United Firefighters Union of Australia

SUPPLEMENTARY SUBMISSION

TO THE SENATE EDUCATION, EMPLOYMENT AND WORPLACE RELATIONS COMMITTEE

ON THE

SAFETY, REHABILITATION AND COMPENSATION AMENDMENT

(FAIR PROTECTION FOR FIREFIGHTERS) BILL 2011

Introduction

1. We refer the Standing Committee to the UFUA submission filed with the Committee and discussed at the hearing in Melbourne on 9 August 2011. This is a supplementary submission to address issues that have arisen during the Inquiry.

2. We refer the Committee to the executive summary of the earlier submission, in particular paragraphs 1.2, 1.5, 1.6, 1.7, 1.8, and 1.11:

   1.2 The Bill removes barriers that currently prevent, or discourage, firefighters from accessing entitlements to treatment, assistance and compensation for the seven cancers.

   1.5 It is known and accepted that firefighters are exposed to a range of toxins and carcinogens through their duties of firefighting.

   1.6 The toxins in structural fires including residential fires are not country-specific. Construction materials, fabrics, furniture and electronics are universal.

   1.7 Australian fire fighting Personal Protective Equipment for firefighters is essentially the same as Canada and the United States.

   1.8 It is impossible to fully protect a firefighter from exposure to toxins as the f ire firefighting Personnel Protective Equipment used in combating structural fires and motor vehicle fires, must not be able to breathe.

   1.11 The risk of exposure to toxins and carcinogens cannot be completely eliminated. It is the inherent nature of firefighting, and the protective equipment, that firefighters will be exposed to toxins while performing firefighting duties.

Firefighting and the increased risk of cancer

3. We refer to the submission of Alex Forrest and the UFUA submission that was discussed at the Senate Standing Committee hearing on the 9th August 2011.

4. We reiterate there are a wealth of studies that have shown the nexus between firefighting and the increased risk of cancer. That increased risk and elevated incidence of some cancers results from the absorption of toxins and carcinogens through the skin.

5. We do not believe that the Committee has been presented with evidence to disprove the studies relied upon.

6. We refer the Committee to the verbal submissions of Andrew Kefford, Deputy Director-General, Chief Minister and Cabinet Directorate of the ACT Government, when he appeared before the Committee on the evening of Tuesday 23 August 2011. Mr Kefford was asked by Senator Thistlethwaite if he could alert the committee to any reports which would rebut the medical reports which concluded there is a link between the role of firefighters and the development of particular cancers due to exposure to particular toxins. At page 7 Mr Kefford was recorded as stating:

> *"I do not think anyone is contesting that there is a link in the exposure of firefighters to smoke for at least the increased risk of contracting cancer later."*

Deemed diseases

7. It has been suggested to this inquiry that the Declaration of specified diseases and specified employments under section 7(1) is sufficient to capture cancer as an occupational disease for firefighters and provide firefighters with assistance and compensation.

8. Section 7(1) provides for:

7 Provisions relating to diseases

(1) Where:

(a) an employee has suffered, or is suffering, from a disease or the death of an employee results from a disease;

(b) the disease is of a kind specified by the Minister, by legislative instrument, as a disease related to employment of a kind specified in the instrument; and

(c) the employee was, at any time before symptoms of the disease first became apparent, engaged by the Commonwealth or a licensed corporation in employment of that kind;

the employment in which the employee was so engaged shall, for the purposes of this Act, be taken to have contributed, to a significant degree, to the contraction of the disease, unless the contrary is established.

9. The Declaration applies to diseases caused by a listed chemical or toxin compound and linked to employment involving exposure to that chemical or toxin compound.

10. Section 7(1) requires the following to be proven on a balance of probabilities:

    (i) That the disease (cancer) was caused by the exposure to the particular chemical or toxic compound; and
    (ii) That the employee was exposed to that particular chemical or toxic compound.

11. If the two tests can be proven, then there is a presumption that the employment contributed to a significant degree to the contraction of the disease, and assistance and compensation would follow.

12. This section and the list of deemed diseases do not assist firefighters as it still requires the proof of exposure before the presumption takes effect. Firefighters cannot prove "exposure" to the particular chemicals or toxins at the specific fires or incidents they have attended. It is simply not possible or practicable for the detection of the numerous toxins firefighters are exposed to at each particular fire. This problem is exacerbated as the exposure can be over a long period of time at a number of fires/incidents and the cancers have various latency periods.

13. Therefore, without being able to prove that exposure at any particular time in the employment, the firefighter fails to meet the test for the presumptive threshold as specified in section 7(1). The firefighter is left in the impossible position of having to prove the link of the cancer with their particular work as a firefighter i.e.:

    - Which toxins/carcinogens s/he was exposed to; and
    - When that exposure occurred; and
    - That the exposure caused the occupational cancer

14. This is the point of the current Bill. Without providing for the proposed specific rebuttable presumption it will be impossible for firefighters to access their entitlements.

15. Without this proposed legislation the firefighter will always be in the impossible position of proving the exposures to toxins and carcinogens in order to access their entitlements for occupational cancer.

16. We reiterate that these are occupational cancers because:

- All fires contain an unknown but significant number of toxins and carcinogens;
- There is a synergetic effect of these toxins when they are mingled upon combustion– that is the intensity of the toxicity is increased exponentially. (We refer the committee to the evidence of Commander Brian Whittaker on the 9th August 2011as recorded in Hansard at page 22);
- It is an uncontrolled environment and all risk cannot be eliminated; and
- Structural firefighting clothing must breathe – the firefighter cannot be fully encapsulated;
- Because the clothing must breathe, toxins are absorbed through the skin;
- The absorption of those toxins can result in cancer.

AIRS Records

17. It is our understanding that there is evidence before the Standing Committee suggesting that there is a recording system which records a firefighter's attendance at fires/incidents and the exposures at those fires/incidents. This is incorrect.

18. The Australian Incident Reporting System ("AIRS") is a national standard for reporting. The current system AIRS2 has been in operation since July 2007. Prior to that the CFA and MFB and other fire services had separate systems.

19. While it is a national standard, individual agencies can still determine the data that is captured within their service. As a result the electronic forms to be completed and the data to be recorded can differ between states and between agencies within states. For example in Victoria, the CFA and MFB utilise different sections (blocks) of the standard AIRS.

20. AIRS is a mechanism for fire services to collect data as to the incidence of fire and is used to identify trends in fires and incidents. It is not a system designed to record the event from the firefighter's perspective, experience or exposure to toxins. AIRS data in part is used to measure the effectiveness of emergency responses to the community in accordance with the Australian Government Productivity Commission report of Government Services.

21. There are limitations to this system which is acknowledged by AFAC on their Knowledge Web website. A copy of the excerpt from that website has been provided to the Standing Committee. The AFAC website states:

> *"The data available on responses to fires and emergencies in Australia do not represent 100 per cent coverage of fires occurring within Australia. This is because:*
>
> - *A significant number of fires (usually causing only minor property damage) are never reported to fire services and therefore no AIRS report is generated.*
>
> - *Not all Australian fire services contribute to the national database, and of the fire services that have contributed, some have not included responses from the rural component of their service.*
>
> *Some anomalies in the data exist due to separate development of the reporting systems by each fire service. It is not required that AIRS reports be supported by irrefutable evidence. The reporting fire-fighter or the office in charge is expected to apply reasonable judgment based upon investigations and information available at the time of the incident. For example the estimated dollar loss and property value is the opinion of the fire-fighter making the report and not a formal insurance assessment.*
>
> *AIRS originated in the urban fire brigades and still has greatest applicability to the urban and combination urban/rural fire services. It does not currently cater for AFAC's land management, aviation firefighting and State/Territory Emergency Service members, however activities are occurring that will see these agencies progressively contribute to the national database."*

22. Other limitations of the AIRS include:
    - The AIRS records do not record the firefighter(s) exposure to toxins as a result of combustion at the scene.
    - There is a screen which records "exposure" but that is not exposure to the firefighter. It is the exposure from the fire scene; e.g. fire spread to another structure.
    - The use of respiratory protection (Breathing Apparatus) can be recorded but is only recorded as the number of sets used, not which firefighter used the equipment.
    - The recording of respiratory protection is only compulsory under C Block (Hazardous Materials) and is not compulsory for structure fires.
    - Specialist equipment including personnel protective equipment (fully encapsulated suits) can be recorded but does not specify which firefighter used that equipment.
    - The recording of specialist equipment is only captured on Block C (hazardous materials) and is not compulsory for structure fires.
    - Some fields are compulsory and other fields are not. This can give rise to inconsistencies and some information that may have been relevant to a call not being recorded because it was not compulsory to record it.
    - The recording of data relies heavily on the visible to the officer at the scene.
    - The Officer is unable to detect what toxins or carcinogens are in the environment of a fire due to the very nature of having a short time frame to perform a successful rescue or limit the damage to property.

23. AIRS is divided into the following blocks. Attached as Appendix A is a copy of the incident report blocks:

A	Incident report header
B	False alarm
C	Hazardous Materials
D	Casualties, rescue and evacuation
E	Ignition (all fires)
F	Firefighting
G	Bush, Forest, Grass fires
H	Dollar loss fires
J	Mobile property
K	Structure fires

- Not all Blocks are required to be completed. It depends on the nature of the call. For example if it is a residential structure fire B Block (false alarm) and C Block (Hazardous Materials) would not be completed.

24. Attached as Appendix B is a copy of the type of information inputted into the system by inputting into various screens. This is a copy of a document that was used for training on the operation of the AIRS 2 programme.

25. Please note screen 11 headed "exposures" illustrates that there is no recording of toxic exposure to a firefighter.

26. The information that can be recorded includes:
    - The zone, fire station and platoon
    - The address with a map reference
    - The time of the call and how it was reported
    - The type of property, occupant and nature of the property use
    - Fire indicator panels, alarms and sprinklers
    - Any injuries or fatalities (civilian/firefighter)
    - No of people extricated, rescued, assisted
    - Any evacuation problems
    - Details of any casualty
    - Area of origin of the fire, form of heat of ignition, type of material ignited first, equipment involved in ignition
    - Firefighting force (e.g. permanent full time)
    - Method of attack, method of extinguishment, number and size of hose reels
    - Water supply and any problem with water supply
    - Estimated value of property loss
    - Insurance details
    - Name of owner of address
    - If a bush fire, the type of vegetation and any fire restrictions and preventative measures taken
    - If a vehicle, year make and model of vehicle
    - If a structure fire, the type of building, construction type, dimensions, wall and ceiling linings, type of material contributing most to fire intensity, type of material generating most smoke, extent of smoke and heat damage
    - Exposure to other property
    - If a rescue the nature of the incident (e.g. head on motor vehicle accident) type of equipment used

- The resource attended (pumper number, number of crew, distance travelled, names of the crew

27. The Officer in charge of the first attending appliance is responsible for inputting the data.

28. In the MFB Victoria the Officer in Charge is required to have completed the AIRS before the end of the tour of duty (four day shift). Ideally it is completed upon return to the station after the call but that is not always possible or practicable.

29. It is the responsibility of the Operational Commander to check the report and approve or reject. Once approved it is archived.

30. In addition there is personnel attendance and appliance attendance.

31. An inherent problem in the current recording system is that the personnel who attended the fire may not be recorded accurately. As it is the responsibility for the officer on the first appliance to complete the report, that officer may not be provided with the accurate information of attendance on subsequent appliances. Generally the Officer will contact the other stations to supply that information, or the Officer can access the rosters. However, the rosters may not accurately reflect who was on that appliance due to unscheduled changes (sick leave, re-calls etc). The higher the alarm level, attendance numbers are increased and the risk of inaccurate personnel reporting increases.

Flow on effect of the legislation

32. Questions have been put to various witnesses regarding the flow-on effect of presumptive legislation for firefighters to other industries and occupations.

33. The workplace of a firefighter is unique. The firefighter attends an incident with little information about the nature of the incident or fire. The firefighter takes every precaution in terms of issued protective personnel clothing and equipment. However, it is the absorption through the skin that places the firefighter at risk. There is no system that will prevent this exposure.

34. As Alex Forrest has informed the committee, firefighting is one of the most studied occupations in terms of risk of cancer.

35. Because of the above, the concern about flow on effect has not been realised.

Volunteers

36. The ACT Government submission noted that the coverage of the Safety Rehabilitation and Compensation Act which this Bill proposes to amend includes both career and volunteer firefighters. The ACT government understood that the Bill was only intended to apply to structure firefighters and suggested that the Bill would benefit from further clarification on this issue.

37. The UFUA submits to the committee for information the definition of volunteer in jurisdictions in Canadian provinces of Manitoba and Alberta is different to the definition of volunteer in Australia i.e. presumption legislation that covers firefighters in Canada which refers to volunteers is in fact referring to paid on-call firefighters who receive payment for services - commonly referred to in Australia as retained firefighters.

38. Volunteer firefighters are covered by the Safety Rehabilitation and Compensation Act 1988 by declaration.

39. The "Fair Protection for Firefighters" Bill does not expressly differentiate between career firefighters and volunteers but section 7(9) qualifies the meaning of being employed as a firefighter.

40. Proposed section 7(9) reads:

> *(9) For the purposes of subsection (8):*
>
> *(a) an employee is taken to have been employed as a firefighter if firefighting duties made up a substantial portion of his or her duties; and*
>
> *(b) an employee who was employed as a firefighter for several periods that add up to the qualifying period is taken to have been so employed for the qualifying period.*

41. The legitimacy of the application of that definition to any particular case can be contested by an employer through the ability to rebut the presumption.

42. In short, the safeguard to ensure the section is applied appropriately is the rebuttable presumption.

Conclusion

43. The UFUA thanks the Senators for the thorough and caring manner in which they have approached this inquiry. It is one of the most important issues facing firefighters.

44. We embrace the words and sentiments enshrined in Federal Parliament Hansard by the co-sponsors of the Bill – Member for Melbourne Adam Bandt (Australian Greens), Member for Calwell Maria Vamvakinou (Australian Labor Party) and Member for McMillan Russell Broadbent (Liberal Party of Australia). It is the sentiments of the above decision-makers that have encouraged many firefighters in Australia to gain a better understanding that their parliamentarians not only understand the work that is performed by firefighters but, indeed have empathy for the dangers they face in carrying out their duties in protecting the community.

45. Finally, the UFUA respectfully submits that it is irrefutable that there is an unavoidable risk to firefighters in carrying out their duties in protecting life and property. The protective clothing must breathe otherwise the firefighter would perish from metabolic heat build-up. The fact that the protective clothing must breathe means that the toxins will be absorbed by the firefighter through the skin. The absorption of those toxins results in the increased risk of occupational cancer.

Dated this 31st day of August 2011

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Peter Marshall

UFUA National Secretary