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SENATE

EDUCATION, EMPLOYMENT AND WORKPLACE RELATIONS
LEGISLATION COMMITTEE

**Safety, Rehabilitation and Compensation Amendment (Fair Protection for
Firefighters) Bill 2011**

TUESDAY, 23 AUGUST 2011

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SENATE
EDUCATION, EMPLOYMENT AND WORKPLACE RELATIONS LEGISLATION COMMITTEE
Tuesday, 23 August 2011

Senators in attendance: Senators Back, Marshall, McKenzie, Thistlethwaite and Wright

Terms of reference for the inquiry:

To inquire into and report on:

Safety, Rehabilitation and Compensation Amendment (Fair Protection for Firefighters) Bill 2011

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BRIGHTON, Ms Meg, Director, Continuous Improvement and Workers' Compensation Branch, Chief Minister and Cabinet Directorate, Australian Capital Territory

KEFFORD, Mr Andrew, Deputy Director-General, Chief Minister and Cabinet Directorate, Australian Capital Territory

Committee met at 18:59

CHAIR (Senator Marshall): I declare open this public hearing of the inquiry into the Safety, Rehabilitation and Compensation Amendment (Fair Protection for Firefighters) Bill 2011, which was referred to the Senate Education, Employment and Workplace Relations Legislation Committee on 5 July 2011 for inquiry and report. The bill seeks to amend provisions of the Safety, Rehabilitation and Compensation Act 1988 so that if Commonwealth firefighters develop certain types of cancer there will be a presumption that their illness is related to their service.

Before the committee starts taking evidence I advise that all witnesses appearing before the committee are protected by parliamentary privilege with respect to their evidence. This gives them special rights and immunities because people must be able to give evidence to committees without prejudice to themselves. Any act which disadvantages a witness as a result of evidence given before the Senate or any of its committees is treated as a breach of privilege. Witnesses may request that part or all of their evidence be heard in private. I also remind witnesses that giving false or misleading evidence to the committee may constitute contempt of the Senate.

I welcome representatives of the ACT government and thank them for joining us here tonight. I note that the Senate has resolved that an officer of a department of the Commonwealth or of a state shall not be asked to give opinions on matters of policy and shall be given reasonable opportunity to refer questions asked of the officer to superior officers or to a minister. This resolution prohibits only questions asking for opinions on matters of policy and does not preclude questions asking for explanations of policies or factual questions about when and how policies were adopted. Thank you for your submission to this inquiry. I now invite you to make some opening comments to the committee, which will be followed by some questions.

Mr Kefford: Thank you for the opportunity to meet with the committee this evening. I thought I might start with a brief statement setting out the context in which the government's submission has been made and the basis in which we appear this evening. The Chief Minister and Cabinet Directorate is responsible for supporting the Chief Minister in the way that Prime Minister and Cabinet is in the Commonwealth. It is in that context that we are here. Of course in the context of this inquiry the government appears as an employer of firefighters. We have approximately 1,900 individuals who participate in firefighting in the territory. That is broken up between the emergency services agency full-time staff, volunteer staff and the firefighters attached to our Territory and Municipal Services Directorate. The breakdown of those numbers is 332 in the metropolitan service, if I might call it that, 140 in Territory and Municipal Services and around 1,500 volunteers attached to our Rural Fire Service.

CHAIR: So the 332 and the 140 would all be professional, full-time firefighters?

Mr Kefford: The 332 are attached to our emergency services agency and the 140 work for what in other jurisdictions might be characterised as the national parks area. They are rangers who also engage in firefighting, although the territory, as a matter of practice, engages seasonal firefighting teams each summer to supplement that capacity.

CHAIR: And the seasonal ones would be included in the 1,500?

Mr Kefford: No, the seasonal firefighters are employed by the government. They are separate to the Rural Fire Service.

CHAIR: Thank you.

Mr Kefford: The last thing I would say by introduction is that all of those firefighters we have mentioned are covered in the course of their duties by the act to which this bill relates. We note in that context that that act provides a reverse onus of proof where a worker—and they are all classified as workers for this purpose—contracts a disease that is specified under the act. The act provides for compensation for all territory workers where diseases associated with particular toxin exposure in their employment on the balance of probabilities

involved exposure to such toxins. This means in practice that, if a firefighter contracts cancer and that disease is linked to exposure to toxins during their employment, then it would more than likely be taken to be a compensable injury, although I note for the information of the committee that to the best we have been able to ascertain from the history there has not been a claim for occupational cancer amongst the territory's firefighters. I will conclude my opening remarks there, if that would assist the committee. We are very happy to take your questions.

CHAIR: Thank you. Do you know why there has not been a claim?

Mr Kefford: Certainly there have been claims for firefighters for what I might describe as physical injuries, but there has not been a cancer related compensable claim in the history of the service.

CHAIR: Are you aware of any firefighters who have actually contracted cancer during employment with the ACT or afterwards?

Mr Kefford: I understand that, as you would expect in a group of population, a number of people who have been firefighters or might have been firefighters have contracted cancer. But, coming back, we have reviewed our statistics for the current operation of the scheme and in no case has that been attached to work.

CHAIR: The reason I ask is that the evidence before us so far is that the difficulty of making a claim for a cancer is pointing to the event at work which caused the cancer. What we do accept as a committee, because the medical evidence is clear in this respect, is that cancers are caused generally by an accumulation effect. If there was a one-off exposure incident, with the latency period generally sometimes being a very short time but most likely a long time, it would be impossible to come back and actually point to either that accumulated exposure or the event itself; therefore, it makes claiming near impossible. In fact, the evidence before us is that it is impossible to make a claim; therefore, people do not. What I am asking is whether you have any evidence apart from the fact that people have not made a claim and whether there is any evidence you have on why they may not have.

Mr Kefford: I think that sort of detailed question is something that would be better put to Comcare rather than to us, because it is not something with which our directorate would routinely deal. If I might expand on that point slightly, one of the benefits of the current act which does apply to our firefighters is the capacity for 'deemed' diseases to be accepted as claims under the act. The way that operates is that when an employee acquires a deemed disease there is a presumption that the disease was contributed to by their employment. The SRC Act currently provides for workers who contract diseases—and that would include firefighters—from exposure to certain toxins like benzene to be compensated without perhaps the sort of evidentiary proof to which your question earlier referred.

It might be characterised that our firefighters are in the fortunate position of having the ability to access this 'deemed diseases' provision under the act as it applies to us now. The way that scheme works is that there is an ILO list of occupational diseases. There is an expert panel that assesses exposure and likelihood of causation. Once a disease is on that list, under the provisions of the act as it applies, if—to take a hypothetical—one of our firefighters were to acquire a disease to which these deeming provisions apply, then that would bring into effect the workers compensation arrangements under the act.

CHAIR: I guess it puts you in a difficult position as an employer because, if you know there is going to be exposure to a carcinogen, under your duty of care you would have to in fact ensure that there was no exposure. If you have a professional firefighter fighting a fire at which many of these chemicals and cocktails thereof are in the environment which they are in, I guess you are then in the position that is a bit of a cleft stick. Do you say, 'We know that there is potential exposure here, so you must not enter the environment'? How would you deal with that?

Mr Kefford: We are all, as the government notes in its submission, indebted to firefighters and others who put themselves in harm's way for the greater good. That is something of which this community had experience in 2003, when we had a very significant sequence of fires, so it is something that is very much in the consciousness of this town. The government's submission notes that, of course, the desire to fulfil the normal duty of care to an employee is perhaps even stronger in the context of those who put themselves in harm's way.

CHAIR: I do not want to cut you off, but the reason I asked that was your suggestion that there might be another way to deal with it—that is, exposure to benzene. We would expect that would be in circumstances where an employee was accidentally exposed to benzene in the course of employment at a chemical spill. You could point to that. It would not apply to a situation where you said, 'You just go and work with benzene unprotected,' because that certainly would not be allowed. The suggestion you were making of simply defining diseases really does not apply to the situation of firefighting.

Mr Kefford: I am not sure that was what I was suggesting. If I conveyed that impression, I apologise. I will come back to that in just one moment. The other half of what were just saying about the duty of care of an employee is to ensure that the firefighters who do go into harm's way for the public good are appropriately equipped with safety equipment and safe operating procedures and all of the obligations that come with any workplace. Obviously, in a workplace that is as dangerous as the one into which they go, those duties become greater. Our firefighters are equipped with protective equipment which is part of managing the risk—partly through the equipment and partly through the procedures, as I said.

I did not mean at all to convey the impression that because there are deemed diseases we do not have to worry. I was saying that we are in the fortunate position in some respects, although it is a direct parallel with the amendment that is proposed, that if it were the case that a firefighter who had worked in the ACT did contract one of the cancers that is on the list of diseases then the deeming provisions would apply. That is not to say, of course, that we should not worry about taking preventive measures, but at the end of the day that firefighter in this jurisdiction at least would not necessarily need to go down the path of proving causation that a firefighter in another jurisdiction may have to.

CHAIR: Are you suggesting though that—benzene is one of the chemicals but there are many more—if there is evidence that a burning vehicle for instance may give off 100 different toxic substances that would then trigger the fact that a firefighter has had exposure to maybe 100 different substances and therefore, if they contracted cancer at any time in the future, they would be covered?

Mr Kefford: I am advised all of our emergency services have rigorous incident notification mechanisms, which would permit, should the case eventuate, a particular individual to show that they had been to X number of fires involving burning vehicles, factory fires, chemical spills or whatever the case may be, which goes to establishing an exposure through work, which is part of the operation of this particular provision about which we are speaking.

CHAIR: But there has never been a claim. It is hard to test—

Mr Kefford: We have been fortunate to date that none of our firefighters have needed to claim.

CHAIR: I didn't think that was what you said. You just said that no claims have been made; that is not the same as saying no-one had ever needed to claim.

Mr Kefford: That is correct but in the example about which you were speaking the fact of the matter is that we have not had to make a claim. My assumption would be that in the event that someone in those circumstances did contract cancer that would be something they would seek to engage the workers compensation with. I do not mean to give a flippant answer. As I say, we are fortunate to date that none of our firefighters has reached the point where they have made a claim for cancer.

CHAIR: In your submission you raise the issue of a perceived lack of clarity concerning the fact that the majority of ACT firefighters who are volunteers would not be covered. My understanding of the intention of the bill, and it may need clarification, which is something that the committee can turn its mind to, is that it is indeed looking at professional firefighters in this instance. If that were clarified in the bill, would that change your position on it?

Mr Kefford: That is probably not a term I would choose to use. We have consulted with our emergency services agency in this space. Coming back to the submission, at the point that the ACT government lodged its submission, based on conversations that we had had we were of a particular mind that the bill was intended to be confined. The concern that we have, and the concern that our operational agencies have, is that, even in the ACT, the Rural Fire Service is exposed through the course of their duties, at least potentially, to the same chemicals and the same sorts of incidents. The government's submission is that it would be helpful if the extent to which the bill is intended to apply to volunteers were clarified, should it be passed by the Senate. In that context I would suggest to the committee that, while we are not the same as large country towns in New South Wales, where in fact the only fire brigade is the Rural Fire Service, it is still very much the case that when our Rural Fire Service are engaging with a bushfire the first thing they do, as with so many others, is fall back to property protection, and property protection could well be the farmer's shed, and we do not really know what is in that, or the house or the motor vehicle. So it really comes down to a clarification of intent, which is ultimately a matter of policy. However, the suggestion from our government is that the bill could be clearer about its intended coverage and, in that context, we made the observation that we did.

CHAIR: I think that is a fair point. Are you able to determine in the ACT Fire service, across both professionals and volunteers, who has had exposure, how much and when? If you do have such records, how far would those records go back?

Mr Kefford: I would have to take the last part of your question on notice. I do not know the answer to it. In relation to current activities, we had a conversation today with the commissioner and are advised that they have a very rigorous system of reporting not only who was in attendance at a particular event but also what was there and what happened. He was confident that, for the purposes of at least the deeming provisions that are currently within the framework under which we operate, there would be records going sufficiently far enough back. Obviously the ACT government has a particular life span but he was confident that there would be sufficient records in the event that a claim is made at some point in the future to provide information not only on the nature of the event but also on the number of events that a particular individual may have been asked to attend.

CHAIR: You indicated that Comcare is your insurer. Is that the only insurer you have?

Mr Kefford: Yes.

Senator BACK: Mr Kefford and Ms Brighton, I learned at my peril not to refer to volunteers and professionals but to volunteers and career officers, on the basis that each can be highly professional and each can be an amateur.

CHAIR: I stand corrected, senator.

Senator BACK: Thank you very much, chair, I do appreciate that. It seems to me that, in the legislation you have presented us with, the Safety, Rehabilitation and Compensation Act in fact already meets the objectives that have been placed before this committee in terms of the direction in which it may be caring to move. In fact, not only are you there but you have moved beyond in the sense that you define a lot more conditions. Would that be a reasonable summary?

Mr Kefford: As I said in a previous answer, in one sense firefighters in the ACT are fortunate in the coverage that they have. If I might suggest, it was partly that fact that underpinned the government's suggestion that if moves are to be made down this path then it would be helpful if it were done on a national basis, because the coverage of this bill, as the committee would be aware, is relatively limited. I think it is around eight per cent of the total firefighters that are covered by the provisions if they were to be passed by the Senate. Because of who and where we are—in the fortunate situation of being covered under the SRC Act in provisions already—it is not exactly the same but is a similar degree of coverage to what is proposed.

Senator BACK: I notice the act is from 1988. Has it been from the original proclamation of the act that this presumption clause has been in place, or has the presumption clause come along at some time during the life of the legislation?

Mr Kefford: I think that question might be directed to our Commonwealth colleagues, because it is their act.

Senator BACK: Thank you. It is just that I was trying to come to an understanding which the committee is going to need to come to: the possible cost impact on other jurisdictions than yourselves in the event that this committee recommended and the government decided to move in that direction. But possibly you cannot help us there.

I also join the chairman in going to the question of volunteers. On the one hand, the volunteers might be exposed less often in the nature of their work as volunteers. On the other hand, it is possible that the type of clothing that they wear, particularly for bush firefighters, is of a different nature from what we would expect career firefighters to wear, as we have seen amply demonstrated in our earlier hearings. So it may be the case, mightn't it, that a volunteer could accumulate these chemicals in their system with fewer exposures due to the nature of the exposure. So we could have a circumstance in which volunteers could be at risk—whilst not being as much at risk as career firefighters—due to the nature of their volunteer work.

Mr Kefford: The short answer is yes, and that is partly why the government has suggested that the application of this to volunteers needs to be considered. The other part of the answer is that part of the response to risk is protective equipment and procedures. I am advised that, in relation to the Rural Fire Service, what they would do arriving at a fire is different from what a metropolitan brigade with the full equipment might do. So the government, in setting its procedures, takes account of the greater risk in terms of the standard sorts of equipment that we might expect the crews to have at the point they arrive on the fire ground. But what you say is correct: it is not as simple as drawing a line between metropolitan and volunteer or career and volunteer brigades, because the exposure is still there. That is why our volunteer services have the same access to the same provisions as our career firefighters.

Senator BACK: Yes, I am very pleased to see that. I have one other question. In point B of your submission you recommend that consideration be given to introducing rebuttal provisions consistent with those operating in other jurisdictions. You talk about pre-employment, annual physical checks et cetera. I wonder if you could expand on that. In so doing, could you explain to the committee whether or not you think this is feasible for volunteers? You can understand career firefighters and those who would be career firefighters. But we have

1,500-odd volunteers; asking them to participate in pre-sign-up physical checks or even annual physical checks would just be impractical. So how would your recommendation pick that up? Would you simply draw the assumption that volunteers are not going to be able to participate in pre-sign-up physical examinations and annual examinations?

Mr Kefford: I will ask Ms Brighton in a moment to talk about how the rebuttal provisions work in jurisdictions in North America. We have been speaking with our friends in British Columbia about the operation of their scheme. While you are right that it is more difficult, I would suggest that it would be something that the government would still need to do. If we are going to ask our firefighters to participate in what they do on behalf of the community and this is the mechanism by which they gain access to that scheme, then that it is hard would not be a reason not to do it. That might be an issue that goes to the complexity of the proposed scheme, but I do not think that, if the exposure is similar, we can establish a scheme that is not of equivalent application.

Senator BACK: So is it the case at the moment that you do not seek these pre-employment physical checks and annual checks of your career firefighters?

Mr Kefford: At engagement they are subjected to very rigorous physical and medical testing, as brigades around the country are. There are also procedures for the RFS members that take account of different requirements of the positions, but there is still baseline testing of firefighters as they join the service.

Senator BACK: Ms Brighton? Did you have something?

Ms Brighton: What I would add to that is that, following consultation with our North American colleagues, as we understand it, the provisions proposed before us are broadly consistent with those that are operating in North America. What the bill does not currently have are the types of provisions that exist in a number of jurisdictions in North America that enable a degree of clarity to the application of the provisions. They are broad depending on the jurisdiction you look at. Some jurisdictions have provisions with regard to smoking: if a firefighter is a smoker and has been a smoker for a period of time, that is a factor in the decision making. Other jurisdictions have cessation of employment provisions whereby the liability for the jurisdiction ceases 10 years beyond employment or five years beyond employment. These rebuttal provisions, as we understand how they operate in North America, are designed in the operation of presumptive provisions to ensure there is the necessarily appropriate degree of rigour that attaches to any compensation scheme.

Senator BACK: Thank you.

Senator WRIGHT: I am sorry to labour this, but I want to be really clear on the evidence that you were giving before, Mr Kefford, about the claims—or lack of claims. I understood you to say that there have not been any claims at all as opposed to no successful claims. Is that right? You would be aware of claims that had been made.

Mr Kefford: So I can be entirely clear: there have been no claims from ACT firefighters for cancer.

Senator WRIGHT: All right. And I think we heard a bit of discussion about not necessarily assuming that there were not people who may have needed to make a claim. I think that was the wording you used. The assumption you are making is that, if someone had needed to, they would have. Coming from the point of view of a lawyer, you have to assume that people have access to advice and understand that they may have that claim but choose not to.

Mr Kefford: Of course.

Senator WRIGHT: I am really trying to understand the similarities between the SRC Act and this proposed bill. I am going to your submission, where you say:

... the SRC Act already provides presumptions for prescribed occupational diseases. That is, the disease is deemed to be work-related if the worker's employment involved exposure to certain chemicals, toxins and biological agents.

How would someone go about proving that their work was exposed? There would be some degree of proof that would be needed that they were actually exposed to one of those three potential carcinogenic substances. Is that right?

Mr Kefford: It comes back to what we were saying before about the incident notification record keeping of the fire services. If we were in the situation of someone who had been a firefighter in the ACT contracting cancer then part of the process that applies at the moment is that they would need to show that they had been a firefighter and exposed in the course of their work. There would be records that would permit them to do that. I might come back to what you were saying before about knowledge of the provisions. I should say that safety generally and workers' safety generally in our fire services are things that are at the front of the government's mind. They are at the front of the minds of all of the people involved in it. So I am confident that any firefighter who contracted a

disease or work injury that even might have been related to their work would know about the appropriate channels through which they should go to pursue their claim, whether they be a member of our ESA or a volunteer brigade.

Senator WRIGHT: Thank you. I hear that. I am imagining that I am a lawyer and have a worker come to me. I give them advice about how they would go about making a claim and proving that they were exposed to one of these three potential agents. I might be wrong, but it seems to me it is significantly different to the presumption that if someone has been employed for a certain period of time and they contract a cancer it is going to be work related, but that can be rebutted on the basis of other evidence. So someone comes and I have to give them advice about how they would establish that they have been exposed to one of those three agents: a chemical, a toxin or a biological agent. You gave the example of the shed on the farm. You would have to be able to establish that there were chemicals at that particular farm. I am interested in the degree of specificity that you would require to establish a claim under the SRC Act.

Mr Kefford: The particulars of what would be required to establish a claim is really a question for Comcare and not for us as an employer, but I note that, while the government's submission mentions those three categories, they are based on the ILO convention process, for which there is much more rigorous documentation. I would not want to oversimplify the process by saying you have to prove a particular fire exposed a particular person to a particular agent. There is the broader scientific underpinning framework that supports the acceptance of a particular disease or a particular chemical as relevant in this context.

Senator WRIGHT: The reason I am pursuing this is that I think the point behind this particular bill is that it is so difficult to prove those causal links and yet the argument is being put that statistically there is an association between a particular occupation over a particular period of time and a particular disproportionate cluster of cancers that occur to people in that occupation. This committee has heard evidence about how difficult it is for someone to be able to establish causation. I am interested in the suggestion that this other act meets those difficulties.

Mr Kefford: I am conscious that in other jurisdictions there are more significant issues than our firefighters might have to face because of the operation of their particular schemes, where proving actual causation is central to the process that an individual might have to go through. Our evidence to the committee would be that the current deeming provisions of the act as they apply to ours overcome those difficulties. The conversations we have had with our insurers and our firefighters suggest that the way in which the deeming provisions would operate allow us to overcome those difficulties.

CHAIR: I do not see that. If after every fire event you are then to do an analysis of what was burning, in what combination and what toxins were released into the environment in which the firefighters worked, then giving every firefighter that attended that incident an exposure letter saying what they were exposed to, what you are suggesting could work. But unless you are doing that it cannot possibly work, because they are still left with the position that after the event they have to go back and say, 'It was this particular fire some 20 years ago.' It may have been that fire or that fire or that fire as well. Where is the trail of evidence on the exposure for the firefighter?

Ms Brighton: As Mr Kefford has pointed out, Comcare, as our insurer, is probably much better placed to answer the specifics of that question, but as we understand it as an employer, the way the deemed disease provisions works is that we know in structural fires and car fires there is a prevalence of particular types of toxins. If through our records over the course of one's employment until such time as the disease may have arisen there is a period of exposure to structural fires or car fires, which inherently contain things like benzene, then on balance of probabilities that may well be sufficient for the insurer to link the employment to the exposure to the toxin without needing a toxin report against every single fire a firefighter attends.

CHAIR: But then the presumption you are suggesting is not really working. It is not a presumption at all. People still have to prove their case.

Senator WRIGHT: As opposed to having to prove causation, which is an extremely high bar, it seems to me that the act that you are describing still requires proving exposure to those particular chemicals, which would require evidence about particular fires and particular exposure. That is different from the basis of the bill we are considering, which is that there is by virtue of scientific studies a connection or association between length of occupation and prevalence of cancers, and all you have to prove is that you were employed as a firefighter over a period of time. Then there is a rebuttable presumption. Issues like smoking and so on would of course be called upon by an employer to rebut the presumption. So I think it is different in that there is more required to be proved. Much is being made of the fact that no-one has brought a claim, but I always wonder how difficult it is to bring a claim. We have also heard that people do not bring claims in the ordinary course of work because the evidentiary issues are so tricky.

Mr Kefford: You are certainly right that this is a different way of doing it. I think Ms Brighton is right. If the committee is interested in exploring the deeper details of exactly what our insurers would require to satisfy this burden, that is really a matter that would need to be taken up with them. However, based on the discussions we have had with our emergency services, we are confident as an employer that we could provide the information about attendance at particular fires by particular individuals. The fact that this process has not been used in relation to this disease for this occupation class means that we are, in effect, asking hypothetical questions about what Comcare would ask for. That is really something that you need to take up with them.

CHAIR: Your evidence is this: you think you have a robust system and any firefighter that needed to make a claim could have made a claim. That is right?

Mr Kefford: Yes.

CHAIR: So, if we accept that yet move to this new legislation anyway, there would be no cost impact, because you are confident that anyone who needed to make a claim already can make a claim. Therefore, there will be absolutely no cost impact if we move to this system, because it will not make any difference. Claims that need to be made can already be made. Would you agree with that?

Mr Kefford: In general the administration of the schemes may be different, so I do not think I can give you an absolute yes, but I accept the basis of what you are saying.

CHAIR: Thank you.

Senator WRIGHT: You were talking about the duty of the employer to protect people adequately and so on. This committee has heard that, because of the nature of firefighting, it is not possible to issue protective equipment that can protect from some of the toxins that are ingested. This is because of the requirement that you have permeable protective equipment. Given everyone's best efforts, that is still not possible. Would you like to comment on that?

Mr Kefford: I am aware that the committee has taken that evidence, but it is not something on which I am able to comment.

Senator THISTLETHWAITE: In the evidence that the committee has received to date there have been a number of medical studies presented spanning close to 50 years and studying quite a number of firefighters in different jurisdictions throughout the world. Most all of those studies reach a conclusion of a link between the role of firefighters, the danger associated with the work and the development of particular types of cancer due to exposure to particular toxins in fires over a period of time. We attempt to make decisions based on the best evidence available before the committee. My question to you is: can you present or alert the committee to any reports which rebut those medical studies and reach the conclusion that there is no connection between firefighting and the development of certain cancers over a particularly long period of time?

Mr Kefford: 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. The government's submission notes a number of studies that are relevant to our consideration of this issue. But I am not a doctor. I would not propose to sit here and give evidence on the medical causation.

Senator THISTLETHWAITE: But you as an employer, given that this issue has come up, I presume ensure for these types of things.

Mr Kefford: Through Comcare, yes.

Senator THISTLETHWAITE: Surely you make an informed decision about whether there is a risk to your employees based on reports that you have viewed. Have you made any attempt to ascertain the veracity of those reports? Do you accept the conclusions in those reports?

Mr Kefford: I am not in a position to accept or refute any particular conclusion of any particular report. The government has a duty to provide safe workplaces or procedures and equipment that permits a dangerous place to be made as safe as it can be, and the government does that, as all governments around the country do.

Senator THISTLETHWAITE: Do you accept that it is reasonable for this committee, in the absence of any other medical reports, to accept the conclusions of those reports?

Mr Kefford: I am really not in a position to comment one way or the other on the findings in those reports other than to say that which is in the government's submission—it is not my evidence here this evening—that there is no link. The government's submission is that it has arrangements in place to protect its firefighters from exposure to risk as best can be done with the technology that is available. It has procedures in place to do that. Of course we accept that firefighting is a dangerous occupation. Because of the situation we are in with our insurers,

we are able to access a particular scheme that is more generous than is in place for firefighters in some other jurisdictions.

Senator THISTLETHWAITE: I suppose the question I am asking is if you accept that there is a link between firefighting and the development of those cancers for employees who have been with the firefighters for a particular period of time?

Mr Kefford: I think that exposure to smoke for firefighters has a link to higher rates of cancer. I do not think anyone is disputing that. But whether that is absolute or somewhere in between is not something in which I am in a position to comment. That is not my area of expertise.

Senator THISTLETHWAITE: I have one more question. You mentioned earlier that there had been no claims for this type of thing in your jurisdiction. Despite that, do you still insure for the possibility of these types of claims being lodged?

Mr Kefford: It is part of our overall risk based premium for workers compensation insurance for all of the territory's workers. So yes, absolutely.

Senator McKENZIE: Thank you so much for your appearance here tonight. I have a quick question about deemed diseases. What provisions exist currently under the SRC Act for the listed chemical toxins or biological agents to be updated given new evidence or science? Does the act provide for that to happen?

Ms Brighton: We will answer that as best we can, but our Commonwealth colleagues in the room will be better placed to give you some more detail on that. The ILO group on occupational diseases meets periodically to review the list, and it is a tripartite arrangement. The clinical experts appointed to consider the list of prescribed occupational diseases are drawn from recommendations from workers doctors, government doctors and employer representatives. That list was last updated in 2010, and to our understanding the SRC Act has not yet been updated to reflect the most recent version of that list. That delay in adopting the most recent ILO provisions is not uncommon across the country.

CHAIR: Thank you very much for your submission and your presentation to the committee today. Your evidence has been very useful to the conduct of this inquiry.

BAXTER, Ms Michelle, General Manager, Workplace Relations Implementation and Safety Group, Department of Education, Employment and Workplace Relations

KIBBLE, Mr Steve, Comcare

LIS, Mr Henry, Branch Manager, Workplace Relations Legal Group, Department of Education, Employment and Workplace Relations

SULLIVAN, Ms Sarah, Acting Branch manager, Safety and Compensation Policy, Department of Education, Employment and Workplace Relations

[19:47]

CHAIR: Welcome. I know you are all familiar with the standing orders and the rules governing committee inquiries, so I will not read that out again unless you require that. I thought Comcare was coming too.

Ms Baxter: Mr Kibble is expected but unfortunately has not yet arrived. However, we do have Ms Denise Lowe-Carlus from Comcare here, who would be able to speak to any operational issues the committee may wish to inquire about.

CHAIR: Thank you. Did Mr Kibble intend to make some opening remarks that you are aware of?

Ms Baxter: Not as far as I am aware.

CHAIR: When he comes he should join us. I will go to him and offer that to him at the time. Ms Baxter, did you have some opening remarks?

Ms Baxter: Yes I did. They are quite short. Thank you for inviting DEEWR to appear before the committee's inquiry into the Safety, Rehabilitation and Compensation Amendment (Fair Protection for Firefighters) Bill 2011. DEEWR welcomes the opportunity to speak briefly to its submission and answer any questions the committee may have. The department recognises the extreme risk to which firefighters are regularly exposed because of their duties and acknowledges that it is entirely appropriate that any injury or disease firefighters contract in the course of their work should be fairly compensated.

The department relies on its written submission that it has provided to the committee, however, we would like to note two issues. The first issue is the application of section 7(1) of the Safety, Rehabilitation and Compensation Act 1988. For the purposes of this inquiry Comcare has undertaken an examination of the toxins and diseases currently listed under section 7(1) of the SRC Act to see whether the existing list encompasses the cancers listed in the firefighters bill. Comcare also undertook a similar examination in relation to the current ILO list of occupational diseases. Advice from Comcare is that their preliminary research—noting that that research has not been conducted through a medical or scientific expert—indicates that the existing list of declared diseases that can be caused by exposure to relevant toxins would encompass certain cancers but may not encompass all cancers listed in the firefighters bill. Comcare have further advised that this would continue to be the case even if the current list of declared diseases and toxins under the SRC act is updated to bring it into line with the current ILO list of occupational diseases.

The second matter I wish to raise in my introductory comments relates to the department's submission in relation to the Monash University longitudinal cohort study. The department would like to update the information that was included in its submission. On pages 10 to 11 the department quoted an Australasian Fire and Emergency Service Authorities Council, AFAC, publication from its website which refers to the current Monash University and AFAC longitudinal study. The publication stated amongst other things that many of the previous studies into the health of firefighters in Europe, North America and Australasia over the past 50 years have been small. The department has now been advised by AFAC that since the publication by AFAC of the above information, new information has come to light of significance. AFAC is now aware of the LeMasters study which was a meta-analysis of more than 30 studies which collectively covered more than 110,000 firefighters. That study includes other studies that would not be considered small. The AFAC publication also states that the cohort study could

include prospectively collected exposure information from the Australian Incident Reporting System, the AIRS database. AFAC would like to point out that there are limitations with the AIRS database.

Finally, as noted in our written submission to the committee there are some issues that we have identified in relation to the bill as currently drafted that may benefit from greater clarity. However, we note that those matters are for the committee's consideration. We welcome any questions the committee may have in relation to the bill. Thank you very much.

CHAIR: Thank you. We are always happy to take advice on matters that you think need clarification. Mr Kibble, did you have any opening remarks you would like to make to the committee?

Mr Kibble: No, thank you.

CHAIR: Ms Baxter, I think you were in the room for the evidence given by the ACT. I just want to take you again to the issue of the existing legislation and the way exposure to certain types of chemicals is actually dealt with now. Again it goes to the issue which we canvassed, so I will not go through it in detail. Without an analysis of every single fire and the components that were burning, the different chemicals that may have been given off through the mixture of different burning things and an acknowledgement of exposure to all those chemicals at that particular point in time, we are still left with the problem that many years after the event, the onus will be on the firefighter who has contracted cancer to then go back and make a case and point to an exposure to a chemical in order to make a claim. I do not see, and nothing has been put to me so far, how the existing legislation will accommodate that process.

Ms Baxter: In relation to the operation of the connection between disease and employment in the usual course of events under section 5 in the act what you have stated is absolutely correct. However of course we have section 7(1) in the SRC act which provides the list of deemed diseases. I might handover to Mr Kibble to talk about how that provision works operationally, bearing in mind of course my opening statements in relation to the work that Comcare have done recently on section 7(1)—the list of deemed diseases. Even if updated with the latest ILO information, it still appears it would not capture all of the cancers that are listed in the bill. However, it might be useful if Mr Kibble spoke about the operation of section 7(1) to assist the committee.

Mr Kibble: Chair, I indicate I am happy to put this in writing. I will go through the tests and the process that we go through in determining claims under section 7(1) of the SRC Act. When we determine claims under that subsection there are two evidentiary tests considered. The first one is disease of a kind—and I am referring to the legislation—and the second is employment of a kind, which involves exposure to a specified risk. For example, the notice of the deemed diseases provides coverage for occupational diseases caused by benzene, for those employees whose employment involves exposure to benzene.

With that example, firstly, it must be established that the disease is of a kind caused by benzene and the person who is making a decision about the claim would rely on specialist medical evidence or research that provides a scientific and medical link to the contraction of a kind of disease caused by benzene. Secondly, the delegate would rely upon the information provided on the claim form or obtain factual evidence from the employer and/or the employee to establish that the employee was engaged in a kind of employment involving exposure to the risk—that is, of benzene—before they contracted the disease and their employment involved exposure to the risk. For example, if a firefighter fought structural fires, therefore it can be taken that he or she had been exposed to benzene.

CHAIR: Do you take it that someone who has fought a structural fire has been exposed to benzene?

Mr Kibble: Yes, subject to that first test that I mentioned regarding the scientific and medical link to the contraction of that disease. Then, unless the contrary is established, the disease will be deemed to have been significantly contributed to by their employment. Contrary evidence may be facts such as the disease is not of a kind caused by benzene or the employment—which goes to your question, Chair—did not involve a risk of exposure to benzene before the onset of the disease.

CHAIR: How many chemicals are in the list?

Mr Kibble: I will take advice on that.

CHAIR: If you want to take that on notice that is fine.

Senator BACK: It would be very interesting to know which conditions are not in alignment vis-a-vis the proposals under the legislation before the committee and what is in the SRC Act now. I do not expect you to provide that now but if you could inform the committee of that gap that would be very useful.

Mr Kibble: Yes. Going back to the chair's question, the answer is over 20. As well as taking Senator Back's question on notice, I would also be happy to outline the factors that the Comcare claims' decision maker takes into account in determining claims under section 7(1).

CHAIR: The department's submission indicates that very few firefighters have ever made a claim. Are you satisfied that any firefighter who was eligible to make a claim has been able to make a claim?

Mr Kibble: I would say about that that it may well be that these particular provisions of the legislation are not well known amongst employers or, indeed, employees, so it may well be simply the fact that people are not aware of those provisions and have put forward claims under that specific clause. Of course, firefighters would have put claims forward, generally speaking, under the SRC Act for compensation, but it may well be that have not been specifically aware of section 7(1). We have had three claims from firefighters and we have accepted all of those claims for cancer under section 7(1).

CHAIR: You have only had three claims and they have all been successful?

Mr Kibble: Yes.

Senator BACK: That goes to the nub of it for me. Mr Kibble, you mentioned disease of a kind with benzene being the clinical sign and a diagnosis consistent with benzene exposure and toxicity and, secondly, the employment being consistent with exposure to benzene, and therefore if (1) and (2) are in alignment they will be deemed to have been caused in the course of their work. Did I hear you then go on to say that, as well, there had been no evidence of any previous exposure? Would that be pre-employment exposure? Did I hear you correctly?

Mr Kibble: That last test—

Senator BACK: No, not the last test. I thought I heard you say that if (1) and (2) are satisfied then it would be deemed to have been caused by benzene and, almost as a rider in your analogy, that as well there was no evidence of previous exposure to benzene.

Mr Kibble: Just to clarify: unless the contrary is established, which goes back to those first two tests, the disease will be deemed to have been significantly contributed to by their employment and therefore an accepted claim. The contrary evidence may be facts such as the disease is not of a the kind caused by benzene, in this example, or—and this goes your question—the employment did not involve risk of exposure to benzene before the onset of the disease.

Senator BACK: I am thinking partially of career firefighters or, for that matter, a volunteer who might be a farmer. But let us imagine that they have had significant exposure to benzene because they had worked in the fuel industry and were involved in fuel transportation at some time in the past—I was about to say prior to most fuel being transported in bulk, but even that. Where, hypothetically, would that scenario fit? Would the onus be on your organisation to satisfy itself that there was not some pre-employment exposure to benzene that may be having an impact, or is it something that if (1) and (2) are satisfied then the likelihood is that the result would be deemed to be employment related?

Mr Kibble: Yes, Senator, noting it is a hypothetical example and every individual claim is considered on its facts. Generally speaking, yes, unless the decision maker had evidence to the contrary as I have discussed they would accept the claim.

Senator BACK: This jurisdiction seems to partially or completely move in the direction that this proposed legislation before us moves, and that is that this deeming is in place. We are to hear evidence, I think, from North Americans to try to get some understanding of the cost or cost neutrality of this whole exercise. Maybe it is anecdotal but could you give us an opinion as to whether you believe that this legislation in its present form has actually been more costly or not more costly to the ACT government as a result of having this deeming effect?

I ask this in the context that the legislation would appear to allow somebody to make a claim early, perhaps whilst a cancer was in its early formative stages, rather than having to wait until it is quite advanced, which has a cost on the person and their family but also the cost to the government and the community is a lot higher. We are just very interested to try to get a handle on the cost of this direction.

Mr Kibble: I might just confer with my colleagues for a second. I was not here for the ACT government's—

Senator BACK: I am not asking you for line and verse. Because of your association with insurance in this area, I am just keen to get a feel from you as to your perception.

Mr Kibble: It is difficult for us to estimate the cost of implementing the bill. I could not really provide any sensible answer on that one.

Senator BACK: With Comcare being part of the Commonwealth government, you are not a reinsurer. You do not go to the commercial market to offset your risk, presumably. Does the Commonwealth government effectively pick up its insurance exposure?

Mr Kibble: All of our workers compensation claims are funded by premiums which are paid for by the premium payers—either the Commonwealth government bodies or the ACT government. It pays compensation premiums as well which fund workers compensation claims.

Senator BACK: So it is not possible for you to advise us in the open insurance market whether or not a premium is charged to yourselves in consideration of providing the level of cover that you provide? You really would not be able to give us that advice?

Mr Kibble: No, not in that way. The way our scheme operates is that it is very much an experience based scheme. You may be aware of some of the state and territory workers compensation schemes which have some elements of an experience base in terms of some of the claims experience and performance of individual employers but because of the size of the schemes and the number of employers they quite often operate on an industry basis et cetera. But our scheme is very much an employer based experience, so the premium which is charged in each year is based on the actual claims experience of the individual employers as well as the overall costs of the scheme itself.

Senator BACK: Ms Baxter, you have made mention of the AFAC Monash University longitudinal study. That is in its early days, isn't it?

Ms Baxter: Yes, that is my understanding. There will not be any meaningful results from that for some time.

Senator BACK: So while it will be of tremendous interest to the committee and the Senate at sometime in the future, it is premature at this time to incorporate any conclusions coming out of that particular study.

Ms Baxter: Yes, I think that is correct.

Senator BACK: Consistent with the department, you actually make no recommendations to the committee, I think. Is that correct?

Ms Baxter: In the submission that we have put before the committee, we have put information before the committee and suggested that the committee may wish to consider whether some further consideration of the issues is necessary and we have noted that Safe Work Australia is undertaking some work in relation to workers compensation and, in particular, in relation to the list of deemed diseases.

Senator BACK: This is my final question. Whilst this inquiry relates to firefighters, have you given any thought to whether there are other groups of workers employed by the Commonwealth that this might be extended to? Or do we understand that the risk is unique to firefighters?

Ms Baxter: I will ask my colleague Ms Sullivan to respond in relation to that.

Ms Sullivan: In our submission we did talk about other groups that may have similar challenges in terms of the changing environment. I think we referenced paramedics, police and emergency services type workers. That was more in relation to thinking about the context in which firefighters are operating with changing factors, but we really have not given in-depth consideration to any other groups.

Senator BACK: I have tried to address my mind to others in the state context such as sea search and rescue and state emergency services and others. I cannot but I thought you might have been able to.

CHAIR: I just want to take you to the Safety, Rehabilitation and Compensation Act, Mr Kibble, and the provisions relating to diseases. In section 7(1)(b) it says, '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'. Where do I find the list of diseases that have been specified by the minister and where do I find the list of 'employments of a kind'?

Mr Lis: It is in an instrument known as the Safety, Rehabilitation and Compensation (Specified Diseases) Notice 2007 (1), and it is publicly available on the Federal Register of Legislative Instruments. The reference number is F2007L01983.

CHAIR: Is that both for diseases and the kinds of employment?

Mr Lis: Yes, the one declaration deals with both.

CHAIR: Thank you. Mr Kibble, I found the bit in the submission that I was interested in. Just to make sure we are on the same page, there have been three claims for cancer by firefighters and all have been accepted. That is over the last 20 years.

Mr Kibble: I might just update my advice to the committee. Since December 1988 there have been four cancer claims from firefighters. One claim was accepted in accordance with section 7(1), while the other three were accepted as diseases that employment contributed to in a material significant degree.

CHAIR: So they have all been accepted?

Mr Kibble: Yes, all four have been accepted since 1988.

CHAIR: Were any of them for the cancers described in this bill?

Mr Kibble: My understanding is that none of the cancers accepted are cancers that are tabled in the proposed subsection 7(8).

CHAIR: Are you confident that any firefighter who needed to make a claim would be able to make a claim under the existing legislation? This really goes back to the evidence I put to the ACT, who I think were fairly clear that, as far as them being an employer goes, any firefighter who needed to make a claim would in fact be able to make a claim. Where I want to take you is in terms of the cost. Looking at the four claims since 1998, they have all been successful under the existing legislation but none of them are for the cancers list in this legislation. I guess I am making an assumption, but it is only an assumption: if we moved to this legislation as a different way of dealing with these matters to what is there now, is there going to be any material cost difference? If there was to be, again I just make the practical observation that it would have to be minute.

Ms Baxter: There is no legislative prohibition on firefighters making application under the SRC Act. However, we are mindful that, both in discussions we have been having with the United Firefighters Union of Australia and also perusing the evidence that was given during the Melbourne hearings and in some of the submissions to the committee, there is a view that firefighters may not proceed to lodge claims under workers compensation legislation for a variety of reasons, including potential stress involved with proceeding at a time when they are very ill, advice that they will not be successful, at any rate, and that type of thing. As I said, while there is no legislative prohibition, what we do not know is how many firefighters there may be who have not lodged for various reasons—have not even potentially recognised that they could lodge a claim.

CHAIR: In that case, it is really a saving that has been made by Comcare. I do not mean that in a disrespectful way, as if you are deliberately trying to do that.

Mr Kibble: I understand, Senator.

CHAIR: People have not made those claims, for those reasons, but all those claims are potentially there to have been met. It may be that as more knowledge is gained under the existing system there may be more claims. That is probably not the point I am trying to make, though. If we picked up this legislation, it would be a change in the way people apply. Given what we know with the claims history now and what is potentially the claims history, whether that changes under this method, the existing method, or a new method would there be a cost burden in moving to the new method? I have put that in a very clumsy way, but I think you know what I mean.

Mr Kibble: I do, Senator. But, as per my response to Senator Back, we cannot add much more information in relation to potential costs et cetera. The only other thing I would say, further to Ms Baxter's answer just then, is that there is no legislative barrier to firefighters or indeed any other federal worker putting in a claim. In fact, we would encourage any federal worker to put in a workers compensation claim. The legislation is there and we are there to provide support in financial and other ways to federal workers who have been harmed at work. In this case, for example, we would certainly be happy to work with the firefighters associations and other groups to ensure that they understand how the current legislation works and encourage them, if they do have a claim to put in, to put it forward.

Senator WRIGHT: I would like to clarify. I do not know to what extent you were actually referring specifically to the provisions of the act or whether you were paraphrasing, because I do not have the SRC Act in front of me. I understand that there are prescribed diseases of a kind, based on the ILO list, and that is not quite updated yet but it will be. Then there is employment of a kind that involves a risk of exposure to a specified risk. So the criteria a person would have to meet would be that they were experiencing or suffering from a disease of a certain kind that was on the list and then they would need to show that they had a career that involved a risk of exposure to the particular chemical prior to the disease. And there needs to be proof of a link between the chemical and the disease.

Mr Kibble: Yes.

Senator WRIGHT: I am interested in the last bit, the career involving a risk of exposure to the chemical prior to the disease. Does the legislation actually refer to a risk of exposure or do you have to establish exposure itself?

Mr Lis: The instrument sort of describes various categories. It does not use the word 'risk'; it generally uses 'exposure'. Let me find an example: employment involving exposure to the inhalation of organic dusts' or 'employment involving exposure to phosphorus or its toxic compounds'. That is kind of the flavour of it.

Senator WRIGHT: I see. Thank you for that. In terms of a claims officer dealing with a claim, is there a table where they would look up 'firefighter' and there would be accepted exposures due to that occupation, or would there be some further evidentiary requirement made in the claim by the person making the claim? Do you understand what I am asking there?

Mr Kibble: Yes. Mr Lis might correct me, but in the current declaration there is no 'firefighter' called out separately. But certainly, as Mr Lis was indicating, it generally talks about employment involving exposure to arsenic, mercury, compressed air and so on. So it is really done on that basis. There is, I think, a reference to asbestos. I think the only particular occupational group that is called out is in relation to:

Employment carrying a particular risk of contamination including:

- (a) Health or Laboratory work;
- (b) Veterinary work;
- (c) Work handling animals—

et cetera.

Senator WRIGHT: I see. That has helped clarify. So basically, if someone were putting in a claim, they would say, 'I've contracted this particular disease; there's a scientifically established link between the disease and exposure to this particular chemical'—let us say dioxin.

Mr Kibble: Yes.

Senator WRIGHT: I do not know if dioxin is one of the chemicals that are specified in the act. Is it?

Mr Kibble: I do not think so.

Senator WRIGHT: Let us say benzene, then.

Mr Kibble: Benzene, yes.

Senator WRIGHT: I think you said benzene definitely is, but we have been advised about a lot of different chemicals that have toxic and carcinogenic effects. But let us go with benzene. Suppose I say: 'I've contracted this disease. The disease is factually established to be related to exposure to benzene, and this is my occupation.' What I am interested in is what further evidence the person making the claim would have to give on their occupation. It cannot be taken that, if they say they were a firefighter, it is presumed that they will have been exposed to benzene; they would then have to provide further evidence. They would essentially, I suppose, have to prove some exposure to that particular chemical in the nature of the work that they have been carrying out. Is that right?

Mr Kibble: Yes, in that particular case: the diseases caused by benzene or its toxic homologues, and then the employment involving exposure to benzene or its toxic homologues. That is the signal.

Senator WRIGHT: Again, it is not enough to just say the particular type of employment: it would have to be some kind of claim made and evidence given that that employment specifically caused the condition. I am interested in where that evidence would come from, and I suppose what I am interested in—and I do not know that you will be able to answer this—is that I would imagine you would then need to have some kind of evidentiary basis over the period of your occupation. Incident reports perhaps will not be enough; the fact that you attended a fire on a particular date will not necessarily establish that you were exposed to benzene at that time. I am just interested in the degree of difficulty, I suppose, in establishing the claim to the satisfaction of the claims officer who then grants the claim.

Mr Kibble: Yes, bearing in mind that it is a hypothetical situation. Every claim—

Senator WRIGHT: Is different—exactly. They all are different. That is the thing in this situation and this scenario, isn't it?

Mr Kibble: They all are different, but you asked, Senator. As I said, I think I will provide on notice some more detailed written information about the approach taken by Comcare decision makers in determining claims under section 7(1). But, in that particular case, generally they would be relying on information. This is in this second leg, if you like—the second phase of decision making—on claims or the factual information provided by either the employer or the federal worker about what they have been exposed to et cetera and, as I said, the medical evidence et cetera.

Senator WRIGHT: Yes, so I guess the factual evidence would be reliant on the degree of accuracy and the detail of the records they have been kept over the course of employment. That would be helpful, would it not, in terms of incidents and exposures because essentially the exposure has to be proved?

Mr Kibble: Yes—

Senator WRIGHT: If there is an establishment that there has been exposure, there is a deeming that that type of disease is related to that exposure but there is not a deeming of exposure by virtue of the employment—that is the difference. Is that right?

Ms Baxter: That is right. Neither the department nor Comcare are suggesting that section 7(1) goes as far as the conceptualisation in the bill before the committee at the moment. They are quite different provisions in the way that they operate.

Senator WRIGHT: Yes, thank you. I understand that.

CHAIR: Would the claims officer take into consideration the years of service and/or the number of incidents attended?

Mr Kibble: It is a difficult question to answer in some ways. But, yes, I think they would take into account years of service and incidents attended.

Senator McKENZIE: In your submission on page 3 you talk about the broader policy issues and specifically mention the treatment of Australian ADF firefighters who are covered under the MRC Act. Could you comment on how the SRC and the MRC acts are applied regarding compensation for those two different groups of firefighters?

Ms Baxter: We note in our submission that claims under both the Veterans' Entitlements Act and the Military Rehabilitation and Compensation Act are determined by using what are called statements of principles—or SOPs, as they are commonly known. The SOPs are legislative instruments that set out the factors which can connect particular injuries, diseases or death with service. SOPs are determined by the Repatriation Medical Authority. The distinction is that under both the VEA and the MRC Act it is the SOPs alone that determine what factors could cause a medical condition that is the subject of a claim, and in order for a claim to succeed under those pieces of legislation at least one of the SOP factors must be related to service.

The point the department was making in its submission is simply that there is a different approach in the VEA/MRC legislative framework than under the Safety, Rehabilitation and Compensation Act. I am afraid I do not pretend to be an expert in relation to how the VEA and the MRC Act operate. I have a lot more detail in relation to the statements of principles methodology. But they are different approaches to the way these things work.

Senator WRIGHT: Can you tell us the four cancers that were accepted? You said they would not have been cancers covered under the bill.

Mr Kibble: Yes. They are malignant neoplasm of mesothelioma, other malignant neoplasm of skin, neoplasm not specified as benign or malignant and other malignant neoplasms and carcinomas.

CHAIR: The mesothelioma one interests me. This does not go directly to the bill, but I guess it is a related issue: what is the incidence among firefighters of asbestosis and mesothelioma? Is there just that one case?

Mr Kibble: I would have to take that on notice.

CHAIR: If you could. It occurs to me that it is not only toxins; it is asbestosis in a fire situation that is everywhere. From memory, I think the latency period for mesothelioma is generally 30 years—is that right?

Mr Kibble: Yes.

CHAIR: We should watch that space. There are no further questions, thank you, Ms Baxter, Mr Lis, Ms Sullivan and Mr Kibble. Thank you for your submission. I appreciate the tone of the submission too. Generally when it is a government sponsored bill, there is a strong weighting on a policy issue. So I do appreciate the way you have addressed the issues in this. I am aware that some significant thought and preparation have gone into your submission. I do appreciate that and I thank you. If there is anything that you believe that the committee should be aware of in the course of the inquiry, you are invited, as you are always invited, to present any additional information to the committee.

Committee adjourned at 20:30