

## **SECOND READING SPEECH**

### **Workers Rehabilitation and Compensation Amendment (Fire-Fighters) Bill 2013**

Mr Speaker, I move that the *Workers Rehabilitation and Compensation Amendment (Fire Fighters) Bill 2013* be read for a second time.

The purpose of the Bill is to establish a rebuttable presumption that particular forms of cancer developed by fire fighters, are taken to be work related for the purpose of claiming workers compensation under the *Workers Rehabilitation and Compensation Act 1988*.

Mr Speaker I wish to flag that I will be introducing some amendments to the Bill during the Committee stage. These amendments have arisen from consultations with representatives of both career and volunteer fire-fighters that have taken place since the Bill was tabled.

Mr Speaker, it is important to recognise the enormous contribution that is made to the Tasmanian community by both career fire-fighters and volunteer fire-fighters. The extent of this contribution became more apparent during the devastating bush fires of last summer.

Mr Speaker, the presumption established by the Bill is based on numerous scientific studies which indicate that fire-fighters are at greater risk of developing certain types of cancers because of their increased exposure to hazardous materials. On this basis, there is a strong argument to put in place measures that will

make the process of applying for compensation less onerous for fire-fighters who contract certain types of cancers.

Under current arrangements, a worker seeking compensation for a disease must establish that his or her employment was the major or most significant contributing factor. From a legal perspective, it can be difficult to present sufficient evidence to satisfy this test.

The measures proposed in this Bill provide that, subject to certain threshold requirements, a person's work as a fire-fighter will be taken to satisfy this test, unless there is evidence to displace this presumption.

Mr Speaker, it is important to note that apart from some minor variations, the Bill will ensure that our Tasmanian fire-fighters will be protected in a manner similar to federal and aviation fire-fighters under the *Safety, Rehabilitation and Compensation Act 1988* of the Commonwealth.

However, this Bill goes further by applying the legal presumption to volunteer fire-fighters. The additional coverage addresses the inequity in the Commonwealth Bill, which currently excludes volunteer fire-fighters. A number of other jurisdictions are considering this issue, but Tasmania is the first State to introduce legislation to adopt these measures for both career and volunteer fire-fighters

Mr Speaker, appropriate restrictions to limit the operation of the presumption have been included in the Bill. These restrictions will ensure that the presumption only applies in

cases where there is genuine evidence of significant exposure to hazardous materials during employment as a fire-fighter.

The criteria which must be met include a requirement that the worker must be suffering from one of the diseases listed in Schedule 5 of the Bill. At this point in time, the list includes 12 primary site cancers which have been identified in a number of research papers and which are recognised in the Safety, Rehabilitation and Compensation Act of the Commonwealth.

The second criterion which must be met is that the disease must occur during a period in which the worker is employed as a fire-fighter or, alternatively, it must occur within the 10 year period after the worker retires or resigns. For the purposes of this Bill a person is employed as a fire-fighter if the person is employed as a career fire-fighter or engaged as a volunteer fire-fighter.

Mr Speaker, it should be noted that while the Commonwealth model has no limits on the presumption applying post retirement. The 10 year limit has been included, as it is seen to be an appropriate compromise and will ensure that the presumption is applied in a fair but cost effective manner.

The third criterion that must be met is that before the disease occurred, the fire-fighter must have been employed as a fire-fighter for a certain period. This is known as the qualifying period.

The Bill makes provision for different qualifying periods depending upon which type of cancer is suffered. For example, in the case of primary leukaemia, the qualifying period is

5 years. In the case of primary site oesophageal cancer, the qualifying period is 25 years. The qualifying periods included in this Bill mirror the qualifying periods in the Safety, Rehabilitation and Compensation Act of the Commonwealth.

Mr Speaker, the fourth and final criteria is that the worker must have experienced a certain number of exposure events during their employment as a fire-fighter. As drafted the obligation applies to both career and volunteer fire-fighters. However as a result of representations made to me by the United Firefighters Union I agreed to remove the exposure requirement for career fire-fighters and will be seeking to amend this aspect of the Bill.

Data provided by the Tasmanian Fire Service indicates that almost all career fire-fighters that satisfy the qualifying period have the required number of exposures. Therefore applying this criterion to career fire-fighters is considered unnecessary. However the exposure requirement remains a relevant consideration for volunteer fire fighters, many of whom have experienced much lower numbers of exposure events compared to career fire-fighters.

A worker is considered to have an exposure event if they attend an incident, as a fire-fighter that is recorded on the Tasmanian Fire Service incident recording system. Avoidable call-outs, such as false alarms, false calls, good intent calls, and other incidents where there is not likely to be exposure, will not be counted as exposure events.

The number of exposure events required to meet this criteria is 520 exposures over any 10 year period of employment, or in

the case of primary site brain cancer or leukaemia, 260 exposures over any 5-year period. The shorter exposure period for brain cancer and leukaemia recognises that these cancers have a shorter latency period than most other cancers. The reference to 520 exposures is a drafting error and an amendment has been prepared to reduce this figure to 260 exposures.

Mr Speaker, a further safeguard is included in the Bill which provides that the presumption is rebuttable if there is evidence to the contrary. This is a standard feature of presumptive legislation.

Mr Speaker, these amendments will not have retrospective application. That is, the amendments will not apply unless the disease has occurred on or after commencement of these amendments. Further, the amendments will not apply where compensation is not payable under sub-section (2) of section 25 of the Workers Rehabilitation and Compensation Act. This means that compensation will not be payable where a worker willfully and falsely represents himself in writing, as not having previously suffered from the disease at the time of entering his employment.

Mr Speaker, in order to make this presumption work as intended, it has been necessary to clarify that for the purpose of the presumption, where a worker suffers from the disease, the disease is taken to have occurred on the day they are either first diagnosed, become incapacitated or die because of the disease. Mr Speaker, this requirement is included in the Bill because the existing provisions under the Workers Rehabilitation and Compensation Act only deem a disease to

have occurred when the worker became incapacitated, or when it is certified that they were incapacitated. This concept does not work very well for latent diseases such as cancer, because the prognosis and diagnosis of these types of diseases is usually more complex and protracted than it is for physical injuries, where the date of occurrence is rarely an issue.

Further, as a number of conditions must be met before the presumption will apply, it must be clear when the injury has occurred. For example, it is necessary to determine that the injury occurred during a period of employment as a fire-fighter, or within 10 years after the worker ceases employment as a fire-fighter.

Finally Mr Speaker, a mechanism has been included in the Bill which requires that a review of the legislation must be completed as soon as practicable after 12 months of operation and annually thereafter. This mechanism will provide an opportunity to assess the general effectiveness of the amendments, as well as to review any developments in medical research or improvements in the incident recording systems used by the Tasmanian Fire Service

Mr Speaker, while actuarial advice suggests that the number of claims will be very low, it is expected to cause an increase in the annual insurance costs paid by the Tasmania Fire Service. However, the additional impost will not represent a significant burden on Government and is expected to be covered from existing resources.

Mr Speaker, the measures included in this Bill have come about following more than 12 months of research and consultation. I

think it is appropriate that I acknowledge the work of Mr Peter Marshall from the United Fire Fighters Union of Australia, who has visited Tasmania on a number of occasions to promote this issue on behalf of professional fire-fighters. It is also important to note that the WorkCover Board and the Tasmania Fire Service have been actively engaged throughout this process and support the legislation.

Mr Speaker, by introducing this presumptive legislation we will ease the burden placed on those fire-fighters who contract cancer because of the inherent nature of their job, and through this we hope to improve the lives of our dedicated fire-fighters and their families.

I commend this Bill to the House.