> *The 2013 amendments ensured employers were granted the right to request a prospective worker disclose any pre-existing injury or medical condition that they believe would be aggravated by the duties in the position applied for, or alternatively, employers were conferred the right to request access to a prospective worker's claims history from the Workers' Compensation Regulator.*
>
> *Together, these amendments were of significant benefit to employers as they allowed small businesses to manage risks when employing prospective staff and ensure appropriate safeguards were in place to prevent incidents in the workplace.*
>
> *Other benefits of the policy changes include the capacity for the employer to mitigate potential workplace health and safety issues in the workplace, afford a potential employee procedural fairness by opening up a discussion as to a worker's injury history, deter vexatious claimants, and increase an employer's duty of care for a worker in agreed instances.*
>
> *While these changes provided prospective employers with more information about a worker, businesses remain subject to a number of stringent requirements that provide adequate protections for a workers' ability to find work, including the Anti-Discrimination Act 1991.*[128]

The Committee sought advice from employer groups regarding the usefulness of the worker's claims history summary to employers. CCIQ advised that their organisation primarily sees the availability of that information to an employer as a conversation starter around ensuring that an employer's duty of care is sufficient to meet that employee's needs and to have a discussion with the employee around whether or not they are able to fulfil the duties required of that position.[129]

The Committee sought from the department the number of claims records that have been accessed. The department advised that they have received a total of 26,977 requests up to June 2015, of which the majority were from labour-hire companies. The department stated:

> *…which is on average around 103 requests being received a day at the moment, which is around 515 requests a week. Those numbers are increasing on a weekly and monthly basis. We are seeing no slowdown. We are rather seeing an increase in numbers continually. In terms of who they are made up of, nine out of the top 10 users of the service are labour-hire companies. Our top user is actually responsible for approximately 15 per cent of all requests. They have put in around 4,236 requests.*[130]

The department confirmed that the information provided is high level summary information detailing the date of the injury, the nature of the injury and the type of claim. The information also includes notification-only claims where a worker might not require any time off work.[131] They advised that there is not a lot of information that can be gained from the histories and it would give no indication of whether someone has an existing injury or not.[132]

[128] Chamber of Commerce and Industry Queensland, Submission No. 137: 13
[129] Mr Behrens, Chamber of Commerce and Industry Queensland,, Public hearing transcript 13 August 2015: 30
[130] Ms Hillhouse, Queensland Treasury, Public departmental briefing transcript 6 August 2015: 8
[131] Mr Goldsbrough, Queensland Treasury, Public departmental briefing Transcript 6 August 2015: 8
[132] Ms Hillhouse, Queensland Treasury, Public departmental briefing Transcript 6 August 2015: 10

The Committee also asked the department to clarify the utility of a prospective worker's claims history summary in that if an employee's injury has healed, what benefits can be derived from an employer having that knowledge. The department explained that an employer could potentially make a judgement about whether a person who has had multiple back injuries are best suited for that role.[133] The department stated that other than the history perhaps showing an employee's propensity to claim, there is not much information that can be gained from the history as it would not give any indication as to whether someone has an existing injury or not.[134]

3.20.2 Additional amendments suggested by stakeholders

In addition to supporting the omission of section 571D, the QNU also submitted that sections 571B and 571C should be omitted, on the basis that pre-employment disclosure of an existing condition can lead to discrimination against the employee and that employees are not experts in determining whether their injury or medical condition would be aggravated by the potential employment.[135]QCU supported this submission advising that these provisions provide the potential for an employer to discriminate, whether intentionally or otherwise, against an employee on the basis of impairment.[136]

The ADCQ raised additional issues in relation to Chapter 14 of the Act. They recommended that former section 572(3)(d), which provides that the document holder has the right to decline a request for a workers' compensation document if the document holder suspects on reasonable grounds that the claimant or worker requires the document for a purposes prohibited in section 572A.[137]

The department advised the Committee that sections 571A-571D enable a prospective employer to request from a prospective worker information about a pre-existing injury or medical history or to receive a copy of the person's workers' compensation claims history. The previous section 572(3)(d) was omitted in 2013 to prevent inconsistencies in the operation of sections 571A-571D. The requirement for the previous section 572(3)(d) was related to the former practice of prospective employers asking or requiring potential employers to provide them with information about the claim's histories when the employer had no legislated right to that information.[138]

The ADCQ advised that in their experience, both employers and employees have misunderstood the obligations to relate to any injury or medical condition that the job applicant has experienced in the past and this misunderstanding has led to applicants not being offered the job and in some cases, complaints to the Commission. In order to achieve greater clarity and understanding for employers and employees, the Commission suggests that the word 'pre-existing' should be replaced with either 'existing' or 'current' and the meaning of pre-existing injury or medical condition be incorporated into the body of the obligation to disclose provision. They consider that these changes should assist in balancing the interests of workers in having a fair chance at obtaining employment even though they may have past or current injuries or medical conditions and the interests of employers in being able to recruit people who are able to perform the essential elements of the job.[139]

The ADCQ advised that their preferred approach is that the request for disclosure is only made after the applicant is offered the position as this reduces the potential for discrimination, whether conscious or unconscious, in the worker not being considered for the position.[140]

[133] Mr Goldsbrough, Queensland Treasury, Public departmental briefing Transcript 6 August 2015: 10
[134] Ms Hillhouse, Queensland Treasury, Public departmental briefing Transcript 6 August 2015: 10
[135] Queensland Nurses' Union, Submission No. 65: 3
[136] Mr Martin, Queensland Council of Unions, Public hearing transcript 13 August 2015: 2
[137] Anti-Discrimination Commission Queensland, Submission No. 2: 7-8
[138] Correspondence from Queensland Treasury to FAC dated 19 August 2015: 14
[139] Anti-Discrimination Commission Queensland, Submission No. 2: 9
[140] Anti-Discrimination Commission Queensland, Submission No. 2: 9

In response to these suggestions, the department advised that sections 571A-571C allow employers to require prospective workers to disclose any pre-existing injuries that could reasonably be aggravated by performing the duties of employment. If workers do not comply, their entitlement to compensation or damages for an aggravation of the pre-existing injury ends. It is in a prospective employee's interests to voluntarily disclose any pre-existing injuries to minimise the potential for an aggravation of the injury. Employers can already require prospective employees to undergo a pre-employment medical assessment to determine suitability for a role.[141]

The department considers that the definition of "pre-existing injury or medical condition" combined with the definition of "employment process" is clear that the obligation to disclose relates to injuries or medical conditions that are in existence during the recruitment process. They also consider that any concern regarding the clarity of these provisions in practice could be managed administratively through the development of appropriate guidance material.[142]

The department noted that these provisions are designed to ensure that employers are not placing workers in jobs that will increase the risk of harm to the worker. They consider that postponing the provision of information to after the applicant is offered the position would not support the objectives of the provision.[143]

In response to the suggestion that sections 571A – 571C also be omitted, the department advised that workers are not expected to make a medical determination when considering their obligation to disclose and their only requirement is to disclose pre-existing injuries or conditions that are in existence during the recruitment process that the person reasonably believes may be aggravated by undertaking the duties as described by the prospective employer. They noted that this places a high evidentiary burden on the insurer that requires them to be satisfied that the employer provided sufficient detail to the workers and that based on that information the worker knowingly provided a false or misleading disclosure.[144]

3.21 Committee comments

The non-government Members of the Committee believe that employers should be able to avail themselves of a perspective employee's claims history. The non-government Members of the Committee are of the view it will enable an employer to work with the prospective employee to put appropriate safeguards in place to ensure there is no risk of aggravating a prior or pre-existing injury. The non-government Members also note the evidence of some submitters about the existence of some unscrupulous employees who take advantage of the workers' compensation system.

Government Members expressed alarm at the increase in the number of work claim histories being accessed by employers, which was reported by the department. Government Members considered the information being made available on the existing provisions was of very limited utility to business. However they considered that there was the potential for such information to be misused to the detriment of both prospective employers and employees.

Government Members further noted the evidence of a number of submitters that, under the existing legislation, some of their members were failing to report workplace injuries for fear that the claim may be used against them in the future.

[141] Correspondence from Queensland Treasury to FAC dated 19 August 2015: 14-15
[142] Correspondence from Queensland Treasury to FAC dated 19 August 2015: 15
[143] Correspondence from Queensland Treasury to FAC dated 19 August 2015: 15
[144] Correspondence from Queensland Treasury to FAC dated 19 August 2015: 36

Government Members agreed that there are some unscrupulous workers who take advantage of the workers compensation system, and some unscrupulous employers who use the information available under these provisions to exclude potential employees.

Government Members noted the ADCQ's preferred approach that the request by the employer for disclosure is only made after the applicant is offered the position, thereby reducing the potential for discrimination. They also noted the department's advice that employers can already require prospective employees to undergo a pre-employment medical assessment to determine suitability for a role.

3.22 Clause 31 – Insertion of new chapter 32, part 4

Clause 31 inserts a new Part 4 in the new Chapter 32. The Explanatory Notes detail that new Part 4 clarifies the operation of the amendments made to sections 542 and 550 in clauses 28 and 29. It also clarifies how the Workers' Compensation Regulator is to consider applications made under the previous section 571D. Proposed new Part 4 also continues the requirements under the previous section 571D regarding the disclosure, access and use of a worker's claims history summary. This includes the penalties for employers who fail to comply with these requirements.[145] Proposed new Part 4 is as follows:

Part 4 Amendments commencing on assent

714 Review or appeal of existing decisions

(1) This section applies if, during the relevant period -

(a) a decision mentioned in former section 540(1) was made; or

(b) a decision mentioned in former section 548 was made.

(2) Section 542, as amended by the amendment Act, applies to the decision mentioned in subsection (1)(a).

(3) Section 550, as amended by the amendment Act, applies to the decision mentioned in subsection (1)(b).

(4) In this section -

relevant period means the period starting on 28 April 2015 and ending immediately before the commencement.

715 Existing applications under former s 571D

(1) This section applies to an application for a copy of a prospective worker's claims history summary that was made to the Regulator under former section 571D but not decided before the commencement.

(2) The application may continue to be decided by the Regulator under former section 571D as if it had not been repealed.

(3) To remove any doubt, it is declared that the Regulator may refuse the application under former section 571D.

716 Saving of former s 571D(3)

(1) This section applies if the Regulator provides or has provided a copy of a worker's claims history summary to a prospective employer under former section 571D, including that section as continued in effect under section 715.

(2) Former section 571D(3) continues to apply, despite its repeal by the amendment Act, to the prospective employer.

3.23 Clause 32 – Amendment of section 185 (Insurer to give notice of assessment of permanent impairment)

The Explanatory Notes state that clause 32 amends section 185 to simplify the notice requirements.[146]

[145] Explanatory Notes, *Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2015*: 7

[146] Explanatory Notes, *Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2015*: 7

3.24 Clause 33 – Insertion of new section 193A

The Explanatory Notes outline that clause 33 inserts a new section 193A to provide for the payment of additional lump sum compensation amounts to particular workers.[147]

Proposed new section 193A is as follows:

> **193A Additional lump sum compensation for particular workers**
>
> (1) This section applies to a worker who sustained an injury on or after 15 October 2013 and before 31 January 2015, if -
>
> (a) the worker's injury -
>
> (i) results in a DPI of 5% or less; and
>
> (ii) is not a terminal condition; and
>
> (b) the worker has not accepted or rejected an offer of lump sum compensation from an insurer under section 189.
>
> (2) The worker is entitled to additional lump sum compensation for the injury -
>
> (a) up to an amount prescribed by regulation; and
>
> (b) subject to the conditions prescribed by regulation.
>
> (3) A regulation may provide for the establishment of a panel of appropriately qualified persons to review a decision of an insurer about whether a worker is entitled to additional lump sum compensation under this section.

The department explained that this provision is designed to target injured workers who were adversely impacted by the introduction of the common law threshold. The additional payment will be available to workers who have not accepted or rejected an offer of lump sum compensation, providing they can meet qualifying conditions prescribed by regulation. Workers who have made a decision under section 189 will not be eligible for this additional payment because this would be inconsistent with the operation of sections 189 and 190.[148]

The Committee sought additional information regarding the actual number of claimants who accepted a statutory payment, who would otherwise have lodged a common law claim and are therefore affected by the amendments proposed in clause 33. The department advised:

> *Based on current scheme trends and analysis, from 3,048 permanent impairment assessments between 0-5%, there have been 2,818 offers of lump sum compensation; 1,339 offers have been accepted; and 19 have been rejected (a total of 1,358). Of the 1,339 accepted offers, 585 claims would have been expected to proceed to common law if there were no threshold. Under section 193A, the workers who have accepted or rejected offers of lump sum compensation will not be eligible for additional payments.*
>
> *For claims relating to injuries occurring during the period 15 October 2013 to 31 January 2015, it is estimated that overall there will be approximately 5,900 permanent impairment assessments between 0-5%. Of these, it is estimated that around 2,700 would have proceeded to common law if there were no threshold.*[149]

A number of submissions highlighted to the Committee that the legislation in place at the time of these offers was validly enacted and as such entitlements should not be amended retrospectively.

[147] Explanatory Notes, *Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2015*: 7
[148] Correspondence from Queensland Treasury to FAC dated 19 August 2015: 38
[149] Correspondence from Queensland Treasury to FAC dated 27 August 2015: 7

The AiGroup advised:

> *If the amendments are passed, it is essential that there is no retrospectivity, as this would create extreme uncertainty in relation to any future amendments that may be made to the Act. Further, Ai Group is strongly opposed to any reparation scheme being introduced by the government, outside legislative specification or control, for those workers who were unable to access common law damages from October 2013 until the effective date of the amendments.*[150]

The department advised the Committee that:

> *The payment of additional lump sum compensation does not provide a substitute for the full restoration of access to common law damages. Payments will not be available to injured workers who have already finalised claims. Instead, the payments will be applied prospectively to workers injured between 15 October 2013 and 31 January 2015 who still have open claims and can establish the necessary criteria for receiving the additional payment. Available payments are anticipated to be significantly lower than the average common law payments for the applicable degree of permanent impairment.*
>
> *Under sections 189 and 190, if a worker accepts or rejects an offer of lump sum compensation, this has the effect of ending the worker's entitlement to further statutory compensation and finalising the claim. Workers who have made a decision about the offer before the commencement of section 193A will have finalised their claims in accordance with the legislation in force at the time of their decision. To provide these workers with an additional entitlement under section 193A will have the effect of reversing a valid action taken with reference to the legislation and of essentially reopening these workers' finalised claims. This would be inconsistent with the operation of sections 189 and 190 and would arguably amend the status of these workers' claims in a retrospective manner.*[151]

The Committee noted that the conditions that apply to a worker who is entitled to additional lump sum compensation for the injury is to be prescribed by regulation and not yet available. The Committee also notes that the regulation may provide for the establishment of a panel of appropriately qualified persons to review a decision of an insurer about whether a worker is entitled to additional lump sum compensation under this section.

This issue was also highlighted by HIA in their submission. They stated:

> *Another significant deficiency in the Bill is that provision is made (in Clause 33) for the payment of lump sums to a subset of compensation recipients who were injured during the period that the 5% threshold was in force. Not only is the retrospective application of the provision contrary to the rule of law, in HIA's view it is insufficient to rely on the Regulations to deliver the detail of the eligibility for, and extent of, payments to this group. Notwithstanding the lack of detail about what is proposed for this group, HIA does not believe that a case has been made that a subset of this group should receive additional financial support.*[152]

[150] Australian Industry Group, Submission No. 83: 2
[151] Correspondence from Queensland Treasury to FAC dated 19 August 2015: 31
[152] Housing Industry Association, Submission No. 93: 2

With regard to the panel proposed under proposed new section 193A(3) the department advised:

> *When considering arrangements for addressing the disadvantage to injured workers impacted by the common law threshold, and having regard to the exceptional circumstances and restricted eligibility for receipt of this additional payment, the Stakeholder Reference Group considered that an appropriately qualified panel was the most suitable body to review insurer decisions. The proposed section 193A provides for the establishment of a panel of appropriately qualified persons to review decisions made by an insurer about whether a worker is entitled to additional lump sum compensation.*
>
> *The establishment of an appropriately qualified panel is balanced by an amendment to section 548 which provides there is no right of appeal to an industrial magistrate for a decision about entitlement to an additional payment under section 193A, as an insurer's decision about payment of lump sum compensation under chapter 3 would ordinarily be a non-reviewable decision to which a right of appeal would attach. Providing for an appropriately qualified panel as a review mechanism in substitution of the Act's review and appeal processes will streamline the administrative process for making the additional payments and reduce associated costs. Workers may still be able to apply for a statutory order of review under the Judicial Review Act 1991 in relation to decisions made by the panel under section 193A.*
>
> *The panel will not review the issue of the degree of permanent impairment assessment (as assessed by either a doctor or a medical assessment tribunal). The panel's decision will only address the issue of whether a worker meets the qualifying conditions prescribed under a regulation for establishing an entitlement to an additional payment. As anticipated by section 193A, the amount of the additional payment will also be prescribed by regulation. Where appropriate, the panel will review each matter 'on the papers' and will not be compelled to conduct a hearing.*[153]

3.25 Committee comments

The Committee agreed that it was unable to fully consider the issue of additional compensation for those workers who sustained injuries between 15 October 2013 and 31 January 2015 because of the limited detail of what additional compensation would be offered and how it would be managed.

The non-government Members wish to express their disappointment that the proposed subordinate legislation, which will contain the detail of this additional compensation, is not available for its consideration.

3.26 Clause 34 – Amendment of section 548 (Application of div 1)

Clause 34 amends section 548 of the Act to provide that a decision by an insurer regarding additional lump sum compensation under section 193A (see clause 33) is not an appealable decision. The Explanatory Notes state that review rights are also provided for in the new section 193A (clause 33).[154]

[153] Correspondence from Queensland Treasury to FAC dated 19 August 2015: 32-33

[154] Explanatory Notes, *Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2015*: 8

3.27 Clause 35 – Insertion of new chapter 32, part 5

Clause 35 inserts a new Part 5 in the new Chapter 32 into the Act. The Explanatory Notes outline that the clause provides transitional arrangements for injuries sustained on or after 15 October 2013 and before the 31 January 2015.[155]

Proposed new Part 5 is as follows:

> **Part 5 Amendments commencing by proclamation**
>
> **717 Application of s 193A**
>
> Despite section 709, section 193A applies to an injury sustained by a worker on or after 15 October 2013 and before 31 January 2015.

3.28 Other issues – Committee comments

The issue of 'no-win/no fee' and the advertising of such arrangements was raised both in submissions and at the Committee's public hearing. These matters are outside the scope of this inquiry.

The Committee also received evidence from Racing Queensland and the Queensland Jockeys Association regarding the treatment of jockeys under the workers' compensation legislation. The issues raised were not within the scope of the Bill and further comment on these issues has not been included in this report.

4 Examination of the *Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2015 – Clauses relating to firefighters*

The Committee also considered the provisions relating to firefighters in its consideration of the *Workers' Compensation and Rehabilitation (Protecting Firefighters) Amendment Bill 2015* which provides for an alternative method of achieving similar policy objectives. This report should be considered in conjunction with the comments included in the Committee's report on that Bill.

The QFES advised the Committee that the department is the primary provider of fire and emergency services in Queensland and as a department they strive to deliver effective fire management services to ensure the safety of Queensland and our firefighters. They advised that the broad functions of QFES from the fire and rescue perspective are: to protect persons, property and the environment from fire and hazardous materials emergencies and also to protect persons trapped in a vehicle or a building or who are otherwise endangered.[156]

[155] Explanatory Notes, *Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2015*: 8

[156] Deputy Commissioner Roche, Queensland Fire and Emergency Services, Public departmental briefing transcript 6 August 2015: 2

They advised that QFES provides:

> *…fire and rescue services across seven regions encompassing a skilled work force. There are approximately 2,200 permanent, 2,050 auxiliary and over 36,000 volunteer firefighters across the state. Our full-time and auxiliary firefighters provide these services through 69 permanent, 152 auxiliary and 21 composite stations. That totals 242 fire and rescue stations to service the community of Queensland. Our firefighters responded to over 70,000 incidents in the 2014-15 financial year including structural, vehicle and landscape fires. The strength and depth of our service is provided through the integration of the full-time auxiliary and volunteer firefighters, State Emergency Service and also Emergency Management staff within the one service, focusing on enhancing our service delivery through a continuous framework of debriefs, lessons learned, equipment and procedural reviews.*[157]

The proposed provisions will deem 12 specified cancers to be work related for firefighters, including volunteer fighters, who meet the required qualifying period of active firefighting service. The provisions allow for rebuttal if the insurer can show that the cancer is not work related. Stakeholders were generally supportive of the inclusion of presumptive legislation for firefighters.

4.1 Firefighter cancer studies

This section of the report contains a chronology of the results of major scientific studies undertaken on cancer in firefighters.

4.1.1 International studies

Occupational health problems of firefighters have been extensively studied around the world. In 2002, this issue in Canada prompted a report on the health risks to firefighters for the Government of Manitoba, following a push to adopt legislation establishing rebuttable presumptions for compensation of firefighters who develop certain types of cancer.[158]

The International Agency for Research on Cancer (IARC), the cancer research agency of the World Health Organization (WHO), has established a Monographs program which seeks to identify the causes of human cancer. The objective of the program is to establish an international working group of experts to publish, in the form of Monographs, critical reviews and evaluation of evidence on the carcinogenicity of a wide range of human exposures.

In 2007, an IARC Monographs Working Group examined Painting, Firefighting and Shiftwork. The Working Group found that:

> *Epidemiologic studies of firefighters have noted excess cancer risks compared with the general population. Consistent patterns are difficult to discern due to the large variations in exposure across different types of fires and different groups of firefighters. Relative risks were consistently increased, however, for three types of cancer: testicular cancer, prostate cancer, and non-Hodgkin lymphoma.*

[157] Deputy Commissioner Roche, Queensland Fire and Emergency Services, Public departmental briefing transcript 6 August 2015: 2

[158] Guidotti, TL and Goldsmith, DF , *Evaluating Causation for Occupational Cancer Among Firefighters: Report to the Workers' Compensation Board of Manitoba*, March 2002: 5

> *Acute and chronic inflammatory respiratory effects have been noted in firefighters, and this would provide a plausible mechanism for respiratory carcinogenesis. Firefighters are exposed to numerous toxic chemicals, including many known or suspected carcinogens. These intermittent exposures can be intense, and short-term exposure levels can be high for respirable particulate matter and for several carcinogens, notably benzene, benzo[a]pyrene, 1,3-butadiene, and formaldehyde.*[159]

The Working Group found that:

> *Although increases in various cancers in fire-fighters compared with the general population have been noted in several studies, consistent patterns are difficult to discern due to the large variations of exposures.*[160]
>
> *For intermittent, but intense, exposures to highly variable complex mixtures, conventional measures, such as years of employment or number of firefighting runs, can be poor surrogates for exposure. The available epidemiological studies are inherently limited by this issue.*[161]

In 2010, the US National Institute for Occupational Safety and Health (NIOSH) launched a multi-year study to examine whether firefighters have a higher risk of cancer and other causes of death due to job exposures. The study included career firefighters who served in Chicago, Philadelphia and San Francisco Fire Departments between 1950 and 2010. The study examined both deaths and diagnosis of cancer compared to the general public.[162] Phase I of the study found that firefighters are at higher risk of cancers of the digestive, oral, respiratory and urinary systems when compared to the general population. The study also found that some cancers occurred at a higher than expected rate among younger firefighters. For example, firefighters who were less than 65 years of age had more bladder and prostate cancers than expected.[163] The Phase II of the study has also been able to demonstrate that duration of exposure has a statistically significant positive exposure impact for lung cancer and leukaemia risk.[164]

[159] International Agency for Research on Cancer, Press Release No 180, *IARC Monographs Programme finds cancer hazards associated with shiftwork, painting and firefighting*, December 2007: http://www.iarc.fr/en/media-centre/pr/2007/pr180.html

[160] *The Lancet*, Vol 8, December 2007: 1066 http://www.thelancet.com/pdfs/journals/lanonc/PIIS1470-2045(07)70373-X.pdf

[161] *The Lancet*, Vol 8, December 2007: 1066 http://www.thelancet.com/pdfs/journals/lanonc/PIIS1470-2045(07)70373-X.pdf

[162] Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health, *Study of Cancer among U.S. Fire Fighters* http://www.cdc.gov/niosh/firefighters/ffcancerstudy.html

[163] Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health, *Study of Cancer among U.S. Fire Fighters*, *– Frequently Asked Questions,* November 2013 http://www.cdc.gov/niosh/firefighters/pdfs/FAQ-NIOSHFFCancerStudy.pdf

[164] Daniels, R D et al, Workplace, Exposure-response relationships for select cancer and non-cancer outcomes in a cohort of US firefighters from San Francisco, Chicago and Philadelphia (1950-2009), January 2015 http://www.cdc.gov/niosh/firefighters/pdfs/Daniels-et-al-(2015).pdf

4.1.2 Australian studies

In 2007, the Bushfire Cooperative Research Centre (CRC) undertook a study of Australian firefighters' exposure to air toxics in bushfire smoke. This study which examined the air quality of bushfire smoke was undertaken between 2005 and 2007. The study noted that:

> *Although bushfire firefighters share a common exposure with structural firefighters, work practices and environments differ significantly. Typically, bushfire firefighters do not experience extreme acute exposures as do structural firefighters, however, bushfire fighters often persist for long shifts, which may last for days or weeks and have no protection from toxic emissions such as self-contained breathing apparatus. Furthermore off shift firefighters during a bushfire campaign are usually camped nearby and thus are further exposed to smoky environments. Multiple chemical exposures and the effects of heat stress and physical fatigue on firefighter health and safety also need to be considered.*[165]

The results of this study were also presented at the 2007 TASSIE FIRE Conference. A paper was presented at that conference which discussed the adequacy of the existing exposure standards for bushfire fighting. The authors concluded that standards need to be adjusted to take into account the different work environment of bushfire fighters, e.g. longer and irregular work shifts, heavier workload, exposure to a mixture of air toxics that may have interactive health impacts. They suggested that a better characterisation of bushfire smoke particles is essential to determine a suitable exposure standard.[166]

In February 2014, Dr Tee Guidotti, a world renowned expert in Occupational and Environmental Medicine, was engaged by the Australian Department of Veterans' Affairs (DVA), to examine the current evidence for risk and to provide a summary of the current literature addressing the risk, of health outcomes associated with the occupation of firefighting. The report notes:

> *The evaluation of cancers associated with firefighting presents methodological and logical problems, a number of them common to other applications of occupational epidemiology. The occupational health problems of firefighters have been extensively studied, to the point that the world epidemiological literature on this topic is among the most complete and detailed available for any occupation. Even so, many issues remain unresolved. This is not a deficiency of the literature. It reflects the inherent limits of applying the science of epidemiology to the framework of claims assessment and eligibility determination (the process of adjudication).*[167]

The report identified a number of sources of uncertainties in studies on risk of firefighters. These sources of uncertainties included: data gaps, exposure response relationships, disease rubrics and identification, statistical error, bias, confounding and paradigm blindness. A confounder, in epidemiology, is a risk factor that is linked to both the risk factor under study and the outcome, so that it interferes with the interpretation of the risk factor under study. Confounders identified in the study include cigarette smoking and latency.[168]

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[165] Reisen, F and Tiganis, BE, *Australian Firefighters Exposure to Air Toxics in Bushfire Smoke – What do we know?* June 2007: 1 http://www.bushfirecrc.com/publications/citation/bf-1297

[166] Reisen, F, Hansen, D and Meyer, CP, TASSIE FIRE Conference Proceedings, *Assessing firefighters' exposure to air toxics in bush fire smoke*, 18 - 20 July 2007: 2-3

[167] Guidotti, TL, *Health Risks and Occupation as a Firefighter – A report prepared for the Department of Veterans' Affairs, Commonwealth of Australia*, February 2014: 6

[168] Guidotti, TL, *Health Risks and Occupation as a Firefighter – A report prepared for the Department of Veterans' Affairs, Commonwealth of Australia*, February 2014: 39

The report noted:

> *Municipal firefighters have been the subjects for the studies that are the basis for most of this report. It should be clear, however, that this is not the only type of firefighter at risk of work-related health problems. There are three major categories of firefighters relevant to exposure and therefore health risk:*
>
> - *municipal firefighters (professional or volunteer)*
> - *industrial firefighters (who provide fire and rescue services in facilities such as mines, refineries, and chemical plants; this group most closely resembles military firefighters)*
> - *wildfire (forest fire and brush fire) firefighters.*[169]

With regard to rural firefighters the report stated:

> *In Australia, specialized firefighters who suppress wildfires represent a hugely important subset of the profession, and a stark line of protection for civilians. Their exposure regime, however, is not closely comparable to that of municipal firefighters or of military and industrial firefighters. Exposure to burning wood (and presumably brush) is chemically simpler and toxicologically likely to be less carcinogenic than burning structures. Health outcomes for wildland firefighters have not been studied as often or as extensively of using the same analytical methods as for municipal workers.*[170]

The report made recommendations for recognition of chronic conditions associated with firefighting on the basis of the weight of evidence. The report notes that the alternative to recognising a particular diagnosis as compensable is to examine the particulars of the individual case. The following table details the recommendations[171]:

[169] Guidotti, TL, *Health Risks and Occupation as a Firefighter – A report prepared for the Department of Veterans' Affairs, Commonwealth of Australia*, February 2014: 39

[170] Guidotti, TL, *Health Risks and Occupation as a Firefighter – A report prepared for the Department of Veterans' Affairs, Commonwealth of Australia*, February 2014: 40

[171] Guidotti, TL, *Health Risks and Occupation as a Firefighter – A report prepared for the Department of Veterans' Affairs, Commonwealth of Australia*, February 2014: 7-9

Table 4: Recommendations for recognition of chronic conditions associated with firefighting

Conditions demonstrating elevated risk among firefighters, weight of evidence sufficient to make a recommendation on general causation:	**Conditions for which elevated risk of firefighters is suggested by current weight of evidence; but which require qualification in a recommendation on general causation:**	**Conditions for which evidence of elevated risk of firefighters is not sufficient to make a provisional recommendation on general causation – individual evaluation is recommended:**	**Condition for which evidence of elevated risk of firefighters is not sufficient to make a provisional recommendation on general causation but association is unlikely – individual evaluation is recommended**
▪ Heart attacks following an alarm or knockdown by up to 24 to 72 hrs, resulting in disability ▪ Acute respiratory failure and decompensation within 24 hrs of an event (toxic inhalation, pulmonary edema), resulting in disability ▪ Asthma, irritant induced (associated with a particularly intense event or exposure history) ▪ Bladder cancer ▪ Kidney cancer ▪ Testicular cancer ▪ Lymphoma (Diffuse large B-cell lymphoma and follicular cell lymphoma; others unclear and require individual analysis) ▪ Leukemia (Acute myeloid leukemia) ▪ Brain cancers (Glioma is most likely to be related to firefighting) ▪ Lung cancer in a firefighter with little or no smoking history ▪ Mesothelioma ▪ Cancer of the lip ▪ Breast cancer among males ▪ Amyotrophic lateral sclerosis ▪ Noise-induced hearing loss ▪ Post-traumatic stress disorder and reactive depression (requires compatible history and diagnosis)	▪ Accelerated decline in lung function in a non-smoker usually not associated with impairment; (history of inadequate respiratory protection) ▪ Asthma, irritant-induced (sufficient to cause respiratory impairment) ▪ Chronic obstructive airways disease with minimal or no smoking history (fixed airways obstruction, not chronic obstructive pulmonary disease as term is generally understood) ▪ Colon cancer (for individuals with a low *a priori* risk) ▪ Melanoma (taking into account sun protection, lifestyle, and location) ▪ Myeloma (overall; cannot differentiate by type at the present time) ▪ Parotid gland tumours (suggest case-by-case evaluation) ▪ Nasal sinus cancer (in the absence of other exposures) ▪ Traumatic injury resulting in impairment leading to disability (must be individually considered) ▪ Musculoskeletal disorders (chronic) resulting in impairment leading to disability (must be individually considered	▪ Sarcoidosis ▪ Thyroid cancer ▪ Esophageal cancer ▪ Basal and squamous cell carcinomas (taking into account sun protection, lifestyle, and location) ▪ Laryngeal cancer ▪ Prostate cancer (below age 60) ▪ Infectious disease	▪ Prostate cancer (above age 60) ▪ Glomerulonephritis ▪ Infertility and birth defects in offspring (particular reference to heat exposure during pregnancy)

Source: Guidotti, TL, *Health Risks and Occupation as a Firefighter – A report prepared for the Department of Veterans' Affairs, Commonwealth of Australia*, February 2014: 7-9

In February 2014, Bushfire CRC published its report on bushfires extending into the rural/urban interface. The study identified that, currently fire and land management agencies do not have scientific evidence to quantify the exposure to air toxics faced by workers at the rural/urban interface and there is a need to better understand the environment of the interface to assess exposure risks to firefighters, emergency service workers and residents during and after fires.[172]

Monash University was commissioned by the Australasian Fire and Emergency Service Authorities Council (AFAC) to carry out a national retrospective study of firefighters' mortality and cancer incidence known as the Australian Firefighters' Health Study. The report on this study was published in December 2014. The study examined mortality and cancer among firefighters and investigated different subgroups, based on varying factors such as employment type, length of firefighting service, era of first employment/service, serving before/including or only after 1985, by the number of incidents attended and whether an individual was identified as having been a trainer.[173]

The study was overseen by an Advisory Committee whose membership included AFAC, fire agencies, trade unions and volunteer firefighter associations. Those who assisted by contributing records of career, full-time, part-time, paid and/or volunteer firefighters included the following agencies:

- Airservices Australia (ASA);
- Australian Capital Territory Fire and Rescue (ACTFR);
- Country Fire Authority (CFA);
- Department of Defence;
- Department of Fire and Emergency Services WA (DFES WA);
- Fire and Rescue NSW (FRNSW);
- Metropolitan Fire and Emergency Services Board Victoria (MFB);
- NT Fire and Rescue Service (NTFRS);
- NSW Rural Fire Service (NSWRFS); and
- Queensland Fire and Emergency Services (QFES).[174]

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; and
- considered other health outcomes which firefighters may be at risk, for example cardiovascular disease, suicide and death in the line of duty.[175]

It should be noted that 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 they did not meet the criteria of attending one fire in a year.[176]

[172] Borgas, MS and Reisen, F, CSIRO, *Bushfire CRC, Bushfires extending into the rural/urban interface*, February 2014: vii http://www.bushfirecrc.com/sites/default/files/managed/resource/final_report_for_the_operational_readiness_air_toxins_project.pdf
[173] Monash University, Faculty of Medicine, Nursing and Health Services, *Australian Firefighters' Health Study*, December 2014: 9
[174] Monash University, Faculty of Medicine, Nursing and Health Services, *Australian Firefighters' Health Study*, December 2014: 11-16
[175] United Firefighters Union of Australia, Submission No. 103: 17
[176] United Firefighters Union of Australia, Submission No. 103: 17

The report noted:

> *The differences in findings between the career full-time, part-time paid and volunteer firefighter groups showed that it was both appropriate and necessary to analyse the cancer and mortality separately for these three groups. This is the first study to investigate the cancer and mortality of a cohort of volunteer firefighters.*[177]

Some of the results from the final report released in December 2014 are as follows:

- *The cancer mortality risk for paid firefighters was comparatively higher than the risk for other major causes of death although still reduced compared to that of the Australian population.*
- *For male career full-time firefighters compared to the Australian population, overall cancer incidence was significantly raised for the group as a whole and for those who had worked for longer than 20 years.*
- *There was no trend of overall cancer incidence increasing with duration of service when longer serving firefighters were compared to those who had served for less than 10 years, in internal analyses.*
- *There was a trend of increasing overall cancer incidence with increasing attendance at vehicle fires.*
- *There was a statistically significant increase in prostate cancer incidence for career full-time firefighters overall, and particularly for those employed for more than 20 years.*
- *The risk of melanoma was significantly increased for career full-time firefighters, and for both of the employment duration groups who were employed for more than 10 years.*[178]

The Monash study found that male volunteer firefighters did not have an overall increased risk of cancer compared to the Australian population and there was no trend of overall cancer increasing with duration of service in internal analyses, but there was a trend of increased cancer risk with the number or type of incidents attended. There is a significantly increased risk of prostate cancer compared to the Australian population and this was mainly associated with firefighters who had served for more than 10 years.[179]

The authors of the study acknowledged a number of sources of uncertainty in the risk estimates relating to the reliability of the data to undertake the study. They noted that in some cases historical records of those who had left the service were not retained and consequently the number of deaths may have been under reported.[180] They also noted that the completeness and quality of both the cohort and incident data provided varied by agency.[181] The report identified that some analyses are based on small numbers of cancers for several less common cancers so the point risk estimates should be interpreted cautiously.[182]

[177] Monash University, Faculty of Medicine, Nursing and Health Services, *Australian Firefighters' Health Study*, December 2014: 16
[178] Monash University, Medicine, Nursing and Health Services, Report Australian Firefighters' Health Study Summary, December 2014: 3
[179] Monash University, Medicine, Nursing and Health Services, Report Australian Firefighters' Health Study, Summary, December 2014: 13
[180] Monash University, Medicine, Nursing and Health Services, Report Australian Firefighters' Health Study, December 2014: 85
[181] Monash University, Medicine, Nursing and Health Services, Report Australian Firefighters' Health Study, December 2014: 30
[182] Commonwealth of Australia, Senate Standing Committees on Education and Employment, *Safety, Rehabilitation and Compensation Amendment (Fair Protection for Firefighters) Bill 2011 [Provisions],* September 2011: 101

The report recommends that a further follow up be undertaken in five years when the larger number of cancer and death events as the cohort ages will increase the statistical power of the study and so provide more precision in the risks of causes of death and types of cancer particularly for the less common cancers such as kidney cancer.[183]

The report notes:

> *While this study has some strengths, including the large size, especially for volunteer firefighters and the ability to access nationally complete death and cancer databases, there are some limitations, in particular no information being available about individual lifestyle factors such as smoking.*
>
> *There were also some limitations in firefighter exposure assessments, the study relied on surrogates, such as attendance at incidents, which may impact on the strength of conclusions which can be drawn from the internal analyses.*[184]

4.2 Presumptive legislation – Firefighter compensation provisions

Workers' compensation, both in Australia and overseas, is generally available only where an employee acquired an injury or disease in the course of their employment. Under the general workers' compensation arrangements, the onus is on firefighters with cancer to pinpoint an event which cause their illness. This requirement is often difficult to satisfy and can be an insurmountable obstacle to firefighters seeking compensation at a time where they are struggling physically, emotionally and financially.[185]

Presumptive legislation has been developed mainly for those diseases where there is a gradual or long term onset of illnesses and diseases and where the causal link may not be clear cut. These presumptive laws were developed in order to relieve the employee of a lengthy process while the employee is in need of benefits and compensation.[186]

Canadian jurisdictions were among the first to enact presumptive legislation for firefighters following a report to the Workers' Compensation Board of Manitoba by Dr Tee Guidotti and Dr David Goldsmith. The report identified the use of presumptive legislation as follows:

> *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.*[187]

[183] Commonwealth of Australia, Senate Standing Committees on Education and Employment, *Safety, Rehabilitation and Compensation Amendment (Fair Protection for Firefighters) Bill 2011 [Provisions],* September 2011: 101

[184] Commonwealth of Australia, Senate Standing Committees on Education and Employment, *Safety, Rehabilitation and Compensation Amendment (Fair Protection for Firefighters) Bill 2011 [Provisions],* September 2011: 101

[185] Commonwealth of Australia, Senate Standing Committees on Education and Employment, *Safety, Rehabilitation and Compensation Amendment (Fair Protection for Firefighters) Bill 2011 [Provisions]*, September 2011: 6

[186] National League of Cities, *Assessing State Firefighter Cancer Presumption Laws and Current Firefighter Cancer Research*, April 2009: 3

[187] Guidotti, TL and Goldsmith, DF , *Evaluating Causation for Occupational Cancer Among Firefighters: Report to the Workers' Compensation Board of Manitoba*, March 2002: 8

Presumptive legislation invokes a rule of law which permits a court to assume a fact is true until such time as there is a greater weight of evidence which disproves, outweighs or rebuts the presumption. A presumption is rebuttable in that it can be refuted by factual evidence. One can present facts to persuade the judge the presumption is not true. [188] The presumption is based upon a policy of law or a general rule and not upon the facts or evidence in an individual case.[189]

A presumptive disability law links a particular occupation with a disease or condition that has been shown to be a hazard associated with that occupation. As a result of this linkage, if an individual employed in the occupation covered by the presumption contracts a disease or condition which is specified in the presumptive law, then that disease or condition is presumed to have come from that occupation. The burden of proof then shifts from the employee to the employer to demonstrate that the condition was not, in fact, associated with the occupation but with another cause.[190]

Generally, benefits assigned under presumption statutes are not automatic and employers have rebuttal provisions which enable them to deny benefits by proving that the illness is not job connected.[191]

In 2009, the US National League of Cities (NLC) undertook a study assessing state firefighter cancer presumption laws. This study identified a number of issues they believed needed to be considered when dealing with the enactment of legislation and the consequences of creating presumption laws. The study cited the following to be the most significant issues[192]:

- *Social issues – Fire and EMS professionals enjoy a special place in the hearts of Americans. Firefighting is considered one of the most prestigious jobs in the United States. Given the high esteem in which firefighters are held and the respect the public has for the risks they face, the arguments offered by proponents of cancer presumption are compelling.*
- *Occupational Disease – Assigning the origin of a disease to specific employment is problematic because outside activities may also contribute to the disease. For example, career firefighters may have part-time positions and volunteer firefighters may have full-time jobs that contribute to the developing cancer.*

  Some individuals may have a genetic, congenital or behavioural predisposition that may be impossible to differentiate from workplace exposures.
- *Technology – Technological advancements such as self-contained breathing apparatus and increased enforcement of department policies requiring the use of protective equipment will raise questions about presumption in the future. The relationship between safety equipment and the incidence of cancer in firefighters may be affected by technological advancements.*
- *Economic – One of the greatest issues involving firefighter presumption is the cost of a state-mandated program that is borne by municipal employers. Firefighters are often eligible for benefits for many years, even after retirement. Even if there is a limitation tied to retirement, volunteer firefighters often do not retire and the eligibility period is longer. This is significant because the National Fire Protection Association estimates that over 70 percent of all firefighters are volunteers.*

[188] http://legal-dictionary.thefreedictionary.com/presumption
[189] http://dictionary.reference.com/browse/presumption+of+law
[190] International Association of Fire Fighters, *Presumptive Health Initiative* http://www.iaff.org/hs/phi/
[191] National League of Cities, *Assessing State Firefighter Cancer Presumption Laws and Current Firefighter Cancer Research*, April 2009: 4
[192] It should be noted that workers' compensation is provided by municipalities in the US and as such some of the issues raised would not be applicable in Australian jurisdictions.

Two other economic issues are the inability to forecast accurately the short-term and long-term costs of presumption claims and the inability to manage healthcare costs in the workers' compensation system. The medical cost component of workers' compensation has risen at twice the rate of medical cost inflation and is projected to continue the trend well into the next decade.

For the firefighter, medical coverage under most healthcare systems results in some financial liability. However, financial liability assigned to the employee for a work-related injury can be regarded as an assessment of fault, which is contrary to workers' compensation principles.

Because cancer is widely prevalent in the general population, the adoption of presumption statutes for firefighters means that cities may be extending workers' compensation benefits to individuals who would have developed cancer even if they were not firefighters. Moreover, the transfer of medical expenses to the workers' compensation system from the healthcare system has serious cost implications. Payments for workers' compensation claims are assigned to the policy in effect when a claim is filed. When the policy is written, the insurer must take into account all future costs and possible changes in the laws. Pricing this unknown future liability is problematic and puts insurers' capital at risk. As a result, the private market for insurance may no longer be available.

- *Extension of Worker Benefits – Municipalities have a vested interest in assuring that job-related benefits are awarded in the appropriate situation because of the additional benefits that are available to employees with cancers that are deemed work-related. These benefits include accident-related illness/injury leave, tax-free workers' compensation, temporary total disability payments or permanent partial disability payments, special death benefits, extension of pension benefits, continuation of health benefits and more.*
- *Equity Concerns – There are questions about the fairness of one class of employees obtained expanded benefits when other municipal employees (sanitation workers, automotive fleet personnel, and others) may also be exposed to hazards similar to firefighters.*
- *Political – Political pressure to pass cancer presumption legislation has often resulted in laws and regulations that lack traditional scientific validity or financial stewardship.*[193]

The study found that one of the most sensitive issues with regard to presumption laws was the issue of rebuttals. The study found that it is difficult to rebut a presumption law because an employer must present a clear and convincing preponderance of evidence that:

- the primary site of the cancer is different than claimed; and
- the employer presented factors rebuttable by law, such as tobacco use; or an exposure did not occur.[194]

The study noted that rebuttal, while difficult, was not impossible and that courts have upheld tobacco use as a rebuttal to presumption.[195] It should be noted that some US states have introduced no smoking clauses for those firefighters who were employed after the introduction of presumptive legislation.[196]

[193] National League of Cities, *Assessing State Firefighter Cancer Presumption Laws and Current Firefighter Cancer Research*, April 2009: iii-iv http://tkolb.net/FireReports/PresumptionReport2009.pdf

[194] National League of Cities, *Assessing State Firefighter Cancer Presumption Laws and Current Firefighter Cancer Research*, April 2009: 53

[195] National League of Cities, *Assessing State Firefighter Cancer Presumption Laws and Current Firefighter Cancer Research*, April 2009: 53

[196] North Dakota Supreme Court Opinions, McDaniel v. North Dakota Workers Comp. Bureau, 1997 ND 154, 567 N.W.2d 833, https://www.ndcourts.gov/court/opinions/960383.htm#FN_1

The *Safety, Rehabilitation and Compensation Amendment (Fair Protection for Firefighters) Bill 2011* (Cwlth) was introduced into Parliament on 4 July 2011. The Senate referred the provisions of the Bill to the Senate Standing Legislation Committee on Education, Employment and Workplace Relations for inquiry and to report by 15 September 2011. The Senate Committee received submissions from 27 individuals and organisations and held public hearings in Melbourne, Canberra and Perth, as well as site visits in Melbourne, Geelong and Brisbane.[197]

The Senate Committee's report outlined that scientific studies have shown that firefighters are at increased risk of developing certain types of cancer. This is due to ongoing exposure to carcinogenic particles released by combusting materials of varying toxicity.[198] The report found that the science underpinning presumptive legislation is pivotal to its justification. The Senate Committee examined the scientific research available at the time and concluded that:

> *Given the quantity and quality of evidence presented, the committee is confident that a link between firefighting and an increased incidence of certain cancers has been demonstrated beyond doubt.*[199]

The Senate Committee report emphasised that claims under presumptive legislation are rebuttable in order to reflect the fact that science indicates where a firefighter with a certain number of years of service develops cancer, that cancer is most likely to be caused by occupational exposure to carcinogens. The science does not indicate that the cancer is definitely caused by occupational exposure.[200]

The Senate Committee considered the case for non-rebuttable legislation. They considered that making the presumption non-rebuttable would render it automatic and not provide employers and insurers with the opportunity to reject a weak or unfounded claim for compensation. They considered presumptive legislation should be rebuttable. They considered the legislation should not create a new right or entitlement but rather it should shift the burden of proof from a sick individual to their employer or insurer and only in defined cases founded on premises supported by scientific research.[201]

The Senate Committee report identified that in the US presumptive legislation is in place in approximately half of the state jurisdictions with more pending. The report noted the legislation is not uniform, varying between states in areas such as cancers covered, qualifying periods and other requirements necessary for firefighters to fulfil the criteria for compensation.[202]

The United Firefighters Union of Australia Union of Employees Queensland (UFUQ) advised the Committee that firefighters and the incidence of cancer has been the focus of many studies and it is now accepted internationally there is a nexus between firefighting and the incidence of some cancers. It is known and accepted that firefighters are exposed to a range of toxins and carcinogens through their duties of firefighting.[203]

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[197] Commonwealth of Australia, Senate Standing Committees on Education and Employment, *Safety, Rehabilitation and Compensation Amendment (Fair Protection for Firefighters) Bill 2011 [Provisions]*, September 2011: 1

[198] Commonwealth of Australia, Senate Standing Committees on Education and Employment, *Safety, Rehabilitation and Compensation Amendment (Fair Protection for Firefighters) Bill 2011 [Provisions]*, September 2011: 2

[199] Commonwealth of Australia, Senate Standing Committees on Education and Employment, *Safety, Rehabilitation and Compensation Amendment (Fair Protection for Firefighters) Bill 2011 [Provisions]*, September 2011: 9

[200] Commonwealth of Australia, Senate Standing Committees on Education and Employment, *Safety, Rehabilitation and Compensation Amendment (Fair Protection for Firefighters) Bill 2011 [Provisions],* September 2011: 12

[201] Commonwealth of Australia, Senate Standing Committees on Education and Employment, *Safety, Rehabilitation and Compensation Amendment (Fair Protection for Firefighters) Bill 2011 [Provisions]*, September 2011: 34-35

[202] Commonwealth of Australia, Senate Standing Committees on Education and Employment, *Safety, Rehabilitation and Compensation Amendment (Fair Protection for Firefighters) Bill 2011 [Provisions],* September 2011: 6

[203] United Firefighters Union of Australia Union of Employees Queensland , Submission No. 103 4

The UFUQ advised studies have shown there is an elevated risk of the cancers listed in the Bill for firefighters as a result of firefighting duties. However, in much of the research there is a gap in regard to the level of impact experienced by volunteer firefighters. They noted that much of the research deals with the toxic environments produced by structural fires and building contents and not as much emphasis has been placed upon wildfires. They noted that as research progresses this gap will close. They consider that what is clear is that there is known and recognised elevated risks of the specified cancers for all firefighters.[204]

4.3 Presumptive legislation in Australia

4.3.1 Comparison of presumptive legislation across Australia

All states and territories and the Commonwealth (which applies in the Australian Capital Territory (ACT)) have workers' compensation schemes which allow firefighters to make a claim for compensation, if they suffer a work-related disease or injury, including cancer.

Generally, in order to be eligible for compensation, firefighters must prove the cancer was contracted as a result of their work. The exception to this is that in the Commonwealth, Tasmania, South Australia, Western Australia and the Northern Territory have implemented presumptive legislation for firefighters who contract certain types of cancer. In the ACT, government employed firefighters are covered by Commonwealth legislation.

In comparing the legislation in other Australian jurisdictions, the Committee acknowledged that the work undertaken by fire services in each jurisdiction varies considerably. The QFES advised:

> *In relation to specifics on other fire services around Australia, they are very different. The CFA in Victoria provides a firefighter response as a first response to quite a significant number of incidents, very much like the full-time urban firefighters. They will be first response to structural fires, to motor vehicle accidents, to chemical incidents, hazardous material as well as grassfires, bushfires and supporting with other events such as storm and cyclone. Within Queensland, it is a bit different inasmuch as, from a volunteer perspective … their focus is more on the bushfire fighting, even though they do respond to other incidents. But I will look at it from an urban perspective. That is from both the permanent full-time and also the auxiliary firefighters. They will respond within their area of coverage: first response to structural fires in Queensland, motor vehicle accidents, chemical incidents, hazardous material and bushfires as well. So they will cover the gamut as a first response and also support rural firefighters and other agencies at other incidents. I believe that some of the other volunteer firefighters around Australia, that is, Victoria and South Australia, would have very similar response profiles that they will respond to from an urban and auxiliary perspective in Queensland. Rural will be a little different.*[205]

[204] United Firefighters Union of Australia Union of Employees Queensland , Submission No. 103: 4
[205] Deputy Commissioner Roche, Public Departmental Hearing Transcript 24 August 2015: 16

With regard to Queensland, they advised:

> *The primary response for volunteer firefighters in Queensland is to vegetation-type fires, but they do respond to other incidents in support of fire and rescue or urban firefighters or auxiliary firefighters; that is true. The difference in the model is that … in other states outside of the area that provides a permanent or auxiliary response—and CFA is a good example; CFA provides a primary response to a whole range of incidents above vegetation fires and that does not happen in Queensland. That is their primary response. There are very few brigades that are the primary response to road accident and rescue. There would be approximately five in the whole state that do that out of the 1,438, I think, rural fire brigades. That is the general case. They are not equipped or trained to carry out firefighting internally in a structure. They do have training where appropriate to carry out firefighting on a structure but from an external position.*[206]

The presumptive legislation in each state and territory operates similarly. If a firefighter contracts a cancer of a prescribed kind, has been a firefighter for the relevant qualifying period for that cancer, and during their employment was exposed to the hazards of a fire scene, the firefighter's employment is taken to have contributed to the contraction of the disease for the purposes of the worker's compensation application. The presumption is rebuttable where it can be proved that the cancer was not work related.

All Australian jurisdictions with presumptive legislation have the following diseases and minimum number of years as firefighters included in their legislation:

Disease	**Minimum number of years as firefighter**
primary site brain cancer	5 years
primary site bladder cancer	15 years
primary site kidney cancer	15 years
primary site non-Hodgkin lymphoma	15 years
primary leukemia	5 years
primary site breast cancer	10 years
primary site testicular cancer	10 years
multiple myeloma	15 years
primary site prostate cancer	15 years
primary site ureter cancer	15 years
primary site colorectal cancer	15 years
primary site oesophageal cancer	25 years

A comparison of firefighter compensation in Australian jurisdiction is attached as Appendix G.

There are differences between the jurisdictions in terms of whether the legislation applies to all firefighters, including volunteers. The Commonwealth (including ACT) and Western Australian legislation does not apply to volunteers, while Tasmanian and the Northern Territory legislation only applies to volunteers who have attended a requisite number of exposure events.

[206] Assistant Commissioner Varley, Public departmental hearing transcript 24 August 2015: 16

There are also differences in regard to whether the firefighter is still engaged or is retired as a firefighter. Firefighters in Western Australia must still be employed to be able to claim the benefit of the presumption. In South Australia, Tasmania and the Northern Territory volunteers are able to claim the presumption after leaving the service but only for a period of ten years.

It should be noted that if a firefighter does not meet the requirements under the presumptive legislation they may still be eligible for compensation. Liability will be assess under the general disease provisions of the relevant workers' compensation scheme.

The UFUA advised the Committee that:

> *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.*
>
> *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.*[207]

4.3.2 Commonwealth legislation

The first Australian jurisdiction to introduce presumptive legislation for firefighters was the Commonwealth. As noted above, the *Safety, Rehabilitation and Compensation Amendment (Fair Protection for Firefighters) Bill 2011* (Cwlth) was introduced into Parliament on 4 July 2011. As noted above, the Senate referred the provisions of the Bill to the Senate Standing Legislation Committee on Education, Employment and Workplace Relations for inquiry and report.[208] That Committee recommended that the Bill be passed subject to amendment.[209]

The legislation, when introduced, included only seven categories of cancer – primary site bladder cancer, primary site kidney cancer, primary non-Hodgkins lymphoma, primary leukemia, primary site breast cancer and primary testicular cancer – with a further category covering 'a cancer of a kind prescribed'. The Senate Committee identified its concern that:

> *…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 the seven listed by this Bill.*[210]

[207] United Firefighters Union of Australia, Submission No. 103: 30

[208] Commonwealth of Australia, Senate Standing Committees on Education and Employment, *Safety, Rehabilitation and Compensation Amendment (Fair Protection for Firefighters) Bill 2011 [Provisions]*, September 2011: 1

[209] Commonwealth of Australia, Senate Standing Committees on Education and Employment, *Safety, Rehabilitation and Compensation Amendment (Fair Protection for Firefighters) Bill 2011 [Provisions]*, September 2011: 46

[210] Commonwealth of Australia, Senate Standing Committees on Education and Employment, *Safety, Rehabilitation and Compensation Amendment (Fair Protection for Firefighters) Bill 2011 [Provisions]*, September 2011: 12

The Senate Committee recommended that multiple myeloma, primary site lung cancer in non-smokers, primary site prostate, ureter, colorectal and oesophageal cancers be included in the types of cancers specified. [211] With the exception of primary site lung cancer in non-smokers, this recommendation was accepted.

The legislation includes provision that a firefighter must have been involved in firefighting duties as a substantial portion of his or her duties in order for presumptive provisions to apply. The legislation also included provisions that a review to be completed by 31 December 2013.[212] The definition of 'employee' in the Act does not include volunteer firefighters.[213]

The review, as required by the 2011 Act, was completed and a report published in December 2013. The review identified there had been a limited number of claims made under the provisions and no compelling evidence to support either the inclusion or removal of cancers at that time. The reviewer recommended a further review in 2018. The review report considered the issue of lung cancer in non-smoking firefighters and recommended that this issue be considered further in the next review.[214]

With regard to coverage for volunteer firefighters, the Senate Committee report identified that[215]:

> *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:*
>
> > *The definition of 'volunteer' in Canada is different from the definition of 'volunteer' here. In Canada, there is no such thing as a person who gives their labour or their services for no remuneration. They are paid on-call or are part-time firefighters.*

4.3.3 Tasmanian legislation

The Tasmanian presumptive firefighter legislation commenced in October 2013. The legislation limits the operation of the presumption to diseases that occurred during the period of employment or up to 10 years post retirement or resignation as a firefighter. The Act only applies to firefighters, both career and volunteer, appointed or employed under the *Fire Service Act 1979*. For volunteer firefighters there is an additional requirement that, for claims related to brain cancer and leukaemia, the person must have attended at least 150 exposure events within any five year period, and within 10 years for the remaining 10 cancers. This requirement ensures the presumption only applies to volunteers who have had a significant level of exposure to the hazards of fire.[216]

[211] Commonwealth of Australia, Senate Standing Committees on Education and Employment, *Safety, Rehabilitation and Compensation Amendment (Fair Protection for Firefighters) Bill 2011 [Provisions]*, September 2011: 13

[212] *Safety, Rehabilitation and Compensation Amendment (Fair Protection for Firefighters) Bill 2011* (Cwlth), Schedule 1 (as amended)

[213] *Safety, Rehabilitation and Compensation Act 1988* (Cwlth), section 5

[214] Australian Government, *Review of the Safety, Rehabilitation and Compensation Amendment (Fair Protection for Firefighters) Act 2011 Report*, December 2013:

[215] Commonwealth of Australia, Senate Standing Committees on Education and Employment, *Safety, Rehabilitation and Compensation Amendment (Fair Protection for Firefighters) Bill 2011 [Provisions]*, September 2011: 32-33

[216] Safe Work Australia, *Comparison of workers' compensation arrangements in Australia and New Zealand*, August 2014: 7

The UFUA submission highlights that when the Tasmanian Bill was introduced it included a requirement for both career and volunteer firefighters to demonstrate 520 exposures over any 10 year period of employment or 260 exposures over any five year period of employment. The legislation that was ultimately enacted included the requirement to demonstrate 150 exposures and only applies to volunteer firefighters. The reasons cited for this restriction is to 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 Minister noted in his second reading speech that the requirement for the exposure limits to apply to career firefighters was considered unnecessary because almost all career firefighters who satisfy the qualifying period have the required number of exposures.[217]

The Committee noted that this legislation was introduced prior to the release of the Monash University study.

4.3.4 South Australian legislation

In June 2013, the *Workers Rehabilitation and Compensation (SAMFS Firefighters) Amendment Bill 2013* (SA) was introduced into the South Australian Parliament. This Bill provided for South Australian Metropolitan Fire Service (SAMFS) firefighters who contracted any of 12 specified cancers with entitlement to workers compensation without having to prove that the cancer arose specifically from their employment. Limited protection was provided to volunteer firefighters who were exposed to hazards of a fire scene or away from the fire scene but firefighters had to be exposed to the hazards at least 175 times in any five year period of that employment.[218]

In May 2014, the *Workers Rehabilitation and Compensation (SACFS) Amendment Bill* (SA) was introduced to the Legislative Council in South Australia providing that volunteer firefighters have the same entitlements as SAMFS firefighters. In October 2014, this bill was referred to the Parliamentary Committee on Occupational Safety, Rehabilitation and Compensation (PCOSRC). However, subsequent to the referral, the government announced that it had reached an agreement to provide automatic compensation to South Australian Country Fire Service (SACFS) volunteer firefighters. The Committee published its report in March 2015. The amendments covered SACFS volunteers who were active members on or after 1 July 2013 and the presumption will remain in place for 10 years after a SACFS volunteer ceases operational activities. The incident threshold limit was also removed.[219]

The Committee examined the Monash study as part of its considerations. The Committee noted that while the Monash report found the firefighters are a healthier cohort than the general population, length of service as firefighters can increase the risk of contracting cancer. They identified that Monash University reported that risk estimates were uncertain and should be interpreted cautiously and that they recommended a follow up in five years.[220]

[217] United Firefighters Union of Australia Union of Employees Queensland , Submission No. 103: 27-28

[218] South Australian Parliamentary Committee on Occupational Safety, Rehabilitation and Compensation, *Report into the Referral of the Workers Rehabilitation and Compensation (SACFS Firefighters) Amendment Bill*, March 2013: 3

[219] South Australian Parliamentary Committee on Occupational Safety, Rehabilitation and Compensation, *Report into the Referral of the Workers Rehabilitation and Compensation (SACFS Firefighters) Amendment Bill*, March 2013: 4

[220] South Australian Parliamentary Committee on Occupational Safety, Rehabilitation and Compensation, *Report into the Referral of the Workers Rehabilitation and Compensation (SACFS Firefighters) Amendment Bill*, March 2013: 7

The PCOSRC report makes reference to the inclusion of the 10 year time limit for claims which has been applied to volunteer firefighters and stated:

> *SACFS volunteer firefighters and SAMFS firefighters now have the same presumptive protection in the event that they contract any one of the 12 prescribed cancers. However, volunteer firefighters have a 10 year time limit within which to make a claim after ceasing operational activities, while career firefighters are not prevented from making a claim at any time in the future. This time restriction imposed on volunteer firefighters is likely to preclude some retired volunteer firefighters from making a claim for cancers of extremely long latency, unless they can prove a connection to their previous work as a volunteer firefighter.*
>
> *The Monash University research confirms that volunteer firefighters are at an increased risk of dying in a fire and of contracting some cancers and this risk increases with more time served. Therefore, the prescribed qualification periods should be sufficient to establish a connection to work as a firefighter without the need for further barriers such as time limits.*[221]

The PCOSRC report also acknowledges that there is a need for ongoing research into this area and as the knowledge associated with this work increases through collaborative scientific work, legislative protections may need to be amended to reflect the emerging knowledge.[222]

4.3.5 Western Australian legislation

In Western Australia, the presumptive firefighter legislation commenced in November 2013. The Western Australian legislation is based on the Commonwealth legislation and does not include coverage for volunteer firefighters.

However, in October 2014, the Western Australian Minister for Emergency Services; Corrective Services; Small Business; Veterans, announced that State Cabinet had approved legislation to provide compensation to current and former volunteer firefighters, the Department of Parks and Wildlife firefighters and former Department of Fire and Emergency Services firefighters who contract a prescribed cancer.[223] As at the date of this report, the proposed amendments had not been introduced.

4.3.6 Northern Territory legislation

The Northern Territory legislation commenced on 1 July 2015. The presumption applies to both career and volunteer firefighters. However, volunteer firefighters must be exposed to the hazards of not fewer than the prescribed number of fires (currently 150) within any period. The legislation limits the operation of the presumption to diseases that occurred during the period of employment or up to 10 years post retirement or resignation as a firefighter. Other firefighters are required under his or her contract of employment to be exposed to the hazards of fighting fires. [224]

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[221] South Australian Parliamentary Committee on Occupational Safety, Rehabilitation and Compensation, *Report into the Referral of the Workers Rehabilitation and Compensation (SACFS Firefighters) Amendment Bill*, March 2013: 8

[222] South Australian Parliamentary Committee on Occupational Safety, Rehabilitation and Compensation, *Report into the Referral of the Workers Rehabilitation and Compensation (SACFS Firefighters) Amendment Bill*, March 2013: 8

[223] Hon J Francis MLA, Minister for Emergency Services; Corrective Services; Small Business; Veterans, Media Statement, *New compensation support for firefighters*, 4 October 2014: 1

[224] *Workers Rehabilitation and Compensation Legislation Amendment Act 2015* (NT)

The Northern Territory Minister for Employment and Training, Hon Peter Styles MLA, noted in his second reading speech that:

> *For volunteer fire fighters an additional requirement is proposed – 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 the presumption only applies to volunteers who have had measurable exposure to the hazards of fire. The proposed legislation will allow claims to be made up to 10 years after having been involved in active firefighting.*[225]

The Northern Territory legislation also provides for reduced compensation for older workers. The Minister stated:

> *It is recognised that people are working longer than the traditional pension age. Currently, workers injured after 67 years of age are restricted to a maximum of 26 weeks of incapacity benefit. This bill proposes older workers will get 104 weeks of compensation instead of 26 weeks. This will provide a more reasonable level of economic protection for older workers and is consistent with changes in other jurisdictions.*[226]

4.4 Existing Queensland workers' compensation provisions relating to firefighter cancer

Under the existing arrangements in Queensland, firefighters who contract cancer are entitled to workers' compensation provided the disease can be shown to be caused by their employment as a firefighter.

The department advised the Committee that since 2013 there have been 14 claims lodged covering cancers specified in the Bill. Of these, six have been accepted and the balance have been rejected or withdrawn. All claims have been made by fulltime firefighters.[227]

The Firefighter Cancer Foundation Australia (FCFA) advised the Committee that in their experience paid firefighters will use up all their sick leave, annual leave, long service leave or superannuation income protection while going through treatment. Volunteer firefighters who contract these specified diseases do not have leave benefits from their voluntary employment as firefighters.[228]

The FCFA advised that they are currently assisting firefighters presently traversing their way through the workers' compensation system. They advised that whilst a number of claims have been accepted without the benefit of presumptive legislation, it takes six to 12 months or more each time to go through the process of proving the claim.[229]

They advised that many firefighters with cancer do not file a workers' compensation claim in the mistaken belief that until there is presumptive legislation, their claim will not be accepted.[230]

[225] Northern Territory Parliament, Debates - 12Th Assembly, 1St Session - 17/02/2015 - Parliamentary Record No: 17 http://notes.nt.gov.au/lant/hansard/hansard12.nsf/WebbySubject/14DB5777F0E940A769257E27000AFF3F?opendocument

[226] Northern Territory Parliament, Debates - 12Th Assembly, 1St Session - 17/02/2015 - Parliamentary Record No: 17 http://notes.nt.gov.au/lant/hansard/hansard12.nsf/WebbySubject/14DB5777F0E940A769257E27000AFF3F?opendocument

[227] Correspondence from Queensland Treasury to FAC dated 14 August 2015: 3

[228] Firefighter Cancer Foundation Australia, Submission No.134: 3

[229] Firefighter Cancer Foundation Australia, Submission No.134: 3

[230] Firefighter Cancer Foundation Australia, Submission No.134: 4

4.5 Clause 14 – Amendment of section 12 (Entitlements of persons mentioned in subdivision 1)

Under existing section 12, rural fire brigade members and volunteer firefighters and fire wardens covered under a contract of insurance with WorkCover Queensland are entitled to weekly compensation and the same entitlement to other forms of compensation as workers under the Act. However, the contract does not cover payment of common law damages.[231]

The Explanatory Notes outline that clause 14 amends section 12 of the Act to provide that the contracts of insurance covering specified volunteer firefighters must cover the payment of damages for specified diseases.[232]

The clause changes the terminology in the section from 'does not' to 'must not'. The department explained that the change in terminology is a drafting requirement which ensures consistent language is used in the newly inserted section 12(2) and section 12(2A). The amendments provide a clearer indication of the status of coverage for common law damages, from a statement that damages cover under the contract has no effect to a more prescriptive statement that damages cover is not permitted to be included in the contract (except for damages cover for a person who is a specified volunteer firefighter who sustains an injury that is a specified disease).[233]

The department advised that volunteers are currently covered by the Emergency Services Volunteers contract of insurance. This is a voluntary contract of insurance entered into by QFES and WorkCover Queensland. The proposed amendments provide that if a volunteer has an injury accepted under the deemed diseases provisions, then the worker will be entitled to seek damages under the provisions of the Act.[234]

4.6 Clause 15 – Amendment of section 14 (Rural fire brigade member)

The Explanatory Notes detail that clause 15 amends section 14 of the Act to clarify the coverage of a contract of insurance for rural fire brigade members covered by the new deemed disease provisions for firefighters.[235]

4.7 Clause 16 – Amendment of section 15 (Volunteer firefighter or volunteer fire warden)

Clause 16 amends section 15 of the Act to clarify the coverage of a contract of insurance for volunteer firefighters or volunteer fire wardens covered by the new deemed disease provisions for firefighters.[236]

[231] Queensland Government, Submission No. 56 to *Workers' Compensation and Rehabilitation (Protecting Firefighters) Amendment Bill 2015*: 7
[232] Explanatory Notes, *Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2015*: 6
[233] Correspondence from Queensland Treasury to FAC dated 14 August 2015: 11
[234] Correspondence from Queensland Treasury to FAC dated 19 August 2015: 19
[235] Explanatory Notes, *Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2015*: 6
[236] Explanatory Notes, *Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2015*: 6

4.8 Clause 17 – Amendment of section 36A (Date of injury)

Existing subdivision 3A applies to latent onset injuries. Section 36A is as follows:

> **Subdivision 3A When latent onset injuries arise**
>
> **36A Date of injury**
>
> (1) This section applies if a person—
>
> (a) is diagnosed by a doctor after the commencement of this section as having a latent onset injury; and
>
> (b) applies for compensation for the latent onset injury.
>
> (2) The following questions are to be decided under the relevant compensation Act as in force when the injury was sustained—
>
> (a) whether the person was a worker under the Act when the injury was sustained;
>
> (b) whether the injury was an injury under the Act when it was sustained.
>
> (3) Section 131 applies to the application for compensation as if the entitlement to compensation arose on the day of the doctor's diagnosis.
>
> (4) Subject to subsections (2) and (3), this Act applies in relation to the person's claim as if the date on which the injury was sustained is the date of the doctor's diagnosis.
>
> (5) To remove any doubt, it is declared that nothing in subsection (4) limits section 236.
>
> (6) Subsections (2) to (4) have effect despite section 603.
>
> (7) In this section—
>
> ***relevant compensation Act*** means this Act or a former Act.

Under existing section 36A, the current version of the Act applies as if the date on which the injury is sustained is the date of the doctor's diagnosis. This means that the current Act will apply to the injury based on the date of diagnosis, even if the period of exposure and the commencement of the disease's development occurred prior to the commencement of the Act or section 36A. This ensures that compensation entitlements are calculated under the current legislation rather than the legislation operating at the time the injury was sustained. Under section 36A(2)(b), the question of whether the person sustained an injury must be decided under the compensation Act in force when the injury was sustained.[237]

The proposed amendment inserts a new subsection (2A) stating that subsection (2)(b) does not apply if the latent onset injury is a specified disease and section 36D applies to the person. The Explanatory Notes state that section 36A is amended to provide that subsection (2)(b) does not have application to firefighters who have an injury under the new section 36D (see clause 18).[238]

The department confirmed that the Bill proposes to provide coverage for a person who is diagnosed by a doctor for the first time as having a specified disease. The Bill excludes the application of section 36A(2)(b) for a latent onset injury which is a specified disease, for the purpose of applying the deeming provisions. This ensures that the presumption applies to all specified diseases diagnosed on or after the date of introduction, and that section 36A operates to ensure that entitlements are paid under the current legislation.[239]

[237] Queensland Government, Submission No. 56 to *Workers' Compensation and Rehabilitation (Protecting Firefighters) Amendment Bill 2015*: 6

[238] Explanatory Notes, *Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2015*: 6

[239] Queensland Government, Submission No. 56 to *Workers' Compensation and Rehabilitation (Protecting Firefighters) Amendment Bill 2015*: 6

4.9 Clause 18 – Insertion of new chapter 1, part 4, division 6, subdivision 3B

Clause 18 inserts new subdivision 3B under Chapter 1, Part 4, division 6 of the Act to provide new deemed disease provisions for firefighters who develop specified diseases. The Explanatory Notes detail that under the new deemed disease provisions, if a current or former firefighter is diagnosed with one of twelve specified latent onset injuries and has been engaged in active firefighting duties for a specified number of years then their injury is deemed to be a work-related injury. This new subdivision specifies additional exposure requirements for volunteer firefighters. The new subdivision also clarifies that the deemed diseases provisions do not apply if it can be proved that there is another cause of the firefighter's specified disease or their firefighting work was not a significant contributing factor to the specified disease.[240]

4.9.1 Proposed new section 36B – Definitions

Proposed new section 36B contains the definitions relating to the new chapter 1, part 4, division 6, subdivision 3B. New proposed section 36B is as follows:

> **36B Definitions for sdiv 3B**
>
> In this subdivision –
>
> ***employ*** includes engage.
>
> ***firefighter*** means –
>
> (a) a fire officer under the Fire and Emergency Services Act 1990; or
>
> (b) a member of a rural fire brigade registered under the Fire and Emergency Services Act 1990, section 79; or
>
> (c) a volunteer fire fighter or volunteer fire warden engaged by the authority responsible for the management of the State's fire services.
>
> ***specified disease*** means a disease mentioned in schedule 4A, column 1.
>
> ***volunteer firefighter*** means a person mentioned in the definition firefighter, paragraph (b) or (c).

With regard to the definitions of firefighters contained in the Bill, the UFUA submission states that:

> *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.*[241]

The FCFA agreed that in their view the definition of firefighter leaves a number of the state's firefighters without the benefit of the presumptive legislation being proposed. They considered that there is a need to include provisions so that firefighters employed in national parks and private industry, such as at coal and gas mines, are also given the benefit of the presumption if they meet its thresholds. They consider that these firefighters are still engaged in the occupation of firefighting and are experiencing dermal, thermal, digestive and respiratory exposures to carcinogenic particulates at fire events and therefore should be afforded the same benefit of presumption.[242]

[240] Explanatory Notes, *Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2015*: 6
[241] United Firefighters Union of Australia, Submission No. 103: 35
[242] Firefighter Cancer Foundation Australia, Submission No. 134: 8

The QLS submission also highlighted that the definition of firefighter leaves some firefighters without the benefit of the presumptive legislation, such as firefighters employed by the Department of National Parks, Sport and Racing or those employed in private enterprise. They supported the broadening of the definition to encompass these categories of firefighter.[243]

The UFUQ also raised the issue of private contract firefighters. They advised that firefighters engaged at the Oakey Military Airport are contracted by Transfield to undertake firefighting at the airport. They consider that, on the surface, neither the subject Bill nor the federal legislation covers these employees.[244]

In response to these issues the department advised that the proposed definition of firefighter for the purpose of the deemed disease provisions will capture all persons employed as a fire officer by QFES, including active permanent and auxiliary firefighters, all volunteer members of a rural fire brigade registered under the *Fire and Emergency Services Act 1990* (section 79), and any person who has volunteered as a firefighter under the authority of QFES (for example a farmer volunteering to assist QFES to fight a bush fire).

They advised that the Department of National Parks, Sport and Racing (DNPSR) does not employ firefighters. DNPSR does employ park rangers who may engage in limited firefighting work. Consistent with the findings of the Monash study, the limited exposure of this group of workers would not lead to an increased incidence of cancer compared to the general population. Similarly, the work undertaken by privately employed firefighters would result in limited exposure that would not lead to an increased incidence of cancer compared to the general population. The department advised that if any of these workers sustain a deemed disease or another latent onset injury they will continue to be eligible to make a workers' compensation application using the existing provisions of the Act.

4.9.2 Proposed new section 36C – Meaning of exposure incident

Proposed new section 36C provides the definition of what is an incident exposure which, for volunteer firefighters, is the basis on which they are considered eligible for the presumption under proposed new section 36D. Sections 4.9.3 to 4.9.5 of this report should be read in conjunction with this section.

New proposed section 36C as follows:

> **36C Meaning of *exposure incident***
>
> For this subdivision, a firefighter attends an exposure incident if –
>
> (a) the firefighter attends a location; and
>
> (b) a fire is burning at the location; and
>
> (c) the firefighter participates in extinguishing, controlling or preventing the spread of the fire at the location.
>
> *Examples for paragraph (b) –*
>
> • a fire started by arson
>
> • a controlled burn

Evidence provided to the Committee raised a number of issues in regard to the proposed provision including:

- the types of incidents attended by volunteer rural firefighters;
- the definition of 'burning' contained in the provision; and

[243] Queensland Law Society, Submission No. 75: 1

[244] United Firefighters Union of Australia Union of Employees Queensland, Submission No. 79: 6-7

- the type of protective equipment provided to volunteer rural firefighters.

The issue of the number of exposures is considered in section 4.9.3 of this report.

4.9.2.1 Types of incidents attended

QFES advised that the role of the rural firefighter is predominantly dealing with vegetation fires, although that role has been expanded in recent years and rural fire brigades are quite active in recovery operations; however it is not a requirement for volunteer firefighters to attend structural fires. They advised:

> *For brigades that are likely to be confronted with those types of circumstances we do provide structural firefighting training but external only. In those sorts of training environments they are taught to stay uphill and upwind of the event, to not go inside the building, to protect the area from any other exposures or stop the fire from spreading. It is not an expectation that volunteer firefighters will enter a structure. They are not provided with the protective clothing required to do so. What they are trained in is external, structural firefighting, predominantly protecting exposures to stop that fire from spreading.*[245]

The Committee queried whether rural fire brigades in small communities where urban brigades are a significant distance away would in fact stand by whilst a structure burned. QFES advised:

> *As an organisation we are primarily focused on safety. That comes through in all of our training for the volunteer firefighters. We emphasise that they are not to enter any sort of a structure fire. They are not trained in how to do that. They are not provided with equipment to do that. There is zero expectation that they will do that. Likewise, in swiftwater type events they are provided with training that is predominantly around keeping them safe and alerting them to the dangers of entering swift water. With a structure fire, the training is about the dangers of entering a structure fire and teaching them how to fight that fire externally—largely preventing it from spreading. Whilst I cannot put my hand on my heart and say that no-one has ever done that, it is not the practice. The standard and professionalism of volunteer firefighters today is very high and their understanding of the dangers is correspondingly high. To answer your question, whilst they would fight that fire they would fight it externally under the parameters that their training allows.*[246]

The RFABQ confirmed that rural fire brigades meet the needs of their communities whether it be grass fire, scrub fire, house fire, road crash rescue, car fire or large animal rescue.[247] They also advised that there are many small communities in Queensland where the rural fire brigade is the only available responder within a reasonable time frame. They provided examples of the communities of Mungallala and Weipa.[248]

The Queensland Auxiliary Firefighter Association Inc. (QAFA) advised the Committee that auxiliary firefighters perform the same tasks as full-time firefighters but are not subject to the limitations of shift work where full-time staff only respond to incidents during their shift. They advised that auxiliary firefighters can potentially respond to all incidents in their communities. They advised that in regional Queensland auxiliary firefighters work closely with rural volunteers and it is their observation that rural firefighters respond to most urban incidents providing essential support such as water capacity and additional trained manpower.[249]

[245] Assistant Commissioner Gallant, Public departmental briefing transcript 6 August 2015: 7
[246] Assistant Commissioner Gallant, Public departmental briefing transcript 6 August 2015: 7
[247] Rural Fire Brigades Association of Queensland, Submission No. 016: 6
[248] Mr Choveaux, RFBAQ, Public Hearing Transcript 13 August 2015: 41
[249] Queensland Auxiliary Firefighters Association, Submission NO. 125: 2

The Committee heard evidence from rural firefighters located in urban-rural interface (iZone) regions. They advised that often they are called to misidentified fires, including car fires. They advised that the safety equipment they are provided with is minimal compared with the urban firefighters and both groups are exposed to the same conditions.[250] They also advised that rural fire brigades regularly come across burning dumped building materials. They are concerned that insufficient research has been done into the effects of chemicals being released from all types of fires they are exposed too.[251] They also indicated their concern that rubbish is dumped in the bush and they are also concerned about the chemicals that are used to control weeds and fertilisers which change when heat is applied in a bush fire situation.[252]

One firefighter advised the Committee that he had personally been called to wildfires in rubbish dumps, liquid waste dumps and vegetation fires containing suspected drug setups, asbestos and treated timber, chemical drums and other plastics and household goods illegally dumped.[253]The following diagrams provide a summary of the incidents attended by rural fire brigades for the financial year 2014-15.

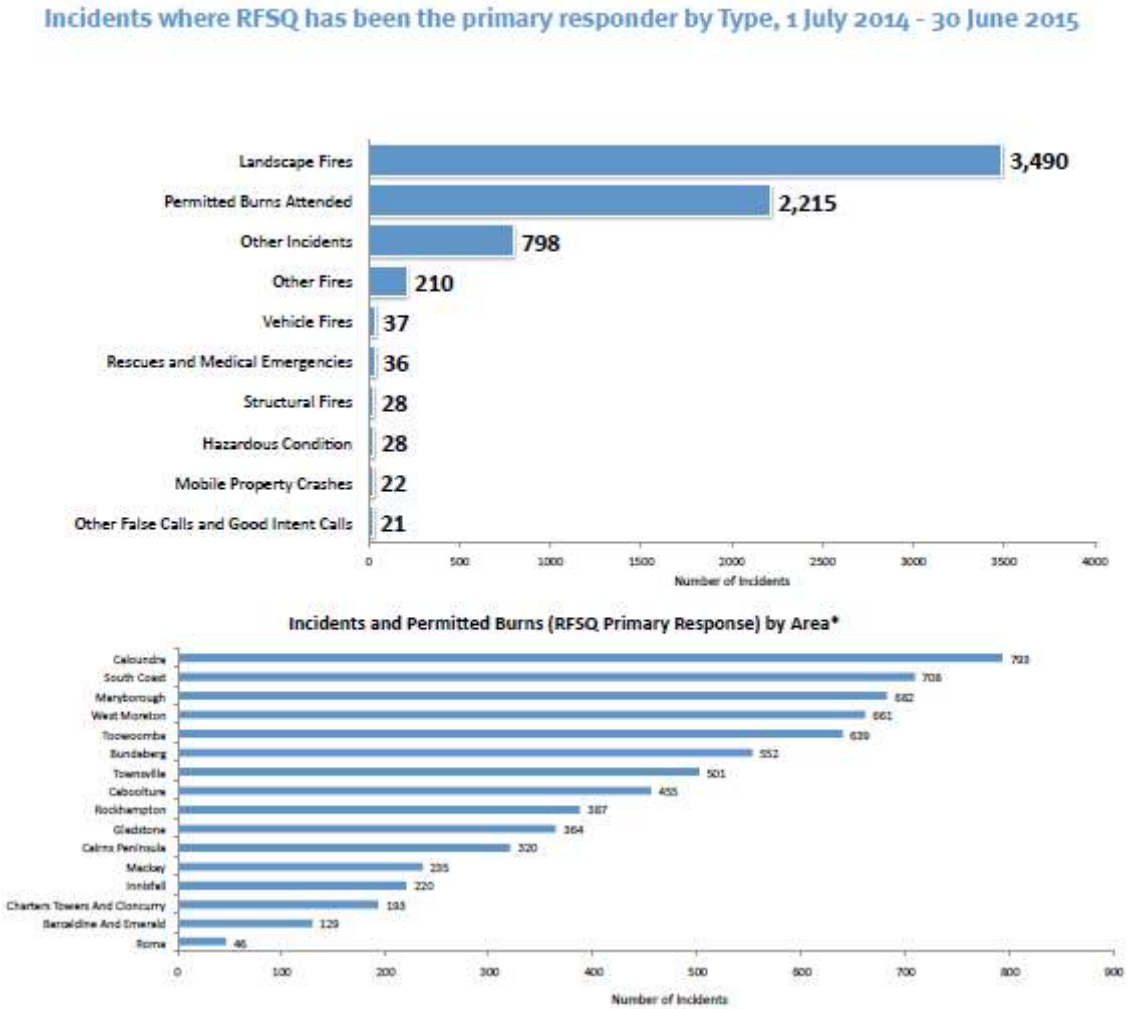

Diagram 1: Incidents where FRSQ has been the primary responder by Type, 1 July 2014- 30 June 2015

Source: Queensland Fire and Emergency Services, Rural Fire Service Queensland, *Rural Fire Bulletin*, August 2015: 31

[250] Ms Thompson, Public Hearing transcript 17 August 2015: 2
[251] Mr McWilliam, Public Hearing transcript 17 August 2015: 3
[252] Mr Gillespie, Public Hearing transcript 17 August 2015: 4
[253] Mr McWilliam, Submission No. 60: 1

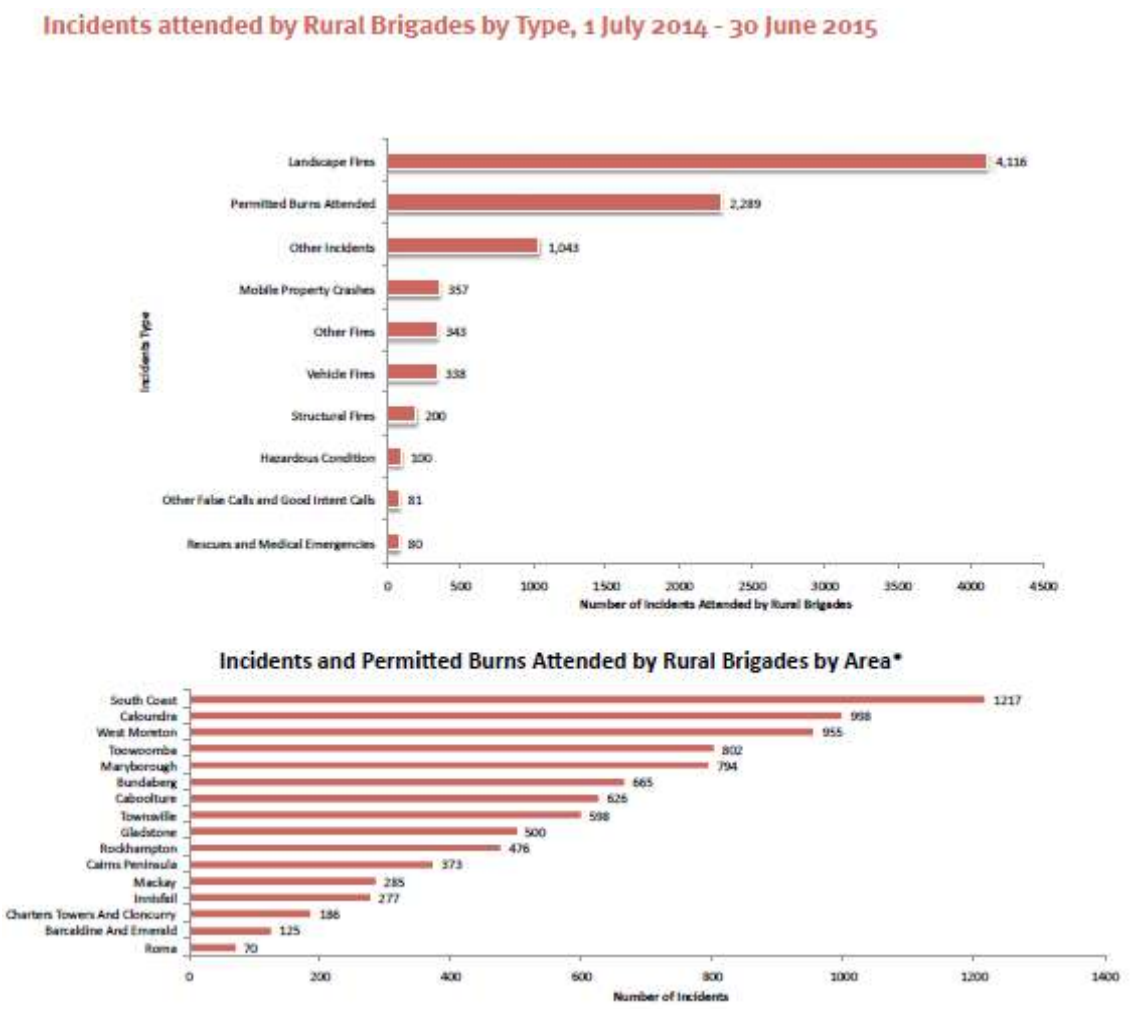

Diagram 2: Incidents attended by Rural Brigades by Type, 1 July 2014- 30 June 2015

Source: Queensland Fire and Emergency Services, Rural Fire Service Queensland, *Rural Fire Bulletin*, August 2015: 32

Rural firefighters also highlighted the issue of the length of time they spend at fires. This issue is considered further in section 4.9.4 of this report. The issue of record-keeping with regard to the type and source of exposure was also identified. This issue is considered in detail in section 4.9.3 of this report.

4.9.2.2 Definition of 'burning'

The FCFA identified their concern that there is no definition of 'burning' included in the legislation. They suggested that this definition should include smouldering or other heat-related events such as overhaul or dampening down work. They noted that scientific literature illustrates the dangerous nature of carcinogenic exposure on a dermal, thermal, respiratory and digestive basis during the overhaul phase of firefighting.[254]

[254] Firefighter Cancer Foundation Australia, Submission No. 134: 9

They consider that under the proposed legislation a volunteer attending to overhaul or dampening down after the burning fire has been extinguished, would not be able to include that the attendance to perform this work was an exposure event simply because the fire was not burning. They advised that studies show that this can be more hazardous from an exposure perspective.[255]

The FCFA submission also noted that the definition includes no provision for attendance at locations where there are other types of exposures such as chemical spills and other HAZMAT events where carcinogenic exposure occurs.[256]

The department advised the Committee that for these types of exposures the exposure would be recorded on either the injury or near-miss form. They advised that if a volunteer firefighter contracted cancer and was able to demonstrate that they did attend a particular exposure then that would fall under the normal type of WorkCover legislation where a person has demonstrated contact with a particular chemical.[257]

The UFUA also identified its concern that 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.' They consider that 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. They noted that the Federal legislation threshold for career firefighters is 'exposed to the hazards of a fire scene' which encompasses all circumstances of exposures.[258]

The QLS also highlighted that it is not clear from the Bill whether or not the definition of 'burning' includes smouldering or another heat-related event such as overhaul or dampening down work. They considered that firefighters still risk exposure during these events, and QLS is of the view that the definition should be clarified to ensure that all dangerous exposure events are captured by the legislation.[259]

In response to this issue the department advised the Committee that:

> *Presumptive legislation provides a special level of coverage for firefighters in recognition of the traditional difficulties faced seeking compensation for certain work-related injuries connected with exposure to fires. As such it was necessary to ensure that there were clear linkages between the scope of the coverage and available data and research concerning relative exposure rates as firefighters and cancer incidence.*
>
> *The coverage provided is supported by the findings of Monash University's recent Australian Firefighter Health Study, a national retrospective study of mortality and cancer incidence among 232,871 current and former Australian firefighters, and the approach taken in other jurisdictions. The evidence provided in this research does not support the presumptive coverage of exposure to non-fire related exposure as distinct from other professions.*[260]

[255] Firefighter Cancer Foundation Australia, Submission No. 134: 9-10
[256] Firefighter Cancer Foundation Australia, Submission No. 134: 10
[257] Assistant Commissioner Gallant, Public departmental briefing transcript 6 August 2015: 7
[258] United Firefighters Union of Australia, Submission No. 103: 35
[259] Queensland Law Society, Submission No. 75: 2
[260] Correspondence from Queensland Treasury to FAC dated 19 August 2015: 7

The department also advised that:

> *The meaning of exposure incident requires attendance at location where a fire is burning. The meaning of "fire" and "burning" have the usual dictionary meaning. For example the Macquarie dictionary includes in the definition of "fire" the active principle of burning or combustion, manifested by the evolution of light and heat, and for "burning" to undergo combustion.*[261]

4.9.2.3 Protective equipment

A number of submissions from rural fire brigades also identified the type of personal protective equipment (PPE) and breathing apparatus (BA) to be an issue in terms of exposure for volunteer firefighters.

The Thuringowa Rural Fire Group advised the Committee that career firefighters have less exposure to smoke risk than volunteers as their respiratory protection is greater than the type of masks currently used by volunteer rural firefighters. They articulated the view that volunteer firefighters are often exposed to fire events for much longer time periods and therefore their exposure is likely to be greater.[262]

The Logan Village Rural Fire Brigade submitted to the Committee that the logic behind the assumption that volunteers will be less likely to experience exposure to sufficient carcinogens to affect their health is flawed due to the inferior protection equipment and decontamination facilities provided to volunteer firefighters. In addition to the respiratory protection issues raised above, they advised that clothing is of a lesser quality than that provided to full-time firefighters and allows far more carcinogenic material to make contact and remain in contact with volunteer firefighters' skin.[263]

In addition, they noted that decontamination procedures are also significantly inferior as volunteers must launder their own equipment.[264]

This issue was also highlighted at the Committee's public hearing where the Committee was provided with the following example of attending a fire for a volunteer firefighter:

> *Yesterday I attended a fire. I got home smelling like a bushfire. I showered. I still smelled like a bushfire. I had another shower this morning. I can still smell the smoke in my skin and in my hair. My nose is clogged and I will be blowing out black particles for the next two to three days. My throat is thick and it is a little bit hard to swallow. Yesterday was a low-intensity fire. I have been to far, far worse. When we get back to the station after a fire we replenish our trucks for the next callout, debrief and go home to our families. I throw my yellows in the washing machine—I am not sure that everyone does this—and try to get the smell out of my skin and my hair. I throw my mask in the bin. My helmet goes back in my turnout bag and I restock it with a clean uniform. This thing goes into the back seat of my ute ready for my next callout. I know it is there: I can smell it. I do not even have to look. Why? Because my callout bag sits on the back of the truck when we are attending a fire. We do not have decontamination areas, washing units for PPE or deemed contaminated zones at our station, nor have I seen these at any other rural station I have attended. I have been to fires where multiple agencies have been in attendance—me with my P2 mask standing in the smoke next to my urban colleagues in their breathing apparatus.*[265]

[261] Correspondence from Queensland Treasury to FAC dated 19 August 2015: 45
[262] Thuringowa Rural Fire Group, Submission No. 1: 3
[263] Logan Village Rural Fire Brigade, Submission No. 49: 5-6
[264] Logan Village Rural Fire Brigade, Submission No. 49: 6
[265] Ms Thompson, Public hearing transcript 17 August 2015: 2-3

The QLS indicated in their submission that they consider that volunteers are often at a higher risk at a fire due to the fact that they rarely have the same quality or quantity of equipment as career firefighters and regularly attend bushfires which are of a significant duration. They also noted volunteers are also responsible for their own laundry, and can spend many days in the same protective clothing. They advised that career firefighter professionals change daily and have access to washing machines specifically designed to clean protective clothing.[266]

The QFES explained to the Committee the types of respiratory protection provided to firefighters. They advised:

> *There are two types of respiratory protection going away from what we call the breathing apparatus itself which is a self-contained breathing apparatus mainly used for internal firefighting et cetera. Presently volunteer firefighters are issued with what we call a P2 smoke mask, which is suitable for vegetation type fires. That P2 mask meets an Australian-New Zealand standard which blocks particles that are generated either mechanically or thermally. It blocks particles from burning vegetation. It blocks particles from welding fumes or grinding or anything like that. The P2 mask is a carbon filter type mask which fits around the face and is held on by straps. The P3 mask is a different type of mask altogether.*
>
> *The next level of respiratory protection is the P3 mask. It is a rubberised full face mask which covers the entire face and it has canister filters fitted to it that they breathe through. It is another step up from the P2 because it stops smaller particles and, using the right type of filter, it will also stop some sorts of fumes. That is issued to the permanent and auxiliary staff because of the types of incidents that they attend. To give you an example: firefighters would use a breathing apparatus to extinguish internally a structure fire, say a house fire. Once that is done and it has been put out, the firefighters may then don the P3 style mask to do damping down, because there are still certain fumes and particles that come off that burnt material.*[267]

QFES advised that in regard to vegetation type fires, which are the majority of fires that volunteers attend to, there has to be a trade-off between what is respiratory protection and what is high level respiratory protection which then brings in other issues, and one of those is heat stress. They advised that the P2 style mask meets Australian-New Zealand standard for the type of work that they expect the volunteers to undertake.[268]

The department further advised that face masks provided to rural volunteers, permanent and auxiliary staff have differing requirements to meet the incident types to which each is expected to respond. The equipment provided to volunteer firefighters is considered to provide adequate respiratory protection and is the most suitable choice to avoid heat stress and discomfort. This type of mask also negates the need for all volunteers to be clean shaven.[269]

4.9.3 Proposed new section 36D – Presumption of injury

Proposed new section 36D contains the provisions relating to the diagnosis of a specified disease, who is eligible to be covered and the provisions that allow for rebutting of the presumption.

[266] Queensland Law Society, Submission No. 75: 2
[267] Assistant Commissioner Varley, Public departmental briefing transcript 24 August 2015: 18-19
[268] Assistant Commissioner Varley, Public departmental briefing transcript 24 August 2015: 19
[269] Correspondence from Queensland Treasury to FAC dated 19 August 2015: 6

Proposed new section 36D is as follows:

> **36D Presumption of injury**
>
> (1) This section applies to a person who -
>
> (a) is diagnosed by a doctor for the first time as having a specified disease; and
>
> (b) at any time before the diagnosis, was employed as a firefighter for at least the number of years mentioned in schedule 4A, column 2 opposite the specified disease; and
>
> (c) if the person was a volunteer firefighter for any period of the person's employment mentioned in paragraph (b) - has attended at least 150 exposure incidents.
>
> (2) For the purposes of an entitlement to compensation, the specified disease is taken to be an injury.
>
> (3) However, this section does not apply if it is proved that -
>
> (a) the specified disease did not arise out of, or in the course of, the person's employment as a firefighter; or
>
> (b) the person's employment as a firefighter is not a significant contributing factor to the specified disease.

Issues raised in regard to proposed new section 36D included:

- implementation of deeming provisions in relation to specified diseases included in schedule 4A (refer also section 4.12 of this report);
- the requirement that volunteer firefighters must also show that they have attended 150 exposure incidents before they eligible for the benefit arising from the deeming provisions;
- reasons for the requirement of 150 exposure incidents before eligibility commences;
- comparison with career firefighter requirements;
- the ability of volunteer firefighters to provide evidence of 150 exposure incidents;
- departmental records;
- how evidentiary processes will be managed by the department; and
- the provision of records to facilitate the deeming provisions.

4.9.3.1 Deeming provisions in relation to specified diseases

Career firefighters who have been employed as firefighter for the specified periods contained in schedule 4A, for the specified diseases, are eligible for the presumption to apply. Volunteer firefighters who have been employed as a firefighter for the specified periods contained in schedule 4A, and have attended at least 150 exposure incidents, are eligible for the presumption to apply.

Proposed new section 36D also allows that the deeming provisions do not apply if the specified disease did not arise out of the employment or was not a significant contributing factor to the specified disease (the rebuttal provisions).

The UFUA advised the Committee that 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. They advised that there is a wealth of accepted scientific studies that have demonstrated the increased incidence of specific cancers for career firefighters. However, they consider that there is not the same evidence or studies for volunteer firefighters. They advised that 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. They considered that the requirement of demonstrating exposure to 150 exposure incidents would enable volunteer firefighters who could demonstrate such exposures, access to the presumption. They advised that without this demonstration of exposure it is likely that any claim from a volunteer would be challenged as firefighting does not comprise a substantial portion of their working lives.[270]

The UFUA advised the Committee of their concern that if an evidentiary base is not included, employers or insurers are simply going to rebut it and then the volunteer will have to go into litigation.[271] They advised:

> *In Tasmania the government wanted to make sure that its volunteer firefighters were looked after as well. So they tried to get around that very trap that was there in the first place, and that is the rebuttable part, the protections for the employer and the insurer to remove the litigious nature. It would have been simply a case that for a career firefighter, the claim would have been made out if the latency period had been met. But for a volunteer firefighter, it would have been easy for a lawyer to simply say, 'We rebut that,' because there is no evidence. The Senate of Australia has found no evidence; in fact, it makes reference to that. There is no evidence to support that claim and you are back to where you started, back to show causation and effect.*
>
> *What the Tasmanian government did is it actually put in latency periods or qualification periods as well as contacts, and they base that on the records. We say they got it right because now there is a firm basis if a lawyer comes along and says, 'Look, there's a volunteer firefighter who is claiming compensation. There is no evidence.' However, the fact that they have 150 contacts, the fact that they have actually also got the latency period in place, they would get around that criteria. That is the reason for the whole structure in Tasmania. That was prior to the Monash University report, which came out in December 2014. I will take you to this because it is very important. That is on page 16. Under 4.9 it says—*
>
> *The Monash Australian Firefighters' Health Study 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.*
>
> *That is a lawyer's picnic. If you have a system that is rebuttable a lawyer would simply put that in there every time a volunteer put up a claim.*[272]

[270] United Firefighters Union of Australia, Submission No. 103: 31
[271] Mr Marshall, Public hearing transcript 13 August 2015: 40
[272] Mr Marshall, Public hearing transcript 13 August 2015: 39

The Committee asked QFES whether it had any plans to undertake future research into the medium and long-term medical effects of fires on firefighters. They advised that QFES:

> *…currently has a scientific research section. There are some very high-quality and very experienced scientists involved in that. They are also very much about not only the planning but the operational side of things. They continually do research about exposure of all firefighting particulates not only within Queensland but also very well-known nationally and internationally. So we constantly have a vast range of programs in place to identify not only the research but also the outcomes, better practice and better equipment as a result of that research.*[273]

4.9.3.2 Requirement for attendance at 150 exposure incidents

The Committee received 119 submissions from volunteer rural firefighters and rural fire brigades. It also received submissions for volunteer fire service associations from Queensland, South Australia and Victoria. The majority of these submissions considered that the additional requirement for attendance at least 150 exposure incidents by volunteer firefighters to be discriminatory.

The RFBAQ advised the Committee that the proposed amendments are unworkable and discriminatory and will see an exodus of volunteer firefighters from the brigades that will leave communities across Queensland vulnerable to future fire and weather events. They advised that they consider that the proposed amendments are based on pay status and not upon service delivery or potential exposure. They advised the Committee that they believe that all other types of firefighters are covered after one exposure but that volunteer firefighters are not covered until after 150 exposures.[274]

The RFBAQ advised that they consider that one of the greatest challenges for rural fire brigades is the attraction and retention of volunteers and for the government to propose legislation that infers the value to the state of a volunteer is less than that of a paid firefighter is the surest way to discourage new volunteers and alienate existing volunteers.[275]

In its response to this issue, the department advised:

> *It is important to note that the Bill strengthens the existing entitlements to workers' compensation for firefighters and provides volunteer firefighters entitlement to seek common law damages under the Act.*
>
> *All firefighters, including volunteers, who contract a specified cancer prior to the commencement of the deemed diseases provisions will continue to be eligible to make a workers' compensation application using the existing provisions of the Act. For example, if a firefighter attended a fire where a known carcinogenic material was released into the atmosphere and the person was directly exposed to this material and the person subsequently develops a cancer linked to the carcinogenic material, then this may be evidence that would support an application for compensation.*
>
> *The Bill does not propose to remove any current right or entitlement for volunteer firefighters. Further, the Bill will increase the rights of volunteer firefighters by providing access to common law under the provision of the Act for persons with a deemed disease claim. As the Bill provides for additional beneficial rights for volunteer firefighters, it is considered unlikely that its successful passage would result in persons deciding that they will withdraw their service.*[276]

[273] Deputy Commissioner Roche, Public departmental hearing transcript 24 August 2015: 20
[274] Rural Fire Brigades Association Queensland, Submission No. 016: 1
[275] Rural Fire Brigades Association Queensland, Submission No. 016: 4
[276] Correspondence from Queensland Treasury to FAC dated 19 August 2015: 8

The RFBAQ submission contests that section 36D which requires volunteer firefighter to have 150 exposures is not based on scientific fact but rather the government's willingness to pay and is drawn from the original Tasmanian legislation that was introduced in 2013. They noted that initially the Tasmanian legislation had a requirement of 260 exposures under the schedule, however, these exposure numbers were reduced after the Tasmanian Volunteer fire association successfully lobbied the government for a reduction.[277]

The RFBAQ also noted that the South Australian government had proposed to include 150 exposures in its legislation, however, this has been reduced to one exposure but with the rider that there is a 10 year sunset clause for claims by volunteer firefighters that does not extend to fulltime or part time firefighters.[278]

4.9.3.3 150 exposure incident threshold

The FCFA advised the Committee that whilst the science indicates that occupational cancer results from cumulative exposure and not necessarily cumulative by number of exposure events attended but over a number of years, they have been unable to find any science that supports a threshold of 150 or more exposure events before a specified cancer in a volunteer firefighter will or can develop.[279]

They acknowledged that if the threshold for volunteers is introduced, this does not mean that volunteers have no access to workers' compensation and they can still apply and have claims accepted because the medical and scientific research still supports their claims. They advised that it just makes an already hard time harder and probably encourages them not to apply.[280] They also advised:

> *We can confirm that we have actually heard of people being instructed not to make a claim now because there is no presumptive legislation to support them. What we need to identify to everybody is that claims can be made now, but for somebody who sees this legislation and sees they have been excluded they will not make a claim. They will not make a claim.*[281]

The FCFA also considered that the imposition of a threshold of 150 exposure events for volunteers to be arbitrary and unfair, particularly when volunteer firefighters are not provided with the same quality or quantity of PPE and BA particularly when they often attend bushland fires for long periods of time where BA is not worn at all.[282]

The RFBAQ noted that that the 150 exposure events threshold is based on the Tasmanian legislation. They also noted that support for the inclusion of an exposure limit is based on the premise that there needs to be scientific evidence to support the basis of the presumption and the Monash University study found that there was no increased risk for volunteers. In response to this issue they noted:

> *Out of the seven states and territories in Australia, six of the organisations that employ, in terms of workers compensation, volunteer firefighters were not even part of the study. The Western Australian Bush Fire Service, the ACT Rural Fire Service, the Northern Territory bushfire service, all of South Australia and all of Tasmania were not involved in the Monash study. So it is very interesting that the government is using the Tasmanian model—a state that was not even involved in the Monash study itself.*

[277] Rural Fire Brigades Association Queensland, Submission No. 16: 2
[278] Rural Fire Brigades Association Queensland, Submission No. 16: 3
[279] Firefighter Cancer Foundation Australia, Submission No. 134: 5
[280] Firefighter Cancer Foundation Australia, Submission No. 134: 6
[281] Mr Bunney, Public hearing transcript 13 August 2015: 47
[282] Firefighter Cancer Foundation Australia, Submission No. 134: 11

> *I can also advise the committee that the Queensland figures for volunteer firefighters were actually removed from the Monash study. The Monash study began in 2011 and, as the study notes, Queensland's dataase in terms of accuracy for volunteers was not considered to be robust enough until 2011, when the study was done, so the figures were actually removed. So there is a significant body of volunteers, particularly here in Queensland—and, after all, we are talking about Queensland legislation—that were not even included in the study.*
>
> *The reality is the Monash study does mention on a number of occasions that its figures in terms of volunteering from the agencies were dubious and inaccurate. It recognised that and made a very specific reference that a separate study for volunteer firefighters should be undertaken.*[283]

The Committee asked the department to clarify how the 150 threshold was determined to provide deemed diseases coverage for rural firefighters. The department explained:

> *Presumptive legislation generally provides a special level of coverage. In this instance it provides a special level of coverage for firefighters in recognition of the difficulties that we have faced in seeking compensation for certain work related injuries. As part of the process of developing the policy, we had discussions with Queensland Fire and Emergency Services that looked at the roles, responsibilities and expectations of volunteer firefighters and how they are distinct from auxiliary and full-time firefighters in the sense that they do not engage in sustained active firefighting as regularly.*[284]

The department used findings from the Monash studies report, Australian firefighters' health study which 'indicated that volunteer firefighters have significantly fewer recorded attendances than full-time and part-time firefighters'.[285] The department stated:

> *On the basis of this, the additional requirement for 150 exposure events was introduced. This was based upon similar requirements in Tasmania and the Northern Territory, so we sought to rely on those requirements nationally.*[286]

4.9.3.4 Comparison with career firefighter requirements

Many of the submissions received from rural fire brigades submitted that all firefighters other than volunteers need only attend one exposure incident to be eligible for the deem diseases provision.

The government responded that:

> *It will not be possible for a permanent or auxiliary firefighter to attend a single exposure incident and remain eligible for the deeming provisions. Section 36D makes it clear that there is a minimum number of years a person has to be an active firefighter to be eligible. That is they can only include years where the firefighter has been required to attend exposure incidents (see section 36E). For example, prostate cancer requires 15 years minimum active service and it is inconceivable that a permanent firefighter could be in an active operational role for 15 years and only attend a single exposure incident.*[287]

[283] Mr Gillespie, Public hearing Transcript 13 August 2015: 38
[284] Ms Hillhouse, Queensland Treasury, Public departmental briefing transcript 6 August 2015: 4
[285] Ms Hillhouse, Queensland Treasury, Public departmental briefing transcript 6 August 2015: 4
[286] Ms Hillhouse, Queensland Treasury, Public departmental briefing transcript 6 August 2015: 4
[287] Correspondence from Queensland Treasury to FAC dated 19 August 2015: 5

QFES also advised the Committee that career firefighters are exposed to fire incidents from the beginning of their training. They advised:

> *…when they are employed by Queensland Fire and Emergency Services and attend the academy for their training, their training alone is around 655 hours or 78 days. That incorporates classroom and theory but also significant exposure to live fire, compartment firefighter training, bushfire/grassfire training and hazardous material management. They also then progress through a series of assessments and also time served as operational firefighters through their career.*[288]

The Committee sought clarification on how the rebuttal provisions would be managed in practice. The department advised that the rebuttal will be applied by the insurer, where in the usual course of investigating and determining an application for compensation, evidence is obtained which conflicts with the presumption that the person has sustained an injury. They advised that in practice, the rebuttal provisions will be relevant where the employer disputes the conclusion that the specified disease is causally related to the person's employment as a firefighter and the employer will bear the onus of proving that the person should not be entitled to compensation, for example by submitting conflicting evidence to the insurer of another significant cause of the specified disease.[289]

4.9.3.5 Evidence of 150 exposures

Concerns about the availability of records of attendance at exposure incidents were raised by many submitters.

The FCFA advised that the prerequisite to produce evidence of 150 exposure events is unachievable as historically record keeping has been varied across the regions and through the decades. They advised of their belief that currently there is no ability for volunteer firefighters to officially identify an attendance at a fire event. They confirmed that the firefighters they have assisted to date with workers' compensation claims have had to conduct Right to Information searches to access fire events attended and these searches have revealed an inconsistent and incomplete record-keeping system by the department.[290]

The QLS advised:

> *Holding volunteers to a threshold of 150 exposure incidents may exclude many volunteers due to the paucity of records kept and the lack of a uniform system of recordkeeping. Feedback from the Society's members reveals that record-keeping can vary from region to region, and in some cases is in the personal notebooks of rural supervisors or does not exist at all. It is unlikely that many volunteers would be able to discharge an evidentiary burden of 150 exposure incidents, regardless of their length of service.*[291]

Witnesses at the Committee's public hearing confirmed that record keeping varies significantly between rural fire brigades. They advised that forms are not always filled out due to time and other constraints. However, they did advise that some improvements have been made as they can now provide incident notifications verbally to Fire Communications Centres (Firecom). However, they advised that it would be impractical to advise individual volunteer names via this avenue.[292] Witnesses also indicated that they do not keep personal records of this type of information and brigade records are not always retained so it would difficult for them to prove exposure limits.[293]

[288] Deputy Commissioner Roche, Public departmental hearing transcript 24 August 2015: 5
[289] Correspondence from Queensland Treasury to FAC dated 14 August 2015: 12
[290] Firefighter Cancer Foundation Australia ,Submission No. 134: 10
[291] Queensland Law Society, Submission No 75: 2
[292] Mr Gillespie, Public hearing transcript 17 August 2015: 3
[293] Ms Thompson, Public hearing transcript 17 August 2015: 5

One submitter advised the Committee that:

> *The lack of an effective recording system within QFES concerning volunteers and fire wardens to prove any minimum number of exposure incidents have been attended by a potential claimant is a significant evidentiary impediment. This is both a historical issue, where recording by QFES (then QFRS) was scant/non-existent, and a prospective matter under the current arrangements. Hence, whether the number is 1, 10, 50, 100 or 150 exposure incidents is largely irrelevant as most volunteers and fire wardens will not be able to show or prove how many incidents of the required type they have attended. This is an obvious impediment for any volunteer seeking to rely upon the presumption as it will not, in most cases, be able to be proven.*[294]

In regard to Fire Wardens, the submitter advised that there is no formal recording system in place to identify when they are at the scene of an exposure incident, and most of their activities go unrecorded.[295]

The submitter also noted that in many cases where a spot fire ignites new bush each turnout will have a separate incident number and each will be recorded as a separate fire event leaving the volunteer to debug the data to prove their claim. They considered the provisions fails to align to the way bushfire events occur, are recorded by QFES and the operational requirements of a volunteer's role.[296]

The department advised the Committee that:

> *The Rural Fire Brigades Manual Business Rule relating reporting of incidents is being changed to reflect the requirement of Rural Fire Brigades to submit the previously optional form naming individual volunteers who attend an incident. This information is entered into the Operations Management System (OMS) by Area Offices.*
>
> *A project involving the redesigning of the QFES Portal includes investigating allowing volunteers access to certain information is current. The recording through Fire Communications Centres of individual volunteers attending incidents is to be discussed with the Executive Manager State Fire Communications Branch.*[297]

The QFES acknowledged that their record keeping for volunteers is not strong but there has been some improvements in the past two years. The QFES stated:

> *Our records of attendance at incidents by brigades have increased from less than 50 per cent accurate to over 99 per cent accurate. However, that does not also equate to a record of individuals attending incidents. That is just the brigades attending. Some brigades have kept very good records – keeping in mind that they are volunteers and bureaucracy is not something they are keen on – but some have been less than strong in keeping records.*[298]

[294] Mr T Marks, Submission No. 41: 2-3
[295] Mr T Marks, Submission No. 41: 3
[296] Mr T Marks, Submission No. 41: 3
[297] Correspondence from Queensland Treasury to FAC dated 19 August 2015: 28
[298] Assistant Commissioner Gallant, Queensland Fire and Emergency Services, Public departmental briefing transcript 6 August 2015: 6

In regard to record keeping, QFES advised:

> *As far as record keeping for personal attendance by volunteer firefighters is concerned, that is not something that we have done in the past. It has been changed recently. What happens is that rural fire brigades will report on incidents they attend, but they do not report the individuals who actually went there. They have the ability to do that through our processes, but it has not been mandatory. The reason that has been in place is because volunteers themselves do not like too much paperwork. It is not something that we can keep up.*
>
> *There are a number of rural fire stations throughout the state that maintain their own records but, going back to what Paul*[299] *said, if we wanted to investigate that we could have a look at the particular brigade the firefighter belongs to and see how many attendances they have had overall. We would then interview the officers of that brigade and the area staff who support that brigade to identify whether that firefighter is likely to have gone to a majority of those calls or has never attended them at all. We could make a reasonable assumption based on that of the amount of exposure that person has had.*[300]

4.9.3.6 Management of evidence of exposures by employer

In order to compensate for the lack of reliable data on exposure events, the department proposes to establish a small group to consider claims. They advised:

> *We believe that the best way to look at this is to have a small group consider these claims. Because not all fire stations keep good records—and I will get the deputy commissioner to talk about that—we thought that if there was a small working group, possibly made up of WorkCover, the Office of Industrial Relations and chaired by Queensland Fire and Emergency Services, with representation from some stakeholders group, they could go away in each of these cases and look at them and build a pattern of likely exposure. That group would then make a recommendation to WorkCover as to whether they thought the person met the test. We thought that was probably the best way to take this forward when we really have another 10 years before you are going to have detailed records.*[301]

They advised that this group will need to look beneficially and examine other anecdotal or local evidence of the types of activities that a particular individual might have undertaken.[302]

The department further explained that it is their intention that this group will review some of these where there is any doubt such as whether firefighter has been involved in exposure events and a decision would then be made on whether to seek to rebut it.[303]

[299] This reference refers to Mr Paul Goldsbrough from Queensland Treasury
[300] Assistant Commissioner Varley, Queensland Treasury, Public departmental briefing transcript 24 August 2015: 9-10
[301] Mr Goldsbrough, Queensland Treasury, Public departmental briefing transcript 6 August 2015: 6
[302] Assistant Commissioner Gallant, Queensland Fire and Emergency Services, Public departmental briefing transcript 6 August 2015: 9
[303] Mr Goldsbrough, Queensland Treasury, Public departmental briefing Transcript 24 August 2015: 9

They explained that:

> *The rebuttal process will be applied by the insurer, and that will usually be done based upon evidence provided to the insurer by the employer. As part of the claims management process the insurer will ask the employer to provide any information relevant to the claim. It will be for the employer to provide information if they were looking at a rebuttal. If they had concerns in relation to the number of exposure events or whether the period that the firefighter had provided where potentially the firefighter was not involved in active service that would be the time that the employer would do that. With the additional process of the consultative group that will look at it, … the insurer will make a determination based upon the additional evidence provided by the employer as well as the advice provided by that group as to what may be reasonable in that circumstance.*[304]

The Committee queried whether it would be an option for this group to consider a firefighter who did not have 150 exposures. The department advised that it could be used either way irrespective of whether the 150 exposure events were included in the legislation. They considered this option because the record keeping is currently not complete.[305]

4.9.3.7 Records to facilitate the deeming provisions

The UFUA also highlighted that the Bill does not include any requirements for the employer to provide the necessary information to WorkCover Queensland so that the presumption can be applied. They suggested that the Bill be amended to include provisions requiring the following information be provided to WorkCover by any current or previous employers:

- confirmation that the claimant was/is employed as a firefighter;
- the period or periods of employment as a firefighter;
- confirmation that the claimant was/is a volunteer firefighter;
- the period or periods of service as a volunteer firefighter;
- the number of attendance at exposure incidents[306]

4.9.4 Proposed new section 36E – Deciding number of years

Proposed new section 36E is as follows:

36E Deciding number of years

(1) This section applies for deciding the number of years of the person's employment as a firefighter for section 36D(1)(b).

(2) The number of years may only include periods during which the person is required, as part of the person's employment as a firefighter, to attend exposure incidents.

(3) However, the number of years may be made up by taking into account -

(a) more than 1 period of employment; or

(b) periods of employment as more than 1 type of firefighter.

Example 1 -

A person is a member of a rural fire brigade for 5 years and attends over 150 exposure incidents during that time. The person subsequently works in an administrative role for the brigade for 5 years. The person is later employed as a fire officer and attends exposure incidents for another 10 years. For section 36D(1)(b), the person is employed as a firefighter for 15 years.

[304] Ms Hillhouse, Queensland Treasury, Public departmental briefing transcript 24 August 2015: 9
[305] Mr Goldsbrough, Queensland Treasury, Public departmental briefing transcript 24 August 2015: 9
[306] United Firefighters Union of Australia, Submission No. 103: 37

Example 2 -

A person is a fire officer who attends exposure incidents for 10 years. The person subsequently works in administrative and management roles for another 20 years. For section 36D(1)(b), the person is employed as a firefighter for 10 years.

The Committee queried how the legislation deals with firefighters, either volunteer or career, who have done part of their time interstate before they have come to Queensland. The department confirmed that service in another jurisdiction would be acceptable within the way that the legislation is drafted.[307]

The Committee also queried whether retrospectivity is applicable to the exposure incidents, for example in the case of a volunteer firefighter who may have been volunteering for 10 years and if they can demonstrate their 150 incidents over those 10 years. The department explained that workers' compensation legislation is beneficial legislation. The department stated:

> *Workers' compensation legislation is beneficial legislation. You have to look at things fairly. The government used the date of diagnosis as the date that this would apply from quite deliberately. What it means is that if the bill were passed today and someone fronts up tomorrow with one of the 12 specified cancers then they would have an entitlement, subject to meeting the other criteria - whether it is 10, 15 or 25 years and then they are a volunteer with 150 exposure events.*[308]

4.9.5 Proposed new section 36F – Deciding number of exposure incidents

Proposed new section 36F is as follows:

36F Deciding number of exposure incidents attended

(1) This section applies for deciding the number of exposure incidents attended by a volunteer firefighter for section 36D(1)(c).

(2) The firefighter is taken to attend only 1 exposure incident on a single day if -

(a) the firefighter attends more than 1 exposure incident on the day; and

(b) the fire at the first exposure incident was started by a particular thing happening (the igniting event); and

(c) each later exposure incident on the day is connected to, or happened as a result of, the igniting event.

Example of circumstances in which a firefighter attends only 1 exposure incident -

A firefighter attends a fire that starts in 1 location in bushland. Before the fire can be controlled, the fire spreads to 2 other locations in the bushland. The firefighter attends the 3 locations during the day. For section 36D(1)(c), the firefighter has attended 1 exposure incident on the day.

Example of circumstances in which a firefighter attends more than 1 exposure incident -

A firefighter attends a fire that starts in 1 location in bushland. The firefighter subsequently goes to an unrelated house fire at a different location on the same day. For section 36D(1)(c), the firefighter has attended 2 exposure incidents on the day.

Evidence provided to the Committee raised a number of issues in regard to the proposed provision including:

- the requirement that exposures from a single igniting event are only counted as one exposure; and
- the definition of a exposure event.

[307] Mr Goldsbrough, Queensland Treasury, Public departmental briefing transcript 24 August 2015: 16

[308] Mr Goldsbrough, Queensland Treasury, Public departmental briefing Transcript 6 August 2015: 6

Many of the submissions received by the Committee were critical of how an exposure incident is to be calculated.

One submitter noted that proposed new section 36F introduces a concept of when an exposure is considered to be one event and advised:

> *While this may make sense for attendance at an urban fire event which is usually quickly contained, short in duration and extinguished in a single turnout, however, in a rural context, this is illogical. It is common for a vegetation fire to be extinguished, yet the fire will reignite due to worsening fire weather on the day or a spot fire igniting new bush, thereby resulting in a further turnout of volunteers to the same general location at a later point on the same day. As currently drafted, the subsequent turnout will not be counted, even though it is essentially a different fire event.*[309]

The Committee presented the hypothetical case of a rural brigade attending to a grass fire which spreads to an old shed with old drums of chemicals such as endosulfan or DDT. In this scenario, as this incident would expose the firefighters to a very serious incident, the Committee queried why those firefighters would not be eligible for immediate coverage. The department acknowledged the complexities but highlighted that the Monash study did not find an increased incidence of cancer amongst Australian volunteer firefighters compared to the general population.[310]

At its public hearing, the Committee heard of the practicalities involved in the definition of an exposure incident contained in the Bill. The Committee was provided with an example where a rural firefighter went to five call outs in one day covering 22 hours, however, under the legislation it would be considered to be one exposure incident.[311] This issue was also discussed with the department who confirmed that if a firefighter had a number of breaks in a single day on a fire it would be counted as one exposure. However, if they attended the same fire on two separate days it would be considered as two exposures.[312]

The department advised the Committee that the provisions draw a clear distinction between incidents which happen in separate locations as a result of entirely separate circumstances and, are unrelated to each other and those which are substantially connected events or a continuation of the one event which started from the same point of ignition. They advised:

> *This provision reflects recordkeeping practices of Queensland Fire and Emergency Services, which treat a number of related incidents occurring on the same day as a continuation of one incident. Without this provision it will be difficult for QFES to determine what incidents it will need to record to support the deemed diseases provisions, and the lack of detail on this matter would significantly increase disputation when determining a claim for a deemed disease.*[313]

QFES confirmed that the definition of an exposure incident will include hazard reduction burns and training burns.[314]

[309] Mr T Marks, Submission No. 41: 3
[310] Mr Goldsbrough, Queensland Treasury, Public departmental briefing transcript 6 August 2015: 6
[311] Ms Thompson, Public hearing transcript 17 August 2015: 6
[312] Mr Goldsbrough, Queensland Treasury, Public departmental briefing transcript 24 August 2015: 12-13
[313] Correspondence from Queensland Treasury to FAC dated 19 August 2015: 7-8
[314] Assistant Commissioner Gallant, Queensland Fire and Emergency Services, Public departmental briefing transcript 6 August 2015: 9

4.10 Clause 19 – Insertion of new section 236A

The Explanatory Notes state that clause 19 inserts a new section 236A to clarify that specified volunteer firefighters covered by a contract of insurance under section 12 of the Act are entitled to seek damages for a specified disease under Chapter 5.[315] Proposed new section 236A is as follows:

> **236A Application of ch 5 to specified volunteer firefighter**
>
> (1) This chapter applies to a specified volunteer firefighter who -
>
> (a) is covered by a contract entered into with WorkCover for chapter 1, part 4, division 3, subdivision 1; and
>
> (b) sustains an injury that is a specified disease; and
>
> (c) is entitled to seek damages.
>
> (2) For applying this chapter to the specified volunteer firefighter -
>
> (a) the firefighter is taken to be a worker; and
>
> (b) the activity covered by the contract mentioned in subsection (1)(a) is taken to be the firefighter's employment; and
>
> (c) the party with whom WorkCover entered the contract is taken to be the firefighter's employer; and
>
> (d) an amount paid to the firefighter under the contract as compensation is taken to be compensation paid to the firefighter under chapter 3; and
>
> (e) a document given, or a thing done, under the contract in relation to the payment of compensation to the firefighter is, to the extent chapter 3 provides for an equivalent document or thing, taken to have been given or done under chapter 3.
>
> *Examples for subsection (2)(e) -*
>
> • a notice of assessment given to the firefighter
>
> • an election made by the firefighter to seek damages
>
> • the acceptance by the firefighter of an offer of lump sum compensation
>
> • an assessment of the injury to decide if the injury has resulted in a DPI (c) the application has not been accepted.

The Committee sought clarification regarding the cost implications of the presumptive firefighter provisions. The department advised that their actuary had provided some modelling using health demographic data and the age profile of volunteer firefighters which indicates a cost of approximately $14 million. However, the caveats the actuary has put on the costings is that they could be 50 per cent out either way. They advised that limited data is available and the expectation that there was going to be a significant proportion of claims in other jurisdictions when the deeming laws came in has not been realised.[316]

The Committee sought advice from the department regarding the costs to the scheme if the 150 exposure were excluded from the scheme. Whilst stressing that the modelling is very uncertain and indicative only, they advised that the estimated cost to the scheme with the exposure requirements in place the estimated cost for 2015/16 would be $14.4 million and without the exposure requirements in place the estimated cost for 2015/16 would be $28.8 million.[317]

4.11 Clause 20 – Insertion of new chapter 32, part 3

Clause 20 inserts a new Part 3 in the new Chapter 32 to clarify that the new deemed disease provisions for firefighters (clause 18) do not apply to firefighters who were first diagnosed with a specified disease before the commencement of these provisions. The Explanatory Notes outline that the new Chapter 32 also validates relevant volunteer contracts that may have been entered prior to commencement.[318]

[315] Explanatory Notes, *Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2015*: 6
[316] Mr Goldsbrough, Queensland Treasury, Public departmental briefing transcript 6 August 2015: 5
[317] Correspondence from Queensland Treasury to FAC dated 27 August 2015: 4-6
[318] Explanatory Notes, *Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2015*: 6 - 7

Proposed new part 3 is as follows:

> **Part 3 Amendments commencing on introduction**
>
> **712 Firefighter diagnosed with specified disease before commencement**
>
> Section 36D, as inserted by the amendment Act, does not apply to a person who was diagnosed by a doctor for the first time with a specified disease before the commencement.
>
> **713 particular WorkCover contracts covering volunteers**
>
> (1) This section applies to a contract of insurance entered into with WorkCover for chapter 1, part 4, division 3, subdivision 1 that -
>
> (a) was in force at any time during the transitional period; and
>
> (b) covered a volunteer firefighter.
>
> (2) The contract is taken to have covered the payment of damages to a specified volunteer firefighter who, during the transitional period, sustained an injury that was a specified disease.
>
> (3) In this section -
>
> ***introduction day*** means the day the Bill for the amendment Act was introduced into the Legislative Assembly.
>
> ***transitional period*** means the period starting on the introduction day and ending on the date of assent of the amendment Act.

The UFUA suggested to the Committee that it would be just and reasonable to apply the presumption for Queensland state firefighters from 9 July 2011 as that is the date from which aviation firefighters have had presumptive protection under the Federal legislation.[319]

The FCFA referred the Committee to the Northern Territory legislation which includes a clause which allowed a three month extension for claimants who had been diagnosed before the commencement date. They support a similar clause being included in the Bill.[320] The QLS submission also supported this type of sunset clause.[321]

One submitter advised the Committee that they considered that clause 20 is discriminatory towards those firefighters who have already received a diagnosis that they have one of the specified diseases. They also iterated their concern that any subsequent reoccurrence of a cancer after treatment will not qualify as their first diagnosis predated the legislative changes.[322]

The department advised the Committee that historically, amendments to an Act that impact on a person's entitlements have had effect from the date the person sustains an injury or has been deemed to have sustained an injury. They advised:

> *This scheme feature has been designed to provide clarity for scheme participants in relation to the entitlements under the legislation and to minimise potential changes in behaviour.*[323]

They also noted that all firefighters, including volunteer, who contract a specified cancer prior to the commencement of the deemed diseases provisions will continue to be eligible to make a workers' compensation application using the existing provisions of the Act.[324]

[319] United Firefighters Union of Australia, Submission No. 103: 36
[320] Firefighter Cancer Foundation Australia, Submission 134: 11
[321] Queensland Law Society, Submission No. 75: 2
[322] Mr T Marks, Submission No. 41: 4
[323] Correspondence from Queensland Treasury to FAC dated 19 August 2015: 8
[324] Correspondence from Queensland Treasury to FAC dated 19 August 2015: 9

4.12 Clause 21 – Insertion of new schedule 4A

The Explanatory Notes outline that a new schedule 4A is inserted under clause 21. The proposed new schedule 4A lists the twelve specified diseases to which the deemed disease provisions made under clause 18 apply and the minimum number of years that an active firefighter is required to be employed for the presumption in the new s36 D (clause 18) to apply.[325] The proposed new schedule 4A of the twelve specified diseases are as follows:

Schedule 4A Specified diseases

Sections 36B and 36D

Column 1	Column 2
Disease	**Minimum number of years**
primary site brain cancer	5 years
primary site bladder cancer	15 years
primary site kidney cancer	15 years
primary non-Hodgkins lymphoma	15 years
primary leukaemia	5 years
primary site breast cancer	10 years
primary site testicular cancer	10 years
multiple myeloma	15 years
primary site prostate cancer	15 years
primary site ureter cancer	15 years
primary site colorectal cancer	15 years
primary site oesophageal cancer	25 years

The proposed schedule is consistent with the schedules in other Australian jurisdictions who have presumptive legislation covering firefighter cancer. It should be noted, however, that the Commonwealth legislation includes an additional category covering 'A cancer of a kind prescribed for this table' in order to provide for additional cancers to be added in the future.

The UFUA submission identifies that the 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. However, the Bill does not replicate the Federal Bill in that it omits to provide for the adding of additional cancers as the science develops. They noted that the Senate Committee report clearly indicated the need to amend as the science and research develops and other cancers are demonstrated to be occupational cancers for firefighters.[326]

The FCFA submission also identifies that there is a need for the legislation to facilitate the inclusion of other cancers over time, so that the legislation keeps up with research over time.[327]

4.13 Clause 22 – Amendment of schedule 6 (Dictionary)

Clause 22 inserts into the dictionary in schedule 6 new definitions required as a result of the deemed disease provisions inserted by clause 18.[328]

[325] Explanatory Notes, *Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2015*: 7
[326] United Firefighters Union of Australia, Submission No. x: 34
[327] Firefighter Cancer Foundation Australia, Submission No. 134: 7
[328] Explanatory Notes, *Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2015*: 7

4.14 Committee comments

The Committee recognises the significance and importance of presumptive legislation and wishes to ensure that the legislation that is passed provides for the needs of all firefighters, including full time, auxiliary and volunteers. They considered that firefighters risk their lives during their careers protecting the public and their property and when faced with a life threatening illness which is caused by their employment there is a moral obligation to reduce the stress and hardship this diagnosis of this type will have on that employee. They also agreed that presumptive legislation is not about creating a class of liability for WorkCover, but is about reducing the time and energy that is required for a firefighter to pursue a legitimate claim.

The Committee feels that the aim of presumptive legislation is to avoid placing volunteer firefighters diagnosed with cancer into a lengthy and stressful court challenge and that in order to achieve this goal, a process must exist that avoids unnecessary time and stress.

Whilst the department has provided some costings on both the inclusion and exclusion of the 150 exposure limit, the Committee acknowledged that it is difficult to calculate the cost of potential claims, particularly given the long tail nature of these liabilities.

The Committee was also in agreement that the schedule of diseases and timeframes included in proposed new schedule 4A to be appropriate. However, the Committee also noted the view of the Senate Committee that it would prefer to see legislation enacted in step with the most advanced jurisprudence available. The federal legislation includes an item in the schedule of diseases that covers 'A cancer of a kind prescribed for this table' for 'The period prescribed for such a cancer'. The Committee considers that the legislation should provide for scope for additional diseases to be added should future scientific evidence indicate causal linkages.

Recommendation 1

The Committee recommends that amendments be made to allow for the inclusion of additional diseases that may be identified in the future.

The Committee was unable to identify any scientific basis for the inclusion of 150 exposure incidents as being the appropriate measure for exposure by volunteer rural firefighters.

They noted that the number of 150 exposure incidents was the result of negotiation on the requirements to be included in the Tasmanian legislation, with other jurisdictions subsequently following their lead. They also noted that the Tasmanian legislation was enacted prior to the completion of the Monash study.

The Committee believes that to provide volunteer firefighters with a minimum of exposures calculated by any number alone, is not suitable given the evidence presented. However they recognise that a robust process to ensure that exposure has actually occurred, and is relevant to the potential claim, is necessary.

The evidence presented does not satisfy Members that individual firefighters, brigades or QFES can accurately provide records of individual attendances at incidents and the type of incident to which they have been exposed.

Nor do Members agree that there is yet a definition of an exposure which can appropriately capture the range of incidents to which volunteer firefighters may be exposed.

The Committee recommends that the requirement for a 150 exposure incidents for volunteer rural firefighters be omitted from the Bill.

Recommendation 2

The Committee recommends that the requirement for rural volunteer firefighters to have attended 150 exposure incidents be omitted from the legislation.

The Committee was concerned that any proposed amendments ensure that volunteer rural firefighters are not vulnerable to rebuttal on the basis of the unavailability of sufficient scientific evidence and that therefore there needs to be a robust system in place to ensure that those who should be covered are covered. Members are concerned that the legislation does not lead volunteers to consider the legislation to be their insurance against contracting cancer. There still needs to be a demonstrated link to exposure to the hazards from firefighting.

The Committee believes that a holistic approach should be undertaken, which allows for a prompt and thorough review of an individual volunteers exposure history given any evidence available, whether it be verbal or written and through brigade members, community members and any records that indicate the firefighters exposure history.

The Committee believes that an independent committee should be established, comprising representatives from the rural fire brigades association, WorkCover and the medical profession, to consider exposures and assist in determining whether rebuttal of claims are warranted.

The Committee considers this process needs to be rigorous in order to prevent rebuttal of claims and ensure that volunteer rural firefighters are actually covered. They also consider that this committee should provide support and assistance in gathering appropriate evidence to firefighters. They consider that this process will safeguard against misuse and ensure that those who do not have legitimate claims are excluded.

Recommendation 3

The Committee recommends that the legislation be amended to include the appointment of an independent committee or panel to be established to consider exposures and assist in determining whether rebuttal of claims are warranted.

The Committee of the view that rather than rural volunteer firefighters not being exposed to toxins and carcinogens whilst fighting rural fires, there simply is a lack of adequate scientific examination of this issue. The Committee noted that the Monash study relied on its stakeholders to provide information about its firefighters. The Committee considered that QFES would have been unable to provide the required information to the study about volunteer rural firefighter exposures and therefore the outcomes from this study may be deficient due to a lack of available data.

The Committee acknowledged the difficulty of establishing the relationship between a disease and an occupation, particularly when these diseases are prevalent in the general population and other activities, such as smoking, may contribute to the contracting of the disease. The Committee is concerned that insufficient information is available on the potential dangers faced by volunteer rural firefighters which can potentially lead to cancer diagnosis. The Committee also noted that the PCOSRC also included comment on the need for ongoing research in the area of volunteer exposures.

The Committee considers that further scientific study of volunteer rural firefighter's exposure to toxins and carcinogens is imperative, and should be sought by the department wherever appropriate and reflected in workers compensation arrangements.

Recommendation 4

The Committee recommends that the department seek and incorporate additional scientific studies of exposures by firefighters, including volunteer rural firefighters.

Of major concern to the Committee are the poor QFES records around the number and type of incidents to which rural fire brigades are exposed. The Committee notes that this issue was identified both by the former Public Accounts and Public Works Committee in its inquiry on rural firefighters and by the Malone Review. Although the Department reports some improvement, it is clear that much work still needs to be undertaken in order to respond to those earlier and the current reviews. The Committee considers that poor record-keeping is a significant issue mitigating against the success of rebuttable presumptive legislation for volunteer firefighters. For this reason, the Committee considers that record-keeping by both the department and brigades must substantially improve.

The Committee acknowledges that the rural fire brigade volunteers make a significant contribution to their communities in the work that they undertake. Whilst the Committee understands the extra impost it places on volunteers it considers that it is essential that appropriate records are provided to the department. The Committee wishes to stress the importance of providing these records as it will make future claims by volunteer firefighters easier to accept where there is appropriate evidence of exposure to fire hazards. However, this record keeping needs to be facilitated by QFES in a way that is simply managed by firefighters.

Recommendation 5

The Committee recommends that as a matter of priority, Queensland Fire and Emergency Services, implement a system of record keeping for firefighters, including volunteer rural firefighters, that tracks individual firefighter's exposure to incidents.

The Committee considers that there is significant ambiguity around the definition with regard to the length, frequency and nature of an exposure, and that, in light of this, the definition should be reconsidered.

Recommendation 6

Should the Minister not agree with the Committee recommendations numbers 2 and 3, the Committee recommends that the Minister reconsider the definition of an exposure included in proposed new section 36F.

5 Examination of the *Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2015 – amendments to other Acts*

5.1 Amendment of Electrical Safety Act 2002

The following list details the amendments by clause:

- Clause 36 states that Part 3 Division 1 of the Bill amends the *Electrical Safety Act 2002*.
- Clause 37 amends section 122 of the *Electrical Safety Act 2002* to clarify the existing functions of the Regulator.[329]

5.2 Amendment of Work Health and Safety Act 2011

The following list details the amendments by clause:

- Clause 38 states that Part 3 Division 2 of the Bill amends the *Work Health and Safety Act 2011; and*
- Clause 39 amends section 152 of the *Work Health and Safety Act 2011* to clarify the existing functions of the Regulator.[330]

5.3 Committee comments

The Committee sought an explanation for the reasons for the amendments contained in clauses 36, 37, 38 and 39 are considered necessary. The department advised that the amendments align the arrangements for naming the relevant party to court proceedings in relation to the functions of all the Regulators established under the workers' compensation, work health and safety and electrical safety legislation. Currently, the same public service officer is appointed to the offices of Regulator under this legislation. The amendments will ensure that the same procedural requirements will apply for all proceedings conducted across the Office of Industrial Relations, in Queensland Treasury.[331]

The Committee is satisfied that the proposed amendments to the *Electrical Safety Act 2002* and the *Work Health and Safety Act 2011* are of a minor and administrative nature.

6 Compliance with *Legislative Standards Act 1992* – Fundamental Legislative Principles

Section 4 of the *Legislative Standards Act 1992* states that fundamental legislative principles (FLPs) are the 'principles relating to legislation that underlie a parliamentary democracy based on the rule of law'. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals, and
- the institution of parliament.

The Committee examined the Bill's consistency with FLPs. This section of the report discusses potential breaches of the FLPs identified during the Committee's examination of the Bill and includes any reasons or justifications contained in the Explanatory Notes and provided by the department.

[329] Explanatory Notes, *Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2015*: 8
[330] Explanatory Notes, *Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2015*: 8
[331] Explanatory Notes, *Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2015*: 8

This report makes reference to the former Scrutiny of Legislation Committee (SLC). By way of background, two reviews conducted by the Electoral and Administrative Review Commission (EARC) in 1991 and 1992 recommended Queensland replace its then Committee of Subordinate Legislation with a Scrutiny of Legislation Committee with an expanded remit to allow it to review both primary legislation (Bills) and subordinate legislation (regulations and statutory instruments).

The *Legislative Standards Act 1992* saw FLPs enshrined into law and the Committee of Subordinate Legislation then began scrutinising subordinate legislation to ensure there had been sufficient regard given to the newly enacted FLPs.

The *Parliamentary Committees Act 1995* established a new SLC to 'examine all Bills and subordinate legislation to consider the application of FLPs to particular Bills and subordinate legislation, and the lawfulness of particular subordinate legislation'.

A review of Queensland's Parliamentary committee system in 2010 led to the abolition of the dedicated SLC if favour of the current system of portfolio-based committees that have operated since mid-2011. Pursuant to section 93 of the *Parliament of Queensland Act 2001* it is now the role of each portfolio committee to consider any FLP issues contained in Bills and subordinate legislation within its portfolio area. The Committees are assisted in this work by a dedicated secretariat which performs a very similar role to the former SLC by examining Bills and subordinate legislation for FLP compliance.

The considerable body of work generated by the former SLC and its predecessor Committee regarding FLP issues remains a valuable source of information for the current portfolio committees when considering Bills and sub-ordinate legislation. Similarly, the Office of Parliamentary Counsel (OQPC) frequently references the findings of the former SLC in its work *Fundamental Legislative Principles: The OQPC Notebook*, a very detailed and evolving examination of FLP issues.

6.1 Rights and liberties – Section 4(2)(a) *Legislative Standards Act 1992* – Does the Bill have sufficient regard to the rights and liberties of individuals?

Clause 18 inserts new Chapter 1, Part 4, Division 6, subdivision 3B into the *Workers' Compensation and Rehabilitation Act 2003* to provide new deemed disease provisions for firefighters who develop specified diseases. Under the new provisions if a current or former firefighter is diagnosed with one of twelve specified latent onset diseases and has been engaged in active firefighting duties for a specified number of years, then their specified disease is taken to be a work-related injury.

New subdivision 3B specifies additional exposure requirements for volunteer firefighters and clarifies that the deemed disease provisions do not apply if it can be proved that the firefighter's specified disease did not arise out of, or in the course of, the person's employment as a firefighter, or that their firefighting work was not a significant contributing factor to the specified disease.

Volunteer firefighters are defined (by section 36B) as members of a rural fire brigade or volunteer firefighters and volunteer firewardens engaged by the State.

In respect of both paid/employed and volunteer firefighters, there is a requirement that, at any time before the diagnosis, they were employed as a firefighter for at least the number of years listed in Schedule 4A, column 2, opposite the specified disease.

There is a further requirement that if the person was a volunteer firefighter for any period of that employment, that the firefighter has attended at least 150 'exposure incidents'. That further requirement does not apply to paid/employed firefighters. A number of submissions and newspaper articles have commented adversely on this further requirement, commenting that it is inequitable to require a particular number of exposure incidents be attended by rural/volunteer firefighters, over and above the employment duration requirements expected of all firefighters under Schedule 4A column 2.

Section 4(1) of the *Legislative Standards Act 1992* (the LSA) provides that the FLPs are the principles relating to legislation that underlie a parliamentary democracy based on the rule of law.

Equality under the law is a basic concept of justice and a basic requirement under the rule of law in a democratic society. This requires that, for a particular matter, in the absence of justification to treat persons differently, all persons should be treated in the same way. This concept includes, but is not limited to, avoiding discrimination on unjustifiable grounds.

The former Scrutiny of Legislation Committee also considered the reasonableness and fairness of treatment of individuals as relevant in deciding whether legislation has sufficient regard to rights and liberties of individuals.

6.2 Committee comments

There is an apparent inequity in the further requirement being imposed on volunteer firefighters (that they have attended at least 150 exposure incidents) when that is not required of paid/employed firefighters, and the Explanatory Notes provide no explanation of the rationale for the additional requirement, or for its being limited to volunteer firefighters only.

Given that members of rural fire brigades are defined as volunteer firefighters under section 36B, it can be reasonably presumed that the remaining category of firefighter under section 36B, being 'a fire officer under the *Fire and Emergency Services Act 1990*' must be essentially restricted to urban/metropolitan firefighters.

Given that urban and metropolitan areas have comparatively far higher population densities than rural areas, it is reasonable to assume that a paid/employed firefighter serving in an urban metropolitan area would most likely, during the minimum period of paid employment of 5 years, attend at least 150 exposure incidents, if not far more, and hence the correlation between their employment and any subsequent illness might be considered easier to link causatively.

The Committee sought further information from the department regarding the rationale for the different requirements set for paid/employed and volunteer firefighters under subdivision 3B (especially see section 36D). The Committee also enquired how the figure of 150 exposure incidents was arrived at as part of the threshold test for eligibility for volunteers to compensation. The response on this issue is included in section 4.9.3 of this report.

6.3 Onus of proof – Section 4(3)(d) *Legislative Standards Act 1992* – Does the Bill reverse the onus of proof in criminal proceedings without adequate justification?

Clause 18 inserts, *inter alia*, section 36D into the *Workers' Compensation and Rehabilitation Act 2003* as noted above. Subsection (2) of section 36D states that (provided the threshold criteria in 36D(1) are met), *for the purposes of an entitlement to compensation, the specified disease is taken to be an injury.*

Subsection (3) then states that, section 36D does not apply if it is proved that the specified disease did not arise out of, or in the course of, the person's employment as a firefighter; or that the person's employment as a firefighter was not a significant contributing factor to the specified disease.

Subsection (2) is essentially a 'deeming provision' in that it (by default/automatically) deems as true, a particular state of affairs that would normally be required to be proven by a claimant/plaintiff to support the making of their claim (in this case that a specified disease amounted to a workplace injury), without the claimant needing to advance evidence to support the proposition (in this case without the claimant needing to prove that the specified disease was both injurious and acquired as a consequence of their working environment).

As a result of so deeming the specified disease acquired by a firefighter (who meets the criteria in 36D(1)) as an injury (for which compensation is available), the claimant firefighter does not have to adduce evidence to establish a link between their employment and their injury, because that link is already presumed to exist and the injury already deemed to be from that employment.

What the deeming provision also does, by implication, is effectively reverse the onus of proof onto the respondent insurer/WorkCover Queensland to prove (if they wish to successfully challenge the claim for compensation) that the specified disease did not arise out of/in the course of the claimant's employment or that the claimant's employment as a firefighter was not a significant contributing factor to the specified disease.

Section 4(3)(d) *Legislative Standards Act 1992* requires that legislation does not reverse the onus of proof in criminal proceedings without adequate justification.

In the above example, the claimant firefighter only has to prove that he/she worked as a firefighter for the duration of time that correlates to their particular form of cancer and that they attended, in the case of volunteer firefighters, at least 150 exposure incidents during their firefighting career. They do not have to prove any causation/linkage between their employment and the existence of the disease, as that linkage is deemed to exist provided the career-service criteria are met (per section 36D(2)).

The onus instead is shifted to the respondent insurer/Workcover, if they wish to challenge the claim, to lead evidence that the deemed 'injury' is not an 'injury' for the purposes of workplace compensation because it did not arise out of/in the course of employment and the employment was not a significant contributing factor to the specified disease.

Essentially therefore, rather than a claimant firefighter having to make their case to establish their claim, their claim is already effectively deemed to be proven (if they meet the criteria in 36D(1)), unless the respondent insurer/WorkCover is able to prove the matters set out in section 36D(3) to successfully refute the claim.

6.4 Committee comments

Whilst section 36D contains a reversal of the usual onus onto the respondent, it is occurring in respect of a civil claim rather than a criminal proceeding and hence would not strictly violate the FLP in section 4(3)(d) of the LSA. In addition, the reversal of onus places the burden of disproving the (deemed) causative link between the employment and the disease onto the respondent, being either WorkCover Queensland representing the State, or, possibly, a self-insuring employer, sparing an ill firefighter of likely limited financial resources from the burden of trying to establish the link between their illness and their job. From a public policy perspective therefore it seems appropriate that the usual onus be shifted from the claimant to the respondent insurer.

6.5 Rights and liberties – Section 4(3)(g) *Legislative Standards Act 1992* – Does the Bill adversely affect rights and liberties, or impose obligations, retrospectively?

Clause 2, the 'Commencement' provision, declares that:

> (1) Part 2, divisions 1 and 2 are taken to have commenced on 31 January 2015.
>
> (2) Part 2, division 3 is taken to have commenced on the day the Bill was introduced.
>
> (3) Part 2, division 5 commences on a day to be fixed by proclamation.

It is therefore apparent that Part 2, divisions 1, 2 and 3 are intended to operate retrospectively because they are intended to be operative from a date prior to the Bill's assent date.

Part 2, division 5, due to commence on a day to be fixed by proclamation, is not intended to operate retrospectively.

Section 4(3)(g) of the *Legislative Standards Act 1992* (the LSA) provides that legislation should not adversely affect rights and liberties, or impose obligations retrospectively. Strong argument is required to justify an adverse effect on rights and liberties, or imposition of obligations, retrospectively.

The SLC did not generally object to retrospective provisions if their retrospectivity was beneficial to members of the community and only adverse to the State.[332]

6.6 Committee comments

As the retrospective operation of these provisions will serve to increase the pool of persons who are potentially eligible to receive a workers' compensation payment, the retrospective provisions can generally be considered to be beneficial to the community and generally only adverse to the State's insurer, WorkCover Queensland (although there is a potential flow on effect that increasing the pool of eligible compensation recipients may lead to increased insurance premiums for employers in the future).

The Explanatory Notes address this issue at page 3, stating:

> *Retrospective application of amendments to remove the common law threshold from the 31 January 2015 aligns with the Government's election commitment to reinstate common law rights for injured workers by removing the common law threshold. This option conforms with the fundamental legislative principles, in that restoring the entitlement to seek common law damages for a greater number of injured workers with accepted workers' compensation claims is beneficial to the rights and liberties of individuals. Providing only a limited retrospective operation ensures the amendments will not apply to a time prior to the Government being elected into office. This will also minimise impacts on scheme financial viability and individual premium's for impacted employers.*[333]

The Explanatory Notes also acknowledge the potential for financial impacts on self-insured employers, at page 2, stating:

> *The removal of the common law threshold and the introduction of deemed disease provisions for firefighters will have cost impacts for Queensland's workers' compensation scheme.*
>
> *While the WorkCover Queensland Board sets premium annually, it has been estimated the impact of removing the threshold for all injuries on or after the date of the State election and providing additional compensation to particular workers impacted by the operation of the common law threshold prior to the Queensland State election, can be achieved without an increase in the average premium rate of $1.20 per $100 wages paid. WorkCover will remain fully solvent as, while its substantial reserves will reduce, the solvency target of 120% will be maintained. The 120% target is above the level of solvency required in any other centrally funded workers' compensation scheme in Australia.*
>
> *There will be some financial impacts for self-insured employers who make up an estimated 9.5 per cent of claims within the Queensland scheme (2014-15), by removing the threshold for all injuries on or after the date of the State election and providing additional compensation to particular workers impacted by the operation of the common law threshold prior to the Queensland State election. However, this will vary between self-insurers.*[334]

[332] Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook:* 57
[333] Explanatory Notes, *Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2015*: 3
[334] Explanatory Notes, *Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2015*: 2

On balance it could be considered that the retrospective operation of Part 2, divisions 1-3 is more beneficial than not to the community and therefore not in breach of FLPs.

6.7 Administrative power – Section 4(3)(a) *Legislative Standards Act 1992* – Are rights, obligations and liberties of individuals dependent on administrative power only if the power is sufficiently defined and subject to appropriate review?

Clause 34 amends section 548 of the *Workers' Compensation and Rehabilitation Act 2003* from:

> **Division 1 Appeal to industrial magistrate or industrial commission**
>
> **Application of div 1**
>
> This division applies to the following decisions—
>
> (a) a review decision, other than a decision to return a matter to a decision-maker under section 545;
>
> (b) a decision by an insurer under chapter 3 or 4 that is not a decision mentioned in section 540(1) (**a non-reviewable decision**).

to:

> **Division 1 Appeal to industrial magistrate or industrial commission**
>
> **Application of div 1**
>
> (1) This division applies to the following decisions—
>
> (a) a review decision, other than a decision to return a matter to a decision-maker under section 545;
>
> (b) a decision by an insurer under chapter 3 or 4, other than—
>
> (i) a decision mentioned in section 540(1); or
>
> (ii) a decision about an entitlement to additional lump sum compensation under section 193A.
>
> (2) A decision mentioned in subsection (1)(b) to which this division applies is a non-reviewable decision.

The Explanatory Notes for clause 34 state that:

> *Clause 34 amends section 548 of the Act to provide that a decision by an insurer regarding additional lump sum compensation under section 193A (see clause 33) is not an appealable decision. Review rights are provided for in the new section 193A (clause 33).*[335]

Section 193A (clause 33) provides, in 193A(3) that:

> A regulation may provide for the establishment of a panel of appropriately qualified persons to review a decision of an insurer about whether a worker is entitled to additional lump sum compensation under this section.

Legislation should make rights and liberties, or obligations, dependent on administrative power only if subject to appropriate review. The OQPC Notebook states:

> *Depending on the seriousness of a decision and its consequences, it is generally inappropriate to provide for administrative decision-making in legislation without providing for a review process. If individual rights and liberties are in jeopardy, a merits-based review is the most appropriate type of review.*[336]

The SLC was opposed to clauses removing the right of review, and took particular care to ensure the principle that there should be a review or appeal against the exercise of administrative power. Where ordinary rights of review were removed, thereby preventing individuals from having access to the courts or a comparable tribunal, the SLC took particular care in assessing whether sufficient regard had been afforded to individual rights, noting that such a removal of rights may be justified by the overriding significance of the objectives of the legislation.[337]

[335] Explanatory Notes, *Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2015*: 8
[336] Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook:* 18
[337] Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook:* 19

The SLC has, in particular circumstances, found provisions removing review under the *Judicial Review Act 1991* unobjectionable if it considers that an adequate alternative review mechanism is provided.[338]

In the case of clause 34, it amends section 548 of the Act to provide that a decision by an insurer regarding additional lump sum compensation under section 193A is not an appealable decision. Review rights are limited to those provided for in the new section 193A(3) as outlined above, which will entitle review of an insurer's decision regarding an additional lump sum compensation payment, by a panel of appropriately qualified persons, once/if such a panel is established by regulation.

6.8 Committee comments

Refer to the Committee's comments in section 3.26 of this report.

6.9 Clear and precise – Section 4(3)(k) *Legislative Standards Act 1992* – Is the Bill unambiguous and drafted in a sufficiently clear and precise way?

Clause 12 inserts new Schedule 5 into the *Workers' Compensation and Rehabilitation Act 2003.*

Section 2 in Schedule 5 states:

Application for compensation subject to review or appeal

(1) This section applies if, before the end of the general limitation period—

(a) a claimant lodges an application for compensation for an injury; and

(b) the application is or has been the subject of a review or appeal under chapter 13; and

(c) the application has not been accepted.

(2) A proceeding for damages for the injury may be brought—

(a) within 6 months after the claimant's application is accepted; or

(b) if, before the end of the period mentioned in paragraph (a), the claimant asks the insurer to have the injury assessed to decide if the injury has resulted in a DPI—

(i) within 6 months after the insurer gives a notice of assessment for the injury; or

(ii) if, before the end of the period mentioned in subparagraph (i), the worker advises the insurer that the worker does not agree with the DPI stated in the notice of assessment for the injury—within 6 months after a tribunal decides the DPI.

Legislation should be unambiguous and drafted in a sufficiently clear and precise way.[339] Plain English is recognised as the best approach to the use of language in legislation, with the objective to produce a law that is both easily understood and legally effective to achieve the desired policy objectives.[340]

Section 2 in Schedule 5 applies where a claimant lodges an application for compensation or an injury, and the application is or has been the subject of a review or appeal, *and the application has not been accepted*. Where those circumstances exist, a proceeding for damages may be brought *within 6 months after the claimant's application is accepted.*

6.10 Committee comments

Under chapter 13 of the Act, appeal applications must be accepted so the only reason an application 'has not been accepted' would be because it had *not yet* been accepted. Section 2 is therefore attempting to provide for an extension of the time within which a proceeding for damages may be brought, giving the claimant up to 6 months after their application is accepted to then bring their claim for damages.

[338] Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, page 19, citing Alert Digest 2004/8, page 8, paras 21-24; Alert Digest 2003/6, page 6, paras 46-48.

[339] *Legislative Standards Act 1992*, section 4(3)(k)

[340] Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook:* 87-88

Without knowing the above, a plain reading of section 2 might cause confusion as it refers to an application not being accepted and soon after refers to 6 months after the application *is* accepted.

Arguably the provision would be clearer on its face if the word '*yet'* was added so that it reads:

2(1) This section applies if, before the end of the general limitation period—
(a) a claimant lodges an application for compensation for an injury; and
(b) the application is or has been the subject of a review or appeal under chapter 13; and
(c) the application has not ***yet*** been accepted.
2(2) A proceeding for damages for the injury may be brought—
(a) within 6 months after the claimant's application is accepted; or

The Committee sought clarification on this issue. The department responded:

> *Section 2 will apply if before the end of the general limitation period an application for compensation has been made but has not yet been accepted as it is the subject of a review or appeal under the Act. This will cover applications for compensation made before the end of the general limitation period, which have not been finally determined due to the conduct of the Act's dispute resolution processes. If the application for compensation is accepted as a result of the dispute resolution process being finalised, section 2 allows a proceeding for damages to be brought within six months of the application for compensation being accepted or the degree of permanent impairment being finally assessed.*[341]

6.11 Explanatory Notes

Part 4 of the *Legislative Standards Act 1992* relates to Explanatory Notes. It requires that an explanatory note be circulated when a Bill is introduced into the Legislative Assembly, and sets out the information an explanatory note should contain.

Explanatory Notes were tabled with the introduction of the Bill. The notes contain the information required by Part 4 and a reasonable level of background information and commentary to facilitate understanding of the Bill's aims and origins.

[341] Correspondence from Queensland Treasury to FAC dated 14 August 2015: 11

Appendices

Appendix A – List of Submissions

Sub #	Submitters
1	Thuringowa Rural Fire Brigade
2	Anti-Discrimination Commission Queensland
3	Iona Rural Fire Brigade
4	Miriam Vale Rural Fire Brigade
5	Turkey Beach Rural Fire Brigade
6	Calliope Rural Fire Brigade
7	Gatton Springdale Rural Fire Brigade
8	Peggie Carnegie
9	Peter Pocock
10	Brian Marfleet
11	Roberta Doneley
12	Michael Sibley
13	Les Bateman
14	Confidential
15	Tallebudgera Valley Rural Fire Brigade
16	Rural Fire Brigades Association Queensland (RFBAQ)
17	Gemfields Rural Fire Brigade
18	Westowe Rural Fire Brigade
19	Winfield Rural Fire Brigade
20	David Bahnisch
21	Butlerville Rural Fire Brigade
22	Port Curtis Rural Fire Brigade
23	Colin Santacaterina
24	Sherri Taylor
25	Ian Burnett
26	Mount Maurice Rural Fire Brigade
27	Queensland Jockeys' Association
28	Mark Bedford
29	Bauhinia Rural Fire Brigade
30	Many Peaks Rural Fire Brigade
31	Munger Yerra Rural Fire Brigade
32	Motor Trades Association (MTA Queensland)

33	Paul Carolan
34	Springmount Primary Producers Rural Fire Brigade
35	Bernadette Iraci
36	Mick Borzi
37	Keith Hill
38	Kin Kin Rural Fire Brigade
39	Eric Lanham
40	Ormeau Rural Fire Brigade
41	Tony Marks
42	Samford Rural Fire Brigade
43	Warwick Trim
44	Cameron Millar
45	Employers Mutual Management Pty Ltd
46	Yabba Creek Rural Fire Brigade
47	John and Yvonne Thomson
48	Michael Vandersar
49	Logan Village Rural Fire Brigade
50	Matt Luthi
51	Maclagan Rural Fire Brigade
52	Matthew Peterson
53	Scott Goninan
54	Sandy Ridges Rural Fire Brigade
55	Hervey Bay Rural Fire Brigade
56	Vicki Avcin
57	Keith and Karen Ross
58	John Garsden
59	Ian Kenneth Swadling
60	Graeme McWilliam
61	Luanne Stewart
62	Blackrod Rural Fire Brigade
63	Taromeo Rural Fire Brigade
64	Jay Lockyer
65	Queensland Nurses' Union
66	David Warne
67	Darryl Hall

68	Stephen McCabe
69	Gold Coast Rural Fire Brigade
70	Willows Rural Fire Brigade
71	Vanessa Bull OAM
72	Dieter Korte
73	Elena Garcia
74	Childers Rural Fire Brigade
75	Queensland Law Society
76	Bingera Weir Rural Fire Brigade
77	
78	South Australia Country Fire Service Volunteers Association
79	United Firefighters' Union of Australia, Union of Employees, Queensland (UFUQ)
80	Colin Reed
81	Christine Reed
82	Kogan & District Rural Fire Brigade
83	Australian Industry Group (Ai Group)
84	Australian Manufacturing Workers' Union (AMWU)
85	Gregory River Rural Fire Brigade
86	Ocean View Rural Fire Brigade
87	Civil Contractors Federation (CCF QLD)
88	Peter Burton
89	Davies Creek Rural Fire Brigade
90	Narangba Rural Fire Brigade
91	Australian Meat Industry Council
92	Dean Cording
93	Housing Industry Association (HIA)
94	Morris Family
95	Dayboro and Districts Rural Fire Brigade
96	Dena Sadler
97	Lower Beechmont Rural Fire Brigade
98	Kim Crow
99	Australian Lawyers Alliance
100	Upper Flagstone Rural Fire Brigade
101	Andrew Tansey
102	Leonie Smith

103	United Firefighters Union of Australia
104	Keith Rowland
105	Raelene Rowland
106	Insurance Council of Australia (ICA)
107	Ray Aitken
108	Volunteer Fire Brigades Victoria (VFBV)
109	Robert Gratwick
110	Brendon Collins
111	Maleny and District Rural Fire Brigade
112	Karen Thompson
113	Andrew Suttie
114	Bar Association of Queensland
115	Sandra Childs
116	Karen and Errol Thomas
117	Black Mountain Rural Fire Brigade
118	Alan Gillespie
119	Stephen J Mead
120	Michael Heggie
121	Nadine O'Brien
122	Benjamin Weber
123	Firefighter Cancer Foundation Australia
124	Cawarral Rural Fire Brigade
125	Queensland Auxiliary Firefighter Association Inc. (QAFA)
126	
127	Seven Sisters Rural Fire Brigade
128	Master Grocers Australia
129	Elliott Baldwin
130	Association of Self-Insured Employers of Queensland (ASIEQ)
131	Australian Sugar Milling Council (ASMC)
132	Local Government Association of Queensland (LGAQ)
133	Australian Country Choice Group
134	Captain Creek Rural Fire Brigade
135	Gerard de Bruyn and Barbara de Bruijn
136	The Glen Rural Fire Brigade
137	Chamber of Commerce and Industry Queensland (CCIQ)

138	National Retail Association (NRA)
139	Bill Fisher
140	United Voice Queensland
141	Omega Rural Fire Brigade
142	JBS Australia Pty Lid (JBS)
143	Construction, Forestry, Mining and Energy Industrial Union of Employees, Queensland (CFMEU)
144	Hall Payne Lawyers
145	Mount Kanigan Rural Fire Brigade Group
146	Queensland All Codes Racing Industry Board (Racing Queensland)
147	Queensland Council of Unions
148	Bradley Dines
149	AWX Group
150	Queensland Major Contractors Association (QMCA)
151	Debra Suttie
152	Independent Education Union of Australia Queensland and Northern Territory Branch (IEUA-QNT)
153	Tanya Marxsen
154	Maroochy South Rural Fire Brigade
155	Louise Hicks
156	Stewart Davis
157	Master Electricians Australia
158	Charleville Rural Fire Brigade

Appendix B – Officers appearing on behalf of the departments at public departmental briefing – Thursday 6 August 2015

Witnesses
Mr Neil Gallant, Assistant Commissioner, Rural Operations, Queensland Fire and Emergency Services
Mr Paul Goldsbrough, Executive Director, Workers' Compensation and Policy Services, Office of Industrial Relations, Queensland Treasury
Ms Janene Hillhouse, Director, Workers' Compensation Policy and Tribunal Services, Office of Industrial Relations, Queensland Treasury
Mr Mark Roche, Acting Deputy Commissioner, Queensland Fire and Emergency Services

Appendix C – Officers appearing on behalf of the departments at public departmental briefing – Monday 24 August 2015

Witnesses
Mr Paul Goldsbrough, Executive Director, Workers' Compensation and Policy Services, Office of Industrial Relations, Queensland Treasury
Ms Janene Hillhouse, Director, Workers' Compensation Policy and Tribunal Services, Office of Industrial Relations, Queensland Treasury
Mr Mark Roche, Deputy Commissioner, Queensland Fire and Emergency Services
Mr Peter Varley, Assistant Commissioner, Rural Fire Service Queensland, Queensland Fire and Emergency Services

Appendix D – Witnesses appearing at public hearing – Thursday 13 August 2015

Witnesses – Session 1 – 1:15pm to 2:15pm
Mr Ashley Borg, Senior Industrial Officer, CFMEU
Mr Anthony Cooke, Industrial Officer, United Firefighters' Union Queensland
Mr James Gilbert, Occupational Health and Safety Officer, Queensland Nurses' Union
Mr John Martin, Research and Policy Officer, Queensland Council of Unions
Ms Beth Mohle, President, Queensland Nurses' Union
Mr Simon Ong, Industrial Officer, United Voice
Ms Danielle Wilson, Industrial Officer, Independent Education Union Qld & NT

Witnesses – Session 2 – 2:20pm to 3:20pm
Ms Kendall Barry, General Manager Marketing and Policy, Civil Contractors Federation
Mr Adam Carter, Chief Financial Officer, Racing Queensland
Mr David Foote, Group Managing Director, Australian Country Choice Group
Mr David Gomulka, Qld Workers Compensation Manager, JBS Australia Pty Ltd
Ms Jillian Hamilton, National OHS and Risk Manager, AWX Group
Mr Damian Long, President, Civil Contractors Federation
Mr Michael Lucy, Legal Counsel, Racing Queensland
Mr Warwick Temby, Executive Director, Housing Industry Association
Ms Cassandra Wild, Group Manager – QLD, Employers Mutual

Witnesses – Session 3 – 3:25pm to 4:25pm
Ms Anne Andersen, State Director (Complaint Management), Anti-Discrimination Commission Qld
Mr Nick Behrens, Director - Advocacy & Workplace Relations, Chamber of Commerce and Industry Qld
Mr Shane Budden, Manager - Advocacy & Policy, Queensland Law Society
Mr Justin Crowley, Chair, Association of Self-Insured Employers of Queensland
Mr Geoff Diehm QC, Vice President, Bar Association of Queensland
Mr Michael Fitzgerald, President, Queensland Law Society
Mr Cameron Hall – Principal, Hall Payne Lawyers
Ms Michelle James, Qld President, Australian Lawyers Alliance
Mr Luke Murphy, Accident Compensation & Torts Law Committee, Queensland Law Society
Mr David Swan, Manager Commercial Solutions, Local Government Association of Queensland
Mr Thanh Tran, Deputy Chair, Association of Self-Insured Employers of Queensland

Witnesses – Session 4 – 4:30pm to 5:30pm
Firefighter Cancer Foundation Australia Mr Steve Bunney, Director
Mr Justin Choveaux, General Manager, Rural Fire Brigades Association Queensland
Mr Alan Gillespie AFSM, President, Rural Fire Brigades Association Queensland
Ms Leeah James, Firefighter Cancer Foundation Australia
Ms Peter Marshall, National Secretary, United Firefighters Union of Australia
Mr John Oliver, State Secretary, United Firefighters Union Queensland
Mr Rodger Sambrooks, President, Queensland Auxiliary Firefighters Association
Ms Joanne Watson, National Industrial Officer, United Firefighters Union of Australia

Appendix E – Witnesses appearing at public hearing – Monday 17 August 2015

Witnesses – 12:30pm to 1:30pm
Ms Karen Thompson
Mr Alan Gillespie, Gold Coast Rural Fire Brigade Group
Mr Graeme McWilliam, Sandy Straits Rural Fire Brigade (via teleconference)

Appendix F – FAC (54th Parliament) recommendations and Government responses to the Inquiry into the Operation of Queensland's Workers' Compensation Scheme

QUEENSLAND GOVERNMENT RESPONSE TO THE RECOMMENDATIONS OF THE FINANCE AND ADMINISTRATION COMMITTEE'S REPORT OF THE INQUIRY INTO THE OPERATION OF QUEENSLAND'S WORKERS' COMPENSATION SCHEME

#	Committee recommendation	Government response
1.	The Committee recommends that the definition of worker contained in section 11 remain unchanged and amendments are made to Schedule 2 to strengthen who is or is not considered to be a worker.	**Not supported.** The definition of worker was amended as part of the *Industrial Relations (Transparency and Accountability of Industrial Organisations) and Other Acts Amendment Act 2013*. The amended definition aligns with the PAYG definition used by the Australian Taxation Office, and is intended to end the current duplication and overlap of genuine sub-contractors carrying their own private insurance as well as being covered by WorkCover Queensland. The amended definition of worker commenced on 1 July 2013. WorkCover has been actively communicating the change to employers, notably those in the construction and transport industries.
2.	The Committee recommends that Schedule 2 be amended to include crews of fishing vessels, who are paid a percentage of catch as remuneration, as workers.	**Not supported.** Queensland along with South Australia, Western Australia and Tasmania have specific exclusions for the crew of fishing vessels remunerated via a percentage of the catch. The reason for this exclusion is that receiving a share of the gross earnings of the vessel, making them partners in an enterprise. There is no employer and their earnings are subject to market fluctuations. The crew of a fishing vessel who contribute to the running expenses of the vessel and receive a portion of the income are likewise not considered true "workers". However, the crew of a fishing vessel

#	Committee recommendation	Government response
		who receive a wage are workers if this is their main remuneration. The crew of a fishing vessel who are paid by the number of fish they catch would also be considered workers as they are receiving piecework rates. Each case is considered on its own merits. In *Davidson v WorkCover Queensland* [2001] GLA/CM 1808 a deceased deckhand was found to be a worker despite receiving a percentage of the catch. The Government considers that a more appropriate policy response would be for WorkCover to conduct a targeted information and awareness campaign aimed at the commercial fishing industry. In addition, WorkCover will keep a register of fisher claims and their details to monitor acceptances/rejections. The Department of Justice and Attorney General will continue to monitor the impact of the definition of worker on the scheme and report to government where issues emerge.
3.	The Committee recommends that the Department undertake an extensive awareness education and compliance campaign to assist employers and workers understand their rights, obligations and responsibilities with regard to workers compensation coverage.	**Supported.** WorkCover currently undertakes education and awareness activities for employers and workers to better understand who is, and who is not covered for workers' compensation. These education and awareness activities will continue to be undertaken.
4.	The Committee recommends that the Department prepare for and distribute guidance material to assessors to ensure that decisions are made in a clear and consistent manner.	**Supported.** WorkCover will undertake a review of the guidance material it provides to staff.

#	Committee recommendation	Government response
5.	The Committee recommends that the Department monitor the WorkCover policy for Queensland jockeys to ensure that it continues to include secondary income for jockeys and apprentice jockeys in the future.	**Supported.** The Department Justice and Attorney General will monitor WorkCover's policy for jockeys as recommended.
6.	The Committee recommends that the current definition of injury be retained in its current form with the exception of psychological injuries which are addressed separately in section 4.4.	**Not supported.** It is not proposed to implement the changes recommended by the Committee to the definition of injury other than the recommended change to the definition to require employment to be "the major significant contributing factor" rather than "a significant contributing factor" for psychological and psychiatric injuries. The Department of Justice and Attorney General will continue to monitor the impact of the current definition of injury on the scheme and report to government where issues emerge.
7.	The Committee recommends that the definition of injury be considered at the next review subsequent to the roll out of 'DisabilityCare Australia' formerly known as the National Disability Insurance Scheme (NDIS) and the National Injury Insurance Scheme (NIIS).	**Supported.**
8.	The Committee recommends that the current provisions relating to journey claims be retained.	**Supported.**
9.	The Committee recommends that education programs incorporate journey claims as a topic when informing employers about workers' compensation rights and responsibilities.	**Supported.**

#	Committee recommendation	Government response
10.	The Committee recommends that psychological injuries be included under separate provisions within the legislation.	**Not supported.** Amendments to the definition of injury for psychological injuries are not supported due to the potential for unintended consequences on claims and claim rates. The Department of Justice and Attorney General will continue to monitor the impact of psychological injury claims on the scheme and report to government where issues emerge.
11.	The Committee recommends that the definition of psychological injuries be amended to include the two types of psychological injury identified as category A and B above in section 4.5.	**Not supported.** There was no evidence provided to the Committee that psychological injury claims relating to a post-traumatic event disorder are being rejected. To split the injury type into two categories with differing levels of proof may have unintended consequences on claims and claim rates. No other Australian jurisdiction makes this distinction. The Department of Justice and Attorney General will continue to monitor the impact of psychological injury claims on the scheme and report to government where issues emerge.

#	Committee recommendation	Government response
12.	The Committee recommends that the current exclusions for reasonable management action be removed and be replaced with specific exceptions for normal work place practices such as: a) where action is taken to transfer, demote, discipline, redeploy, retrench or dismiss the worker provided that action is taken in a reasonable way; b) where a decision is made not to award or provide promotion, reclassification or transfer of, or leave of absence or benefit in connection with, the worker's employment provided the decision is made in a reasonable way; c) action by the Authority or an insurer in connection with the worker's application for compensation. AND the definition be amended to be 'the major significant contributing factor' rather than the current 'a major significant contributing factor' for Category B type psychological injury claims.	**Supported with amendment.** The recommended change to remove the current exclusions for 'reasonable management action', excludes workers who are subject of 'performance management'. This would see a spike in accepted psychological injury claims and have unintended consequences on claim rates. Further, the proposed definition moves away from the extensive body of existing case law. It is proposed to support the recommended change to the definition of a psychological injury so that employment must be 'the major significant contributing factor' to the injury. The Department of Justice and Attorney General will continue to monitor the impact of psychological injury claims on the scheme and report to government where issues emerge.
13.	The Committee recommends that the Queensland Mental Health Commission be directed to undertake a research study regarding the impact of the legislative changes if they are adopted and that this study must directly inform the next review of the Workers' Compensation Act.	**Not supported.** This recommendation is not supported as it is not proposed to implement the changes recommended by the Committee to the definition of injury.

#	Committee recommendation	Government response
14.	The Committee recommends that the Attorney-General should initiate a review of the *Work Health and Safety Act 2011* with a view to considering whether recompense to victims of workplace bullying could be made through mechanisms in that Act rather than through the Workers' Compensation Scheme.	**Not supported.** Where a worker has been bullied at work and has an accepted workers' compensation claim, then it is appropriate for the injured worker to be compensated through the workers' compensation scheme. This ensures that all injured workers with an accepted work-related injury are treated consistently and have consistent benefits.
15.	The Committee recommends that WorkCover review its psychological claims assessment processes, including a review of the reasons claims are set aside or varied upon review, with a view to reducing this ratio.	**Supported.** WorkCover has undertaken a number of reviews in recent years of its claims assessment processes and is committed to continuous review and improvement to achieve scheme efficiencies.
16.	The Committee recommends that WorkCover undertake a review of its psychological claims management to include the following: • ensure that there is provision for flexibility for claimants to provide necessary information; • inclusion of a specialist unit with suitably qualified assessors; • incorporation of a mentoring style approach to psychological claims management to help reduce anxiety levels for claimants; • incorporation of mental health and wellbeing into education and awareness processes; and • incorporation of consideration and analysis of employer claims history into claims process.	**Supported.** WorkCover has undertaken a number of reviews in recent years of its claims assessment processes and is committed to continuous review and improvement to achieve scheme improvements.
17.	The Committee recommends that the Attorney-General and Minister for Justice facilitate the progression of a consistent national approach to latent onset claims.	**Supported.** Work on emerging latent onset injuries such as those caused by passive smoking and sun exposure is already underway at a national level.

#	Committee recommendation	Government response
18.	The Committee recommends that provisions be included in the Act to enable the Minister to grant premium relief in certain circumstances.	**Not Supported** WorkCover has the discretion to grant premium relief, where appropriate. It is not considered appropriate for the Minister to directly intervene in premium decisions.
19.	The Committee recommends that the WorkCover/Q-COMP undertake an examination of its industry rate groupings with a view to ensuring that they more accurately reflect current industry size and risk exposure.	**Supported with amendment.** WorkCover will undertake an information and awareness campaign to better inform employers of industry rate groupings.
20.	The Committee recommends that the Department investigate options to enable them to provide employers with a self-audit tool so they can assess whether they are complying with the requirements of the Act.	**Supported.**
21.	The Committee recommends that the Department undertake a review of its processes to ensure that decisions, including reasons, are communicated to all parties in a clear, concise and a timely manner.	**Supported.** WorkCover reviews of this type are regularly undertaken.
22.	The Committee recommends that the legislation be amended to refer all allegations of fraud-related offences relating to WorkCover to Q-COMP for investigation and, if necessary, prosecution, consistent with the management of self-insurer fraud referrals.	**Supported.** It is proposed to transfer the management of all fraud-related offences in the scheme to the regulator.

#	Committee recommendation	Government response
23.	The Committee recommends that a psychological specialty medical assessment tribunal be included on the list of specialty medical assessment tribunals under section 118A of *Workers' Compensation and Rehabilitation Regulation 2003*.	**Not Supported.** Psychological injuries are assessed by the General Medical Assessment Tribunal, with 36 of its 78 members psychiatrists. A separate tribunal is unnecessary. The name "General Medical Assessment Tribunal" is preferable to "Psychiatric Assessment Tribunal" which has the potential to cause unease in the persons likely to appear before it.
24.	The Committee recommends that the legislation be amended to include a requirement that employers must have a RRTWC where a statutory claims totalling 15 or more work days lost in any year and wages in Queensland for the preceding year totalling $2.146 million or more.	**Not supported.** This proposal could increase the regulatory burden for employers. The requirement to have rehabilitation and return to work coordinator(coordinator) currently falls on employers with annual wages of $7.049 million, or $2.146 million if the employer is in a high risk industry (as defined in the Regulation). To require employers who are not in a high risk industry to appoint a coordinator on the basis of 15 working days lost due to statutory claims would be an added layer of regulation and difficult to enforce. WorkCover would need to set up systems that notify when total working days lost reaches 15, and inform Q-COMP and the employer of the need to train and register a coordinator. This recommendation would also see the need for a coordinator vary from year to year for many employers.
25.	The Committee recommends that the Department implement an accreditation system for RRTWC.	**Supported.**

#	Committee recommendation	Government response
26.	The Committee recommends that the legislation be amended to make it mandatory for insurers to refer injured workers to an accredited return to work program if they are making a common law claim for future economic loss on the basis that they are unemployed except where the worker can demonstrate they are unable to participate in a return to work program.	**Supported.** To minimise costs and red tape, insurers will be encouraged to establish in-house return to work programs accredited by the regulator.
27.	The Committee recommends that the existing provisions relating to access to common law be retained.	**Not Supported.** Lower end claims have remained stable or increased in certain WRI bands. In view of this, it is proposed to introduce a threshold to access common law of greater than 5% Whole Person Impairment (WPI). Under the proposal injured workers who have been medically assessed as having a permanent impairment of greater than 5% will be able to make a claim for common law damages. Those workers who have a permanent impairment of less than 5% will maintain access to statutory compensation (including lump sum compensation) under the workers' compensation scheme.
28.	The Committee recommends that the Attorney-General and Minister for Justice investigate the issues of 'no-win-no-fee' arrangements and the '50/50 rule' with a view to curtailing the speculative nature of some claims.	**Supported.** This recommendation has implications for personal injury proceedings generally and the Department will investigate this recommendation on the understanding that it may have implications beyond the workers' compensation scheme.
29.	The Committee recommends that the Attorney-General and Minister for Justice investigate the issue of portability of records associated with the 'no-win-no-fee' arrangements.	**Supported.**

#	Committee recommendation	Government response
30.	The Committee recommends that the legislation be amended to give the Minister flexibility to grant an extension of self-insurance arrangements for a further period for existing self-insurers.	**Supported.** This recommendation was implemented by the *Criminal Law and Other Legislation Amendment Act 2013*, which received assent on 13 August 2013. The Act amended the *Workers' Compensation and Rehabilitation Act 2003* to give Q-COMP the discretion to issue or renew a self-insurance licence in circumstances where an employer does not meet one or more of the strict criteria for self-insurance, if Q-COMP is satisfied that special circumstances exist that warrant the employer being issued a licence or warrant the renewal of a licence. The circumstances include where an employer or self-insurer does not have 2,000 full time workers.
31.	The Committee recommends that, given potential for numerous unintended consequences, the Attorney-General and Minister for Justice investigate Q-COMP's 'red tape reduction proposal' before any consideration is given to implementation of the proposal.	**Not supported.** This proposal is not supported as the 'red tape reduction proposal' shifts red-tape and the burden to employers. Further there is no justification to amend existing requirements in this regard.
32.	The Committee recommends that the Attorney-General and Minister for Justice investigate the financial implications of the suggested alternative methods offered before addressing this anomaly.	**Supported.**

Appendix G – Comparison of firefighter compensation in Australian jurisdictions

Appendix A

Comparison of firefighter compensation in Australian jurisdictions

	Who is covered?	Cancers covered and the qualifying period for which the firefighter must have been employed	Conditions of eligibility	When was cancer contracted?	Firefighter legislation to be reviewed?
Commonwealth *Safety, Rehabilitation and Compensation Amendment (Fair Protection for Firefighters) Act 2011* (Cth) (Firefighters Act) amended the *Safety, Rehabilitation and Compensation Act 1988* (Cth)(SRC Act)	s7(8) SRC Act Current and retired employees who performed firefighting duties as a substantial portion of their work duties and were employed as a firefighter by the Commonwealth, a Commonwealth authority or a licensed corporation. This includes ACT Government firefighters.[8] Former members of the Australian Defence Force	s7(8) SRC Act 1. Primary site brain cancer -5 years 2. Primary site bladder cancer-15 years 3. Primary site kidney cancer-15 years 4. Primary non-Hodgkins lymphoma-15 years 5. Primary leukemia- 5 years 6. Primary site breast cancer-10 years 7. Primary site testicular cancer-10 years 8. Multiple myeloma-15 years 9. Primary site prostate	s7(8) During the qualifying period was exposed to the hazards of a fire scene.	The presumption applies to those firefighters who are diagnosed with the disease on or after 4 July 2011.[11]	An independent review was to be undertaken and completed by 31 December 2013.

[8] Comcare, *Information for Firefighters on the Firefighters Act*, (accessed on 7 August 2015).

	Who is covered?	Cancers covered and the qualifying period for which the firefighter must have been employed	Conditions of eligibility	When was cancer contracted?	Firefighter legislation to be reviewed?
	who ceased employment before 1 July 2004.[9] The Firefighters Act does not apply to volunteer firefighters, including those under the *Emergencies Act 2004* (ACT).[10] s7(9) SRC Act An employee is taken to have been employed as a firefighter if firefighting duties made up a substantial portion of his or her duties.	cancer-15 years 10. Primary site ureter cancer-15 years 11. Primary site colorectal cancer-15 years 12. Primary site oesophageal cancer-25 years 13. A cancer of a kind prescribed for this table-The period prescribed for such a cancer			

[11] Department of Employment, *Safety, Rehabilitation and Compensation Amendment (Fair protection for firefighters) Act 2011 Review*, 3 February 2014.
[9] Comcare, *Information for Firefighters on the Firefighters Act*, (accessed on 7 August 2015).
[10] Comcare, *Information for Firefighters on the Firefighters Act*, (accessed on 7 August 2015).

	Who is covered?	Cancers covered and the qualifying period for which the firefighter must have been employed	Conditions of eligibility	When was cancer contracted?	Firefighter legislation to be reviewed?
Queensland **Mr Bleijie** Worker's Compensation and Rehabilitation (Protecting Firefighters) Amendment Bill 2015 introduced by Mr Jarrod Bleijie on 3 June 2015 and proposes to amend the *Workers' Compensation and Rehabilitation Act 2003* (Qld) (WCR Act)	Proposed s 32A (7) WCR Act Applies to a person who contracts a disease while employed or engaged as a firefighter or at any time after the person stops being employed or engaged as a firefighter. ***firefighter*** means— (a) a fire officer; or (b) a rural firefighter; or (c) a volunteer. ***fire officer*** means a person employed under the *Fire and Emergency Services Act 1990* as a fire officer or auxiliary firefighter. ***rural firefighter*** means a member of a rural fire brigade registered under	Proposed s 32A (1)(b) WCR Act 1. Primary site brain cancer - 5 years 2. Primary site bladder cancer -15 years 3. Primary site kidney cancer - 15 years 4. Primary non-Hodgkin lymphoma - 15 years 5. Primary leukemia - 5 years 6. Primary site breast cancer - 10 years 7. Primary site testicular cancer - 10 years 8. Multiple myeloma - 15 years 9. Primary site prostate cancer - 15 years 10. Primary site ureter cancer - 15 years 11. Primary site colorectal cancer - 15 years 12. Primary site		s 707 WCR Act Applies to a disease contracted by a person, , on or after the day the Bill for the *Workers' Compensation and Rehabilitation (Protecting Firefighters) Amendment Act 2015* was introduced into the Legislative Assembly.	No requirement for review

	Who is covered?	Cancers covered and the qualifying period for which the firefighter must have been employed	Conditions of eligibility	When was cancer contracted?	Firefighter legislation to be reviewed?
	the *Fire and Emergency Services Act 1990*. ***volunteer*** means— (a) a volunteer firefighter; or (b) a volunteer fire warden.	oesophageal cancer - 25 years			

	Who is covered?	Cancers covered and the qualifying period for which the firefighter must have been employed	Conditions of eligibility	When was cancer contracted?	Firefighter legislation to be reviewed?
Queensland **Mr Pitt** *Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2015* introduced by Mr Curtis Pitt on 15 July 2015 and proposes to amend the *Workers' Compensation and Rehabilitation Act 2003* (Qld) (WCR Act)	Proposed s 36B Presumption applies to volunteer and career firefighters. ***firefighter*** means— (a) a fire officer under the *Fire and Emergency Services Act 1990*; or (b) a member of a rural fire brigade registered under the *Fire and Emergency Services Act 1990*, section 79; or (c) a volunteer fire fighter or volunteer fire warden engaged by the authority responsible for the management of the State's fire services.	Proposed Schedule 4A • primary site brain cancer -5 years • primary site bladder cancer - 15 years • primary site kidney cancer - 15 years • primary non-Hodgkins lymphoma - 15 years • primary leukaemia - 5 years • primary site breast cancer - 10 years • primary site testicular cancer	Proposed s 36D(1)(c) A volunteer firefighter must have attended at least 150 exposure incidents.	Presumption only applies to new diagnoses after the legislation commences.[12]	No requirement for review

[12] Explanatory Memorandum Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2015.

	Who is covered?	Cancers covered and the qualifying period for which the firefighter must have been employed	Conditions of eligibility	When was cancer contracted?	Firefighter legislation to be reviewed?
		- 10 years • multiple myeloma - 15 years • primary site prostate cancer - 15 years • primary site ureter cancer - 15 years • primary site colorectal cancer - 15 years • primary site oesophageal cancer -25 years			

	Who is covered?	Cancers covered and the qualifying period for which the firefighter must have been employed	Conditions of eligibility	When was cancer contracted?	Firefighter legislation to be reviewed?
South Australia The Workers Rehabilitation and Compensation (Firefighters) Amendment Act 2013 (SA) amended the *Workers Rehabilitation and Compensation Act 1986* (SA) which then became the *Return to Work Act 2014* (SA). (RTW Act)	Sch. 3; s 1(1)(2) RTW Act Covers both employees of the SA Metropolitan Fire Service and volunteers with the SA Country Fire Service (presumptively employed by the Crown). Sch. 3 s 2(3)(c) The presumption only applies to volunteers within 10 years after the cessation of their presumptive employment by the crown.	Sch. 3 s 1(3) RTW Act 1. Primary site brain cancer - 5 years 2. Primary site bladder cancer – 15 years 3. Primary site kidney cancer – 15 years 4. Primary non-Hodgkins lymphoma -15 years 5. Primary leukemia – 5 years 6. Primary site breast cancer – 10 years 7. Primary site testicular cancer – 10 years 8. Multiple myeloma – 15 years 9. Primary site prostate cancer – 15 years 10. Primary site ureter cancer -15 years 11. Primary site colorectal cancer – 15 years 12. Primary site oesophageal cancer –	Sch. 3 s 1(1)(2) Currently, all firefighters must, during the qualifying period, have been exposed to the hazards of a fire scene (including exposure to a hazard of the fire that occurred away from the scene). The original legislation required volunteers to prove that they were exposed to the hazards of a fire scene (including exposure to a hazard that occurred away from the scene) at least 175 times in any five year period during that employment.	Sch. 3 s 1(1)(2) RTW Act The Firefighters Amendment Act applies to injuries diagnosed on or after 1 July 2013.	s 68 RTW Act The Minister must arrange for an independent review after 5 years.

	Who is covered?	Cancers covered and the qualifying period for which the firefighter must have been employed	Conditions of eligibility	When was cancer contracted?	Firefighter legislation to be reviewed?
		25 years	These provisions were amended and now volunteers have the same eligibility requirements as paid firefighters.[13]		

[13] 'SA Government to compensate CFS volunteers diagnosed with cancer', *ABC News*, 20 October 2014.

	Who is covered?	Cancers covered and the qualifying period for which the firefighter must have been employed	Conditions of eligibility	When was cancer contracted?	Firefighter legislation to be reviewed?
Western Australia The *Worker's Compensation and Injury Management Amendment Act 2013* (WA) amended the *Worker's Compensation and Injury Management Act 1981* (WA) (WCIM Act)	s 49B(b) WCIM Act The presumption does not apply to volunteers or to firefighters who contract the disease after retirement.[14] The Bill will apply to firefighters who are members or officers of a permanent fire brigade established under the *Fire Brigades Act 1942.* This is intended to apply to career firefighters employed by the Department of Fire and Emergency Services in circumstances where firefighting duties made up a substantial part of the worker's duties.[15]	Sch. 4A WCIM Act 1. Primary site brain cancer - 5 years 2. Primary site bladder cancer - 15 years 3. Primary site kidney cancer - 15 years 4. Primary non-Hodgkin's lymphoma - 15 years 5. Primary leukaemia - 5 years 6. Primary site breast cancer - 10 years 7. Primary site testicular cancer - 10 years 8. Multiple myeloma - 15 years 9. Primary site prostate cancer - 15 years 10. Primary site ureter cancer - 15 years 11. Primary site colorectal	s 49 C WCIM Act Must be exposed to the hazards of a fire scene in the course of the employment.	s 49B(a) WCIM Act The firefighter must be incapacitated or the disease must be diagnosed on or after the day on which the amending Act came into operation, namely 13 November 2013.	s 49E(1) WCIM Act Review must be undertaken every five years

[14] Worker's Compensation and Injury Management Amendment Bill 2013, *Second Reading Speech*, Legislative Council.
[15] Worker's Compensation and Injury Management Amendment Bill 2013, *Second Reading Speech*, Legislative Council.

	Who is covered?	Cancers covered and the qualifying period for which the firefighter must have been employed	Conditions of eligibility	When was cancer contracted?	Firefighter legislation to be reviewed?
	The firefighter must have been employed as a firefighter at the time of injury, but will take into account retrospective periods of service. It therefore applies to serving firefighters only.[16]	cancer - 15 years 12. Primary site oesophageal cancer - 25 years 13. A cancer of a kind prescribed by the regulations for the purposes of this Schedule- The period prescribed by the regulations for such a cancer.			

[16] Worker's Compensation and Injury Management Amendment Bill 2013, *Second Reading Speech*, Legislative Council.

	Who is covered?	Cancers covered and the qualifying period for which the firefighter must have been employed	Conditions of eligibility	When was cancer contracted?	Firefighter legislation to be reviewed?
Tasmania Workers Rehabilitation and Compensation Amendment (Fire Fighters) Bill 2013 amended the *Workers Rehabilitation and Compensation Act 1988* (Tas) (WRC Act) The Bill was passed by Parliament on 26 September 2013 and commenced operation on 21 October 2013.	s 27(1)(b) WRC Act The legislation limits the operation of the presumption to diseases that occurred during the period of employment or up to 10 years post retirement or resignation as a firefighter. The Bill only applies to firefighters, both career and volunteer, appointed or employed under the *Fire Service* Act 1979.[17]	Sch. 5 1. Primary site brain cancer - 5 years 2. Primary site bladder cancer - 15 years 3. Primary site kidney cancer - 15 years 4. Primary non-Hodgkins lymphoma - 15 years 5. Primary leukemia - 5 years 6. Primary site breast cancer - 10 years 7. Primary site testicular cancer - 10 years 8. Multiple myeloma - 15 years 9. Primary site prostate cancer - 15 years	s 27 (1)(d) For volunteer firefighters there is an additional requirement that 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 a significant level of exposure to the hazards of fire.[18] s 27(6) Firefighters can take voluntary and employed periods of work	s 27(1) Disease must occur on or after the day the section commenced, namely, 21 October 2013.	s 28 Review required every 12 months

[17] Safe Work Australia, *Comparison of workers' compensation arrangements in Australia and New Zealand*, August 2014, p 7.
[18] Safe Work Australia, *Comparison of workers' compensation arrangements in Australia and New Zealand*, August 2014, p 7.

	Who is covered?	Cancers covered and the qualifying period for which the firefighter must have been employed	Conditions of eligibility	When was cancer contracted?	Firefighter legislation to be reviewed?
		10. Primary site ureter cancer - 15 years 11. Primary site colorectal cancer - 15 years 12. Primary site oesophageal cancer - 25 years	into account.		

	Who is covered?	Cancers covered and the qualifying period for which the firefighter must have been employed	Conditions of eligibility	When was cancer contracted?	Firefighter legislation to be reviewed?
Australian Capital Territory Currently no proposals to introduce presumptive legislation. *Safety, Rehabilitation and Compensation Amendment (Fair Protection for Firefighters) Act 2011* (Cth) (the Firefighters Act) applies to firefighters employed by the Commonwealth and the ACT Government.	The Commonwealth Act applies to current and retired employees who performed firefighting duties as a substantial portion of their work duties and were employed as a firefighter by the Commonwealth, a Commonwealth authority or a licensed corporation. This includes ACT Government firefighters.[19] Former members of the Australian Defence Force who ceased employment before 1 July 2004.[20] The Firefighters Act does not apply to volunteer firefighters, including	s 7(8) SRC Act 1. Primary site brain cancer -5 years 2. Primary site bladder cancer-15 years 3. Primary site kidney cancer-15 years 4. Primary non-Hodgkins lymphoma-15 years 5. Primary leukemia- 5 years 6. Primary site breast cancer-10 years 7. Primary site testicular cancer-10 years 8. Multiple myeloma-15 years 9. Primary site prostate cancer-15 years 10. Primary site ureter cancer-15 years 11. Primary site colorectal	s 7(8) During the qualifying period was exposed to the hazards of a fire scene.	The presumption applies to those firefighters who are diagnosed with the disease on or after 4 July 2011.[22]	An independent review was to be undertaken and completed by 31 December 2013.

[19] Comcare, *Information for Firefighters on the Firefighters Act*, (accessed on 7 August 2015).
[20] Comcare, *Information for Firefighters on the Firefighters Act*, (accessed on 7 August 2015).

	Who is covered?	Cancers covered and the qualifying period for which the firefighter must have been employed	Conditions of eligibility	When was cancer contracted?	Firefighter legislation to be reviewed?
.	those under the *Emergencies Act 2004* (ACT).[21]	cancer-15 years 12. Primary site oesophageal cancer-25 years 13. A cancer of a kind prescribed for this table-The period prescribed for such a cancer			

[22] Department of Employment, *Safety, Rehabilitation and Compensation Amendment (Fair protection for firefighters) Act 2011 Review*, 3 February 2014.
[21] Comcare, *Information for Firefighters on the Firefighters Act*, (accessed on 7 August 2015).

	Who is covered?	Cancers covered and the qualifying period for which the firefighter must have been employed	Conditions of eligibility	When was cancer contracted?	Firefighter legislation to be reviewed?
Northern Territory The Workers Rehabilitation and Compensation Legislation Amendment Act 2015 commenced on 1 July 2015 and amended the Return to Work Act and the Return to Work Regulations.	s 50A(1) Presumption applies to both career and volunteer firefighters The legislation limits the operation of the presumption to diseases that occurred during the period of employment or up to 10 years post retirement or resignation as a firefighter. ***firefighter*** includes a person who is one of the following: (a) a volunteer firefighter; (b) a fire control officer (including a Senior Fire Control Officer or the Chief Fire Control Officer) appointed under the *Bushfires Act*; (c) a worker employed by the Territory for the	Regulation 5B 1.Primary site brain cancer -5 years 2.Primary site bladder cancer - 15 years 3.Primary site kidney cancer -15 years 4.Primary non-Hodgkin's lymphoma -15 years 5.Primary leukaemia -5 years 6.Primary site breast cancer -10 years 7.Primary site testicular cancer - 10 years 8.Multiple myeloma - 15 years 9.Primary site prostate cancer - 15 years 10.Primary site ureter cancer - 15 years 11.Primary site colorectal cancer - 15 years 12.Primary site oesophageal cancer - 25	s 50A Volunteer firefighters must be exposed to the hazards of not fewer than the prescribed number of fires within any period. Regulation 5C (a) the prescribed number of fires is 150; and (b) the prescribed firefighting period is: (i) 5 years, if the prescribed disease is primary site brain cancer or primary leukaemia; or (ii) 10 years for any other prescribed disease.	s 50A(1) Presumption applies where the onset day is on or after 4 July 2011.	No requirement for review

	Who is covered?	Cancers covered and the qualifying period for which the firefighter must have been employed	Conditions of eligibility	When was cancer contracted?	Firefighter legislation to be reviewed?
	prevention or control of bushfires who is also a fire warden appointed under section 31(3) of the *Bushfires Act.*	years	Other firefighters are required under his or her contract of employment to be exposed to the hazards of fighting fires.		
New South Wales There are currently no proposals to pass legislation which creates a presumption that certain cancers have been caused by a firefighters work.					
Victoria The Accident Compensation (Fair Compensation for Firefighters) Bill 2011 (Vic) was introduced into the Victorian Legislative Council on 6 February 2013. The Bill proposed to amend the *Accident Compensation Act 1985* (Vic), the *Workers Compensation Act 1958* (Vic) and the *Country Fire Authority Act 1958* (Vic). On 20 February 2013, the President of the Victorian Legislative Council ordered that the Victorian Bill be withdrawn on the basis of it breaching s 62 of the Victorian Constitution Act 1975. In part, s 62 provides that a Bill appropriating any part of the consolidated fund or imposing any duty, rate, tax, rent, return or impost must originate in the Assembly.					

	Who is covered?	Cancers covered and the qualifying period for which the firefighter must have been employed	Conditions of eligibility	When was cancer contracted?	Firefighter legislation to be reviewed?
The Bill was referred to the Economy and Infrastructure Legislation Committee which tabled its report on 12 June 2013: Inquiry into the Accident Compensation Legislation (Fair Protection for Firefighters) Bill 2011 Final Report. The current Labor government made a pre-election pledge that they would introduce legislation which establishes the presumption that certain cancers contracted by firefighters were work-related.[23] Prior to the election, the Labor party indicated that the legislation would be based on a similar model in Tasmania and compensation claims would be capped at $40 million over four years but there would be no limit on individual claims.[24] The Explanatory Notes to the Queensland Bill notes that the Victorian Government intends to introduce legislation in 2016.[25]					

[23] J Edwards, 'Victoria election 2014: Labor to recruit firefighters, launch inquiry into Fiskville CFA training base', *ABC News*, 18 November 2014.
[24] J Edwards, 'Victoria election 2014: Labor to recruit firefighters, launch inquiry into Fiskville CFA training base', *ABC News*, 18 November 2014.
[25] Explanatory Memorandum, Workers' Compensation and Rehabilitation (Protecting Firefighters) Amendment Bill 2015; A Savage, 'Victorian election 2014: Government pledges to make it easier for firefighters with cancer to get compensation', *ABC News*, 6 November 2014.