

Workers' Compensation and Rehabilitation (Protecting Firefighters) Amendment Bill 2015

Report No. 9, 55th Parliament
Finance and Administration Committee
September 2015

Finance and Administration Committee

Chair	Ms Di Farmer MP, Member for Bulimba
Deputy Chair	Mr Michael Crandon MP, Member for Coomera
Members	Miss Verity Barton MP, Member for Broadwater Mr Craig Crawford MP, Member for Barron River Mr Duncan Pegg MP, Member for Stretton Mr Pat Weir MP, Member for Condamine
Staff	Ms Deborah Jeffrey, Research Director Dr Maggie Lilith, Principal Research Officer Ms Louise Johnson, Executive Assistant Ms Julie Fidler, Executive Assistant
Technical Scrutiny Secretariat	Ms Renée Easten, Research Director Mr Michael Gorringe, Principal Research Officer Ms Kellie Moule, Principal Research Officer Ms Tamara Vitale, Executive Assistant
Contact details	Finance and Administration Committee Parliament House George Street Brisbane Qld 4000
Telephone	+61 7 3553 6637
Fax	+61 7 3553 6699
Email	fac@parliament.qld.gov.au
Web	www.parliament.qld.gov.au/fac

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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
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 <i>Legislative Standards Act 1992</i>
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
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	<i>Workers' Compensation and Rehabilitation (Protecting Firefighters) Amendment Bill 2015</i>
the department	Queensland Treasury

Chair's Foreword

This report presents a summary of the Committee's examination of *Workers' Compensation and Rehabilitation (Protecting Firefighters) 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 policy objectives of the Bill, as outlined in the Explanatory Notes, are to:

- Introduce deemed disease coverage for Queensland Full-Time, Auxiliary and Volunteer Firefighters who contract one of 12 specified cancers in the course of their employment.

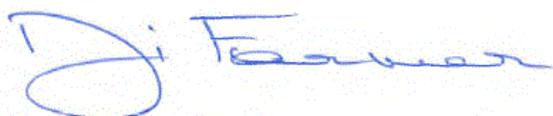
The Committee considered this Bill at the same time as the *Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2015* which provides for an alternative method of achieving similar policy objectives.

The Committee was unable to reach agreement on whether to recommend that the Bill be passed.

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.

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 no recommendations.

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

On 3 June 2015 the Member for Kawana introduced the *Workers' Compensation and Rehabilitation (Protecting Firefighters) Amendment Bill 2015* into the Queensland Parliament. In accordance with Standing Order 131, the Bill was referred to the Legal Affairs and Community Safety Committee (LACSC) for consideration.

On 16 July 2015 the Parliament agreed to a motion that the Bill be referred to the Finance and Administration Committee (FAC) and that the Committee report by 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 Treasurer, Minister for Employment and Industrial Relations and Minister for Aboriginal and Torres Strait Islander Partnerships introduced the *Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2015* into the Queensland Parliament on 15 July 2015. The issues considered in this Bill were also considered as part of the *Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2015*.

1.3 Committee Process

The Committee's consideration of the Bill included calling for public submissions and five public hearings. The Committee also invited the Member for Kawana to provide a briefing on the Bill. However, he was unavailable to meet with the Committee, due to prior commitments.

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 56 submissions, including a government submission. A list of those who made submissions is contained in Appendix A. Copies of the submissions are published on the Committee's website and are available from the Committee secretariat.

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 B. 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 C. 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 policy objectives of the Bill, as outlined in the Explanatory Notes, are to:

- Introduce deemed disease coverage for Queensland Full-Time, Auxilliary and Volunteer Firefighters who contract one of 12 specified cancers in the course of their employment.

The Explanatory Notes detail that under the deemed disease provisions, if a worker suffers a disease that was deemed to be 'work-related' and was, prior to diagnosis, employed in work of a type specified for that disease, the worker's disease is presumed to have been caused by that employment. This presumption may be rebutted by proving the disease was not due to the employment. The effect of this is to reverse the onus of proof from the worker, on proof of the disease and the relevant employment, to the employer or insurer, to prove that the disease was not due to the worker's employment.²

² Explanatory Notes, *Workers' Compensation and Rehabilitation (Protecting Firefighters) Amendment Bill 2015*: 1

When introducing the Bill the Member for Kawana stated:

While I note that Queensland does not lead the nation in terms of being the first jurisdiction to introduce presumptive legislation for firefighters. I understand this bill will provide the highest level of support in any Australian state or territory.³

He further stated:

There are differences in this legislation right round Australia. In a lot of jurisdictions the presumption is applicable to permanent firefighters. We have over 2,000 permanent firefighters and over 2,000 part-time auxiliary firefighters in the state, but we have some 15,000 active rural fire brigade members and also about 30,000 rural fire brigade members of the association. We are talking about a lot of men and women who put their lives at risk for the protection of Queensland citizens on a daily basis.

The difference with this bill compared with the other bills is that this bill is non-discriminatory. A lot of other jurisdictions that have introduced this legislation have a discriminatory clause dealing with rural fire brigades – basically volunteers – where it says that if you are a member of a volunteer fire brigade station and you contract one of the 12 specified cancers, in order to have the workers' compensation claim you have to have been exposed to 175 to 200 fire incidents in a period of five years. Today we end the discrimination. This bill that I place before the House today is applicable to permanent firefighters, auxiliary firefighters and rural fire brigade members without any discrimination of the three levels.⁴

The Member for Kawana advised the Committee that:

The Bill that I introduced provides the most comprehensive presumptive workers compensation regime for all Queensland firefighters in Australia.

I note the Labor Government has introduced its own presumptive legislation Bill into Parliament.

Unfortunately the Labor Government's Bill is discriminatory as it does not provide the same level of protection for rural firefighters.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 considered that the amendments included in the *Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2015* more appropriately realises the policy objectives aiming to be achieved in this Bill and therefore recommended that the *Workers' Compensation and Rehabilitation (Protecting Firefighters) Amendment Bill 2015* not be passed.

The non-government Members considered that the *Workers' Compensation and Rehabilitation (Protecting Firefighters) Amendment Bill 2015* appropriately realise the policy objectives of what they perceive is the most comprehensive presumptive workers' compensation for all Queensland firefighters in Australia and therefore recommend the Bill be passed, subject to amendment. Refer section 3.3 of this report.

³ Queensland Legislative Assembly, Mr J Bleijie MP, Member for Kawana, Introduction, *Parliamentary Debates (Hansard)*, 3 June 2015: 1025

⁴ Queensland Legislative Assembly, Mr J Bleijie MP, Member for Kawana, Introduction, *Parliamentary Debates (Hansard)*, 3 June 2015: 1026

⁵ Correspondence from Mr J Bleijie MP, Member for Kawana to FAC dated 3 August 2015: 1

2 Examination of the *Workers' Compensation and Rehabilitation (Protecting Firefighters) Amendment Bill 2015*: Background

During its consideration of the *Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2015*, 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.⁶

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.*⁷

2.1 Firefighter cancer studies

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

2.1.1 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.⁸

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.

⁶ Deputy Commissioner Roche, QFES, Public Departmental Briefing Transcript 6 August 2015: 2

⁷ Deputy Commissioner Roche, QFES, Public Departmental Briefing Transcript 6 August 2015: 2

⁸ Guidotti, TL and Goldsmith, DF, Evaluating Causation for Occupational Cancer Among Firefighters: Report to the Workers' Compensation Board of Manitoba, March 2002: 5

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.

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.⁹

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.¹⁰

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.¹¹

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.¹² 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.¹³ 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.¹⁴

⁹ 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>

¹⁰ *The Lancet*, Vol 8, December 2007: 1066 [http://www.thelancet.com/pdfs/journals/lanonc/PIIS1470-2045\(07\)70373-X.pdf](http://www.thelancet.com/pdfs/journals/lanonc/PIIS1470-2045(07)70373-X.pdf)

¹¹ *The Lancet*, Vol 8, December 2007: 1066 [http://www.thelancet.com/pdfs/journals/lanonc/PIIS1470-2045\(07\)70373-X.pdf](http://www.thelancet.com/pdfs/journals/lanonc/PIIS1470-2045(07)70373-X.pdf)

¹² <http://www.cdc.gov/niosh/firefighters/ffcancerstudy.html>

¹³ <http://www.cdc.gov/niosh/firefighters/pdfs/FAQ-NIOSHFFCancerStudy.pdf>

¹⁴ [http://www.cdc.gov/niosh/firefighters/pdfs/Daniels-et-al-\(2015\).pdf](http://www.cdc.gov/niosh/firefighters/pdfs/Daniels-et-al-(2015).pdf)

2.1.2 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.¹⁵

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, eg 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.¹⁶

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).¹⁷

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.¹⁸

¹⁵ 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>

¹⁶ 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

¹⁷ Guidotti, TL, *Health Risks and Occupation as a Firefighter – A report prepared for the Department of Veterans' Affairs, Commonwealth of Australia*, February 2014:

¹⁸ Guidotti, TL, *Health Risks and Occupation as a Firefighter – A report prepared for the Department of Veterans' Affairs, Commonwealth of Australia*, February 2014:

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.*¹⁹

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.*²⁰

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 recommendations²¹:

¹⁹ Guidotti, TL, *Health Risks and Occupation as a Firefighter – A report prepared for the Department of Veterans' Affairs, Commonwealth of Australia*, February 2014: 39

²⁰ Guidotti, TL, *Health Risks and Occupation as a Firefighter – A report prepared for the Department of Veterans' Affairs, Commonwealth of Australia*, February 2014: 40

²¹ 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 1: 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
<ul style="list-style-type: none"> ▪ 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) 	<ul style="list-style-type: none"> ▪ 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 <i>a priori</i> 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) 	<ul style="list-style-type: none"> ▪ 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 	<ul style="list-style-type: none"> ▪ 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

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.²²

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.²³

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).²⁴

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.²⁵

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.²⁶

²² http://www.bushfirecrc.com/sites/default/files/managed/resource/final_report_for_the_operational_readiness_air_toxins_project.pdf

²³ Monash University, Faculty of Medicine, Nursing and Health Services, Australian Firefighters' Health Study, December 2014: 9

²⁴ Monash University, Faculty of Medicine, Nursing and Health Services, Australian Firefighters' Health Study, December 2014: 11-16

²⁵ United Firefighters Union of Australia, Submission No. 40: 17

²⁶ United Firefighters Union of Australia, Submission No. 40: 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.²⁷

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.²⁸*

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.²⁹

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.³⁰ They also noted that the completeness and quality of both the cohort and incident data provided varied by agency.³¹ 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.³²

²⁷ Monash University, Medicine, Nursing and Health Services, Report Australian Firefighters' Health Study, Summary December 2014: 3

²⁸ Monash University, Medicine, Nursing and Health Services, Report Australian Firefighters' Health Study, Summary December 2014: 3

²⁹ Monash University, Medicine, Nursing and Health Services, Report Australian Firefighters' Health Study, Summary December 2014: 13

³⁰ Monash University, Medicine, Nursing and Health Services, Report Australian Firefighters' Health Study, December 2014: 85

³¹ Monash University, Medicine, Nursing and Health Services, Report Australian Firefighters' Health Study, December 2014: 30

³² 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.³³

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.³⁴

2.2 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.³⁵

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.³⁶

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.³⁷

³³ 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

³⁴ 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

³⁵ 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

³⁶ National League of Cities, *Assessing State Firefighter Cancer Presumption Laws and Current Firefighter Cancer Research*, April 2009: 3

³⁷ 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.³⁸ The presumption is based upon a policy of law or a general rule and not upon the facts or evidence in an individual case.³⁹

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.⁴⁰

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.⁴¹

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 issues⁴²:

- *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.*

³⁸ <http://legal-dictionary.thefreedictionary.com/presumption>

³⁹ <http://dictionary.reference.com/browse/presumption+of+law>

⁴⁰ <http://www.iaff.org/hs/phi/>

⁴¹ National League of Cities, *Assessing State Firefighter Cancer Presumption Laws and Current Firefighter Cancer Research*, April 2009: 4

⁴² 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.⁴³*

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.⁴⁴

The study noted that rebuttal, while difficult, was not impossible and that courts have upheld tobacco use as a rebuttal to presumption.⁴⁵ 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.⁴⁶

⁴³ 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>

⁴⁴ National League of Cities, *Assessing State Firefighter Cancer Presumption Laws and Current Firefighter Cancer Research*, April 2009: 53

⁴⁵ National League of Cities, *Assessing State Firefighter Cancer Presumption Laws and Current Firefighter Cancer Research*, April 2009: 53

⁴⁶ 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.⁴⁷

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.⁴⁸ 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.*⁴⁹

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.⁵⁰

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.⁵¹

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.⁵²

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.⁵³

⁴⁷ 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

⁴⁸ 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

⁴⁹ 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

⁵⁰ 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

⁵¹ 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

⁵² 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

⁵³ United Firefighters Union of Australia Union of Employees Queensland, Submission No. 40: 4

They 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.⁵⁴

Rural Fire Brigades Association Queensland Inc. (RFBAQ) provided the Committee with a copy of an article by the Bushfire CRC which detailed the results of an air quality study of bushfire smoke undertaken between 2005 and 2007. The paper discusses the adequacy of the existing exposure standards for bushfire fighting. The study found that standards need to be adjusted to take into account the different work environment of bushfire fighters, eg longer and irregular work shifts, heavier workload, exposure to a mixture of air toxics that may have interactive health impacts. The study suggested that a better characterisation of bushfire smoke particles is essential to determine a suitable exposure standard.⁵⁵

Some submitters highlighted the differences between this Bill and the government Bill. In particular they have noted that this Bill does not include the requirement of 150 exposure incidents contained in the government Bill.

2.3 Presumptive legislation in Australia

2.3.1 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.

⁵⁴ United Firefighters Union of Australia Union of Employees Queensland, Submission No. 40: 4

⁵⁵ 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

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.⁵⁶

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.⁵⁷

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.

⁵⁶ Deputy Commissioner Roche, Public Departmental Hearing Transcript 24 August 2015: 16

⁵⁷ Assistant Commissioner Varley, Public Departmental Hearing Transcript 24 August 2015: 16

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 D.

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.

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 assessed under the general disease provisions of the relevant workers' compensation scheme.

The United Firefighters Union of Australia (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.⁵⁸

⁵⁸ United Firefighters Union of Australia, Submission No. 40: 30

2.3.2 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.⁵⁹ That Committee recommended that the Bill be passed subject to amendment.⁶⁰

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.*⁶¹

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.⁶² 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 2013.⁶³ The definition of ‘employee’ in the Act does not include volunteer firefighters.⁶⁴

The review, as required by the 2011 Bill, 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.⁶⁵

⁵⁹ 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

⁶⁰ 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

⁶¹ 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

⁶² 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

⁶³ *Safety, Rehabilitation and Compensation Amendment (Fair Protection for Firefighters) Bill 2011* (Cwlth), Schedule 1 (as amended)

⁶⁴ *Safety, Rehabilitation and Compensation Act 1988* (Cwlth), section 5

⁶⁵ Australian Government, *Review of the Safety, Rehabilitation and Compensation Amendment (Fair Protection for Firefighters) Act 2011 Report*, December 2013:

With regard to coverage for volunteer firefighters, the Senate Committee report identified that⁶⁶:

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.

2.3.3 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.⁶⁷

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.⁶⁸

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

2.3.3 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.⁶⁹

⁶⁶ 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

⁶⁷ Safe Work Australia, *Comparison of workers' compensation arrangements in Australia and New Zealand*, August 2014: 7

⁶⁸ United Firefighters Union of Australia Union of Employees Queensland, Submission No. 40: 27-28

⁶⁹ 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

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.⁷⁰

The Committee included an examination of 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.⁷¹

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.⁷²

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.⁷³

2.3.5 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.

⁷⁰ 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

⁷¹ 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

⁷² 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

⁷³ 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

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.⁷⁴ As at the date of this report, the proposed amendments had not been introduced.

2.3.6 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.⁷⁵

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.*⁷⁶

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.*⁷⁷

2.4 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.⁷⁸

⁷⁴ Hon J Francis MLA, Minister for Emergency Services; Corrective Services; Small Business; Veterans, Media Statement, *New compensation support for firefighters*, 4 October 2014: 1

⁷⁵ *Workers Rehabilitation and Compensation Legislation Amendment Act 2015* (NT)

⁷⁶ <http://notes.nt.gov.au/lant/hansard/hansard12.nsf/WebbySubject/14DB5777F0E940A769257E27000AFF3F?opendocument>

⁷⁷ <http://notes.nt.gov.au/lant/hansard/hansard12.nsf/WebbySubject/14DB5777F0E940A769257E27000AFF3F?opendocument>

⁷⁸ Correspondence from Queensland Treasury to FAC dated 14 August 2015: 3

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.⁷⁹

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.⁸⁰

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.⁸¹

2.5 Alternative ways of achieving policy objectives

The Explanatory Notes state that there are no known alternative ways of achieving the same policy objectives.⁸²

2.6 Stakeholder consultation

The Explanatory Notes state:

This policy was publicly announced by the former LNP Government in December 2014. Since that time, further general discussion has been undertaken with stakeholders⁸³

2.7 Estimated cost of government Implementation

The Explanatory Notes detail that the costs of implementation of the legislation will be paid for by the Queensland Fire and Emergency Services (QFES) WorkCover policy.⁸⁴

The UFUA advised the Committee 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.⁸⁵

2.8 Commencement

The Bill does not specify a commencement date.

⁷⁹ Firefighter Cancer Foundation Australia, Submission No.134: 3

⁸⁰ Firefighter Cancer Foundation Australia, Submission No.134: 3

⁸¹ Firefighter Cancer Foundation Australia, Submission No.134: 4

⁸² Explanatory Notes, *Workers' Compensation and Rehabilitation (Protecting Firefighters) Amendment Bill 2015: 1*

⁸³ Explanatory Notes, *Workers' Compensation and Rehabilitation (Protecting Firefighters) Amendment Bill 2015: 1*

⁸⁴ Explanatory Notes, *Workers' Compensation and Rehabilitation (Protecting Firefighters) Amendment Bill 2015: 1*

⁸⁵ United Firefighters Union of Australia, Submission No. 40: 38

2.9 Consistency with legislation of other jurisdictions

The Explanatory Notes state:

While workers' compensation claims are not limited in Australia (as they are in other countries), it is and has been extremely difficult to prove that a disease was contracted or caused by employment. In recognition of these difficulties, the Commonwealth Government passed presumptive workers' compensation laws for full-time firefighters in 2011. Since that time, South Australia, Tasmania, Northern Territory and Western Australia have since passed similar laws and the Victorian Government have announced that they intend to introduce legislation in 2016.⁸⁶

3 Examination of the *Workers' Compensation and Rehabilitation (Protecting Firefighters) Amendment Bill 2015 – Amendment of Workers' Compensation and Rehabilitation Act 2003*

The Committee also considered the provisions relating to firefighters in its consideration of the *Workers' Compensation and Rehabilitation and Other Legislation 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.

3.1 Clause 3 – Insertion of new section 32A – Special provision about diseases contracted by firefighters

The Explanatory Notes state clause 3 inserts the special provisions about diseases contracted by firefighters. The Explanatory Notes also state that the table referred to is similar to that referred to in section 7 of the *Safety, Rehabilitation and Compensation Act 1988* (Cwth). The Explanatory Notes also state that the clause includes relevant definitions to support implementation of the policy.⁸⁷

⁸⁶ Explanatory Notes, *Workers' Compensation and Rehabilitation (Protecting Firefighters) Amendment Bill 2015*: 1

⁸⁷ Explanatory Notes, *Workers' Compensation and Rehabilitation (Protecting Firefighters) Amendment Bill 2015*: 2

Proposed section 32A is as follows:

32A Special provision about diseases contracted by firefighters

(1) This section applies if—

(a) a person contracts a disease mentioned in column 1 of the following table—

- (i) while employed as a firefighter; or
- (ii) at any time after the person stops being employed as a firefighter; and

(b) at any time before contracting the disease, the person was employed as a firefighter for at least the number of years mentioned in column 2 of the table, whether in 1 period or 2 or more periods.

Column 1	Column 2
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

(2) For section 32(3)(a)—

- (a) the disease is taken to have been contracted in the course of the person's employment as a firefighter; and
- (b) the employment is taken to be a significant contributing factor to the disease.

(3) If the person satisfies subsection (1)(b) by combining periods of employment as different kinds of firefighter, the disease is taken to have been contracted in the course of the following employment—

- (a) if at least 1 of the periods was employment as a fire officer—employment as a fire officer;
- (b) otherwise—employment as a volunteer.

(4) To remove any doubt, it is declared that a disease taken to have been contracted in the course of a person's employment as a rural firefighter or volunteer is taken to be an injury sustained while—

- (a) for a rural firefighter—performing duties as a member of a rural fire brigade; or
- (b) for a volunteer—attending at a fire as a volunteer firefighter or volunteer fire warden.

Note—

See section 14(3) for rural firefighters and section 15(3) for volunteers.

(5) For this section, a person contracts a disease when the first of the following happens—

- (a) the person is first diagnosed as having the disease;
- (b) the person becomes totally or partially incapacitated because of the disease;
- (c) the person dies because of the disease.

(6) This section does not apply if it is proved that—

- (a) the disease was contracted by the person other than 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 disease.

(7) In this section—

employment includes engagement.

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 the *Fire and Emergency Services Act 1990*.

volunteer means—

- (a) a volunteer firefighter; or
- (b) a volunteer fire warden.

The following issues are considered in this section of this report:

- the comparison between the treatment of career and volunteer firefighters in the Bill;
- the presumption conditions contained in the Bill;
- the provision of protective equipment;
- the government response to the Bill; and
- Proposed new section 32A.

3.1.1 Comparison between career and volunteer firefighters

The Committee received a large number of submissions supporting the passage of the *Workers' Compensation and Rehabilitation (Protecting Firefighters) Amendment Bill 2015* on the basis that they considered provides volunteers with the same protections as career firefighters.

The Committee also received a large number of submissions to the *Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2015*. Although some of the comments may add support or opposition to this Bill, those submissions were not lodged in response to this Bill and specifically addressed the relevant sections of the government Bill. This report should be read and considered in conjunction with the evidence and commentary from submitters in the Committee's Report No 8 on that Bill. Those submissions which addressed the passage of this Bill are highlighted below.

The RFBAQ advised that the Bill regards all firefighters as equal and does not define a person by their pay status. Rather they say it recognises all firefighters equally as Queenslanders who place their lives at risk in defending the community. They also advised that they consider the passage of this Bill will see brigades continue to attract and retain volunteer firefighters across Queensland and will be a tangible example of the State supporting all firefighters.⁸⁸

Many rural fire brigades submitted their support for the Bill. For example, the Gatton Springdale Rural Fire Brigade agreed with the RFBAQ in noting that this Bill gives volunteers the same level of protection as paid firefighters.⁸⁹ Many rural fire brigades such as the Upper Flagstone Rural Fire Brigade stated that their members had unanimously voted in preference for this Bill.⁹⁰

⁸⁸ Rural Fire Brigades Association Queensland Inc, Submission No. 50: 1

⁸⁹ Gatton Springdale Rural Fire Brigade, Submission No. 1: 1

⁹⁰ Upper Flagstone Rural Fire Brigade, Submission No. 8: 1

3.1.2 Presumption conditions

The UFUQ submission notes that the Bill almost replicates 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 the inclusion of additional cancers as the science develops;
- it provides for the qualifying period to be calculated combining service as a career firefighter and a volunteer firefighter; and
- it provides for the presumption to be applied when a volunteer firefighter is not a career firefighter.⁹¹

The UFUQ submission notes that the Bill's current drafting arguably only applies the presumption in respect of career firefighters who have been employed under the *Fire and Emergency Services Act 1990* and this distinction excludes firefighters (both career and volunteer) employed under previous legislation, authorities and instruments.⁹²

The submission from Hall Payne Lawyers highlights that under the current system of workers' compensation in Queensland, a worker's employment must have been a significant contributing factor to the onset of their injury in order for there to be an entitlement to workers' compensation benefits. They noted that in order to satisfy the requirements of the Act, a worker must provide medical evidence to the insurer that establishes, to a civil standard, that the claimed injury resulted from their employment.⁹³

They advised that, whilst there is a persuasive body of evidence confirming that firefighters have an increased incidence of cancer in relation to a number of specific cancers, their experience is that it remains difficult for medical practitioners to confidently give evidence that, on the balance of probabilities, a specific occurrence of specified disease was significantly contributed to by a firefighters' employment.⁹⁴

They consider that, given the persuasive body of evidence indicating an increased incidence of specified diseases among firefighters, it is unreasonably harsh to deny firefighters diagnosed with a specified disease workers' compensation entitlements and it is appropriate that in order to remedy the current situation that presumptive legislation is introduced.⁹⁵

However, they consider it paramount that the introduction of such presumptive legislation is founded on persuasive scientific evidence to ensure that the presumption is not seen to be arbitrary. They advised:

*To introduce a presumption on any other basis than persuasive scientific evidence could lead to proposals for presumptions in relation to incidence of conditions which are not persuasively evidenced.*⁹⁶

Hall Payne Lawyers recommended to the Committee that additional amendments are required to the Bill to ensure that workers' compensation entitlements of firefighters diagnosed with occupationally-linked cancers are fully recognised by workers' compensation insurers.⁹⁷

⁹¹ United Firefighters Union of Australia Union of Employees Queensland, Submission No. 40: 5

⁹² United Firefighters Union of Australia Union of Employees Queensland, Submission No. 40: 5

⁹³ Hall Payne Lawyers, Submission 52, 2

⁹⁴ Hall Payne Lawyers, Submission 52, 2

⁹⁵ Hall Payne Lawyers, Submission 52, 2

⁹⁶ Hall Payne Lawyers, Submission 52, 3

⁹⁷ Hall Payne Lawyers, Submission 52, 1

The United Firefighters Union of Australia (UFUA) submission notes that firefighters are exposed to carcinogens, known and unknown, at fires. Whilst firefighters take precautions to limit their exposure to carcinogens, they can never be fully protected because the uniform has to breathe to prevent metabolic heat build-up. As a result firefighters cannot be fully protected from absorbing toxins and carcinogens through their skin at fires.⁹⁸

Their submission also notes that despite the accepted link between firefighting and the increased risk of specific cancers, firefighters have been unable to access their entitlements and assistance under workers' compensation schemes as they are unable to prove the specific fire or fires they attended, or identify the specific carcinogen that resulted in the contraction of the cancer. Due to the nature of firefighting, firefighters are unable to meet the standard of proof required for acceptance of claims and must undertake expensive and stressful litigation which is adversarial and protracted.⁹⁹ They advised that it is difficult for a firefighter to pinpoint the specific fire or incidents where the toxic exposure occurred as it is exposure to toxins over a period of time which has placed the firefighter at risk.¹⁰⁰ The UFUA submission highlighted their concern that the inclusion of volunteer firefighters in the legislation leaves volunteers open to being challenged should they seek to claim under the legislation. They advised:

The operation of the rebuttable presumption is to presume that the specific cancers are contracted as a result of firefighting due to established evidence and facts. There is a wealth of accepted scientific studies that have demonstrated the increased incidence of specific cancers for career firefighters. There is not the same evidence or studies for volunteer firefighters. The studies have only included full time career firefighters in the cohort or part time paid firefighters (referred to as volunteers in North America). The Monash Australian Firefighters' Health Study is the first to include specific analysis on a volunteer cohort and it did not find an overall increased incidence of cancer for volunteer firefighters.

In the context where there is not the research or science to underpin the basis for presumptive legislation for volunteer firefighters, a requirement for volunteers to demonstrate they have been exposed to the hazards of a fire-ground during the required qualifying period is in reference to the understanding that carcinogens and toxins are absorbed as a result of the exposure to a fire scene. This requirement would enable volunteer firefighters who could demonstrate such exposures access to the presumptive; otherwise it is likely any claim from a volunteer would be challenged as firefighting does not comprise a substantial portion of their working lives.¹⁰¹

The UFUA noted that the Bill does not include any requirement for volunteer firefighters to demonstrate attendance/exposures to the hazards of a fire scene. They advised:

The current drafting of proposed s32A (4)(a) includes rural firefighters performing the duties as a member of a rural fire brigade.

- *The current drafting does not require evidence that the rural firefighter has attended fires or been exposed to the hazards of a fire scene as a firefighter.*
- *There may be rural brigade members who do not perform operational firefighting.*

⁹⁸ United Firefighters Union of Australia, Submission No. 40: 5

⁹⁹ United Firefighters Union of Australia, Submission No. 40: 5

¹⁰⁰ United Firefighters Union of Australia, Submission No. 40: 19

¹⁰¹ United Firefighters Union of Australia, Submission No. 40: 31

- *The current wording may give rise to claims to the presumption from members of a rural fire brigade who have not been exposed to the hazards of a fire ground.*
- *The current wording therefore may open the flood gates which would have a direct impact on the credibility of the presumption.*
- *The current wording therefore may open the flood gates which may have significant cost implications.*¹⁰²

Some rural fire brigades are also concerned that their exposure to more hazardous cancer causing fumes in many rural situation is unknown. This is because on many occasions, they can come across fires in disused out-buildings where their contents is not known and cannot be ascertained.^{103,104} Some submitters also explained that bushland can be used illegally as a dumping ground for unwanted materials including asbestos, paints, solvents and other household or industrial waste.¹⁰⁵

In the hearing on the *Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2015*, the QFES advised that the role of rural firefighters is predominantly dealing with vegetation fires but they acknowledged there are occurrences where a vegetation fire might impact on a structure. 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.¹⁰⁶

The UFUA submission identifies the same issues in regard to proposed section 32A(4)(b). The UFUA submission also identifies concerns that the drafting of proposed new section 32A(7) arguably only applies the presumption to career firefighters who have been employed under the *Fire and Emergency Services Act 1990* and rural firefighters who have been a member of a brigade registered under the *Fire and Emergency Services Act 1990* and excludes firefighters employed under previous legislation, authorities or instruments. It noted that the current drafting does not limit the application to volunteer firefighters.¹⁰⁷

The UFUA further advised the Committee that:

The inherent flaw with the current drafting of the Workers' Compensation and Rehabilitation (Protecting Firefighters) Amendment Bill 2015 is that it may be well meaning, but in fact it sets up a situation where most claims for volunteers will be rebutted and result in extensive and unnecessary litigation due to lack of an evidentiary base. This will be because there is no scientific basis for the inclusion of volunteers.

*The Monash Australian Firefighters' Health Study is the first significant study to include a cohort of more than 200,000 volunteer firefighters. The 2014 Monash Study of more than 200,000 Australian volunteer firefighters found there was no overall increased incidence of cancer among volunteer firefighters who had attended at least one fire when compared to the Australian population. The same study confirmed the overall increased incidence of cancer for career firefighters.*¹⁰⁸

¹⁰² United Firefighters Union of Australia, Submission No. 40: 33-34

¹⁰³ Kin Kin Rural Fire Brigade, Submission No. 12: 1

¹⁰⁴ Brian Marfleet, Submission No. 2: 1

¹⁰⁵ Brian Marfleet, Submission No. 2: 1

¹⁰⁶ Assistant Commissioner Gallant, Public departmental briefing Transcript 6 August 2015: 7

¹⁰⁷ United Firefighters Union of Australia, Submission No. 40: 34

¹⁰⁸ Correspondence from United Firefighters Union of Australia to FAC dated 19 August 2015: 3

They advised that:

It is well meaning to include genuine occupational cancer claims for volunteers but the mechanism of a presumption must be effective and applied. Without a credible basis for the extension of the presumption to volunteer firefighters, it is likely that the volunteers will never actually benefit from being included in the legislation as their claims will also be contested and the volunteer will be left to fund a litigious fight to have the occupational cancer claim accepted.¹⁰⁹

They consider that the Bill is fundamentally flawed on the basis that:

...without a reasonable basis for the application of the presumption to be extended to volunteers, it is unlikely that insurers and employers will accept the presumption applies and will rebut every claim by a volunteer. It will result in volunteer firefighters having to litigate for legitimate occupational cancer claims which negates the whole purpose of the presumption.

In addition, without a basis of a minimum requirement of exposures to the hazards of a fire scene, the legislation may result the unintended consequence of creating new entitlements which would have significant fiscal implications and undermine the integrity and viability of the scheme.¹¹⁰

They consider that the only way to protect volunteer firefighters and to actually provide them with the protection of the presumption is to have a requirement to demonstrate exposures to the hazards of a fire scene.¹¹¹

The UFUA also 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.¹¹²

They also suggested that additional provisions should be included to include the requirements for the employer to provide the necessary information to WorkCover Queensland so that the presumption can be applied.¹¹³

The UFUA advised the Committee that:

There is an unintended inherent injustice in workers compensation systems where the onus of proof acts as a barrier for firefighters to access assistance and entitlements for occupational cancer as they cannot prove the specific events of exposure or the specific carcinogens that resulted in the contraction of the cancer.¹¹⁴

¹⁰⁹ Correspondence from United Firefighters Union of Australia to FAC dated 19 August 2015: 3

¹¹⁰ Correspondence from United Firefighters Union of Australia to FAC dated 19 August 2015: 5

¹¹¹ Correspondence from United Firefighters Union of Australia to FAC dated 19 August 2015: 5

¹¹² United Firefighters Union of Australia, Submission No. 40: 36

¹¹³ United Firefighters Union of Australia, Submission No. 40: 36

¹¹⁴ United Firefighters Union of Australia, Submission No. 40: 41

3.1.3 Protective equipment

Some submitters, commenting on both the government Bill and this Bill (e.g. Kin Kin Rural Fire Brigade), also expressed concerns that urban and auxiliary firefighters have access to better Personal Protective Equipment (PPE).¹¹⁵ The Samford Rural Fire Brigade explained:

*It should also be noted that the only respiratory protection that Queensland Fire and Emergency Services issues to volunteer rural firefighters and fire wardens are P2 particulate filter masks whilst for permanent fire fighters, the Fire Service issues not only the P2 masks, but also P3 negative pressure full face masks and of course all have access to Compressed Air Breathing Apparatus (CABA) on all fire appliances. P2 masks supposedly filter 94% of airborne particles whilst P3 masks are rated to filter 99% of airborne particles and CABA excludes all particles and contaminants. In addition, the permanent firefighters can also use a disposable canister with their P3 masks which can filter out not just the 99% of particulate matter, but also a large proportion of the toxins and irritant gases present in the bushfire smoke.*¹¹⁶

The Samford Rural Fire Brigade stated that given the lesser quality of respiratory protection issued to rural volunteers, they are likely to be more susceptible to breathing in a greater concentration of toxic contaminated smoke.¹¹⁷

3.1.4 Volunteer firefighter exposure

Several submitters also outlined their concerns that there is an uncertainty in what dose of harmful gases or particulates a firefighter is inhaling or being exposed to given that illegal dumping of substances such as asbestos could occur.¹¹⁸

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.*¹¹⁹

¹¹⁵ Kin Kin Rural Fire Brigade, Submission No. 12: 1

¹¹⁶ Samford Rural Fire Brigade, Submission No. 15: 2

¹¹⁷ Samford Rural Fire Brigade, Submission No. 15: 2

¹¹⁸ Brian Marfleet, Submission No. 2: 2

¹¹⁹ Ms Thompson, Public Hearing transcript 17 August 2015: 2-3

3.1.5 Whole-of-Government response

Queensland Treasury provided a submission on behalf of whole-of-government in response to the Bill. They advised the Committee that under section 32A of the Bill, every person who has been employed as a firefighter as defined in the Bill will be eligible for coverage regardless of how long they have been engaged in active firefighting duties.¹²⁰

They advised the Committee that:

There are approximately 2,050 auxiliary firefighters and 2,200 full-time firefighters employed by Queensland Fire and Emergency Service (QFES). The Rural Fire Service Queensland has approximately 1,500 rural fire brigades, with approximately 36,000 volunteers. QFES advises that approximately 13,700 volunteer rural firefighters are engaged in active firefighting duties. The broad coverage provided under section 32A would extend to all full-time and auxiliary firefighters and rural and volunteer firefighters who meet the qualifying period for a specified disease, regardless of their length of service performing active firefighting duties or the number of fire incidents attended.¹²¹

They advised that the many of specified diseases are prevalent in the general Australian population and the Bill will provide broad coverage to firefighters for specified diseases they may contract irrespective of their relationship to employment as a firefighter.¹²²

The submission also details that the Bill's definition of volunteers means that the coverage is broad and appears to go beyond volunteers presently covered by QFES' workers' compensation policy as it proposes to include any volunteer firefighter or fire warden without defining the entity that engages them.¹²³

3.1.6 Proposed new section 32A

With regard to section 32A, the whole-of-government submission details that by the application of this provision, an eligible person is taken to have performed active firefighting duties regardless of the duties they have actually performed or the number of the actual fire incidents they have attended.¹²⁴

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

<p>Subdivision 3A When latent onset injuries arise</p> <p>36A Date of injury</p> <p>(1) This section applies if a person—</p> <ul style="list-style-type: none">(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. <p>(2) The following questions are to be decided under the relevant compensation Act as in force when the injury was sustained—</p> <ul style="list-style-type: none">(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. <p>(3) Section 131 applies to the application for compensation as if the entitlement to compensation arose on the day of the doctor's diagnosis.</p> <p>(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.</p>
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¹²⁰ Queensland Government, Submission No. 56: 3

¹²¹ Queensland Government, Submission No. 56: 3

¹²² Queensland Government, Submission No. 56: 3

¹²³ Queensland Government, Submission No. 56: 4

¹²⁴ Queensland Government, Submission No. 56: 5

- (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.

The whole-of-government submission notes that under existing 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 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.¹²⁵

The whole-of-government submission iterated its concern that:

*As the Bill is currently drafted, it is uncertain how it will interact with section 36A(2)(b), and it will be open to the Courts to interpret the interaction of these provisions. The Bill will deem that a specified disease is taken to have the required relationship with employment as a firefighter to enable the disease to meet the definition of 'injury' under section 32 of the Act. However, as it is possible that a specified disease which is latent onset injury was sustained prior to the current Act, potentially section 36A(2)(b) could be interpreted to direct that the question whether the specified disease is an 'injury' should be determined under a previous compensation Act (e.g. WorkCover Queensland Act 1996, Workers' Compensation Act 1990, Workers' Compensation Act 1916). This could nullify the operation of the deeming provisions for specified diseases sustained prior to the introduction of the Bill.*¹²⁶

They also noted that the Bill, as currently drafted, gives a very broad definition of contracting a specified disease. They consider that, as currently drafted, section 32A could apply to a person who dies from a specified disease before they are diagnosed or become totally or partially incapacitated because of the disease.¹²⁷

The whole-of-government submission notes that under existing section 12 of the Act, rural fire brigade members, volunteer firefighters and fire wardens are covered under a contract of insurance with WorkCover. However, the contract does not cover payment of common law damages. The submission iterates the concern that the Bill does not address the restriction on access to common law damages and as a consequence rural fire brigade members and volunteer firefighters would be restricted to entitlements to statutory benefits.¹²⁸

3.2 Clause 4 – Insertion of new chapter 32 – Transitional and declaratory provision for Workers' Compensation and Rehabilitation (Protecting Firefighters) Amendment Act 2015

The Explanatory Notes detail that clause 4 includes the transitional provisions for the application of the deemed disease provisions. It details that the commencement of the policy is taken to be on or after the day the Bill was introduced into the Legislative Assembly.¹²⁹

¹²⁵ Queensland Government, Submission No. 56: 6

¹²⁶ Queensland Government, Submission No. 56: 6

¹²⁷ Queensland Government, Submission No. 56: 7

¹²⁸ Queensland Government, Submission No. 56: 7

¹²⁹ Explanatory Notes, *Workers' Compensation and Rehabilitation (Protecting Firefighters) Amendment Bill 2015*: 2

Proposed chapter 32 is as follows:

Chapter 32 Transitional and declaratory provision for Workers' Compensation and Rehabilitation (Protecting Firefighters) Amendment Act 2015

707 Application of s 32A

- (1) Section 32A applies to a disease contracted by a person, as mentioned in section 32A(5), on or after the day the Bill for the *Workers' Compensation and Rehabilitation (Protecting Firefighters) Amendment Act 2015* was introduced into the Legislative Assembly.
- (2) Section 382(3) does not apply to an amount payable by WorkCover because of the operation of section 32A.

The whole-of-government submission notes that under existing section 382(3) of the Act states that if WorkCover Queensland is unable to pay from a fund under its control an amount payable by WorkCover under a policy or contract guaranteed by the State Government, the amount is to be paid out of the consolidated fund to WorkCover. They noted that under chapter 32 of the Bill, section 382(3) is stated not to apply to an amount payable by WorkCover because of the operation of section 32A.¹³⁰

They advised:

Under the proposed amendments defining the contracting of a disease, it is possible that a person may become partially incapacitated due to a specified disease before being diagnosed, and partially incapacity may have occurred before the commencement of section 32A. As section 32A would apply to a disease contracted on or after the day the Bill was introduced, a person who was incapacitated by a specified disease before commencement but diagnosed after commencement will not be eligible for coverage under section 32A. This would be inconsistent with the application of the current section 36A to other latent onset injuries.¹³¹

The Bill's transitional and declaratory provisions exclude the application of section 382(3) to an amount payable by WorkCover because of the operation of section 32A. This means that if WorkCover were unable to pay entitlements under section 32A for any reason, it would not have access to the Consolidated Fund in order to ensure coverage for eligible firefighters. This provision is necessary to validate the Bill, due to the convention that bills dealing with financial or monetary matters requiring an appropriation of an amount from the consolidated fund also require a Governor's message and this cannot be prepared at the request of a private member. However, it potentially impacts on coverage for firefighters for specified diseases compared with the coverage afforded to other persons under the Act.

3.3 Committee comments

The Committee also considered these provisions in its consideration of the *Workers' Compensation and Rehabilitation and Other Legislation 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.

Whilst the Committee agrees that the presumptive legislative provisions should include volunteer rural firefighters, no agreement regarding the minimum threshold was reached.

¹³⁰ Queensland Government, Submission No. 56: 7

¹³¹ Queensland Government, Submission No. 56: 7-8

The non-government Members of the Committee believe that a firefighter is a firefighter and acknowledges the work done to protect communities across Queensland by permanent, auxiliary and volunteer firefighters. The non-government Members of the Committee are disappointed the government has put the wishes of unions ahead of the needs of the more than 36,000 volunteer firefighters at more than 1,400 volunteer brigades across Queensland. The non-government Members of the Committee, consistent with the LNP's position in government, maintain all firefighters should be treated as equals, irrespective of whether or not they arrive at a fire in a red truck or a yellow one.

When in government, the LNP worked with various stakeholder organisations before committing to the introduction of presumptive legislation for all full-time, auxiliary and volunteer firefighters across Queensland. In Opposition, the LNP remains committed to presumptive legislation for all firefighters across Queensland.

The non-government members of the Committee are concerned the government has plucked from thin air an arbitrary number for the purpose of presumptive legislation and is concerned at the overt discrimination toward the thousands of volunteer firefighters across Queensland demonstrated.

At the Departmental Briefings and Public Hearings held to discuss the proposed legislation representatives of the QFES, the RFBAQ and various brigades, as well as in submissions, provided evidence to the Committee that records are not maintained to the same standard across various brigades.

The RFBAQ and various brigades provided evidence to the committee that volunteer firefighters often work alongside their full-time urban colleagues without the same protective equipment; in addition, particularly for an iZone brigade, they're often the first responders to car and structural fires.

Evidence was also provided to the Committee with respect to the carcinogens present in bushfires, the fires which volunteer firefighters fight with a simple paper mask to protect their airways and after which they have to launder their own uniforms.

Whilst the non-government Members of Committee are recommending that the Bill be passed they noted the government responses which identified drafting issues and the interaction of the proposed amendments with other provisions of the Act. The non-government Members of the Committee agreed that there are some issues that require clarification to ensure that the policy intent of the Bill is achieved. Required amendments include:

- Provide for the inclusion of additional cancers as the science develops;
- Provide that the proposed amendments interact adequately with section 36A;
- Provide that volunteer rural firefighters have access to common law damages under the proposed amendments;
- Ensure provisions are included that, should the insurer be unable to meet its obligations, the fund has access to make payments from the consolidated fund.

Government Members recognise the significance and importance of presumptive legislation and wish to ensure that the legislation that is passed provides for the needs of all firefighters, including full time, auxiliary and volunteers. They consider that firefighters risk their lives 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 that diagnosis of this type will have on that employee.

It is the view of government Members that the aim of presumptive legislation is to avoid placing firefighters (whether full time, auxiliary and volunteers) 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.

They note the findings of the Senate Committee Report that the science underpinning presumptive legislation is pivotal to its justification. They also note the submission of Hall Payne Lawyers that *"to introduce a presumption on any other basis than persuasive scientific evidence could lead to proposals for presumptions in relation to incidence of conditions which are not persuasively evidenced."*

In this context they also note (i) the findings of the Monash study, which found that male volunteer firefighters did not have an overall increased risk of cancer compared to the Australian population and (ii) the advice of the UFUA that in much of the research there is a gap in regard to the level of impact experience by volunteer firefighters.

The Committee is concerned that any proposed legislation 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 there be a demonstrated link to exposure to the hazards from firefighting.

In the absence of scientific information, 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 the 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.

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.

It is of grave concern to government Members that this Bill does not take into account the vulnerability with which volunteer firefighters would be faced if they were making claims in accord with presumptive legislation which could be easily rebutted without a scientific basis. Government Members believe that this Bill was applied, volunteers may be falsely led to consider the legislation to be their insurance against contracting cancer.

It is also of grave concern to government Members that the amendments proposed in this Bill were so poorly drafted that they (i) did not provide that volunteer firefighters have access for common law damages (ii) ensure that the proposed amendments interact adequately with section 36A, and (iii) draft provisions to ensure that should the insurer be unable to meet its obligations, the fund has access to make payments from the consolidated fund.

It is the opinion of government Members that, while the Bill, and the comments of non-government Members, espouse a concern for volunteer firefighters, the Bill which they propose to support these same firefighters – because of a lack of attention to detail and a lack of recognition of widely accepted scientific studies and reviews – would in fact leave those same dedicated men and women even more vulnerable than they currently are.

4 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.

The Explanatory Notes state:

*The Bill is consistent with fundamental legislative principles.*¹³²

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 in 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's 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.

¹³² Explanatory Notes, *Workers' Compensation and Rehabilitation (Protecting Firefighters) Amendment Bill 2015*: 1

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.

5.1 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 3 inserts a new section 32A into the *Workers' Compensation and Rehabilitation Act 2003* which makes special provision for diseases contracted by firefighters. It covers persons contracting a specified disease while employed as a firefighter or at any time after they stop being a firefighter, provided that before contracting the disease they served the minimum number of years as a firefighter that correlates to the specified disease they have. For the Act's definition of injury in section 32(3)(a), the disease is, per section 32A(2) of the Bill, taken to have been contracted in the course of their employment as a firefighter and the employment is taken to be a significant contributing factor to the disease.

Section 32A(6) provides that section 32A does not apply if it is proved that the disease was contracted by the person other than in the course of their employment as a firefighter, or that the person's employment as a firefighter is not a significant contributing factor to the disease.

Section 32A(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 32A(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 they worked as a firefighter for the duration of time that correlates to their particular form of cancer. 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 s.32A(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 32A(1)), unless the respondent insurer/Workcover is able to prove the matters set out in section 32A(6) to successfully refute the claim.

5.2 Committee comments

Whilst section 32A(6) 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.

5.3 Rights and Liberties – Section 4(3)(g) *Legislative Standards Act 1992* – Does the Bill adversely affect rights and liberties, or impose obligations, retrospectively?

Clause 4 inserts a new section 707(1) into the *Workers' Compensation and Rehabilitation Act 2003* which states that section 32A applies to a disease contracted by a person, as mentioned in section 32A(5), on or after the day the Bill was introduced into the Legislative Assembly. Given section 32A is intended to be operative from a time before the Bill is passed and assented to, it is obviously intended that it will 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.

The former Scrutiny of Legislation Committee did not generally object to retrospective provisions if their retrospectivity was beneficial to members of the community and only adverse to the State.¹³³

5.4 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 or a self-insuring employer (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).

On balance it could be considered that the retrospective operation of section 32A is more beneficial than not to the community and therefore not in breach of fundamental legislative principles.

5.5 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.

¹³³ Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*: 57

Explanatory Notes were tabled with the introduction of the Bill. The notes contain the information required by Part 4 and a limited level of background information and commentary to facilitate understanding of the Bill's aims and origins. The Notes briefly mentioned the reversal of onus and retrospectivity but not in the context of fundamental legislative principles, most likely because, although issues for general consideration, they are not in breach of fundamental legislative principles given the reverse onus is in respect of a civil claim rather than a criminal proceeding and both the reverse onus and the retrospectivity will aid firefighters rather than the State.

Appendices

Appendix A – List of Submissions

Sub #	Submitters
1	Gatton Springdale Rural Fire Brigade
2	Brian Marfleet
3	Turkey Beach Rural Fire Brigade
4	Sandy Ridges Rural Fire Brigade
5	Hervey Bay Rural Fire Brigade
6	Vicki Avcin
7	Bauhinia Rural Fire Brigade
8	Upper Flagstone Rural Fire Brigade
9	Munger Yerra Rural Fire Brigade
10	Scott Goninan
11	Spingmount Primary Producers Rural Fire Brigade
12	Kin Kin Rural Fire Brigade
13	Tony Marks
14	Keith Ross
15	Samford Rural Fire Brigade
16	Warwick Trim
17	John and Yvonne Thompson
18	Marilyn King
19	Ronald Anderson
20	Logan Village Rural Fire Brigade
21	Graeme McWilliam
22	Shane Croucher
23	Darryl Hall
24	Stephen McCabe
25	Gold Coast Rural Fire Brigade
26	Willows Rural Fire Brigade
27	Vanessa Bull OAM
28	Elena Garcia
29	Childers Rural Fire Brigade
30	Country Fire Service Volunteers Association (CFSVA)
31	United Firefighters Union of Australia, Union of Employees Queensland (UFUQ)
32	Maroochy South Rural Fire Brigade

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(Protecting Firefighters) Amendment Bill 2015*

33	Narangba Rural Fire Brigade
34	Dean Cording
35	Dayboro and Districts Rural Fire Brigade
36	Dena Sadler
37	Lower Beechmont Rural Fire Brigade
38	Kim Crow
39	Kogan & District Rural Fire Brigade
40	United Firefighters Union of Australia (UFUA)
41	Hayley Sypher
42	Maleny District Rural Fire Brigade
43	Firefighter Cancer Foundation Australia
44	Cawarral Rural Fire Brigade
45	Nadine O'Brien
46	Queensland Auxiliary Firefighters Association Inc.
47	Seven Sisters Rural Fire Brigade
48	Elliott Baldwin
49	Louise Hicks
50	Rural Fire Brigades Association Queensland Inc. (RFBAQ)
51	Gerard de Bruyn and Barbara de Bruijn
52	Hall Payne Lawyers
53	Mount Kanigan Rural Fire Brigade
54	AWX Group
55	Charleville Rural Fire Brigade
56	Queensland Government

Appendix B – 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 C – 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 D – 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?
<p>Commonwealth</p> <p>Safety, Rehabilitation and Compensation Amendment (Fair Protection for Firefighters) Act 2011 (Cth) (Firefighters Act)</p> <p>amended the Safety, Rehabilitation and Compensation Act 1988 (Cth)(SRC Act)</p>	<p>s7(8) SRC Act</p> <p>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</p> <p>Former members of the Australian Defence Force</p>	<p>s7(8) SRC Act</p> <ol style="list-style-type: none"> 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 	<p>s7(8) During the qualifying period was exposed to the hazards of a fire scene.</p>	<p>The presumption applies to those firefighters who are diagnosed with the disease on or after 4 July 2011.¹¹</p>	<p>An independent review was to be undertaken and completed by 31 December 2013.</p>

⁸ Comcare, [Information for Firefighters on the Firefighters Act](#), (accessed on 7 August 2015).

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	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?
	<p>who ceased employment before 1 July 2004.⁹</p> <p>The Firefighters Act does not apply to volunteer firefighters, including those under the <i>Emergencies Act 2004</i> (ACT).¹⁰</p> <p>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.</p>	<p>cancer-15 years</p> <p>10. Primary site ureter cancer-15 years</p> <p>11. Primary site colorectal cancer-15 years</p> <p>12. Primary site oesophageal cancer-25 years</p> <p>13. A cancer of a kind prescribed for this table-</p> <p>The period prescribed for such a cancer</p>			

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).

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	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?
<p>Queensland</p> <p>Mr Bleijie</p> <p>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)</p>	<p>Proposed s 32A (7) WCR Act</p> <p>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.</p> <p>firefighter means— (a) a fire officer; or (b) a rural firefighter; or (c) a volunteer.</p> <p>fire officer means a person employed under the <i>Fire and Emergency Services Act 1990</i> as a fire officer or auxiliary firefighter.</p> <p>rural firefighter means a member of a rural fire brigade registered under</p>	<p>Proposed s 32A (1)(b) WCR Act</p> <ol style="list-style-type: none"> 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 		<p>s 707 WCR Act</p> <p>Applies to a disease contracted by a person, , on or after the day the Bill for the <i>Workers' Compensation and Rehabilitation (Protecting Firefighters) Amendment Act 2015</i> was introduced into the Legislative Assembly.</p>	<p>No requirement for review</p>

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	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?
	<p>the <i>Fire and Emergency Services Act 1990</i>.</p> <p>volunteer means— (a) a volunteer firefighter; or (b) a volunteer fire warden.</p>	<p>oesophageal cancer - 25 years</p>			

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	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?
<p>Queensland</p> <p>Mr Pitt</p> <p>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)</p>	<p>Proposed s 36B</p> <p>Presumption applies to volunteer and career firefighters.</p> <p>firefighter means— (a) a fire officer under the <i>Fire and Emergency Services Act 1990</i>; or (b) a member of a rural fire brigade registered under the <i>Fire and Emergency Services Act 1990</i>, 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.</p>	<p>Proposed Schedule 4A</p> <ul style="list-style-type: none"> • 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 	<p>Proposed s 36D(1)(c)</p> <p>A volunteer firefighter must have attended at least 150 exposure incidents.</p>	<p>Presumption only applies to new diagnoses after the legislation commences.¹²</p>	<p>No requirement for review</p>

¹² [Explanatory Memorandum Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2015.](#)

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	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?
		<ul style="list-style-type: none"> - 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 			

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	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?
<p>South Australia</p> <p>The Workers Rehabilitation and Compensation (Firefighters) Amendment Act 2013 (SA) amended the <i>Workers Rehabilitation and Compensation Act 1986 (SA)</i> which then became the Return to Work Act 2014 (SA). (RTW Act)</p>	<p>Sch. 3; s 1(1)(2) RTW Act</p> <p>Covers both employees of the SA Metropolitan Fire Service and volunteers with the SA Country Fire Service (presumptively employed by the Crown).</p> <p>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.</p>	<p>Sch. 3 s 1(3) RTW Act</p> <ol style="list-style-type: none"> 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 – 	<p>Sch. 3 s 1(1)(2)</p> <p>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).</p> <p>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.</p>	<p>Sch. 3 s 1(1)(2) RTW Act</p> <p>The Firefighters Amendment Act applies to injuries diagnosed on or after 1 July 2013.</p>	<p>s 68 RTW Act</p> <p>The Minister must arrange for an independent review after 5 years.</p>

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	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.

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	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?
<p>Western Australia</p> <p>The Worker's Compensation and Injury Management Amendment Act 2013 (WA) amended the Worker's Compensation and Injury Management Act 1981 (WA) (WCIM Act)</p>	<p>s 49B(b) WCIM Act</p> <p>The presumption does not apply to volunteers or to firefighters who contract the disease after retirement.¹⁴</p> <p>The Bill will apply to firefighters who are members or officers of a permanent fire brigade established under the <i>Fire Brigades Act 1942</i>. 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</p>	<p>Sch. 4A WCIM Act</p> <ol style="list-style-type: none"> 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 	<p>s 49 C WCIM Act</p> <p>Must be exposed to the hazards of a fire scene in the course of the employment.</p>	<p>s 49B(a) WCIM Act</p> <p>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.</p>	<p>s 49E(1) WCIM Act</p> <p>Review must be undertaken every five years</p>

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.

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	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.

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	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?
<p>Tasmania</p> <p>Workers Rehabilitation and Compensation Amendment (Fire Fighters) Bill 2013</p> <p>amended the</p> <p>Workers Rehabilitation and Compensation Act 1988 (Tas) (WRC Act)</p> <p>The Bill was passed by Parliament on 26 September 2013 and commenced operation on 21 October 2013.</p>	<p>s 27(1)(b) WRC Act</p> <p>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.</p> <p>The Bill only applies to firefighters, both career and volunteer, appointed or employed under the <i>Fire Service Act 1979</i>.¹⁷</p>	<p>Sch. 5</p> <ol style="list-style-type: none"> 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 	<p>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</p> <p>s 27(6) Firefighters can take voluntary and employed periods of work</p>	<p>s 27(1) Disease must occur on or after the day the section commenced, namely, 21 October 2013.</p>	<p>s 28 Review required every 12 months</p>

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.

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	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.		

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	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?
<p>Australian Capital Territory</p> <p>Currently no proposals to introduce presumptive legislation.</p> <p>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.</p>	<p>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</p> <p>Former members of the Australian Defence Force who ceased employment before 1 July 2004.²⁰</p> <p>The Firefighters Act does not apply to volunteer firefighters, including</p>	<p>s 7(8) SRC Act</p> <ol style="list-style-type: none"> 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 	<p>s 7(8) During the qualifying period was exposed to the hazards of a fire scene.</p>	<p>The presumption applies to those firefighters who are diagnosed with the disease on or after 4 July 2011.²²</p>	<p>An independent review was to be undertaken and completed by 31 December 2013.</p>

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).

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	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 <i>Emergencies Act 2004</i> (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).

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	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?
<p>Northern Territory</p> <p>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.</p>	<p>s 50A(1) Presumption applies to both career and volunteer firefighters</p> <p>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.</p> <p>firefighter includes a person who is one of the following:</p> <p>(a) a volunteer firefighter;</p> <p>(b) a fire control officer (including a Senior Fire Control Officer or the Chief Fire Control Officer) appointed under the <i>Bushfires Act</i>;</p> <p>(c) a worker employed by the Territory for the</p>	<p>Regulation 5B</p> <ol style="list-style-type: none"> 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 	<p>s 50A Volunteer firefighters must be exposed to the hazards of not fewer than the prescribed number of fires within any period.</p> <p>Regulation 5C</p> <p>(a) the prescribed number of fires is 150; and</p> <p>(b) the prescribed firefighting period is:</p> <p style="padding-left: 40px;">(i) 5 years, if the prescribed disease is primary site brain cancer or primary leukaemia; or</p> <p style="padding-left: 40px;">(ii) 10 years for any other prescribed disease.</p>	<p>s 50A(1) Presumption applies where the onset day is on or after 4 July 2011.</p>	<p>No requirement for review</p>

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	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 <i>Bushfires Act</i> .	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.					

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	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?
<p>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.</p> <p>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</p>					

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.

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