

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

Second Reading

Resumed from 8 August.

MR J.M. FRANCIS (Jandakot — Parliamentary Secretary) [6.23 pm]: I want to conclude my remarks on the issues I raised in this debate when the house last considered this matter last Thursday. I apologise if I was a little emotional last week but when a member of my family—that is, my father—has just been diagnosed with asbestosis, these issues touch very close to home.

I want members from both sides to know that I have read every single word of this bill. As I said last week and as I will say again now, I want the firefighters who so bravely serve the state of Western Australia to know that I fully support them in their cause to have some kind of presumptive recognition of certain illnesses that they have a higher likelihood of contracting, as the science proves, no doubt due to their exposure to the hazards they face protecting our communities. When we dial 000 after we come home or wake in the middle of the night to find our house on fire, we know that there will be firefighters there in next to no time with a fire truck and the necessary resources. They will do whatever it takes to protect life, first and foremost, and property whenever they can. I recognise that they are in a unique field of employment. As I said last week, members of the police force also put their life on the line, as do members of the Army, Navy and Air Force. I put those people in a unique category of people who serve their community with absolute distinction.

As I said, I support what the opposition is trying to do here; I just do not necessarily support the way it is going about it. I do not think the member for Mandurah was here last Thursday when I said that enacting legislation and amending legislation is a very, very slow process in any Parliament but it certainly is in this Parliament. I made the point that we are just now looking at a bill to amend the Dog Act, which I do not think has been touched for over 10 years. A bill that prescribes specific cancers or illnesses is not flexible enough for me. Medical research and science will outstrip the rate of legislative amendment every day in every jurisdiction.

Ms M.M. Quirk: So what should be the alternative, member?

Mr J.M. FRANCIS: I think one of the solutions would be to look at delegating a list. That could be amended at any time and address a number of different issues.

[Member's time extended.]

Mr J.M. FRANCIS: I have asked the government to look at this and I have been told that it is committed to addressing this issue. I will take it at its word that it will address this issue. I think that the United Firefighters Union of Western Australia has done a great job for its members in bringing this issue to the attention of both political parties in Western Australia and I congratulate it on the work it has done. I acknowledge what the member for Girrawheen is trying to achieve, and I absolutely support that and agree with her but the issues I have with this bill specifically relate to proposed section 48A and proposed schedule 3A of the Workers' Compensation and Injury Management Act. That is okay: We can agree on a matter of principle and disagree on the technicalities as long as the issues are resolved as quickly as possible, hopefully by the government.

MR D.A. TEMPLEMAN (Mandurah) [6.27 pm]: I would like to make a contribution. I will not have a go at the member for Jandakot, because I understand the sentiment. I am not convinced about why the proposal before us is not able to be supported. I do not think he has given any real detailed reason why he opposes this piece of legislation. If the government is going to vote against it and if the member's sentiment is that he wants to see appropriate legislation presented to this place, I would like some indication, perhaps from an appropriate minister, of when we would expect to see that. We have fewer than eight weeks in which this place will sit. If this legislation is a priority and if the government is seeking to ensure that the interests of firefighters and their families are enhanced and protected, I would like to see the colour of its money, quite frankly. I have not heard anyone from the government side give any indication of when we will see legislation or, indeed, amendments introduced to address this problem if this bill is defeated by the government.

I want to commend the member for Girrawheen for introducing the Workers' Compensation and Injury Management (Fair Protection for Firefighters) Amendment Bill 2012 to this place. As has been said by previous speakers in the debate and, indeed, in the second reading speech by the member for Girrawheen herself, this is very well researched. I was fascinated to read the second reading speech of the member for Girrawheen and the references to her experiences in New York, speaking to people there, and also the statistical data showing the residual impacts of firefighters contracting various forms of cancers that related to the tremendous work that they do in our community.

Extract from Hansard

[ASSEMBLY — Wednesday, 15 August 2012]

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Mr Joe Francis; Mr David Templeman; Dr Graham Jacobs

Mrs Barbara Kelly, OAM, from the Mandurah branch of the Country Women's Association of WA, came to see me. Mrs Kelly lives in Mandurah. She is a long-term member of the Country Women's Association. Indeed, she has a long and distinguished connection with the CWA and has held very high positions in the organisation over many years. She highlighted to me the concerns of the CWA about the need to protect firefighters. She made these comments to me as a similar bill was being debated, and has now been passed, in the federal Parliament, as the member for Girrawheen highlighted. However, the CWA's concerns about and support for the legislation that the member for Girrawheen has introduced to this place were made very clear to me by Mrs Barbara Kelly, OAM. I read with great interest the submission that she provided me with a copy of and also a petition which she asked me to present to this place and which I presented on 24 May 2012. The petition I presented basically requested that Parliament act quickly to ensure that firefighters and, ultimately, their families were protected if those firefighters contracted occupationally acquired cancers. I was very pleased to do that for Mrs Kelly and the signatories to that petition, many of whom are or were members of the Mandurah branch of the CWA.

In the submission that Mrs Kelly provided to me, a number of points were made. I will refer briefly to that submission and to its relevance to the bill that the member for Girrawheen has very importantly presented to this place. The Country Women's Association endorses the amendment outlined in the bill and recognises that the bill highlights the potential risk of diseases that can occur when firefighters are exposed to environmental hazards in the workplace. The submission refers to a number of factors that are important in this legislation. She highlights that the permanent firefighters who are assigned to large rural and regional towns make a significant and important contribution to the communities in which they live and work and are seen as members of an essential service. She also highlights that firefighters have been exposed to a range of changes in their workplace over time. These changes are significant. Indeed, we now know more about the impact of chemical exposure and the various environmental factors that firefighters may find themselves exposed to than we did previously. That does not change the fact that the evidence now is very clear that many firefighters suffer ongoing and prolonged illnesses as a result of the work they do. In the submission, Mrs Kelly highlights very strongly that the legislation should include provision for rural volunteers—I have not discussed that with the member for Girrawheen, but it is a point that Mrs Kelly has made—particularly given that much of the firefighting response in many rural and regional areas of the state is done by volunteers. It is a point that I think was well made. The telling point is probably one line in the submission. Mrs Kelly highlights —

To live and work in rural situation does not or should not diminish a person's value as a citizen nor his/hers entitlement to equal health benefits.

I agree entirely with that particular comment in the submission. Mrs Kelly highlighted in a follow-up letter to me in February that she was part of a committee known as SIFFT—the social issues and fact finding team. This committee was established as part of a national body to look at a range of topics and how they relate to and affect rural communities. She wanted to give me some background about that because she felt it was important to understand why the CWA would make a submission on any legislation. As I said, initially this was in relation to the legislation going through the federal Parliament. It made a submission because the CWA throughout Australia has a very strong reputation of not only representing the interests of country women, but also advocating very strongly on behalf of families who choose a rural or regional lifestyle. I know that Mrs Kelly is very pleased that not only did I table the petition in this place on 24 May, but also the member for Girrawheen has brought this amendment legislation to the chamber.

Although it seems that some members on the other side may vote it down when the time comes to vote on this legislation at some stage in the future, the telling question that I think the member for Jandakot and others on the government side must answer is: if this legislation is not going to be supported by the government and if, as the member for Jandakot said, the government wants to ensure that our firefighters are protected appropriately and that their families are given some comfort that if their loved one contracts cancer related to their work, they are looked after, the government must tell us exactly when it intends to introduce similar legislation. I cannot see any reason why it would not support this proposal by the member for Girrawheen. If government members are not going to support the legislation and they are dinkum about what they have said about how important it is, they should tell us tonight when we might expect similar legislation to be presented.

DR G.G. JACOBS (Eyre) [6.39 pm]: Thank you, Madam Acting Speaker, for the opportunity to examine this very important issue and, if I may, also examine some of the scientific basis, if we like, behind the Workers' Compensation and Injury Management (Fair Protection for Firefighters) Amendment Bill 2012, some of the lack of scientific backing and some of the issues in and around the legislation that make it far from perfect. It is important from the outset to say that this is a great concept; it is a great cause; it seeks to look after people who risk life and limb, and that damage can be an immediate consequence. It also seeks to look at the risks for these men and women into the future. Essentially, it centres around the risks of cancer, which are delineated in the bill. In proposed schedule 3A it lists 12 industrial diseases, from primary site brain cancer right through to primary site oesophageal cancer. I think it is really important to step back for a moment, and that is not to discount the

contribution these people make, nor to discount the potential risks; it is about looking at the association between what they do and the direct association with other causative agents of cancer.

Most people here will know that prostate cancer is prevalent in society. One in 10 men contract prostate cancer at some time in their life and one in 10 women suffer from breast cancer at some time in their life. Those cancers are in fact included in this list. I do not want to be seen as mean-spirited here, but we want to look at this in an objective way because a lot of this is what we call presumptive legislation. Presumption means that we presume that being exposed to a certain agent will cause the cancer. A Senate inquiry was held into this same issue in 2011. Its deputy chair was Senator Chris Back, whom I have had communication with on this very issue. We could say, “Look, lung cancer is not part of this list.” From a layman’s point of view we might think firefighters are exposed to fumes and smoke and that there is some causative link between what they inhale and lung cancer. It is not in this list but it was recommended in the Senate’s list as, obviously, a causative agent and a link in non-smokers. The fact is—I hope the member for Girrawheen will agree with me—that lung cancer is not in this list because of the equipment firefighters wear; they wear masks and equipment that protects them from inhaling the potential agents. That is not the case with other chemicals because of the nature of the clothing firefighters have to wear; their garments must be able to breathe. If they were non-porous materials, firefighters would cook in their clothing. There must be the capacity for the garments to breathe to keep the temperature of the firefighters’ bodies down. By the same token, the clothing material provides access through which the chemicals can come into contact with the skin and therefore potentially be absorbed into the body and, through that, incite mitotic and cancer changes within other organs in the body, particularly those that have a high blood flow.

However, the science is not altogether settled on this issue. In the Senate inquiry, a table was collated with all the information and submissions made to that inquiry. Those sources of scientific information included a Cancer Care Ontario study carried out in 2004; the report of the research headed by Tee L. Guidotti titled “Report to the Workers Compensation Board of Manitoba on the Association Between Selected Cancers and the Occupation of Firefighter”, commissioned by the Canadian province of Manitoba in 2002; a study carried out by the Industrial Disease Standards Panel of Ontario; and the research work headed by Grace LeMasters titled “Cancer Risk Among Firefighters: A Review and Meta-analysis of 32 studies”, commissioned by the US Department of Environmental Health at the University of Cincinnati College of Medicine. A literature review has been done, as noted in a Queensland study in 2009 and, in fact, there is the Queensland study itself. It is not about denying people; it is about doing it properly and looking at the causation and some of the scientific information behind it.

The first line on this paper compares those sources in the brain—for instance, the cancer type. The Senate report stated that it was reasonable to adopt a policy of presumption; that is, we presume that the causative agents the firefighter is exposed to could give them brain cancer. The Cancer Care Ontario study said there was limited evidence of increased risk. According to the Industrial Disease Standards Panel of Ontario, presumption had been established. The LeMasters meta-analysis study indicated that it was possible. The literature review indicated that there was reasonable evidence and the Queensland study indicated that incidence of malignant cancer was not higher than expected for male firefighters. The issue as well is that there are brain cancers and brain cancers. Essentially, for the malignant type it is not higher, but in the benign cancers some increase was expected in the number based on a case sample of three—a very small sample. I could go through all the cancers listed in this bill, including multiple myeloma, which is just another form of bone marrow cancer. The evidence is patchy and not necessarily consistent. We might ask: what does it matter; if there is even a small connection, even a smidgen of presumption, it should be covered? I think it is important that we do get this right. The member for Mandurah asks why we do not just do it. We need to look at some issues. With all due respect to the member for Girrawheen, she has beaten the gun a little.

Mr M. McGowan: Do you mean jump the gun?

Dr G.G. JACOBS: Jump the gun, beat the gun—whatever.

The member would know that the Australasian Fire and Emergency Service Authorities Council has recently commissioned Monash University to undertake a comprehensive Australia-wide research project examining the overall cancer rates and rates of specific cancer types in Australian firefighters compared with those of the general population. In answer to the member for Mandurah, we can talk about Ontario, US and Canadian studies—a lot of that evidence was given to the Senate inquiry—but this is an Australian study commissioned by the Australasian Fire and Emergency Service Authorities Council, and that study is on foot.

Ms M.M. Quirk: I am told that they have not even started that yet. They have been mucking around with all the administrative stuff. If I can ask the question: did we say that about smoking; did we not rely on overseas evidence in relation to smoking?

Dr G.G. JACOBS: This was the issue that I have considered—not only smoking, but also asbestos and the association between mesothelioma and asbestosis.

It behoves us to do the scientific study. Monash University has commissioned this study. The research will focus on Australian conditions and will assist us in making this good policy. Beat the gun; jump the gun—I do not care, but members get what I mean. This research has been commissioned and is being carried out and will give us a very good scientific basis by which to deliver legislation that can truly cover those cancers that are associated with the exposure of agents in the course of firefighting.

A couple of other things within the legislation probably need tidying up. Some of the design elements are a bit unclear. We know that about 1 076 professional firefighters are in WA. Some suggestions have been made that a special arrangement should be expanded to include the 33 000 volunteers, which is what Senator Back recommended in the Senate inquiry—and, for that matter, firefighters in the resources sector.

Ms M.M. Quirk: They are included in the bill.

Dr G.G. JACOBS: The coverage for volunteer firefighters produces some particular problems due to the absence of even the employment relationship. If someone is a volunteer, who is the employer? We know that the key principle in workers' compensation is that there is an employment relationship. The whole issue that arises is the potential for similar treatment for other community-based volunteers—for instance, those in the State Emergency Service and in the recreational sector. A closer look at some of the design elements is needed, because they are unclear. Another issue is to be considered. I might have missed it; did the member for Girrawheen say anything about this aspect? What about a retired person who did their qualifying period in the firefighting service? They have retired and been diagnosed with prostate cancer. Where are they?

Ms M.M. Quirk: It is prospective not retrospective, member.

Dr G.G. JACOBS: It could well be that a firefighter has done his qualifying period, and, interestingly, the qualifying periods are varied in the member's bill. I presume that that has some scientific basis. For instance, the qualifying period is five years for primary leukaemia. That means someone has to be a firefighter, presumably at the coalface—I might talk about that in a little while. What proportion of that firefighting duty was conducted at the coalface? Quite conceivably, someone could be in the firefighting service for 15 years, but five years of that was spent at the coalface fighting fires but the other 10 years were spent at a desk. Members might ask: what does it matter? It does not matter whether he fought one fire or he fought a fire on a consistent basis for five years. A bit of a question arises for me about the qualifying periods of five years for primary leukaemia and 10 years for primary site breast cancer. If someone happens to be diagnosed and suffer from a primary site ureteric cancer, the qualifying period is 15 years. Someone has to have been a firefighter in active service for 15 years in order to get compensation for ureteric cancer but only for five years for leukaemia, which is a cancer of the bone marrow that produces many white cells that take over the circulation. There are the issues of volunteers, retired people, the qualifying periods and the scientific basis and association between the amount of firefighting and how much firefighting was spent in actively fighting fires as distinct from carrying out other duties.

There is also another question about the list. I mentioned 12 cancers, but number 13 on the list describes a cancer of a kind prescribed for this table. The qualifying period of that is the "period prescribed for such a cancer". It is almost like a catch-all. That does not have a lot of scientific basis. It does not describe the cancer; it allows someone at some time to describe a cancer. I think that that is significantly vague.

Ms M.M. Quirk: Do you want a brief extension, member?

[Member's time extended.]

Dr G.G. JACOBS: I now understand why the member for Morley was tapping his watch. I did not know whether he wanted me to wind up. I understand that he was tipping me off that I could have some more time. Thank you very much! I presumed that that is what the member was doing.

Mr I.M. Britza: It was, member.

Dr G.G. JACOBS: We do not have any problem with the concept of the member for Girrawheen's measure—not at all. We think this is a very good cause. It is important to look after people who risk their life and limb for us, and we need to look at the risks for those people after they have left the coalface, as it were, in the future and ask: what are their risks? I think the presumptive risks are a little unclear. The Senate inquiry identified seven, but it wanted to put another few in, and one of those it wanted to put in was lung cancer for non-smokers. This bill does not do that.

Debate adjourned, pursuant to standing orders.

House adjourned at 7.00 pm
