

**FIREFIGHTERS AND EMERGENCY VOLUNTEERS  
LEGISLATION AMENDMENT (COMPENSATION) BILL 2016**

*Second Reading*

Resumed from 7 September.

**HON ADELE FARINA (South West)** [11.40 am]: On behalf of the opposition, I speak to the Firefighters and Emergency Volunteers Legislation Amendment (Compensation) Bill 2016. I open by saying thank God for the fires—our career and volunteer firefighters—as we would be lost without them. They hold a special place in the hearts of rural people, and indeed all Western Australians. They show great courage and selflessness every time they fight a fire, be it a structural fire or a bushfire. While the rest of us are running away from danger, they are running into it, saving properties and lives. They have my utmost respect. They are extraordinary people. I am honoured to be lead speaker for the opposition on this bill and to state very clearly that the opposition supports the bill.

Members will recall in February 2012 Labor introduced a private member's bill providing a rebuttable presumption; that is, if career firefighters contracted certain forms of cancer after having served a specified period, that the cancer had been incurred in the course of their employment and they would be provided access to compensation under the Workers' Compensation and Injury Management Act 1981. At the time, Labor stressed that its private member's bill would be followed by a further private member's bill with similar provisions for volunteers. At the time the Barnett government did not support the opposition bill. In October 2012, before the 2013 state election, the then Minister for Emergency Services announced that if re-elected the Liberal government would introduce legislation to ensure career and volunteer firefighters who developed a prescribed cancer would have access to workers' compensation.

After the 2013 state election, the government introduced such a bill; however, it covered only career firefighters. It failed to cover other employed firefighters such as those employed by the Department of Parks and Wildlife or the Forest Products Commission, nor did it cover volunteers and former firefighters as the government had promised before the 2013 state election. That bill was assented to in September 2013. It has taken the government a further three years to address the deficiencies in the 2013 bill and to honour its commitment to all firefighters that it made before the 2013 state election—just six months short of the next state election. For this, I would like to express my disappointment on behalf of our selfless volunteer firefighters, employed firefighters with DPaW and the Forest Products Commission, and former firefighters about the length of time it has taken the government to honour its election commitment.

The bill before us provides a rebuttable presumption for volunteer firefighters, state-employed firefighters such as DPaW and Forest Products Commission firefighters, and former career firefighters who contracted one of 12 prescribed cancers and provides access to compensation entitlements for those firefighters under the Workers' Compensation and Injury Management Act 1981 or the Fire and Emergency Services Act 1998. There is extensive scientific evidence that certain cancers are caused by accumulated exposure to carcinogens and exposure due to the combustion of synthetic materials. I do not propose to go through all of that scientific evidence.

Without this legislation, the burden of proof rests with the firefighters—an unreasonable demand especially when we know that the toxins and chemicals encountered in an incident are often unknown and are not recorded. The bill creates a rebuttable presumption, removing the burden of proof from firefighters. In order to ensure that firefighters covered by this bill are not disadvantaged to career firefighters—because that bill passed in 2013—the presumption in this bill is retrospective to the same date as the presumption for career firefighters commenced under the 2013 bill. This is one of the well-established instances in which retrospectivity is accepted because it applies a benefit to people who would otherwise be disadvantaged in the absence of that retrospectivity. The opposition fully supports the retrospective provisions in this bill and fully supports the bill.

It is important to clarify that for volunteer firefighters to be eligible under the bill, they must meet the prerequisites specified in it. This means not all volunteer firefighters will automatically be eligible. The firefighter must have met the qualifying period for the prescribed cancer and the requirement for hazardous firefighting service—that is, the firefighter has attended a minimum of five hazardous fires per year. The definition of “hazardous fire” states —

- (a) a fire in a building; or
- (b) a fire in a vehicle, whether designed to move under its own power or to be towed and whether or not still moveable; or
- (c) a fire involving non-organic refuse or rubbish created by humans; or
- (d) a fire that is prescribed to be a hazardous fire ...

If these prerequisites are met, it will be presumed that the cancer occurred as a result of firefighting and is compensable unless proven otherwise.

It is important to note that the definition of hazardous fire is likely to put bushfires outside the scope of the bill unless the bushfire meets one of the criteria within the hazardous fire definition. In a lot of cases they will be. A lot of rubbish is often dumped in national parks and other state parks, so in most cases it will, but it is also important to note that this requires an assurance from government and local government that accurate records are kept and maintained of volunteer firefighters' attendance at incidents and that the exposure to the elements actually occurred within the definition of hazardous fire. Failure to adequately record that could then put in dispute whether the volunteer firefighter falls within the prerequisites required to be eligible under this legislation.

The Auditor General's 2015 report titled "Support and Preparedness of Fire and Emergency Services Volunteers" expressed concerns about the quality of record keeping including incident reporting. We need to be aware of that. This bill does not address any of those concerns in terms of ensuring that record keeping is adequate and to make sure that it is safely maintained. It could be 10 years after an incident—there needs to be five incidents—that a volunteer firefighter attended before a cancer appears. We need to ensure not only that accurate records are kept, so that we know that particular incident fell within the definition of a hazardous fire, but we also need some assurance by government that there is a system and process in place to ensure those records are maintained so that at any time a claim is made the evidence is not lost, because that would be most unfortunate. There are some concerns about that aspect of the bill, but we fully support the bill. I would have liked entrenched in the bill some requirements about the record-keeping process to make sure we do not end up with problems some time down the path.

The bill also provides consistency of insurance of volunteers carrying out statutory functions under the Fire and Emergency Services Act. Fire and emergency services volunteers in Western Australia currently operate under three separate pieces of legislation. Fire and rescue service volunteers operate under the Fire Brigades Act 1942 and bush fire brigade volunteers operate under the Bush Fires Act 1954. Volunteers from the State Emergency Service, Marine Rescue Services and the fire and emergency services unit operate under the Fire and Emergency Services Act 1998. Each group is covered by a different insurance scheme. This brings consistency across the board for all of those volunteers. The opposition fully supports that long overdue and important measure.

The only other thing I want to note is that the bill does not deal with post-traumatic stress. Most of us will never encounter the situations that firefighters are faced with. Sometimes they can be exposed to the death of a colleague or a whole range of other issues, and so, over a period, the cumulative effect of post-traumatic stress can be significant. I understand that this bill does not cover that issue. At some point, I would like the government to introduce a bill that expands the capacity for our career and volunteer firefighters to claim compensation for post-traumatic stress. It is a significant issue and it is well documented. As a government and a community, we need to take responsibility for asking people to put themselves in harm's way and at risk for our protection. We need to understand that there may be ramifications of that and we need to support those firefighters who experience post-traumatic stress through any recovery period that may be needed. Although this legislation does not go that far, it is something we need to look at in the future. The opposition certainly supports the action that is being taken to ensure that firefighters who end up with cancer as a result of exposure to carcinogens in the course of their work can access compensation, and we welcome the bill.

**HON MARTIN ALDRIDGE (Agricultural)** [11.51 am]: I rise to indicate the National Party's support for the Firefighters and Emergency Volunteers Legislation Amendment (Compensation) Bill 2016. In doing so, I want to make a relatively briefer contribution than I did on the Workers' Compensation and Injury Management Amendment Bill 2013, which has already been referenced in the debate. This bill will extend to other employed firefighters and volunteers a lot of the issues relating to the science and the presumption that now applies to career firefighters. I obviously took an active interest in this bill, even before I came to Parliament. I remember having discussions in our party room with the then parliamentary team when we had a private member's bill before the house, as Hon Adele Farina correctly mentioned in her second reading contribution. Some might also suggest that I have a conflict of interest with this bill, because the bill's passage will obviously provide me, as a retired career firefighter and a currently serving volunteer firefighter, with protection should I be unfortunate enough to contract one of the 12 cancers prescribed in the Workers' Compensation and Injury Management Act.

On 15 May 2013, I delivered my first speech to this house and in that address I made a fairly significant reference to the inequity that existed at that time between commonwealth-employed or engaged and state-employed firefighters. Obviously, those inconsistencies have been fixed to the extent that they apply. We now have some equity between career firefighters employed across state and commonwealth jurisdictions, but obviously we have not quite got there for retired firefighters and volunteers, which this bill addresses.

As the previous speaker mentioned, firefighting is an inherently dangerous business. It is one of those work environments from which all risks cannot be eliminated, and at times firefighters just do their best to manage them. Even in the relatively short time that I served in those services, there was significant advancement in not only personal protective equipment, but also policies and the way in which we manage risk within the workplace. I do not want to dwell on the science of this, because it was largely canvassed in contributions to the

previous amendments to the Workers' Compensation and Injury Management Act, except to say that the international science on this matter is quite advanced to the point at which different qualifying periods have been distinguished for the 12 different cancers prescribed in schedule 4A of the Workers' Compensation and Injury Management Act 1981 based on the scientific work that has been done that links exposure to hazardous fires over time to different types of cancers. I will pick a couple that I can pronounce! The qualifying period for primary site ureter cancer is 15 years, whereas the qualifying period for primary leukaemia is only five years. That is based largely on the work that has been done internationally on understanding the risks that firefighters face and their risk over time of contracting those 12 currently prescribed cancers.

In preparing for my contribution to the 2013 bill, I came across some early work from North America—I cannot remember whether it was the United States or Canada—that considered the effects of exposure to fire in the natural environment and the health impacts on firefighters. That was only early work from three years ago, and I have not had a chance to revisit it, but I think it is fair to say that that work was advancing at that time. I will talk a little bit about how this bill leaves sufficient room for government to respond to the development of science and the proven links between exposure to certain things and the types of illnesses that people can contract.

The bill before us builds on the 2013 bill by extending a rebuttable presumption to volunteer firefighters, state-employed firefighters such as those in the Department of Parks and Wildlife and the Forest Products Commission and former career firefighters who contract one of 12 prescribed cancers. The bill also equalises insurance coverage across emergency services volunteers. As members will be aware, volunteers are engaged under several acts of Parliament and even at different levels of government; some are state government engaged and some are local government engaged. For many years, there has been an inconsistency in the approach taken to the provision of insurance for those firefighters or volunteer firefighters. It has been quite possible to have firefighters from different services serving under different acts, fighting the same fire, sustaining different injuries and having different outcomes from their insurance protection based simply on the colour of the tunic they were wearing on any given day. It is important that those insurance provisions are brought together to make sure that we have some consistency across the services, because, at the end of the day, it does not really matter who is engaging those volunteers or which act they work under; we need to make sure that there is a minimum level of, and some consistency in, the protections that are offered to them. This bill also has retrospective provisions, which have been talked about and which I will reference in considering some of the clauses.

I also want to say that when the bill was introduced on 13 May, I wrote to a number of stakeholders, including the Association of Volunteer Bush Fire Brigades, the WA Volunteer Fire and Rescue Services Association, the Emergency Services Volunteers Association, the State Emergency Service Volunteers Association of WA, Volunteer Marine Rescue WA and the United Firefighters Union of WA, because all their members would have had an interest in this matter. I thank the WA Volunteer Fire and Rescue Services Association, which, to my knowledge, was the only group that responded to my request. I hope that the lack of response from the others meant that they were generally happy with the provisions of the bill. I thought they would have responded if they were not happy with the provisions of the bill.

I turn to the Firefighters and Emergency Volunteers Legislation Amendment (Compensation) Bill 2016 to look at some of the particular things I have taken an interest in, noting that other members wish to seek the call on this bill. The first provision in the bill I will talk about is clause 7, which is proposed new section 36ZN, particularly its definition of a hazardous fire. That provision refers to the definition of a hazardous fire in the Workers' Compensation and Injury Management Act 1981. Under clause 9 we propose to insert a new provision that reads —

***hazardous fire*** means —

- (a) a fire in a building; or
- (b) a fire in a vehicle, whether designed to move under its own power or to be towed and whether or not still moveable; or
- (c) a fire involving non-organic refuse or rubbish created by humans; or
- (d) a fire that is prescribed to be a hazardous fire for the purposes of this Division;

I firstly want to talk about the last paragraph—proposed amended section 49A(d)—that provides adequate flexibility, I believe, to allow further types of fires to be classified for the purposes of the definition of hazardous fire. I think that is important because we need to be able to amend pieces of legislation as science develops in this space. I have talked before about the work that has been done in considering the effect of fire in a natural environment on the health of firefighters, or indeed there may be developing science that lists new cancers and new causes for those cancers that might need to be included. Schedule 4A of the Workers' Compensation and Injury Management Act prescribes 12 cancers, and the thirteenth is: “A cancer of a kind prescribed by the

regulations for the purposes of this Schedule”. The Workers’ Compensation and Injury Management Act already contains provisions for further diseases to be specified. I think this amendment to the definition of hazardous fire in the Workers’ Compensation and Injury Management Act will allow a future government to further respond to evolving matters such as scientific evidence based around exposure to other substances. I think that is important.

I asked some questions during the briefing about how a building would be defined; I was thinking about the types of structural incidents that firefighters attend where there is the potential for interaction with harmful chemicals and substances from smoke. I was told that “building” is not defined in either the Workers’ Compensation and Injury Management Act or the Interpretation Act. I assume we will interpret a fire in a building to mean any built form of structure. One of my questions was how a jetty on fire would be treated if a fire crew turned out, which happens from time to time. There could be all sorts of hazardous materials either in or on the jetty; I wanted to make sure a jetty would be included in the definition of a fire in a building. I am happy with the other definitions. The definition of a vehicle covers anything that moves or once moved, and there are obviously provisions for rubbish and prescribing other matters. I guess that if all else fails and there is a definition issue, there is power in this provision to prescribe a fire to be a hazardous fire for the purposes of this division.

One of the important things I also wanted to make sure was included and catered for, which I think is done quite well, is the treatment of firefighters who move between career and volunteer services. Often, we will see volunteer firefighters become career firefighters, and vice versa. A number of career firefighters have become volunteer firefighters in their retirement or serve concurrently as career and volunteer firefighters. Looking at those provisions of the bill, I am satisfied that the amendments to the Fire and Emergency Services Act 1998 will adequately encompass those scenarios and ensure that consistency of service across those agencies will apply.

Proposed new section 36ZT is the retrospectivity provision. I think that is important because the 2013 amendments to the Workers’ Compensation and Injury Management Act were given royal assent on 12 November, but they did not come into effect until 13 November. The retrospective provisions apply to the commencement date of that act, so although it has taken some time for this bill to get to this point, those firefighters who may have suffered an injury in the period between 13 November 2013 and the time this bill comes into effect will be protected by proposed new section 36ZT. We sometimes get nervous about retrospective provisions, but in this case I agree with Hon Adele Farina that it is important.

I want to talk about proposed new section 36ZR(2). Noting the thickness of the Workers’ Compensation and Injury Management Act 1981 and my lack of experience with it, many of its provisions were difficult to understand. My interest in subsection (2) was how the compensation provisions would treat an unemployed or retired firefighter if they were not earning a wage. The information I received was that the Workers’ Compensation and Injury Management Act does not distinguish between employed and retired workers, and it contains provisions on benchmark weekly earnings. One of the definitions refers to the statistics published by the Australian Bureau of Statistics for that purpose.

I turn to proposed new section 36ZR(4) and (5), which reads —

- (4) The regulations may limit, with respect either to an individual volunteer or to volunteers generally, the amount of compensation for which a responsible agency is required by section 36ZQ(2) to insure.
- (5) The regulations may limit, with respect either to a single claim or to claims generally, the amount of compensation for which a responsible agency is required by section 36ZQ(3) or (4) to insure.

My first reading of this related to regulations limiting compensation. I interpreted that to mean an upper limit, when actually the intent is for there to be a lower limit. We are basically setting a floor on which insurance cover shall be provided. The information I received was that some of the current provisions in the Bush Fires Act 1954, which will be repealed, have not kept pace with the passage of time. For example, the obligations on local governments for the insurance of equipment were pointed out to me. The obligation is set at a floor of only \$2 000, and I think when we consider the cost these days of the types of equipment and machinery used by our volunteer and career fire service we do not get much for \$2 000 anymore, and it should be much higher. I understand that this provision will allow regulation-making powers to put a lower compensation threshold on the levels of insurance that should be applied, particularly for an individual volunteer, or to volunteers generally.

I thought we may have got some feedback on where we landed in terms of the five–25 threshold that Hon Adele Farina also spoke about in her contribution. Volunteer firefighters have to meet certain thresholds, which obviously includes attending five hazardous fires per year. I sought clarification on what was meant by “per year” and was told that it can be any 12-month period—it does not have to be a calendar year or a financial year. A volunteer firefighter who served 30 years could go back over his firefighting service and pick five 12-month periods within that period of service to be eligible. I guess that finding a landing point was always going to be difficult, but obviously proving exposure to hazardous fires and the engagement in a hazardous

firefighting service was always going to be a feature. Other states have sought different thresholds. People often talk about the Tasmanian model being one that almost precludes any volunteer firefighter from being eligible because of the way that state has established the thresholds. I am less familiar with Queensland's model. That is obviously going to be one of the qualifying requirements for volunteer firefighters. Obviously, there will be cases in which somebody had served, for example, in the career service for two years and then started in the volunteer service. They will need to add a combination of both services. This bill provides that each year of service with the Fire and Emergency Services Authority, as opposed to being a volunteer, is a qualifying period, so if I had done two years of service in the career service, two of my five years would be met, and then I would need to find another three years in volunteer service when I was exposed to at least five hazardous fires a year. I would also then need to meet the qualifying period set out in schedule 4A of the Workers' Compensation and Injury Management Act.

It has sometimes been put to me in this debate, which has now occurred over many years, that this sort of protection should be afforded just to members of our career and volunteer fire and rescue services, because they are the ones who predominantly respond to structural fires, and scientific evidence shows the linkages between exposure to these types of fires over time and cancer. I made the point in my 2013 contribution to the debate that just because a brigade may not have an urban firefighting capacity, it does not mean that it is not responsible for fire within its fire district. A bushfire brigade in a non-gazetted fire district is responsible for all fires that occur within that fire district, whether it is a car fire, bushfire or house fire. Often resources are available from urban firefighting brigades, which could exist in volunteer emergency service units—some bushfire brigades have urban capacity, and, indeed, our fire and rescue services across the state have urban capacity—but bushfire brigades are often the first ones to turn up to a house fire or car fire. As a rule, the level of personal protective equipment in a brigade that has a rural firefighting focus and capacity is a lot different than that of a bushfire brigade or fire and rescue brigade with an urban firefighting capacity. They do not have things like level 2 PPE or breathing apparatus. Often the policies and procedures for tackling those fires may be different, so in some respects I would argue that some of those volunteers, who may not necessarily have structural training or capacity, may, to some extent, be more exposed to the hazards of these types of fires. They may not see the same number of structural fires as many of our brigades that have urban firefighting capacity—I stress that that capacity exists in both the bushfire service and the fire and rescue service and, indeed, the volunteer emergency service units that now exist in Western Australia—but I think it is an important point to make that PPE plays a role in limiting a person's exposure to these hazards. Many of these brigades do not have that PPE but still have to respond to or provide support at these fires. I remember that whenever I turned out on a volunteer fire and rescue truck to a structure fire, the brigade backing us up at that incident would be bushfire trucks. They would be going to the same incident, standing in the same smoke, dealing with the same people on the same issues, and I had a different level of PPE to the person standing next to me in an orange tunic. The risk still exists.

When I met with the Western Australian Local Government Association and Local Government Insurance Services, which is WALGA's insurer, they wanted us to go even further. They were saying, "What about the CWA ladies who come to the bushfire and make the sandwiches?" My response was that, first things first, we should focus on our frontline operational firefighters and first responders—this obviously also applies to marine rescue and the State Emergency Service—and that we would save that discussion for perhaps another day. I was initially concerned about how local government and its insurer would consider these sorts of reforms from both a cost and an administrative perspective, but in fact what I got back was the complete opposite and that they really wanted a much broader arrangement that would encompass almost anyone. I note that the bill contains provisions for unregistered volunteers, such as —

in relation to an unregistered volunteer working under the direction of a member of operational staff, FES activities engaged in at the direction of that member;

There are provisions in the bill relating to both registered and unregistered volunteers. Obviously, the fire acts, and certainly the Bush Fires Act, have provisions that allow members working under the Bush Fires Act to second and direct members of the public who are not members of their brigades, and in so doing provide insurance protection to those people who are assisting at a fire scene, for example. Those provisions are welcome in the bill.

One other thing I want to talk about and which was something Hon Adele Farina spoke about in her contribution to the second reading debate is the reporting of exposure to hazardous fires. This is something I raised in the briefings I had. I think it is fair to say that the reporting mechanisms that exist across our services are probably intermittent at best. They probably range from service to service and probably even within services. I should say first of all that incident reporting is the responsibility of the officer in charge of the brigade at that incident. It is not the responsibility of every firefighter who turns out to that fire, false alarm or whatever it might be; it is the responsibility of the officer in charge. If I am just a crew firefighter amongst a bunch of people who responded to a fire on a given day, what responsibility can I take to make sure that my exposure to those hazards of fire are

recorded? In the career service we used to have a form, which was called something like the exposure to hazardous substances form. It was really stressed to us that every time we went to a fire, and particularly a fire that involved asbestos, we should fill out this form. We took responsibility for it. We sent it off to what was then FESA. It would go onto our employment file and we would also keep a copy of it ourselves. I certainly did, in case I was ever faced with the possibility of that record not existing within the department. We took responsibility for that, because we could see a time, particularly when dealing with asbestos-related diseases, when we might be asked to detail the extent to which we were exposed to a substance like asbestos, which as a firefighter you see on a regular basis, particularly where I served, which was predominantly the Belmont Fire Station. A lot of the constructions in those suburbs within the Belmont fire district were, and still are, asbestos. It was almost impossible to avoid contact with asbestos in that job. I use that as an example. We probably need to think of more modern ways to record these sorts of things, rather than the old A4 form that we printed off the intranet and faxed off to the employee safety department or whatever it might be called. There are probably some things that responsible agencies, noting that the responsible agencies are varied in this bill, could consider.

Firefighters, whether volunteer or career, need to take some responsibility. I would certainly record my exposure to hazardous substances. We are extending significant protections to them. I would want to be able to argue quite clearly that I have been exposed to the hazards of firefighting during my service rather than rely on the ability of the person in charge of my crew to correctly carry out the appropriate reporting of the type of fire and the type of substances that we encounter in order to preserve that record. It is not uncommon for volunteers to serve for decades. We are talking about a very long time in some cases. With the passage of time, record keeping becomes more problematic. It is important that the responsible agencies, in particular, the volunteer firefighters, give consideration to how their incident reporting can be improved to ensure that this information is encompassed within the centralised incident reporting systems and also to what extent we can empower firefighters to report and record exposure to the hazards of firefighting themselves because that is something that I would want to do as a volunteer firefighter.

I do not have a great deal more to say on the bill apart from saying that it is welcomed. A lot of the firefighters whom I talk to and whom we are talking about, both volunteer and career—I am a recent member of the Retired Firefighters Association of Australia—are older firefighters. Exposure to asbestos weighs heavily on my mind at times. The latency periods for asbestos-related diseases can be 30 to 40 years. I think of the number of times that I was exposed to asbestos. Even in recent years, when more modern thinking had established around the health effects of exposure to asbestos, firefighters, even in the career service, found particular station officers directing them to do things that, in my view, would unreasonably compromise one's health. When I was serving, I remember having probably the only big argument I had with a senior officer over an incident relating to asbestos. He directed me to pull down an asbestos structure with a ceiling hook, which is basically a big long pole with a hook on the end of it. It is used for collapsing ceilings after a fire has occurred in a roof space. This was an asbestos carport alongside a house in Rivervale, I think. He wanted me to go in after the fire had been put out and pull down the asbestos with a ceiling hook. I refused to do that without wearing the appropriate personal protective equipment. It takes some time to prepare for and then clean down from an operation involving asbestos. It is fair to say that we had a fairly heated discussion on the side of the road, which resulted in me not agreeing to his instructions and him threatening to charge me with insubordination. That was probably in the mid-2000s. The risks of asbestos were well established back then. People were still taking unnecessary risks.

I have digressed from the bill before us. The passage of this bill will be welcomed. I know that it has been challenging in some respects, particularly how we deal with retired career firefighters, who technically no longer work, for the purposes of the Workers' Compensation and Injury Management Act. We have achieved that. The bit that we have not achieved is thinking about the number of retired firefighters living with cancer—about a dozen in total, I am told—and the application of the last bill that came into effect on 13 November 2013. If they had been diagnosed with that condition post-13 November 2013, they would have been eligible for compensation and protection under this bill and the former bill. I personally dealt with a firefighter and his family in Geraldton, whom I will not name. That firefighter spent 40 years in the career service, mostly in Geraldton. He planned to retire in the coming years but because of his failing health, he felt it was time to retire sooner. That was probably the mistake that he made. If he had taken sick leave or extended the period before his official retirement, his family would have been provided with compensation under both the 2013 bill and this bill. Unfortunately, he passed away. I have been working with his family on these issues over time. He spent 40 years in the service, which was a long time. He retired early because he felt that his health was not up to it. He thought it was just age getting on top of him. I think he was eventually diagnosed with a form of leukaemia and ended up passing away not long after his diagnosis. Although it is difficult to apply these types of compensation provisions retrospectively and we have to draw a line somewhere, a number of families out there that have either living or have recently lost members who were formerly serving firefighters in recent years would have received a better outcome under the passage of this legislation.

I congratulate the minister and the government for the presentation of this bill. I commend the bill to the house.

**HON NIGEL HALLETT (South West)** [12.27 pm]: The Shooters, Fishers and Farmers Party will be supporting the Firefighters and Emergency Volunteers Legislation Amendment (Compensation) Bill 2016. I would like to congratulate the minister and the government for the way they have been able to negotiate, firstly, a very affordable premium that will cover the major part of what they are trying to achieve. I am not sure where the money will come from to pay the premium, but what is taken from the fire and emergency service levies certainly falls well into the affordable category. The original premium of around \$50 million was certainly out of the ballpark. The premium in excess of \$1 million is a credit to the people involved in the negotiations.

A couple of little issues will develop over time, including record keeping. With the government having the burden of proof for that, claimants are given the opportunity to come forward in a better way. The older generation could be affected as they are generally remiss in their record keeping. I think Hon Martin Aldridge touched on this pretty well. Some movement will have to be accepted within that area. I hope that the claims that come forward from firefighters who have attended at least five hazardous fires a year are taken in the spirit of the intent of this bill. The definition of “hazardous fire” in the bill and the products that fall into that category, together with what has been learnt since the early 2000s, will cover a lot more issues than prior to the year 2000. Some of the guys who make claims go back generations. Generally, we are very happy with the bill. The issue is with the time frames. We hope that the spirit of the bill is maintained and the time to settle claims is not strung out. As I said earlier, with the burden of proof now with government, there is the prospect that claims will be settled in good time.

I commend the government on bringing this forward. It is a good bill. I thank the house.

**HON ROBIN CHAPPLE (Mining and Pastoral)** [12.30 pm]: The Greens will certainly support the Firefighters and Emergency Volunteers Legislation Amendment (Compensation) Bill 2016, as we did the Workers’ Compensation and Injury Management Amendment Bill 2013. A lot of what we are dealing with today has come about over a very long time. We have to remember that the Senate Standing Committee on Education, Employment and Workplace Relations looked at the whole issue of protecting firefighters. The United Firefighters Union of Australia Firefighter Cancer Foundation has been pushing this issue for quite a long time and it is really pleasing to see that we will now cover volunteer firefighters for those 12 cancers on the list.

In the past, to claim compensation the onus has been on the career or volunteer firefighter who has developed cancer to provide proof of the link between their chosen profession and cancer. Now significant evidence from many empirical studies around the world shows a definitive link between being exposed to various chemicals and the like and the 12 types of cancer that can be experienced by firefighters. We know that firefighters use extensive protective equipment, but we have to remember that that equipment by its very nature has to breathe. I quote from the UFUA Firefighter Cancer Foundation —

Firefighters absorb these toxins and carcinogens through their skin. Firefighters cannot be fully protected as their firefighting personal protective clothing has to breathe to prevent metabolic heat build up. Therefore, while firefighters take every precaution to mitigate their exposure, including breathing apparatus, they cannot prevent all exposure due to the absorption through the uniform and through the skin.

It is also noted that when firefighters take off that protective equipment, quite often a lot of soot is associated with the fire and unless they do it in a very rigorous way, they can then be exposed to a lot of carcinogenic material.

One of the issues I will touch on in a minute is bronchiectasis. I want to come back to that in a minute.

The onus of proof was always nearly impossible to satisfy as firefighters are exposed to a huge mix of toxins, chemicals and many other dusts and particulates and many of those things are not even recorded, so when someone encounters a fire and finds themselves dealing with the result of the fire activity, quite often they are dealing with a suite of chemicals that are not necessarily defined. This legislation determines that firefighters who are exposed to a range of chemicals will, under certain conditions, receive benefit if they get various cancers within various time frames. I think that is a huge step forward. However, if someone falls outside those criteria, they still have to go through personal litigation.

I am mindful that when fireys sought compensation in Tasmania quite recently, the insurance companies fought like tooth and nail against those claims. Clearly, many papers have been written on the subject of exposure to fire and dust, associated with improving the prevention of firefighting cancer, including a paper by Matt Janke from the University of Cincinnati in Ohio. That paper, “Improved Prevention of Firefighter Cancer”, looks at the level of impact on firefighters through their exposure. It determined that firefighters suffer cancer more than the general population. After 10 to 19 years of service, brain cancer is 3.5 per cent more likely in firefighters. Kidney cancer is four per cent more likely. Non-Hodgkin lymphoma is three per cent more likely. Leukaemia is three per cent more likely. Bladder cancer is three per cent more likely. Prostate and colorectal cancer is two per

cent more likely. Multiple myeloma is 2.5 per cent more likely and 10 per cent more likely after 30 years. Testicular and urethral cancer are 2.5 per cent more likely. The studies that have been done to date show that this section of the community really needs our protection.

I suffer from an interesting complaint called bronchiectasis, from my exposure to diesel particulates. I must admit that I suffer very little from this; people who get it really badly can be very, very debilitated. Chang et al in 2003 identified that smoke and smoke particulates were one of the main causes of this complaint. The relationship to diesel particulates is very important because diesel particulates in the main are carbon smoke. For the edification of members, a normal person produces a small amount of mucus in their lungs that is coughed quite regularly and removes all the dust particles and things from the lungs. When someone gets bronchiectasis, the mucus that they create is not readily expunged from the lungs and tends to pool in the lung. Therefore, those who get it really badly have to go through a process of vertical draining every day. They have to get on to a bed and lay downwards so that the mucus is expelled that way. For me, if I get a cold, I have to immediately take antibiotics to deal with that possibility. It is one of the diseases associated with smoke.

It comes back to the point that Hon Adele Farina was making about post-traumatic stress disorder. Fireys still have to go through a process of taking independent action through workers' compensation for other aspects of exposure. Even though links have been quite clearly established now between the exposure of diesel particulates and smoke, that is outside this legislation. As Hon Adele Farina said, those issues of post-traumatic stress disorder and bronchiectasis will at some stage, I assume, be amended and added to this legislation. I am mindful of this, to a large degree, because when I dealt with the Kimberley herbicide workers who were exposed to high levels of dioxin and Agent Orange, I found that they were suffering from a variety of impacts such as St Vitus Dance, blindness, skin complaints and mental disorders. This even extended to family members. The government had to go up and deal with it. The government determined that if any of the 90 people on record of working within that industry developed a cancer, they could claim compensation, but if they had any of the other symptoms identified by the medical profession as being directly linked to their exposure, they had to go through workers' compensation litigation. In most cases, I have to say, unfortunately, that was unsuccessful. We are really supportive that volunteer fireys will get this protection. In the future, we need to understand that many other issues will present to fireys over time that might require this legislation to be amended.

The purpose of the bill is to expand the presumption to include other state-employed firefighters, volunteer firefighters under the emergency services acts and former career firefighters who contract any one of the prescribed cancers. In order to ensure there is no negative impact on these firefighters, the presumption will be retrospective to the same date that the presumption for current career firefighters commenced, on 13 November 2013. I remember quite well the debate leading up to the passage of that legislation in this place. The bill will also ensure consistency of insurance for volunteers carrying out statutory functions under the emergency services acts. Fire and emergency services volunteers in Western Australia currently operate under three separate pieces of legislation. Fire and rescue service volunteers operate under the Fire Brigades Act 1942; bush fire brigade volunteers under the Bush Fires Act 1954; and state emergency service, volunteer marine rescue service and FES unit volunteers under the Fire and Emergency Services Act 1998. Each group of volunteers is covered by a different insurance arrangement, which means that not all volunteers are entitled to the same level of insurance cover and some volunteers are better protected than others in the event of injury. This bill amends the emergency services acts to provide uniform legislated insurance provisions for all emergency services volunteers. These new provisions maintain or improve insurance coverage for volunteers. For the presumption to apply under the proposed provisions of this bill, certain prerequisites will need to be met. Firefighters must have met the qualifying period for the prescribed cancer. A beautiful colour list was given to me by the advisers—I thank them for their advice—but unfortunately I have misplaced that list, otherwise I would probably articulate them all. Firefighters must have met requirements for hazardous firefighting service, which is a minimum of five years of firefighting service where the firefighter attended a required number of qualifying events. If these prerequisites are met, it will be presumed that the cancer occurred as a result of firefighting and is therefore compensable, unless proven otherwise. It is integral to the success of this legislation that the provisions contained within it are accessible to those volunteers who need them and these thresholds will ensure that they are.

The Greens certainly support the legislation. Indeed, I hope in his reply the minister will touch on the other issues that we may find or are finding are associated with illness associated with the occupation of firefighting and how they might be dealt with over the long term by further amendments to this legislation, and whether the insurance agencies dealing with these matters will be able to take into account the emerging suite of evidence that fireys suffer impacts other than those specific cancers.

**HON MICHAEL MISCHIN (North Metropolitan — Attorney General)** [12.47 pm] — in reply: I thank all parties for their indication of support for the Firefighters and Emergency Volunteers Legislation Amendment (Compensation) Bill and the contributions to the debate of those members who have spoken. It has been said that it has taken an excessive amount of time for this commitment to be honoured. I suggest that the issue is a very



difficult one to navigate. We are not talking here of compensation for career firefighters whereby some amendment, albeit finding the right formula, was necessary to the Workers' Compensation and Injury Management Act 1981 in which there is at least a touchstone for what that level of compensation ought to be for someone engaged in that profession. We have here an attempt to provide some equity for those who are engaged in similar activities and exposed to similar hazards and risks of contracting certain cancers but are not compensatable under the Workers' Compensation and Injury Management Act and, indeed, are not workers for the purposes of that act in respect of these particular hazards. That is the situation with the other firefighters engaged by state agencies whereby they are, of course, able to be compensated for a work-related—using the term loosely—disease or injury, but they have to establish that that disease or injury was one that they had suffered as a result of their employment and whereby, ordinarily, a link would have to be established between a particular incident or incidents and their contracting the symptoms of these terrible diseases.

The problem is more difficult when we are dealing with volunteers. Volunteers, by their very definition, are not workers for the purposes of that act. They are engaged in this activity voluntarily, out of hours, as an adjunct to their other activities. In the case of career firefighters, of course, we can expect a certain level of fitness, health and robustness and a certain range of ages to be engaged in that occupation. Perhaps through regular medical examinations, they monitor their state of health and can ascertain whether some other issue has caused them to contract a particular disease, whether it is cancer or anything else. In the case of volunteers, of course, we take people as they come. They come from a variety of occupations or, indeed, may not have any occupation at all but are volunteering their time and services to the community. Their service in the area of firefighting, leaving aside even whether they are hazardous fires within the meaning of the bill, can be sporadic—very occasional indeed in many cases—or very intense in some. We do not know what they do outside their firefighting activities. When it comes to prescribing presumptions that a disease has been contracted in the course of that activity, it becomes very problematic indeed. Nevertheless, the government believes that it has the formula correct in this case and has given the benefit of the doubt to those volunteers in order to give them the comfort that career firefighters enjoy.

One of the purposes of the bill, following the government's amendment in respect of the presumption for career firefighters, is to bring the same benefits that are enjoyed by career firefighters to volunteers and other state firefighters when they are fighting particular fires that, on the evidence, are likely to give rise to a greater incidence of cancer. The government recognises that that is not part of their core or routine duties, hence the formula that has been adopted in this case of five fires per year over a period of five years and the like. The formula selected in Western Australia is far more generous than that in other jurisdictions. There is no coverage at all for volunteers under the federal regime, from which this trend towards recognising a presumption for cancers emerged. In South Australia, it is 175 fires in five years. In Tasmania, it is 150 exposure events in five years for brain cancer and leukaemia, or 150 exposure events in 10 years for other prescribed cancers. The Western Australian government has picked a formula that is accessible to our volunteers, but still necessarily must set a threshold. Another feature of the bill is to provide insurance for volunteers. There are different insurance regimes depending on what sort of firefighter a person is and whom they are doing it for. This has been crafted so that people are brought up to the same level, so no-one is worse off.

Mention has been made of the potential for other diseases and the like. In respect of career firefighters, there is no bar to obtain compensation if a disease or injury is contracted in the course of their duties. The bill simply provides a rebuttable presumption in certain circumstances to ease the need for proof. In the case of volunteers, it is more difficult because of the fact that there is no employment relationship. In the case of other state firefighters, of course, there is an employment relationship. Whether one goes down the path of further presumptions is something that would have to be very carefully considered. The evidence would have to be robust to support the fact that firefighters' duties alone warrant a presumption in respect of other types of maladies and risks suffered by firefighters. But that is not within my portfolio and I am sure it is something that the Minister for Emergency Services would be addressing and monitoring. Mention was made of post-traumatic stress disorder. I understand that is being looked at from a whole-of-government perspective for all emergency services.

I think I have addressed the several issues that have been raised by members in the course of their addresses. So as not to delay the passage of this important reform from the Liberal–National government, I move now that the bill be read a second time.

Question put and passed.

Bill read a second time.

Leave granted to proceed forthwith to third reading.

*Third Reading*

Bill read a third time, on motion by **Hon Michael Mischin (Attorney General)**, and passed.