

**WORKERS' COMPENSATION AND INJURY MANAGEMENT
(FAIR PROTECTION FOR FIREFIGHTERS) AMENDMENT BILL 2012**

Second Reading

MS M.M. QUIRK (Girrawheen) [4.01 pm]: I move —

That the bill be now read a second time.

On a recent visit to the Fire Department City of New York in Brooklyn, I noticed in the foyer a memorial plaque honouring the 53 firefighters who died as a result of the World Trade Center crash in September 2011. On closer inspection, I realised that this number is in addition to the 343 who died in the course of rescue efforts on the day of the attacks. This special plaque honoured those 53 FDNY firefighters who died subsequently from their prolonged exposure over days, weeks or months as part of the huge recovery operations on the site. This statistic is less well known but equally sobering. These 53 were firefighters who were exposed to the toxic mix of chemicals at Ground Zero. They died of cancer or a range of respiratory diseases. It is particularly poignant when we realise that some of the firefighters who contracted cancer were searching for their deceased colleagues and, in some cases, for brothers, sons, fathers or nephews who were also firefighters. In fact, a study published in the British medical journal *The Lancet* last November found that firefighters who toiled in the wreckage of the World Trade Center in 2001 were 19 per cent more likely to develop cancer than those who were not there. These firefighters were exposed to the caustic dust and smoke created by the fall of the twin towers. The findings indicate an increased likelihood of the development of any type of cancer. There were indications in the study that certain cancers, including melanoma, non-Hodgkin lymphoma and thyroid and prostate cancer, occurred more frequently among those firefighters than in the general population. In that study, occurrences of lung cancer did not increase. Thankfully, such extreme and high-profile events testing the endurance, courage and resilience and threatening the lives of so many first responders are rare. They do, however, add substantially to our knowledge of the risks inherent in this kind of work.

This bill, however, is about the cumulative effect of exposure of firefighters in their day-to-day duties, in some cases over many years. Although the bill is narrow in scope, it will make an enormous difference to those firefighters suffering cancer contracted through their years of occupational exposure to a conglomerate of carcinogens, hazardous materials and toxins. If it is not bad enough that a firefighter must face the ultimate battle for life, he is also burdened with the knowledge that during his struggle with cancer, he will not be entitled to workers' compensation payments and his family faces the additional strain imposed by this financial hardship. The reason for this is that as the law stands, a worker must point to a particular source to prove what caused the cancer; in other words, they must identify the carcinogen or toxin and also when they were exposed to these toxins—namely, which fire or fires or emergency. That is simply not possible. On the other hand, if a firefighter is killed or physically injured attending a fire incident, he receives compensation for work-related injuries. This unfair anomaly needs to be remedied.

I am confident this bill will ultimately receive support from all sides of the chamber. I think we would all agree as parliamentarians that if we see a wrong, we should seek to right it. If we see an injustice that can be remedied readily, we are duty-bound to strive to do so.

I acknowledge that a similar bill was introduced into federal Parliament by Greens MP Adam Bandt and was the subject of an inquiry by the Senate Education, Employment and Workplace Relations Legislation Committee. The Senate committee reported favourably on the bill in September 2011. I commend the report to members. The Senate inquiry concluded that —

Study after study has pointed to a higher risk of cancer for firefighters than the general population. Science has confirmed what firefighters suspected for decades: that a disproportionate number of them in the prime of their lives are brought down with illnesses usually reserved for the old and the infirm.

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

... The committee recognises that when a person spends their professional career inhaling and absorbing known—and probably some as yet unknown—carcinogens in the course of public service, it is the moral duty of the community to enable them to seek compensation should they fall ill as a consequence. For this reason the committee believes this Bill needs to be passed after being improved upon through incorporation of the committee's amendments.

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

As a footnote, I understand that the federal bill, which covers the ACT and also aviation firefighters, was proclaimed in January this year.

First and foremost, this bill is about acknowledging that WA firefighters charged with protecting the community and property have an inherently dangerous job. It is about acknowledging that these dangers extend to contracting certain cancers after years of exposure to chemicals, toxins and fumes and their cumulative effects. It is about acknowledging the inequity in the current law and seeking to do away with that unjust law. And it is about acknowledging that, although firefighters willingly put themselves in dangerous situations to protect the community, they do so taking all reasonable precautions. We acknowledge also that these precautions are of little utility against occupationally acquired cancer. It is impossible to avoid absorbing these toxins through the skin as protective clothing has to breathe to avoid metabolic heat build-up.

An impressive body of medical research indicates that firefighters have a higher risk of certain cancers because they absorb carcinogens and toxins through their skin while firefighting. A range of scientific studies show an increased risk to firefighters of defined cancers due to the exposure to harmful substances. For example, there is a five-fold risk of firefighters contracting leukaemia compared with the general population. These figures are even more stark when we are mindful that firefighters have much higher fitness levels and are much less likely to smoke than the general population.

This bill amends the Workers' Compensation and Injury Management Act 1981 by inserting a clause that provides for a rebuttable presumption that specific cancers are occupational diseases for firefighters. If enacted, it will be presumed that the cancers listed in the schedule to the act are occupational diseases for firefighters provided that the firefighter has been exposed to the hazards of a fire scene and has completed the required years of service identified for each cancer. In short, a firefighter who contracts one of the listed cancers in the schedule and who has served the qualifying period is entitled to WorkCover.

This amendment will not create a new right, but rather provide access to the workers' compensation system for firefighters suffering occupational cancers, which they have not previously been able to access because of the unique circumstances of their job and their workplace. As I said earlier, it is impossible to pinpoint the locus and time at which a firefighter was exposed to the carcinogen or carcinogens. Under the bill, this presumption can be challenged but the onus of proof rests with the insurer, the employer or the scheme. This is a safety net to ensure the presumption is applied to the intended circumstances.

Similar laws are operating well in a number of states in the United States and in Canada. This measure was first introduced in the province of Manitoba in 2002 and since then 10 Canadian provinces and three territories have passed this so-called presumptive legislation. About half the states in the United States have similar laws with more pending. Finland and other European states are currently investigating similar laws.

The scheme of the bill restricts access to the presumption to those who are employed as full-time firefighters—that is, FESA and DEC firefighters, or Transfield contracted firefighters who work at Pearce or Stirling Naval Base; who have been exposed to the hazards of a fire scene; for whom firefighting makes up a substantial portion of their duties; who have the qualifying periods of service before a diagnosis; and who have contracted a prescribed form of cancer. Volunteer firefighters are not included because their exposure is not as frequent and continuous and there is not the same body of evidence to warrant their inclusion at this stage. I add by way of footnote that they would not come under the definition of “worker” under the workers' compensation act.

Point of Order

Dr A.D. BUTI: Mr Deputy Speaker, I am having difficulty hearing.

The DEPUTY SPEAKER: Members for Swan Hills, Wanneroo and Ocean Reef—please!

Several members interjected.

The DEPUTY SPEAKER: Member for Girrawheen.

Debate Resumed

Ms M.M. QUIRK: Thank you for your protection, Mr Deputy Speaker.

The bill provides for a separate division within the body of the act to restrict the deeming presumption provision to firefighters only. The separate division means that the specific schedule relating to this division only excludes extrapolation to workers in other industries.

Given the small number of incidences each year—I am told it is in the vicinity of one firefighter a year—and given this amendment does not create a new entitlement, it is considered this will have minimal cost implications. In other jurisdictions where such laws exist there has been minimal cost impact.

There is no more compelling evidence of the injustice of the current laws than that given to the Senate inquiry by two Western Australians. The first was from a widow, Janet Reed. Janet Reed's husband, Robert James Reed, had been a firefighter for 14 years when he was diagnosed with kidney cancer in 2008. He died 10 months later, leaving behind a wife, two children and many friends in the firefighting community. The Senate committee heard that, as a firefighter, Robert Reed was always conscious of safety. He was nevertheless exposed, as all firefighters are, to toxins that were beyond his ability to control. Mrs Reed told the inquiry —

In Rob's everyday work where he looked after people in our communities as a fire fighter, performing road crash rescues, confined space rescues, dealing with hazardous material spills and other work he was regularly exposed to toxins and risk. He was a safe and conscientious worker and he wore protective clothing and used special safety equipment but it did not prevent him from being exposed to all sorts of toxins and some of that exposure was cumulative throughout his career.

Mrs Reed went on to tell the committee of the difficult and stressful months of her husband's ultimately unsuccessful treatment —

The circumstances of Rob's treatment was extremely difficult emotionally and physically ... In July Rob had routine testing 6 months after his surgery and a CT Scan revealed that the cancer had returned to his lymph nodes in his chest. Rob was hospitalised and had a biopsy which was complex procedure because his lung had to be collapsed to perform the biopsy, and the results confirmed that it was secondary cancer originating from the renal cell cancer. That diagnosis was dreadful and very stressful. Rob was then referred to an Oncologist and he commenced a course of chemotherapy treatment.

Robert Reed's family remained hopeful for a positive outcome despite a series of hurdles and discouraging results. Mrs Reed said —

Rob's health declined and the cancer spread to his brain. In September Rob had a course of radiotherapy treatment for 4 weeks to treat the cancer in his head and chest. I supported Rob through this terrible time and we were optimistic for a good outcome. Rob wanted to carry on as though it was "business as usual" to minimise the impact of his illness for everyone else.

Shortly after this treatment, the family went on a short holiday to spend some quality time together. Within two weeks of the break, Robert Reed was hospitalised with swelling on his brain. Janet Reed told the committee that her husband died three days later on 29 October 2009, their twenty-first wedding anniversary. In September last year, Janet Reed attended one of the Senate committee's hearings to tell the committee of the emotional and financial stress that Robert and his family had to undergo because Robert was forced to return to work for financial reasons. She said —

I am here to ask you to carefully go through this presumption legislation and to consider it, because if this had been available to Rob and me when he had cancer it would have made our life easier. I am here for Rob. That is why I am here. And I believe that if Rob had not had to return to work after he had his operation—he had his kidney removed—after he thought that the cancer was all gone, I believe there would have been a lot less stress in our lives and maybe the lower stress would not have accelerated his cancer so quickly.

As the Senate committee observed, Robert Reed and his family did not have ready access to compensation and could not face having to go through lengthy and costly litigation to seek any sort of payment or support. Mrs Reed told the inquiry —

There was no compensation readily available to us and it was not something that we had strength to go and seek money for litigation of any kind when we were going through such a hard time especially when his cancer came back six months after he was diagnosed. The last thing that any person needs to do in that situation is to worry about seeking compensation when you are already worrying about how you are going to get through the cancer. That is why I think it is important for me to be here today to let you know that just having cancer alone is a struggle and the financial part is a bigger struggle again that you do not have the strength to fight.

Dean Symmans was another Western Australian who gave evidence. Dean Symmans is a firefighter of 26 years. In April 2009, he was diagnosed with leukaemia and has been undergoing treatment since that time. He is currently in remission and undergoing chemotherapy, monthly blood tests, and bone marrow aspirate tests every three months.

He told the Senate committee of his treatment —

Upon diagnosis I was given a 70 per cent survival. Treating doctors had less than two weeks to use chemotherapy drugs to place me into remission. Stationed in Albany 400km south of Perth, I was air lifted to Perth by Royal Flying Doctor to Sir Charles Gardner Hospital where chemotherapy and intravenous drugs were initiated.

Being away from home for treatment meant that his family had to travel at their own cost to see him. He said —

Over the next six months, I received 3 x monthly intravenous chemotherapy treatments in SCGH hospital. My wife and sons travelled regularly to visit me at my hospital bedside. This was obviously disruptive to family life, schooling and an expensive exercise. My wife had to reduce her hours of work and we relied heavily on friends to assist with childcare and transport.

The committee observed that Mr Symmans had always been healthy and had accrued many hours of unused sick leave during his time as a firefighter. He used over 1 000 hours of sick leave during his treatment. He was told that if he relapsed after treatment, he would need a stem cell transplant and more time off work.

Having exhausted their resources, Dean Symmans and his family had to turn to his colleagues for help. He gave the following evidence —

During my illness with leukaemia fire fighters and my Union rallied to support my family with monetary assistance to help cover the costs with travel and other expenses. Fire fighters maintained my family car and house in my absence over the initial 12 months. Albany fire fighters also travelled 400kms to visit me in hospital. Perth fire fighters sat with me bedside whilst treatment was administered.

As I noted earlier, Mr Symmans happily is now in remission but lives with the fear of relapse. He said —

My big fear was if I did not stay in remission—which I am at the moment, thankfully—I would need to have stem cell transplants. If that takes place it would further chew out sick leave and I would then have to fall onto a charity that the firefighters themselves have set up. It is a sick and death benefit fund. I was, as I said, trying to preserve what sick leave I had left so that I could battle through my treatment.

He told the committee of the financial strain he and his wife faced during his illness, and the impact on their family and lifestyle —

In my case, being the main breadwinner, it was immense. During my illness my wife, who at that point was job sharing, had to cut back on those hours as well. I guess we were very grateful to her employer, who did the right thing and looked after her—offered her time off and supported her during my ordeal. I have the privilege here today to say how disappointed I was in the return-to-work system of my employer. All that was in place as far as return to work goes was an account-keeping process, which I probably come across as a little bit bitter with at the moment. All they wanted to know was how many hours I was working that day. The hours I did not work they were going to take off my remaining sick leave. That made me livid. I had worked for an organisation for such a long period of time and that was what they were offering me. I thought it was pretty ordinary.

He added —

I went to the point of contacting my area manager and asking ‘How the hell do you work this sort of thing?’ It should not be pushed down to people in fire stations and their area managers to try to make the thing work. There should be something put in place. That, to me, is part of this process of getting presumptive legislation up so that I would not have to worry about how much sick leave I have and my family would be looked after.

Although Dean Symmans believes he was exposed to iridium radiation, he informed the committee that he did not think he could confidently identify a single incident that had caused his leukaemia —

In 1991, I believe, I was probably exposed to radiation caused by iridium. There are ongoing diesel fuel concerns at fire stations and on the fire ground. The leukaemia I have is believed to be caused by an exposure to a chemical or radiation, and benzene gets the green light there. I guess there has been an accumulation of carcinogens over 24 years. The more I look into things, the more I find things. I have only just learnt from a fellow firefighter that the firefighting foam we have been using over the years can be a carcinogen. A lady who is doing research into leukaemia contacted me at one time and told me that a chemical called 2-butoxyethanol, I think it is, was in AFFF foam. I’m not a scientist; I did my own home research ...She indicated that there is a carcinogen in firefighting foam. I don’t know how I can nail it down to one specific thing.

It is clear in both cases that Robert and Dean were health and safety conscious and mindful of the risks inherent in their work. Although it is their duty to take these issues seriously, the community is not relieved of its responsibility towards them. The Senate inquiry noted —

The community holds a deep respect and gratitude for those who serve to protect and assist. If we are honest, however, along with this respect and gratitude comes a generous dose of expectation. We expect firefighters to come to our assistance when our homes, schools, hospitals and businesses are ablaze. We expect that a firefighter will enter a burning building when every human instinct tells us to leave. We expect they will search for those trapped inside and bring them out alive. We expect them to do what they can to minimise loss of life and damage to property. While everyone else is fleeing danger, it is the firefighter's duty to tackle it head-on, to enter an extreme and dangerous environment, armed with the best protective gear available.

There are two final matters that I should mention. The first is to commend the United Firefighters Union both here in Western Australia and nationally for its concerted and passionate campaign on behalf of its members. I hope members of this house avail themselves of the offer of a briefing from the union as they consider their response to this bill. As I said earlier, I hope that not only will there be in-principle support on a bipartisan level, but also this will translate into supporting the bill when it comes to a vote in a few weeks. Firefighters have rightly earned great respect in the community, and the community would expect us all to protect those who so selflessly protect us.

Lastly, this issue should have some special resonance for Western Australians. It was not too long ago that the scandalous and shameful saga relating to the health impacts of asbestos was finally exposed. The inordinate delay between scientific evidence of the harmful effects of asbestos being proven and that evidence being accepted and officially acted upon meant that thousands more lives than necessary were exposed and those people suffered its lethal consequences. So too here the weight of evidence of the nexus between firefighting activity and contracting certain forms of cancer is substantial. We cannot say that our firefighters are heroes and then discard this measure. We cannot say that we are grateful to our firefighters and delay this measure. We cannot praise our firefighters for their readiness to put their lives on the line for the people of this state and then turn our backs on their just cause. We are duty bound to act promptly on the evidence and to not repeat the mistakes of the past. I commend the bill to the house.

Debate adjourned, on motion by **Mr J.E. McGrath**.