

# DRAFT SECOND READING SPEECH

HON ELISE ARCHER MP

## *Workers Rehabilitation and Compensation Amendment Bill 2022*

*\*check Hansard for delivery\**

Mr Speaker, I move that the Bill now be read a second time.

The purpose of the Bill is to make amendments to the *Workers Rehabilitation and Compensation Act 1988* (the Act) to extend the benefits delivered under two unrelated sections of the Act.

Specifically, the Bill amends:

- section 27 of the Act, which establishes a presumption as to cause of certain cancers in relation to fire-fighters; and
- section 87 of the Act, which deals with the cessation of entitlement to weekly payments on the basis of a person's age.

### Section 27

I will speak firstly about section 27 which provides that if a fire-fighter meeting relevant criteria is diagnosed with a specified cancer, then it is presumed, in the absence of evidence to the contrary, that fire-fighting was a substantial contributing factor to the disease.

I am sure we can all agree that the work carried out by Tasmania's fire-fighters is vitally important to our community. Whether volunteer or paid, our fire-fighters provide a crucial service for the community, sometimes at risk to their health and safety. It is, therefore, important that, if their work results in injury or disease, the benefits of the workers rehabilitation and compensation scheme are readily accessible to them.

The presumptive provisions of section 27 make the process of applying for compensation less onerous for a fire-fighter who contracts one of 12 specific cancers which have been linked to the work of fire-fighters.

There is a group of workers employed in fire-fighting and fire prevention operations in the Tasmania Fire Service who are not covered under section 27, namely the Bushfire Risk Unit. These employees perform bushfire prevention operations during the autumn,

winter and spring months, and undertake bushfire fire-fighting operations during the bushfire season. They perform similar tasks and are exposed to similar risks to other fire-fighters covered under section 27.

It was brought to my attention in 2020 that most of these fire-fighters do not meet the definition of any of the three types of fire-fighters covered by section 27, namely career fire-fighters, volunteer fire-fighters and occupational fire-fighters. Because of this, most employees of the Bushfire Risk Unit in the Tasmania Fire Service engaged in bushfire prevention and fighting activities are excluded from the presumption.

Clearly, these workers undertaking fire-fighting activities should be afforded the same protections as those workers who are covered under section 27.

I should acknowledge that a small number of employees of the Bushfire Risk Unit are covered by section 27 because they are career fire-fighters. However, they are in the minority.

Those who miss out on coverage under section 27 are State Service employees or State Service Officers appointed or employed under the *State Service Act 2000*, and are engaged in bushfire-fighting or bushfire prevention operations. They are appointed for the purposes of the *Fire Service Act 1979* in accordance with section 24 of that Act, but they are not career fire-fighters.

A statutory review of the operation of section 27 commenced in 2020, and I requested the WorkCover Tasmania Board consider the cost of covering employees of the Bushfire Risk Unit.

Coverage is affordable. The Board's actuaries estimated extending coverage to fire-fighters of the Bushfire Risk Unit would cost an additional \$53,000 per annum, which is 1% of the cost for all fire-fighters covered by section 27 of the Act.

The Board recommended the Act be amended to cover the relevant employees of the Bushfire Risk Unit, and our Government strongly supports this recommendation.

The amendments set out in clause 4 of the Bill will rectify the current gap by including the relevant employees in a new definition of occupational fire-fighter. The current definition is limited to workers of an Agency or Government Business Enterprise, a significant function of which is the management of forests or parks. It, therefore, excludes employees of the Tasmania Fire Service.

There will be no change to the status of occupational fire-fighters covered under the existing definition. These workers will remain covered in the first part of the new definition. The second part of the new definition will provide coverage to the relevant employees of the Bushfire Risk Unit within the Tasmania Fire Service.

## Section 87

Moving on to section 87 of the Act, the current provisions provide for the cessation of the entitlement to weekly compensation payments under two sets of circumstances, according to when the injury occurred in relation to the person attaining the pension age. By pension age, I refer to the meaning of the term under the *Social Security Act 1991* of the Commonwealth.

Currently, under section 87 of the *Workers Rehabilitation and Compensation Act*, if a person is injured 12 months or more before reaching his or her pension age, then the entitlement to weekly compensation payments ceases when the person reaches their pension age.

If the injury occurs less than 12 months before attaining pension age then the entitlement to payments ceases after one year from the date of injury.

Workers whose conditions of employment would have allowed them to work beyond the date of attaining pension age may seek a determination from the Tasmanian Civil and Administrative Tribunal (TASCAT) allowing the continuation of eligibility for payments until a date specified by the TASCAT.

Since 1 January 2018, section 87 has been silent on workers who are injured on or after reaching their pension age. Any question as to whether such workers are or are not covered by the cessation provisions of section 27 was settled in mid-2020 when the now former Workers Rehabilitation and Compensation Tribunal (which has become a stream within the TASCAT) confirmed that section 87 does not apply to these workers.

The proposed amendments to section 87, set out in clause 5 of the Bill, aim to reduce the disadvantage experienced by workers injured at an older age, by extending the period of time before the age-related cessation provisions apply to those injured close to reaching their pension age. The provisions of the Bill will increase the existing timeframes from one year to two years.

Under the proposed changes, if the injury occurs when the worker is aged two or more years before the date on which the person attains the pension age, entitlements to weekly payments will cease at pension age.

In cases where the injury occurs less than two years before the date on which the worker attains the pension age, entitlements to weekly payments will cease two years after the injury occurs.

Existing provisions, which allow an injured worker to apply to the TASCAT for a determination for an extension of payments beyond the applicable cessation dates will be retained. There will be some changes to the existing wording for greater clarity and consistency throughout section 87.

For clarity, age-based cessation dates do not exempt the worker from other provisions of the Act. They set a maximum period for the entitlement to weekly payments, subject to any decision by the TASCAT for the continuation of payments beyond the cessation date. Responsibilities to participate in rehabilitation and return to work programs apply, just as they do for other workers.

Mr Speaker, section 87 is regarded by many stakeholders as age-discriminatory because it imposes a limitation on the period of entitlement for payments to an older person injured in the years leading up to his or her pension age. The provisions allowing an affected worker to apply to the TASCAT for further payments are also regarded as age-discriminatory. Younger workers do not have to apply to the TASCAT to receive weekly payments for more than two years after their injury.

A review of section 87 was undertaken by the WorkCover Tasmania Board in October 2018. The Board consulted with key stakeholders, called for submissions through regional newspapers and, on 25 April 2019, published an Issues Paper on the Board's and the Department of Justice's websites.

Some stakeholders argued for removal of age-discriminatory provisions or, at least, a very significant reduction of the impact of such provisions. Some other stakeholders preferred no change or minimal change.

Despite two further rounds of stakeholder consultation in 2022, there is no universally agreed approach to amending section 87. Views differ on how to find the right balance between treating older workers the same as younger workers on one hand, and on the other hand, ensuring that our workers compensation scheme remains cost effective and retains its focus on rehabilitation and return work.

Mr Speaker, The Government believes the Bill presents an appropriate balance, particularly when considered in the context that section 87 does not apply to workers injured on or after reaching their pension age. The Government has decided to maintain that position and to additionally provide some further benefits to workers who are injured less than two years before reaching their pension age.

For these workers, the cessation provisions of section 87 will not apply until two years after the date of their injury.

No worker will be disadvantaged by the changes presented in the Bill, and those workers who are injured within the two years before pension age will potentially benefit from the change to the cited time periods from one to two years.

Mr Speaker, it is the Government's view that the changes to section 87 are also affordable. Advice obtained from actuaries in June 2022 estimated that the cost would be an additional \$351,000 per annum to the scheme, compared to the *status quo*. This is less

than 0.01% of the suggested premium rate, which means that the proposed amendments to section 87 of the Act will not trigger any changes to the suggested premium rate.

The proposed changes contained in the Bill are prospective.

In conclusion, these changes will be beneficial to workers who are affected by them. They are worthy changes and are consistent with the objects of the Act, including providing fair and appropriate compensation to workers and a fair, affordable, efficient and effective rehabilitation and compensation scheme.

Mr Speaker, I commend the Bill to the House.