

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

Second Reading

Resumed from 29 February.

DR A.D. BUTI (Armadale) [6.33 pm]: I rise to support the Workers' Compensation and Injury Management (Fair Protection for Firefighters) Amendment Bill 2012. This is a very important bill that has been brought before this house for a number of reasons. As I am sure we would all agree, a firefighter has a very important role in our community. Firefighting is an occupation that is very dangerous. This bill seeks to provide some protection against, and some equity in the system for, some of the occupational hazards that firefighters may come across. This bill acknowledges that being a firefighter in WA is an inherently dangerous job. It also acknowledges that these dangers extend to contracting certain cancers after years of exposure to certain chemicals, toxins and fumes that can have long-lasting effects. The current law does not provide or recognise the inherent dangers associated with being a firefighter and contracting certain cancers. It also acknowledges that firefighters take reasonable precaution to maintain their health, but that reasonable precaution cannot alleviate the dangers of contracting certain forms of cancer. The bill before the house is not a new bill in the sense that many other jurisdictions around the world have similar legislation. The law in certain provinces of Canada and also the United States acknowledges the dangers and provides proper compensation schemes for firefighters who may contract certain cancers.

In many respects being a firefighter has a very heroic image in our society, no more so than after September 11, or 9/11, in New York when many firefighters went to extraordinary efforts to try to save the victims of the attack on the twin towers by two planes. Many firefighters died. Others who survived then contracted certain forms of cancer and other occupational diseases. I am sure that no-one in this house would deny that there should be some sort of compensation for firefighters who contract cancer in the workplace.

It is really inequitable and unjust that the current workers' compensation legislation fails firefighters. The problem with these forms of cancer is that it is not always possible for a firefighter to locate the actual point at which the fire, or the toxins, was the catalyst or cause of the cancer. The inability to pinpoint the actual fire or specific toxin that has resulted in the cancer means these firefighters are denied the access to medical and financial assistance that they should be able to receive.

The Australian Parliament has recognised this inequitable situation. I believe that when a bill similar to the one before the house was debated in the federal Parliament, all parliamentarians of all persuasions supported the amendment to the federal legislation. That is all this piece of legislation seeks to do. It seeks to amend the workers' compensation legislative scheme in our state so that firefighters are provided with the due financial and medical assistance if they contract certain forms of cancer in the workplace.

The Senate Standing Committee on Education, Employment and Workplace Relations reported on the need to provide some legislative provisions or support for firefighters. The Senate committee report stated —

4.41 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.

The report also stated —

3.37 The committee explored the possibility that the Bill could bring about significant increases in premiums by improving the ease with which firefighters can access compensation. However, based on overseas experience as well as the fact that the legislation would not provide for any new grounds to claim, the committee is of the view that there would be negligible impact on the Commonwealth or ACT budget.

I believe that every member of this house would agree to the bill that has been introduced by the member for Girrawheen. I will be very surprised if the government votes against this bill. As I have stated, it will bring some equity into the system. Firefighting is an inherently dangerous job. Firefighters do what they can to protect themselves, but they are unable to protect themselves against certain toxins and other substances that may cause cancer. All the bill seeks to do is make these amendments to the current workers' compensation scheme.

I commend this bill to the house and congratulate the member for Girrawheen for bringing it into the house. I am very confident that it will pass when it goes to a vote.

MR A.J. WADDELL (Forrestfield) [6.40 pm]: The Workers' Compensation and Injury Management (Fair Protection for Firefighters) Amendment Bill 2012 will not cure cancer. This bill will not remove the pain that

firefighters who suffer through cancer experience. This bill will not remove the pain that the partners of firefighters who are suffering through cancer experience as they watch their loved one dwindle before their eyes. This bill delivers a tiny modicum of justice—a recognition by our society that those men and women who regularly put their lives on the line to protect the remainder of the community should be recognised as suffering the consequences of their bravery and given the same level of rights that many other workers experience. It is simply saying that those people who contract a disease as a result of their work and those workers who have put themselves at risk as a result of their work are entitled to access the same compensation system that most workers in Western Australia take for granted. It is not a big ask at all.

As the member for Armadale said, the difficulty we have is pointing to that tiny moment when, by whatever misfortune, a firefighter inhales or comes into contact with a substance that slowly invades their system and slowly manipulates their cellular make-up and delivers what is potentially a terminal blow in the form of a cancer. It is difficult to do that. They are not sitting back taking notes about everything they touch. They are not sitting back carefully and wondering, “Is it safe to go here?” These are people who tear into blazing buildings. Their personal safety is not their primary concern when they do that. When they go into a place, they do not know what is in that place. They do not know what substances are potentially burning. They do not know what the impact of the high temperatures they are dealing with will be on those substances. Often the science is not settled on that. We test materials all the time. We test to see that they are safe for consumers, but do we test that they will be safe in the event of a high-temperature fire? Often there is no known science in these areas, and it is unfortunate that the firefighters who are there to protect us are the petri dish. They are the people who experience these substances and consequently suffer whatever fate befalls them. So it is not a big ask.

Really, this bill is saying that those firefighters have the same rights as everyone else in Western Australia. As I said, it will not ease their pain and it will not cure their diseases, but it will possibly make it a little easier for them to look into the eyes of their families and to see that they are not forcing their families to suffer economic hardship as a result of the choices they have made. It will make it a little easier for them to access the medical facilities they need to access. It will make it a little easier to ensure that the school fees are paid and food is on the table for those people. Again, I cannot emphasise enough what these people give to our community. We have to ask: what is the cost of this bill? It is a mere drop in the ocean compared with the favour that these people, who regularly lay down their lives for us, are doing for us. So it is not a big ask. I, like the member for Armadale, would be surprised if there is a single soul in this place who would dare vote this down.

The questions I suppose that people will pose are: What would happen if the cancer that somebody suffers is not a result of the exposure they have had? What right does an office worker have to be covered for cancer when clearly there is no occupational cause of that? Office workers obviously would not get workers’ compensation unless they could prove that they were exposed to a substance at work that led to that cancer. To that I say, yes, maybe there would be a tiny possibility that the cancer somebody suffers is not a direct result of something they were exposed to in their work, but there are times when we have to err on the side of caution. There are times when we simply say that rather than punish somebody by not giving them the compensation they deserve, we will accept the fact that every so often somebody might get compensation that they do not deserve. I would much prefer to know that we were being a little more generous rather than being mean-spirited towards these people who, as I said, regularly put their own lives at risk for us in our community. With those words, I commend this bill to the house.

MR J.M. FRANCIS (Jandakot — Parliamentary Secretary) [6.47 pm]: I will start with the house’s indulgence by mentioning something slightly off-topic; namely, the passing just a couple of days ago of Mrs Joan Ritchie, the wife of Commander Bill Ritchie, Royal Australian Navy, Retired. Commander Ritchie was a stalwart and a founding father of the modern Royal Australian Navy in Western Australia. He was the first executive officer of HMAS *Stirling*. He could not do what he has done for the Navy in Western Australia without the support of Joan. He is a pretty dry and lovable character and I am sure that a number of other members in this house feel his pain at this time.

I have a huge amount of sympathy for what the firefighters are asking for with the Workers’ Compensation and Injury Management (Fair Protection for Firefighters) Amendment Bill. I have always been a firm believer in a balance between looking after workers who are injured or develop an illness through their employment and the provision to some degree of sufficient protections for employers generally who are open to abuse—but I want to make it perfectly clear that I do not believe that that is the issue in this case of presumptive workers’ compensation for firefighters who fall in this category. In a second, I will go into some personal family reasons why I think that way. I have always believed, rightly or wrongly, that those professions in which people risk their lives for their community or country are always in a slightly different basket. I will touch on two extremes in order to put this issue into context.

I have a friend who works as an occupational therapist for a large service provider in the mining industry. She often mentions to me different cases that she comes across in her role. She had a case recently of a 50-year-old

lady who did not declare a pre-existing condition who went to work for this company, which is a big service provider in Western Australia, as a fly in, fly out kitchenhand. After one week this woman suddenly was diagnosed with carpal tunnel syndrome. As the employer at the time, even though she has worked there for only one week, the company is responsible for her occupational therapy, treatment and continued payment for that particular injury. Although everyone knows that someone really cannot develop carpal tunnel syndrome within one week, there is an extreme situation in industrial relations law in Western Australia in that some cases do not fall fairly between the employer and the employee. I think that perhaps is an issue that we need to look at in this Parliament or the next. I guess what I am saying is that in some situations the assumption of fault lies far too easily with the employer. However, with other injuries and illnesses the cause can be much harder to find, as the member for Forrestfield outlined. On the other hand, people such as firefighters obviously deserve the benefit of the doubt to fall on their side when they get sick. When firefighters who have been exposed to toxic cancer-causing chemicals have a rate of developing cancer that is much greater than those who are not exposed to those chemicals, something is wrong and the morally right thing for us to do is to recognise that inconsistency and injustice.

I want to outline a situation comparable to the situation firefighters face in another service—the Royal Australian Navy. I hold careers like firefighters, police, Navy, Army, and sometimes the Air Force, in a similar light, and I want to touch on my personal experience. My father, Charlie, is without doubt my best mate. Legend has it that dad was too young to join the military, so he doctored his identification in true Francis family tradition and signed up to join the Army. They found out after a week or two and kicked him out, but as soon as he was old enough, he joined the Navy. Dad spent years in the Navy—he was a proud stoker—as an engineer room artificer who became a chief petty officer mechanic. His first ship was HMAS *Australia*, and he served proudly on various corvettes. In 1963, he commissioned HMAS *Perth*, Australia's first Charles F Adams class destroyer. In 1968 dad was serving on HMAS *Hobart* in Vietnam when the Americans shot it up in the Tonkin Gulf. The DDGs were laced with asbestos, the silent killer that nobody knew about or feared.

The destroyers were steam-powered ships; the for'ard had two boiler rooms, with two boilers in each room, developing super-heated steam at about 1 275 pounds per square inch, which was fed down to the two engine rooms, each housing a triple expansion steam turbine producing around 70 000 shaft horsepower. They were amazing ships for their day; the low-pressure steam that came from the low-pressure steam turbine was pumped throughout the ship. Even the ovens in the galley were fed by steam controlled by valves that recycled the low-pressure exhausted steam. Every single steam pipe on these ships was lagged with asbestos, and each ship had a crew of 333 men—all male crews, even until the decommissioning of HMAS *Brisbane* in 2001.

Less than 20 years ago I also was a junior sailor, a stoker on HMAS *Brisbane*, which was another one of these ships. My place of work was in number one fire room—the starboard side boiler room. My job was to keep the fire burning and help regulate the steam to the steam turbines. It was in the deep bowels of the ship; I always remember my fear when we went in for what they called special sea duty, when we were navigating in dangerous waters. They locked us in way below the waterline and we always prayed that the navigator would not run the ship aground or into a rock. But even 20 years ago, everything was still covered with asbestos, and none of us feared it because we had been reassured it was harmless. I will quote an article published in the *Sydney Morning Herald* on 5 August 1990, and reprinted on the website www.asbestosdisease.com.au. It states, in part —

Australia's 15,000 sailors and their families have been told that the deadly blue asbestos which still infests some Navy ships and bases is so harmless that it can be eaten.

The claim — which has astonished Australian and overseas medical authorities — is made in a three-page memo sent out only two months ago to all personnel by one of the RAN's most senior commanders, Rear-Admiral David Guy Holthouse, AO, who is assistant chief of Naval staff in charge of personnel.

In an attempt to allay fears among officers and men following recent media exposure of asbestos disease and death in the Navy, the Rear-Admiral says: "Asbestos is a naturally-occurring fibre ... (it) is not chemically toxic, and may safely be touched or even eaten."

The memo was posted at Navy establishments around Australia just two weeks after the announcement that the Governor of NSW, Sir David Martin, was dying of mesothelioma — an incurable cancer of the chest or stomach lining caused by exposure to asbestos. Sir David served nearly 40 years in the Navy, including on the aircraft carriers HMAS Melbourne and Sydney which were riddled with blue, white and brown asbestos insulation.

He is the most senior of more than 300 Navy personnel to have lodged claims for pensions or lump-sum compensation for asbestosis and various cancers caused by asbestos during Navy service.

My dad, Charlie, was diagnosed with asbestosis in December. To this day, every time I get a cough the fear of God goes through me, and I am only 41 years old. I know that there is a genetic predisposition in my family to suffering these illnesses and I know that, like my father, I have been well and truly exposed to that, not to mention the beryllium and Halon 1211 that they use in the Collins class submarines. Now I am here and I am a volunteer firefighter, as members also know. I therefore want the permanent firefighters in Western Australia and the volunteers to know that I am very sympathetic to their cause on this issue, and that I know exactly what their families are going through; however, even my dad, Charlie, does not have presumption on his side on this issue. There is another case involving defence with the guys who did the sealing and de-sealing of the fuel tanks on the F1-11s. The federal government in 2009 conducted another inquiry into the compensation payments in that case for those workers.

The issue, however, that we now face with the member for Girrawheen private member's bill is not that we do not absolutely agree with what she is trying to achieve. Under the federal act there is a general presumption that when a worker suffers from an asbestos disease—I use the parallel to cancers and exposure to toxics caused by fire—and his or her employment has involved exposure to the inhalation of asbestos fibres, the disease is deemed to be due to that employment. However, there is a clear medical basis for that special arrangement. Presumptive legislation for firefighters in the absence of clear and civil data—at the moment as we speak right now—specific to Australian conditions has far-reaching implications for the workers' compensation scheme. I note that as we are the guardians of taxpayers' money, we have to be aware of the consequences of our actions, no matter how well intended they are.

I have been told that it is difficult to estimate the impact of this bill on insurance premiums for Western Australia. I am not a lawyer and I do not pretend to be a lawyer. I am not quite sure where we stand legally on the fact that it will probably result in the allocation of state finances, which leaves me in the position of having to seek advice on the requirement for allocating resources to a private member's bill as opposed to a government bill. However, as I previously said to the member for Girrawheen privately, I am always happy to take up that cause and have a conversation with her about these issues.

We know that there are about 1 076 professional firefighters in Western Australia; however, there has been some suggestion that special arrangements should be expanded to include the 33 000 volunteers. Senator Chris Back, the Liberal senator for Western Australia, made that recommendation as well as for firefighters in the resources sector. I understand the member for Girrawheen's bill would cover those in the resources sector because it includes corporation firefighters, but the bill does not include coverage for volunteer firefighters. I am not saying it should, but certainly workers' compensation for volunteers who do not get paid for their time is something that we as a Parliament and as a government need to talk about. There was an incident with a lady who was reversed over out at Roleystone, I think.

Ms M.M. Quirk: It was Serpentine–Jarrahdale.

Mr J.M. FRANCIS: It was Serpentine–Jarrahdale where she was reversed over by a truck. I am not particularly sure what stage that case is at. However, if something untoward happens to someone who volunteers their time, puts themselves through all the training, gets all the licensing, does all the studying and wears the bright personal protective equipment, I do not think anyone would say that the state should not be liable and kick in to look after that person. I say that because compensation for firefighters and workers' compensation for volunteers across the sector is something that could be rolled into one. I am not speaking as a government member here—just as a private member. I believe we should be looking at rolling it all into one as far as volunteers are concerned.

This legislation also does something that has me slightly concerned; it pre-determines a list of specific cancers. I would have thought that would be better done by regulation. I make that point by reflecting back on what I said about asbestosis, what we knew about it and what the community's attitude was to it 20 years ago. Some acts in this place do not get updated for 10, 20, 30 or 40 years. My fear with having an inclusive list is that some cancers mentioned in the bill are four times more prevalent in firefighters than they are in the general community, but some are not. I am not a medical specialist and I do not know too much about cancers, but I would suggest that if they were in a prescribed list that the minister could add to at a future date by regulation as medical technology and research evolves, it would perhaps be a better way of handling that issue.

Debate adjourned, pursuant to standing orders.