

WORKERS' COMPENSATION AND INJURY MANAGEMENT AMENDMENT BILL 2013

Second Reading

Resumed from 7 August.

MS M.M. QUIRK (Girrawheen) [11.44 am]: As lead speaker for the opposition, I would ordinarily be allocated 60 minutes to discuss the merits or otherwise of the Workers' Compensation and Injury Management Amendment Bill 2013. However, I am anxious that these important laws not be subject to further delay so I will not use my full entitlement; neither will I fritter away time canvassing what additional evidence the government has in its possession since last year, when it capriciously rejected supporting an almost identical bill when it was introduced by the opposition 18 months ago. Likewise, I will not reiterate the remarks I made on 29 February 2012 at the second reading stage of that private member's bill, the Workers' Compensation and Injury Management (Fair Protection for Firefighters) Amendment Bill 2012. I still endorse those remarks. Nor do I need to recap the comments I made at the first available opportunity after the state election, in May, when I moved a motion urging the government to pass these laws without further delay. I will not waste Parliament's time reflecting on the fact that the gullible National Party was deceived into not supporting the laws. In fact, had it not been so deceived and gullible, these laws would already be enacted. I will not squander valuable minutes asking why no money has been allocated in this year's budget for the implementation of these laws. No money will be allocated until next financial year, indicating that these laws may not be proclaimed until sometime after June 2014.

I do not consider it productive to query why the government went to the state election peddling the lie that these laws would apply equally to 30 000-plus volunteer firefighters. I need to pause on that. The Western Australian Liberals' emergency services policy prior to the election stated —

A re-elected Liberal Government will introduce amendments to legislation which ensure a career or volunteer firefighter who developed one of 12 prescribed cancers recognised in similar Commonwealth Legislation would have a significantly simplified workers' compensation consideration.

This is the important bit —

These changes to legislation will provide cover for career and volunteer firefighters who predominantly undertake structural firefighting duties and retrospectively take into account past years of service.

I want to thank my colleagues in the Labor Party, who immediately understood the significance of these laws and wholeheartedly supported, without hesitation, their enactment. Our party was founded on the fundamental principle that workers deserve and are entitled, as of right, to safe working conditions. We support the unions who strongly advocate for those better conditions on behalf of their members; and where doubt exists, it should always be resolved in favour of the worker.

A corollary to that proposition is that when a workplace cannot be made totally safe, the extent of the risks to which the worker is exposed should be explicitly acknowledged and compensated fairly. In that context, I foreshadow that I will move an amendment at the appropriate time to extend the scope of the bill. I emphasise that this amendment in no way erodes or diminishes legitimate rights conferred under the existing bill. I will speak briefly on that amendment at the consideration in detail stage. The passing of this bill will be truly historic, and I commend it to the house.

Question put and passed.

Bill read a second time.

Leave denied to proceed forthwith to third reading.

Consideration in Detail

Clauses 1 to 3 put and passed.

Clause 4: Part III Division 4A inserted —

Ms M.M. QUIRK: I move —

Page 4, line 5 — To insert after "1942" —

, or was employed in prescribed burning and firefighting activities by the Department of Parks and Wildlife or the Department of Environment and Conservation

This amendment seeks to extend the rebuttable presumption to firefighters employed by the Department of Parks and Wildlife, formerly known as the Department of Environment and Conservation, which is involved in prescribed burning and fire suppression duties. Also employees of the state and covered by workers' compensation, they have been excluded from the application of these laws. The Minister for Environment

recently indicated that these workers would be covered in due course, along with volunteers at some indeterminate time in the future.

It is argued, and I concede, that the volume of research for the link between exposure to bushfires or wildfires and cancer is not nearly as extensive as the connection between structural fires and the disease. But there is ample evidence in general medical research to show that sustained exposure to smoke and carbons will increase the propensity to contract cancer, and certainly wildfires and bushfires generate carcinogens.

In a paper prepared for the World Health Organization in 1999 entitled “Smoke from Wildland Fires”, the following conclusions appear at page 77 —

1. The mixture of particles, liquids, and gaseous compounds found in smoke from wildland fires is very complex. The potential for adverse health effects is much greater because of this complex mixture.
2. The particles are known to contain many important organic compounds some of which condense to form tarry droplets over a substrate material of ash or graphitic carbon or both.
3. The size distribution of smoke particles is such that a large percentage are respirable.
4. Gaseous compounds in the air adjacent to fires in association with the particles include carbon monoxide, methane, oxides of nitrogen and many organic compounds—some of which are carcinogens and many of which are irritants.
- ...
6. With the data available today, we still do not know what the overall toxicity of smoke is from wildland fires or how this toxicity varies from fire to fire.
- ...
9. Along with the combustion products is the dust, heat, and remoteness of many of the wildland fires making exposure to humans difficult to assess.

That does not mean that workers who are exposed to danger should not be given the same level of protection. It also needs to be said that DPaW workers are required to fight structural fires. Members should be mindful that in 2008–09 the Australasian Fire and Emergency Service Authorities Council commissioned Monash University to undertake a project to assess the feasibility of conducting a cohort study of cancer, mortality and other possible health outcomes in Australian and New Zealand firefighters. The primary outcomes of the project were to present AFAC with some recommendations regarding possible study designs, the findings achievable from each design, and associated resources required. All AFAC member organisations involved in firefighting were invited to participate in the feasibility project. After review of the data held by the agencies, and consideration of the scientific aspects of a study, a national retrospective cohort study of Australian firefighters was considered as feasible. This retrospective cohort study of Australian firefighters is now to be undertaken for AFAC. The study will involve assembling a cohort of former and current career, part-time, paid and volunteer firefighters by extracting data from existing computerised records held by the following participating firefighting agencies: Airservices Australia, the ACT Emergency Services Agency, the Country Fire Authority, the Department of Fire and Emergency Services, Fire and Rescue NSW, the Metropolitan Fire and Emergency Services Board, the Northern Territory Fire and Rescue Service, the New South Wales Rural Fire Service and the Queensland Fire and Rescue Service.

Mr J.M. FRANCIS: I am happy to allow the member for Girrawheen to continue making her point.

Ms M.M. QUIRK: I stress that there are agencies amongst that list that specifically or exclusively fight bushfires or wildfires. As I said, after the feasibility study conducted by leading scientists from Monash University, they have said that there is substance to the suggestion and they will look at this range of firefighters who may well be covering only bushfires. In concluding that they will proceed with this study covering the range of different firefighters, they will now investigate differences in the overall death rate and rates for specific causes of death in Australian firefighters compared with those of the general population. The outcomes of primary interest are deaths from cancer, cardiovascular disease, non-malignant respiratory diseases and traumatic injury. They will further examine differences in the overall cancer rate and rates of specific cancer types in Australian firefighters compared with those of the general population. They note that the cancers of primary interest are brain and central nervous system malignancies, melanoma, testicular cancer, prostate cancer, bladder cancer, non-Hodgkin lymphoma, multiple myeloma, and for women, cervical cancer, thyroid cancer and breast cancer. Some of those cancers are scheduled in this bill. Finally, the study will compare the cancer incidence and death rates for subgroups within the cohort by agency, type of firefighter, duration of active firefighting, types of incidents attended and other exposure types. They will go on to assess the feasibility of investigating other health outcomes of which employed and volunteer firefighters may be at increased risk. They will identify exposures that may be associated with increased risk of cancer and/or mortality among firefighters.

I mention this study because its parameters do not exclude those firefighters doing similar roles as those employed by the Department of Parks and Wildlife. This study was designed after having reference to and closely studying available research and information. Although we do not have the results yet, I make the point that Monash University is clearly not discounting the possibility that there is a nexus between Department of Parks and Wildlife workers contracting cancers and their involvement in firefighting activities and bushfire suppression. I do not think this government should dismiss that possibility either. I also need to add that many of these workers are seasonal. That is not a difficulty under the legislation because it envisages cumulative periods and aggregates them for the purposes of when the prescribed periods in the bill come into play.

I will not labour the point. I will let the minister articulate the government's response. I remind members in the house—I raised this matter in relation to the private members' bill—that Western Australia has a very sorry history of exposing workers to carcinogens and toxins. I do not want these workers to be left out and for us to find in years to come, when research has reached a greater level, that we ignored these firefighters who protect our community.

Mr J.M. FRANCIS: I thank the member for Girrawheen for her input into this clause. The government will not support the amendment she has moved for a number of reasons. First, we have not yet seen any scientific evidence of the links between bushfire smoke and cancer. Second, bushfire controls and prescribed burns are only part of the role played out by the firefighters from the Department of Parks and Wildlife, formerly known as the Department of Environment and Conservation. Those firefighters are not subject to the same levels of exposure to any form of smoke compared with the career firefighters from the Department of Fire and Emergency Services. Third, there was commonwealth and overseas legal precedent for limiting presumptive legislation to those firefighters with exposure to structural and chemical fires. Essentially, the career DFES firefighters face predominantly structural fires with unknown chemicals and carcinogens, whereas bush fire fighters and the Department of Parks and Wildlife firefighters do not have anywhere near the same exposure to smoke, so they do not accumulate the toxins at the same rate, and they do not generally fight structural fires. This is a significant difference. I appreciate what the member for Girrawheen has said with regard to the Monash University study —

Ms M.M. Quirk: The Australasian Fire and Emergency Service Authorities Council has not dismissed it.

Mr J.M. FRANCIS: I am aware of that, but the Monash University study will not be completed until September next year—some 12 months away. It is not my position or the position of the government to legislate on speculated possible outcomes of a study from Monash University that will not be available until September next year. We will not legislate on possibilities; we will legislate on scientific fact.

Ms M.M. QUIRK: I note the minister's comments and I seek an undertaking from him that in the event the AFAC study shows a positive nexus between cancer and those involved in fighting bushfires and wildfires, the government will bring this legislation back into this house and make the necessary amendments.

Mr J.M. FRANCIS: We will look at that report when it comes out and consider its findings. I do not know what will be in it, and, as I said, it is still 12 months from completion. In answer to the member's previous questions, I have said that the government will look at all other people involved in firefighting, be they volunteer bush fire fighters or volunteer fire and rescue firefighters, and we are in the process of developing legislation to cover certain workers' compensation issues for them in a completely separate round of legislation. This is a very simple amendment to the Workers' Compensation and Injury Management Act 1981 that covers career fire and rescue firefighters right now with that presumptive provision as soon as this bill is assented to. It is a very simple process. Volunteer firefighters are not covered by that act of Parliament. Amending the Workers' Compensation and Injury Management Act is a simple process for career firefighters. It is a far more complicated and involved process for volunteer firefighters.

Ms M.M. Quirk: The minister's predecessor misled 33 000 volunteers.

Mr J.M. FRANCIS: No. We will deal with them in a separate round of legislation.

Ms M.M. Quirk: That is not what you said in your promise.

Mr J.M. FRANCIS: Volunteers cannot be included in this legislation.

Ms M.M. Quirk: I know that, but I am telling the minister what his predecessor and his party told 33 000 volunteers.

Mr J.M. FRANCIS: We made a commitment to consider the position of volunteers, and we will honour that commitment and address all the other firefighters in a separate round of legislation.

Dr G.G. JACOBS: I am sorry I missed the opportunity to congratulate the minister on bringing in this legislation, and indeed the member for Girrawheen for her work in this area. I thought she would speak for a lot longer than she did and I missed my opportunity. However, in the interest of not making this process any longer

than necessary, I will be brief. This is good legislation, and, as the minister said, it is a special amendment to cover the well-deserving firefighters exposed in this way, and the relationship between their work and the advent of cancer. The cancers are listed in schedule 4A. Is it not an issue with volunteers? The member for Girrawheen would have to concede that we are dealing with a different cohort with different rates of exposures that are not as continuous as they can be with professionals. It is an episodic exposure with different intensities, and we need the science to let that run. I support this legislation. Congratulations to the minister and congratulations to the member for Girrawheen for their work in this area. It is good legislation that is based on science that shows the connection, so we should proceed with this legislation to cover this well-deserving cohort. As the minister says, we will look at the other issues when we have information that looks at the connection for this other group of maybe deserving firefighters as well.

Amendment put and negatived.

Clause put and passed.

Clause 5: Schedule 4A inserted —

Dr G.G. JACOBS: I do not want to prolong this consideration much more, but this is an opportunity to talk about the primary site cancers, the qualifying periods, and a little about evidence because we are basing this legislation, as we said to the member for Girrawheen, on a scientific study that draws the relationships and refers to a qualifying period; this means the amount of exposure over time qualifies for compensation for a firefighter with a specified disease. I will talk a little in and around those studies. An Ontario study has been done and the Monash University study is on foot, and other studies throughout the world at different times have brought us to where we are in making this connection and recognising the work–cause relationship between these primary cancers and the good work done by these firefighters.

Mr J.M. FRANCIS: I thank the member for Eyre for his input. This legislation mirrors exactly the same prescribed cancers, exposure times and latency rates as the commonwealth legislation that applies to full-time firefighters who are employed by the federal government predominantly at federal government airports. Of course, these firefighters also deal with structural fires. Although other states have also introduced similar legislation, none of those bills has progressed so far. Hopefully, with the cooperation of the opposition, Western Australia can be proud to be the first state to pass this legislation and beat Tasmania and South Australia off the mark. Interestingly, the principal list of cancers covered, the latency and the exposure rate is mirrored in legislation in other jurisdictions around the world, including Canada with the Northwest Territories and Manitoba, and the United States with Indiana, Maine, Massachusetts and Missouri. The list of cancers and exposure and latency rates are almost identical in those jurisdictions. As I said, this is an amendment based on the science that is known to us right now, not what may be known in the future. Interestingly, as the commonwealth has done, we have included a thirteenth option on the list of specified diseases, which allows for other types of cancers to be added in future by regulation. If science changes and exposure to other carcinogens or toxins, unfortunately, assists in the contraction of cancer in career firefighters, we can simply amend that list by regulation, rather than bring the legislation back to this place.

Clause put and passed.

Title put and passed.

Leave granted to proceed forthwith to third reading.

Third Reading

MR J.M. FRANCIS (Jandakot — Minister for Emergency Services) [12.11 pm]: I move —

That the bill be now read a third time.

I place on the record my appreciation of the opposition's cooperation and I acknowledge the input and support from the United Firefighters Union in raising these issues with both opposition and government members. It has been fighting for this legislation for some time across all jurisdictions in Australia and has been very effective and supportive. I understand that the union is perfectly comfortable with this legislation being passed in its current form. In closing, I also acknowledge our respect and appreciation for those firefighters who —

Ms M.M. Quirk: Where's the Minister for Health? He's stretching.

Mr J.M. FRANCIS: This is an important point. I think the member for Girrawheen would join me in acknowledging the contribution of firefighters—regardless of whether they are career fire and rescue firefighters, DPaW firefighters or volunteers—who have paid the ultimate price when fighting fires to protect our community. Once a year, on International Firefighters' Day, a ceremony is held at Kings Park and the names of fallen firefighters are read out and the bell tolls for each of them. It is a very moving ceremony and I know the member for Girrawheen has been to it.

Ms M.M. Quirk: DEC firefighters are not even recognised anymore. The last firefighter who died was a DEC firefighter.

Mr J.M. FRANCIS: Member for Girrawheen, this is a sensitive issue.

Ms M.M. Quirk interjected.

The ACTING SPEAKER (Mr I.M. Britza): Member for Girrawheen, the minister is on his feet.

Ms M.M. Quirk: He should not invite comment from me.

The ACTING SPEAKER: Member!

Mr J.M. FRANCIS: In my closing comments I want to treat this issue with some degree of sensitivity. My appreciation of those firefighters is heartfelt and genuine, and shared, hopefully, by every member in this house. Some members of this house were exceptionally close to firefighters who have paid the ultimate price while fighting fires and protecting the community. The people of Western Australia appreciate that when something terrible happens, such as a house catches fire, and they call 000, professional, trained and well-resourced firefighters will come to protect not only their assets but also their lives. It is a risky business through exposure to not only carcinogens and toxins, as we talked about today, but also burning buildings, heat, explosions and collapsing floors and ceilings. It is a very, very risky and dangerous business that these firefighters undertake on our behalf to protect our families, our community and our society. I again thank serving firefighters for their contribution and bravery and the sacrifices they make. I also thank the families of those firefighters who must stress every single time their partners go to work. Mums, dads and children know their family member is involved in a very dangerous profession. The people of Western Australia, the Parliament and I appreciate the sacrifices and contributions they make.

Question put and passed.

Bill read a third time and transmitted to the Council.