

**Joint submission to the Senate Standing Committee on
Education, Employment and Workplace Relations**

**Inquiry into the
Safety, Rehabilitation and Compensation Amendment
(Fair Protection for Firefighters) Bill 2001**



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Joint Submission - Fire Brigade Employees' Union and United Voice

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1. Preamble/ Recitals

- a. The Fire Brigade Employees' Union (FBEU) and United Voice Northern Territory Branch (UVNT) make this submission jointly. Between us, we represent approximately 40% of the Australian professional firefighting workforce.
- b. We represent both public and private sector firefighters in full time/ permanent and part time/retained or auxiliary employment.
- c. The FBEU is Australia's oldest firefighting Union¹, and represents members in the largest fire and rescue service in Australia² in both metropolitan and regional areas. UVNT represents firefighters and other emergency services workers in the NT and is part of United Voice, one of Australia's largest Unions, representing over 120,000 workers nationally.³
- d. We welcome the invitation to make this joint submission to the Senate Standing Committee into proposed amendments to the *Safety, Rehabilitation and Compensation Act 1998* (SRC Act).

¹ <http://fbeu.net/about-2/history-of-the-fbeu/>

² <http://www.nswfb.nsw.gov.au/>

³ <http://unitedvoice.org.au/about>

2. Legislative specifics

- a. We make our submissions in relation to the content of the Safety, Rehabilitation and Compensation Amendment (Fair Protection for Firefighters) Bill 2011 (the Bill), which was referred to the Senate Standing Committee on Education, Employment and Workplace Relations on 5 July 2011.
- b. If amended in the terms sought by the Bill, the SRC Act would provide that “the employment is taken to have been the dominant cause of the contraction of the disease” for firefighters with reference to seven listed cancers. Such a cancer, subject to the qualifying periods outlined in the Bill, would therefore be presumed to have been caused by employment as a firefighter.
- c. The SRC Act has limited application to firefighters, and would on our reading have application only to firefighters employed by Airservices Australia and those employed in the ACT.^{4 5} Airservices Australia employs 650 staff at 21 airports around Australia.⁶ The ACT Fire Brigade employs approximately 300 firefighters at nine stations.⁷ Therefore, out of 16,000 professional firefighters in Australia, the Bill will have application to approximately 1,000.
- d. Despite the Bill having no immediate affect on our members in either the Northern Territory or NSW, we make submissions for three reasons.
- e. Firstly, there is a clear commitment from State and Territory Governments⁸ to harmonise Workers Compensation laws nationally throughout Australia, and therefore at some stage the amendments proposed would likely form part of the compensation system our members are subject to.⁹ If the experience of

⁴ “Definitions” s5A of the SRC Act.

⁵ “Workers Compensation”, Safe Work Australia, <http://safeworkaustralia.gov.au/WorkersCompensation/Pages/WorkersCompensation.aspx>

⁶ “Our Aviation Rescue & Firefighting Stations”, Airservices Australia, www.cmd.act.gov.au/_data/assets/file/0019/113950/appendix-f.rtf. See Appendix 1.

⁷ “Fire Brigade Stations,” A.C.T Emergency Services Agency, http://www.esa.act.gov.au/ESAWebsite/content_actfb/response/stations.html

⁸ Agreement by the States and Territories on Harmonisation of Workers Compensation and Occupational Health and Safety Arrangements, http://www.cmd.act.gov.au/_data/assets/pdf_file/0008/119483/caf-harmonisation-iga.pdf, 13 October 2006.

⁹ Ward, A, “Workers Compensation” a speech given at the National Workers Compensation Summit 2011, available from http://www.lawcouncil.asn.au/shadomx/apps/fms/fmsdownload.cfm?file_uuid=46B31C86-9882-A609-6DA1-A1827C6B03D5&siteName=lca, 21 February 2011.

occupational health and safety harmonisation is any guide¹⁰ to the effect this process would have for workers in NSW and the NT, where a higher standard was lowered for the sake of harmonisation, it is clear that we must act to ensure the provisions applying at a national level provide adequate compensation. As this Bill does not, as drafted, do that, we make submissions on the areas needing urgent improvement.

- f. Secondly, it is expected that there will be agitation and lobbying to amend State workers compensation laws in similar terms to those proposed by the Bill. This would present a risk for our members, as noted above, if the standard proposed in the Bill were established as the norm through harmonisation. Similarly, the terms of the Bill would likely be used as a referent for any drafting of State legislation, and therefore it is in no ones interest that they are parsimonious. There is also the broad issue, as will be covered below, of the inadequacy of the Bill as drafted. It is in the interests of all firefighters to have the best compensation system in place for their occupational illness, and our submissions highlight those areas where this Bill requires improvement.
- g. Thirdly, the FBEU is unique in Australia as the only Union who has campaigned for and won a death and disability regime for injured or ill firefighters.¹¹ NSW firefighters who are injured or ill (whether the injury or illness is on or off duty) have access to pension or lump sum payments in addition to their entitlements under the *Workplace Injury Management and Workers Compensation Act 1998*. The FBEU and UVNT have been undertaking work to recognise occupational illnesses suffered by firefighters, bearing in mind the interaction between the workers compensation and death and disability entitlements of NSW firefighters. We submit the Committee should be mindful to avoid any unintended consequences that may prejudice the interests of our members in amending the SRC Act.

¹⁰ AAP, "NSW leads the way on National OH&S Laws", <http://www.australiannews.com.au/story?cityid=d1de82e1-fce9-4f45-9541-79d83e888155&storyid=eac67522-29c6-4266-9b13-6e00cb31727b>, 4 May 2011.

¹¹ *Crown Employees (NSW Fire Brigades Firefighting Staff Death and Disability) Award 2009*.

3. Firefighting Illness and public policy

- a. In our view, the question of whether or not firefighters suffer certain illnesses at a rate above that of the general population is settled. This matter has been studied exhaustively around the world, with work done in Australia with the Melbourne Metropolitan Fire Brigades as early as 1980.¹² Studies and meta-studies in Europe,^{13 14 15}, the United States^{16 17 18} and Canada¹⁹ demonstrate that firefighters as an occupation suffer from certain illnesses as a result of their occupation.
- b. Usually, the illnesses in question are cancer, though other illnesses and injuries are also part of various legislative frameworks.²⁰ Such cancers are causally linked to the release of carcinogens from building materials in structural fires (such as benzene, chloroform, styrene and formaldehyde), which can be absorbed through the skin or inhaled.²¹ One analysis conducted in the United States found firefighters in the overhaul stage of structural firefighting were exposed to:
 - i. Aldehydes;
 - ii. Benzene;
 - iii. Toluene;
 - iv. Ethyl benzene;
 - v. Xylene;

¹² Giles, G, Staples, M, "Cancer incidence in Melbourne Metropolitan Fire Brigade members, 1980-1989", *Health Reports*, 1993; 5:33-38.

¹³ Deschamps S, Momas I, Festy B, "Mortality amongst Paris fire-fighters", *Eur J Epidemiol*. 1995; 11:643-646.

¹⁴ Tornling G, Gustavsson P, Hogstedt C. "Mortality and cancer incidence in Stockholm fire fighters", *Am J Ind Med*. 1994; 25:219-228.

¹⁵ Stang, A, Jöckel, Karl-Heinz, Baumgardt-Elms C, Ahrens, W, "Firefighting and risk of testicular cancer: Results from a German population-based case-control study", *American Journal of Industrial Medicine*, 2003; 43(3):291-294

¹⁶ LeMasters GK, Genaidy AM, "Cancer risk and firefighters: a review and meta-analysis of 32 studies", *J Occupational and Environmental Med*. 1996; 48(11):1189-1202.

¹⁷ Baris, D., Garrity, T.J., Telles, J.L., Heineman, E.F., Oshan, A. and Zahm, SH., "Cohort Mortality Study of Philadelphia Firefighters", *Am Journal of Ind Medicine*, 2001;39(5):463-76.

¹⁸ Ma, F., Fleming, L.E., Lee, D.J., Trapido, E., Gerace, T.A., Lai, H. and Lai, S. "Mortality in Florida Professional Firefighters, 1972-1999", *Am Journal of Ind Medicine*, 2005 49(2):138-40.

¹⁹ See Appendix 3 for a survey of relevant Canadian literature.

²⁰ Appendix 3, "State Presumptive Disability Laws", from www.iaff.org.

²¹ LeMasters (above n 16), quoted in "Firefighter cancer risk 'higher'", *BBC News*, <http://news.bbc.co.uk/2/hi/health/6133044.stm> , 13 November 2006.

- vi. Hydrochloric acid;
 - vii. Polynuclear aromatic hydrocarbons;
 - viii. Respirable dust;
 - ix. Hydrogen cyanide;
 - x. Carbon monoxide;
 - xi. Nitrogen dioxide; and
 - xii. Sulfur dioxide.²²
- c. As the risk of occupational cancers is established, the key issue becomes what the appropriate public policy response may be.
- d. We have therefore assessed the Bill in this way, by comparison to the legislative and regulatory responses to firefighter illness by Canadian provinces. The similarity between Canada and Australia's legal and political systems is an accepted principle^{23 24 25} making for ease of comparative analysis.
- e. We are also guided by public policy concepts set out in a 2007 technical report into firefighter cancers in Washington State, which we have adopted.
- f. In our submission, any regulation dealing with occupational illness for firefighters should have as guiding principles:
- i. "An appreciation of the personal risk and sacrifice of public safety personnel;
 - ii. A recognition of the unique nature of work as a firefighter with regards to uncontrolled exposures to chemical, biological and physical hazards including known and unknown carcinogens; and
 - iii. That in order to avoid serious or irreversible potential harm to firefighters... that protective public policy measures may be warranted."²⁶

²² Bolstad-Johnson, Dawn M; Burgess, Jeffery L; Crutchfield, Clifton D; Storment, Steve, "Characterization of firefighter exposures during fire overhaul", *AIHA Journal*, 61.5, 200; 636-641.

²³ Black, M, "An Overview of Australia's Legal System", An Address to the Plenary Session of the 10th Congress of the International Association of Supreme Administrative Jurisdictions, 8 March 2010.

²⁴ Kilcullen, J, "A Comparison of the Australian and Canadian Political systems", <http://www.humanities.mq.edu.au/Ockham/auscan.html> (Macquarie University) 2000.

²⁵ Sharman, C, "Citizens' Assemblies and Parliamentary Reform in Canada", *Papers on Parliament* 46, 2006. http://www.aph.gov.au/senate/pubs/pops/pop46/citizens_assemblies.htm

²⁶ Bonauto, D and Silverstein, B, "Review of the Epidemiologic Studies for the Association between Firefighters and Selected Cancers; Multiple Myeloma, Stomach, Prostate, Testicular, Intestinal – Colon and Rectal Cancers", *Technical Report Number 74-1-2007*, Washington State Department of Labor and Industries, from <http://www.lni.wa.gov/Safety/Research/Files/FireFighter.pdf>.

4. Deeming/presumption

- a. Colloquially, the designation of certain illnesses as related to the occupation of firefighting is called ‘deeming’, ‘deemed illness’ or ‘presumptive legislation’. There are several forms such legislation can take, differentiated by how strong the presumption is that a firefighters illness is caused by their occupation. The Bill as drafted does not provide the strongest form of presumptive relief available.
- b. In a report prepared for the Ontario Workplace Safety and Insurance Board, the Parliamentary Assistant to the Minister of Labour noted that there are four approaches in Canada to assessing firefighter cancer claims, with different provinces adopting different methods. These are:
 - i. Non-rebuttable presumption;
 - ii. Rebuttable presumption;
 - iii. Occupational disease policy;
 - iv. Case-by-case adjudication.²⁷
- c. This report also notes that there are exceptions or alterations to the presumptive standard for lung cancer, principally related to differentiating between smoking and non-smoking firefighters.²⁸
- d. Non-rebuttable presumption, based on the “high scientific certainty that the disease was linked to an individual’s work”,²⁹ provides the best possible coverage for ill firefighters. The terms of the Bill do not do this; instead it provides for a ‘rebuttable presumption’ that a firefighter’s cancer is work related – that is, “there is strong and consistent epidemiological evidence supporting a multi-causal association with the disease, with one being occupation.”³⁰ The Bill expressly provides that a firefighter’s employer can dispute the occupational linkage between their illness and their occupation.

²⁷ Racco, M, “Report to Minister Peters on the Treatment of Firefighter Cancer Claims by the Workplace Safety and Insurance Board <http://www.labour.gov.on.ca/english/hs/pubs/firefighters/review.php>.

²⁸ See Appendix 5.

²⁹ Racco, M, above n 26.

³⁰ Racco, M, above n 26.

5. Canadian policy responses and the Bill

- a. In addition to creating a form of presumption that does not provide the highest standard, the Bill also fails to cover a number of illnesses established elsewhere as compensable for firefighters.
- b. When compared to Canadian legislative responses to firefighters occupational illness, the Bill falls short on a number of fronts. These are:
 - i. It provides for inadequate recognition of cancers accepted in other jurisdictions as occupational;
 - ii. It excludes from it's scope part time/retained or auxiliary employees within the firefighting industry;
 - iii. It does not cover asbestos -related disease suffered by firefighters;
 - iv. It does not cover infectious disease suffered by firefighters; and
 - v. It does not cover heart disease and heart failure suffered by firefighters.

6. Firefighter occupational cancers

- a. Appendix 4 provides an overview of the Canadian jurisdictions that recognise certain cancers as occupationally related to firefighting. The majority of the provinces do provide recognition of firefighting occupational illness, though with varying implementation dates (with Yukon enacting legislation as recently as July 2011) and differing approaches to retroactive claims.
- b. Appendix 5 details the different cancers accepted (or not) by various provinces as work-related.
- c. Appendix 6 makes it clear that the Bill is at the modest end of cancer recognition, covering only 50% of those cancers recognised in Canada.

Omitted from the Bill are:

- i. Oesophageal cancer;
- ii. Colorectal cancer;
- iii. Ureter cancer;
- iv. Lung cancer (with regulation in most cases for differentiating between smoker and non-smoker firefighters);
- v. Prostate cancer;
- vi. Skin cancer; and
- vii. Multiple myeloma.

	Cancer unrecognised by Bill	Canadian provinces that recognise cancer
1	Oesophageal cancer	Alberta, Ontario, Manitoba, Yukon
2	Colorectal cancer	Alberta, Ontario, British Colombia, Saskatchewan, Manitoba, Nova Scotia, Yukon, N Brunswick
3	Ureter cancer	Alberta, Ontario, British Colombia, Saskatchewan, Manitoba, Yukon, N Brunswick
4	Lung cancer	Alberta, British Colombia, Saskatchewan, Manitoba, NW Territories, Yukon, N Brunswick
5	Prostate cancer	Alberta, Manitoba, NW Territories
6	Skin cancer	Alberta, Manitoba, NW Territories
7	Multiple myeloma	Alberta, Manitoba, NW Territories

Fig. 1: Cancers recognised by Canadian provinces omitted from the Bill

7. Part time/ retained or auxiliary firefighters

- a. The firefighting industry employs firefighters at less than full time hours in a somewhat unique arrangement. Retained^{31 32} or auxiliary^{33 34 35} firefighters are paid a retainer and are on call to respond to fire calls, and are paid an hourly rate for responses.
- b. Retained or axillary firefighters are employed in NSW, the Northern Territory, South Australia, Queensland and Tasmania. Retained firefighters perform firefighting work in addition to being employed in their 'primary employment'. They respond to fire calls around their primary employment. Retained or auxiliary firefighters do not usually work only as retained or auxiliary firefighters.
- c. In addition, part –time and casual firefighters are covered by Airservices Australia's Aviation Rescue Fire Fighting Collective Agreement,³⁶ which has application to firefighters employed at most major airports in Australia, as per Appendix 1.
- d. On our reading, part time firefighters may not be captured by the Bill by virtue of the requirement to have firefighting duties "ma[k]e up a substantial portion of his or her duties." Part time firefighters (as well as casual and some full time firefighters) do not fight fires as their primary employment. However, they are still exposed to the same carcinogens from structural fires as full time/permanent firefighters.

³¹ "What is a retained Firefighter?" Fire & Rescue NSW, <http://www.nswfb.nsw.gov.au/page.php?id=60>

³² "Retained Firefighters", South Australian Metropolitan Fire Service, http://www.mfs.sa.gov.au/site/join_us/retained_firefighters.jsp

³³ "Auxiliary Firefighter Recruitment", Queensland Fire and Rescue Service, <http://www.fire.qld.gov.au/employment/auxiliary.asp>

³⁴ Appendix F, National emergency service arrangements: an overview, from McLeod, R, "Inquiry into the Operational Response to the January 2003 Bushfires in the ACT", 7/2003, http://www.cmd.act.gov.au/_data/assets/pdf_file/0008/113939/McLeodInquiry.pdf

³⁵ "Auxiliary firefighters", Northern Territory Fire and Rescue Service, <http://www.pfes.nt.gov.au/Fire-and-Rescue/Careers-in-firefighting/Auxiliary-firefighters.aspx>

³⁶ Airservices Australia (Aviation Rescue Fire Fighting) Collective Agreement 2009-2013, <http://www.fwa.gov.au/documents/agreements/wpa/CAUN095991206.pdf>

- e. While it is arguable that the provisions of this Bill would cover a part time firefighter *in their capacity as a part time firefighter*, this is by no means clear. This, coupled with the rebuttable presumption standard, is of concern for our retained and auxiliary membership of approximately 3300 professional firefighters.
- f. While it may not be the intention of the Bill to exclude retained firefighters, it is a flaw that part time firefighters are subject to such ambiguity.

8. Asbestos

- a. Asbestos is established as a causal factor for a number of diseases, including:
 - i. Aluminosis;
 - ii. Asbestosis;
 - iii. Asbestos induced carcinoma;
 - iv. Asbestos related pleural disease (ARPD);
 - v. Bagassosis;
 - vi. Berylliosis;
 - vii. Byssinosis;
 - viii. Farmers' Lung;
 - ix. Hard Metal Pneumoconiosis;
 - x. Mesothelioma;
 - xi. Silicosis; and
 - xii. Silico-tuberculosis.³⁷
- b. While there is a general awareness of the dangers of asbestos, that firefighters are particularly exposed is less well known. During structural fires, asbestos within buildings that is considered safe for those living or working within is released and firefighters are exposed to fibres.
- c. The National Health and Medical Research Council (NHMRC) notes that asbestos was widely used in Australia for construction, and was included in insulation, construction materials, concrete, paints, sealants, and even outdoor furniture.³⁸ All materials of this type are degraded and damaged during structural fires.
- d. The NHRMC estimates that most public buildings and approximately one-third of all private dwellings built between 1945 and 1980 contain asbestos in the forms of concrete, asbestos cement sheeting (fibro), vinyl floor coverings, lagging of pipes and boilers, and insulation.³⁹ Asbestos was phased out from

³⁷ "Dust Diseases", Workers Compensation Dust Diseases Board of NSW, <http://www.ddb.nsw.gov.au/DustDiseases/Pages/default.aspx>

³⁸ "Asbestos related diseases", National Health and Medical Research Council, <http://www.nhmrc.gov.au/your-health/asbestos-related-diseases>

³⁹ NHRMC, above n 30.

1980, but was used in construction until 1989.⁴⁰

- e. Much of Australia's compensation system for those affected by asbestos relates to employees who were involved in its manufacture, mining, production, transport and installation.⁴¹ The banning of asbestos is largely in response to the illness and death through exposure to asbestos of these employees. However, buildings containing asbestos, when damaged or degraded by fire, present a large and unrecognised risk to firefighters.
- f. A structure fire will involve damage to the building, and may compromise what asbestos containment measures (if any) are in place.
- g. A US study has found an increased risk of asbestos-related disease for firefighters, and has noted the damage to, and demolition of, buildings during fires "may lead to uncontrolled and possibly heavy exposure to asbestos."⁴² The overhaul stage of structural firefighting exposes firefighters to particular risk from asbestos fibre inhalation.^{43 44 45}
- h. We submit that the Bill is incomplete without some acknowledgement of asbestos-related disease risk for firefighters.

⁴⁰ NHRMC, above n30.

⁴¹ NHRMC, above n 30.

⁴² Markowitz, S, Garibaldi, K, Lilis, R, and Landrigan, P, "Asbestos Exposure and Fire Fighting", *Annals of the New York Academy of Sciences*, 1991; 643:573–577.

⁴³ "Asbestos and Mesothelioma", Northern Territory Fire and Rescue Service, <http://www.pfes.nt.gov.au/Fire-and-Rescue/Community-safety/Asbestos-and-mesothelioma.aspx>.

⁴⁴ Bolstad-Johnson, above, n22.

⁴⁵ Firefighters can unknowingly be exposed to asbestos from structure fires", AsbestosNetwork.com, http://www.asbestosnetwork.com/exposure/ex_firefighters.htm

9. Heart injury, myocardial infarction and infectious disease

- a. In addition to cancer, seven Canadian provinces recognise heart injury within 24 hours of attendance at a fire call as an occupational illness, as outlined in Appendix 7. Appendix 3 also makes reference to this type of injury, though the term used is 'heart disease'.
- b. All provinces that recognise heart attack (called variously myocardial infarction, heart injury and cardiac arrest by different provinces) after an emergency response or a drill is a compensable occupational illness for firefighters.
- c. This recognition is also the case for a number of US jurisdictions, as Appendix 3 demonstrates.
- d. While no Canadian jurisdictions recognise infectious disease, a number of US ones do. This may, in part, reflect the emergency medical response role that US fire brigades undertake, though there are some Australian Brigades who perform an emergency medical response role.
- e. We submit consideration should be given to including these illnesses in the Bill as an occupational illness for firefighters.