

WORKERS' COMPENSATION AND INJURY MANAGEMENT AMENDMENT BILL 2013

SECOND READING SPEECH

LEGISLATIVE ASSEMBLY

I move –

That the bill be now read a second time.

The purpose of this Bill is to provide a rebuttable presumption, for the purpose of facilitating access to workers' compensation entitlements under the *Workers' Compensation and Injury Management Act 1981*, in favour of firefighters who contract certain cancers.

This Government recognises the significant contribution that firefighters make in protecting life and property in Western Australia and acknowledges risks to which they are exposed in the course of their duties.

The presumption established by this Bill is in response to various scientific studies which indicate an increased risk to career firefighters of contracting certain cancers from their accumulated exposure to carcinogens in the course of their fighting structural and chemical fires. It reflects changes enacted by the *Commonwealth Government in 2011 to its Safety, Rehabilitation and Compensation Act 2008*.

Under the current law, a worker's employment must be a significant contributing factor to the contraction of a disease in order for the worker to be able to be eligible for workers' compensation entitlements. In relation to firefighters who contract cancer, the requirement to prove an occupational link between exposure to carcinogens through firefighting duties and cancer can be difficult and costly.

The Bill will reverse the onus of proof in favour of firefighters by providing that certain, specified, cancers are work-related, unless the employer proves the contrary.

This will make it easier for career firefighters to claim workers' compensation entitlements by overcoming the evidentiary requirements of proving an occupational link between firefighting and the applicable cancer.

It is important to be aware that the proposed amendments do not create a new right to claim; nor do they change the benefit structure under the *Workers' Compensation and Injury Management Act 1981*. The Bill is shifting the burden of proof regarding the cause of the cancer from the cancer sufferer to their employer or insurer. It will still be open to the employer or insurer to rebut the presumption if it can be proved by them that the firefighter contracted the cancer in some other way.

Twelve types of primary site cancer will be covered by the presumption. Different qualifying periods will apply depending upon which type of cancer is contracted. The qualifying periods relate to employment as a firefighter and range from five years to 25 years. The 12 cancers and qualifying periods align with those enacted by the

Commonwealth Government in its *Safety, Rehabilitation and Compensation Amendment (Fair Protection for Firefighters) Act 2011*.

A regulation making power will provide a mechanism to include other cancers within the scope of these presumptive laws if there is conclusive scientific evidence of an association between firefighting and the relevant cancer in the future.

There are certain requirements relating to employment as a firefighter for the presumption to apply.

The Bill will apply to firefighters who are members or officers of a permanent fire brigade established under the *Fire Brigades Act 1942*. This is intended to apply to career firefighters employed by the Department of Fire and Emergency Services in circumstances where firefighting duties made up a substantial part of the worker's duties.

For the presumption to apply 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.

A 'date of injury' is defined in the Bill to provide certainty about the application of these laws and to provide a reference point for the qualifying employment periods for each of the 12 cancers. This is important as the occurrence of an injury is sometimes difficult to ascertain with gradual onset diseases such as cancer.

The relevant date of injury for cancers covered by these presumptive provisions will be the earlier of –

- (a) the day on which the worker became totally or partially incapacitated for work by reason of the specified cancer, or
- (b) the day on which the worker was first diagnosed by a medical practitioner as having contracted the specified cancer.

This definition of the 'date of injury' is to protect firefighters who may be incapacitated for work before a diagnosis of cancer is made, as entitlements accrue from the date of injury.

I would like to acknowledge the work of the United Firefighters Union West Australian Branch on this issue on behalf of its members.

By introducing presumptive laws the Government will ease the burden placed on firefighters who perform a dangerous and lifesaving role for the community. I hope this legislation goes some way to alleviating the stress of contracting cancer so firefighters and their families can focus on recovery.

I commend the Bill to the House.