

Submission
No 28

**INQUIRY INTO HEALTH IMPACTS OF EXPOSURE TO
POOR LEVELS OF AIR QUALITY RESULTING FROM
BUSHFIRES AND DROUGHT**

Organisation: The Australian Workers' Union

Date Received: 12 March 2020

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Legislative Council Portfolio Committee No 2 – Health

Inquiry into the health impacts of exposure to poor levels of
air quality resulting from bushfires and drought

Submission of
THE AUSTRALIAN WORKERS' UNION

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Introduction

1. The Australian Workers' Union (the **AWU**) welcomes the opportunity to make a submission to this critical inquiry into the health impacts of poor air quality.
2. As recent months have made clear, existing resources are inadequate to deal with the challenge posed by catastrophic particulate matter levels in the air. A comprehensive public policy response is required, on many different fronts—including a long-term public health strategy and improved emergency response planning.
3. Central to this response must also be a reassessment of work health and safety (**WHS**) standards for exposure to dangerous air quality conditions while performing work.
4. The WHS dimension of the inquiry is especially important because many workers will acquiesce to employer directions to continue working, unless there is a clear and direct safety risk. Longer-term risks associated with particulate matter exposure are less immediate and create a 'grey area' where workers may not feel comfortable exercising their rights under the WHS framework to cease unsafe work. Similarly, site management may be unwilling to cease work

without clear rules, as they are accountable for production to more senior levels of management.

5. It is likely that many workers across New South Wales continued to work outdoors, without appropriate personal protective equipment, during the recent catastrophic air-quality conditions. It is now clear that more definitive guidance from regulators is needed to ensure workers and employers are aware of their obligations under the WHS framework.

The AWU's interest in the inquiry

6. The AWU represents over 20,000 workers in New South Wales in a diverse array of industries, who rely on the protections afforded by the WHS framework in their daily employment.
7. Our members predominantly work in 'blue-collar' industries including:
 - steel, aluminium, glass and other manufacturing
 - tunnelling and civil construction
 - horticulture
 - roadmaking and asphalt
 - quarrying and mining
 - hairdressing
 - field operations in the National Parks and Wildlife Service and Forestry Corporation NSW
8. Many of our members work largely outdoors (e.g., quarrying, roadmaking, construction); while our members in the National Parks and Wildlife Service and Forestry Corporation were on the frontlines of the bushfires working to protect life and property.
9. During the recent bushfires crisis, our members often worked outdoors in catastrophic air-quality conditions, without safety equipment or clear direction from regulators or managers.
10. For this reason, we have a special interest in the following aspects of the inquiry:
 1. *The health impacts of exposure to poor levels of air quality resulting from bushfires and drought including:*
 - (b) *the impact on people who are exposed to poor outdoor air quality in the workplace;*
 2. *The effectiveness of the NSW Government to plan for and improve air quality including:*

(d) the suitability of work health and safety regulations, industrial provisions and related guidelines;

Long-term health impacts and NSW's public health strategy

Long-term health impacts of exposure to poor air quality

11. NSW Health identifies the following long-term health effects of exposure to bushfire smoke:

- a. reduced lung function;
- b. development of cardiovascular and respiratory diseases;
- c. increased rate of disease progression;
- d. reduction in life expectancy.¹

12. Similarly, the United States Environmental Protection Agency (**US EPA**) guidance on the public health effects of wildfire smoke states:

Particulate matter is the principal public health threat from exposure to wildfire smoke. The effects of particulate matter exposure range from eye and respiratory tract irritation to more serious disorders including reduced lung function, bronchitis, exacerbation of asthma and heart failure, and even premature death.²

13. The American guidance goes on to outline the population groups who are most vulnerable to health impacts due to exposure, namely:

- a. people with asthma and other respiratory diseases;
- b. people with cardiovascular disease;
- c. children;
- d. pregnant women;
- e. older adults;
- f. people of low socioeconomic status;
- g. outdoor workers.³

¹ *Particulate Matter (PM10 and PM2.5)* (2013, NSW Health, accessed at <https://www.health.nsw.gov.au/environment/air/Pages/particulate-matter.aspx>).

² *Wildfire Smoke: A Guide for Public Health Officials* (2019, United States Environmental Protection Agency, accessed at <https://www3.epa.gov/airnow/wildfire-smoke/wildfire-smoke-guide-revised-2019.pdf>), p 9.

³ *Ibid*, p 10 (Table 1).

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14. Recent research, published in August 2019 in the *New England Journal of Medicine* analysing the effects on health of short-term exposure to heightened levels of PM_{2.5} in 652 cities across the world concluded:

Our data show independent associations between short-term exposure to PM₁₀ and PM_{2.5} and daily all-cause, cardiovascular, and respiratory mortality in more than 600 cities across the globe. These data reinforce the evidence of a link between mortality and PM concentration established in regional and local studies.⁴

15. One of the first academic works on the impact of the 2020 bushfires was published in *The Lancet Planetary Health* on 10 January 2020 by members of Monash University's Air Quality Research Unit (a copy is annexed to this submission). The authors made the following observations about the health impacts of this crisis (citations omitted):

The best documented hazardous components of bushfire smoke are PM₁₀ and PM_{2.5}. Because of the bushfire, in most areas of Sydney, 24-h average PM_{2.5} concentrations this December have exceeded 100 µg/m³ (and could reach 500 µg/m³), which is four-times higher than the WHO guideline value of 25 µg/m³. By comparison, the daily average PM_{2.5} concentration before the bushfire was around 20 µg/m³. Such an increase in daily PM_{2.5} concentration is estimated to induce an increase of at least 5.6% in daily all-cause mortality, 4.5% in cardiovascular mortality, and 6.1% in respiratory mortality, according to our global study from 2011, which included Sydney. These estimates are close to a previous observation on the effects of bushfire events between 1997 and 2004, in Sydney.

In addition to its fatal effects, bushfire smoke has also been related to increased risks of hospitalisation and emergency department visits due to respiratory diseases such as asthma, chronic obstructive pulmonary disease, and respiratory infections. Increasing evidence also suggests bushfire smoke might increase cardiovascular morbidity, psychological disorders, adverse birth outcomes, and eye irritation. However, our knowledge about the health effects of bushfire smoke is still insufficient. The long-term and lasting effects of bushfire smoke and which subgroups are most vulnerable to bushfire smoke remain largely unknown. It has been suggested that PM₁₀ generated from bushfires might have different health effects compared with PM₁₀ from urban background sources (eg, traffic

⁴ Liu et al., "Ambient Particulate Air Pollution and Daily Mortality in 652 Cities" in *New England Journal of Medicine* (2019), Vol 381, pp 705-715 (accessed at <https://www.nejm.org/doi/full/10.1056/NEJMoa1817364>).

emissions). Therefore, more studies are required to focus on air pollutants from bushfires.⁵

16. Their conclusion is within the capacity of the Government to address. The expedited release of additional research funding, targeted specifically at research into the health effects of air pollutants from bushfires, is a necessary part of any comprehensive public health response.
17. Without further studies expanding our knowledge of the health risks caused by bushfire smoke, public health agencies and safety regulators will be operating 'in the dark', forced to estimate standards with direct consequences for human health outcomes.

Public health communication

18. In New South Wales, the Department of Planning, Industry and Environment (DPIE) is responsible for air quality monitoring, and NSW Health is responsible for issuing public health guidance. Effective interaction between these agencies is critical to ensure appropriate public health advice is issued to the general public.
19. While there is a wealth of information on air quality provided to the public by DPIE, there are inadequacies in the 'conversion' of that information to effective guidance for the public:
 - a. Warnings issued are generally precautionary and list remedial actions that can be taken for individuals deemed at risk, but do not state clearly the direct actions required of organisations with duties of care (employers, health services, schools) to ensure a safe environment during periods of hazardous air quality.⁶
 - b. Warnings issued by DPIE and NSW Health are typically framed as discretionary advice, rather prescribing mandatory actions. In the workplace context, this leaves significant room for individuals, including PCBUs and officers, to misinterpret their duty of care obligations to provide a safe workplace.⁷
 - c. The risks from exposure to hazardous air quality have largely been communicated as short-term and symptomatic, rather than focusing on the potential chronic, long-term health impacts identified in the literature (e.g., reduced lung function, development of

⁵ Yu et al, "Bushfires in Australia: a serious health emergency under climate change" in *The Lancet Planetary Health* (2020), Vol 4(1), pp e7-e8 (accessed at [https://www.thelancet.com/journals/lanplh/article/PIIS2542-5196\(19\)30267-0](https://www.thelancet.com/journals/lanplh/article/PIIS2542-5196(19)30267-0)).

⁶ *Illness and Injury from Bushfire* (2019, NSW Health, accessed at <https://www.health.nsw.gov.au/environment/air/Pages/bushfire-illness.aspx>).

⁷ Public health standards adopted in relation to 'smoke-free workplaces' may, in the broader sense, be useful in the context of bushfires. See, e.g., *Guidance Note on the Elimination of Environmental Tobacco Smoke in the Workplace* (2003, National Occupational Health and Safety Commission, accessed at https://www.safeworkaustralia.gov.au/system/files/documents/1702/guidancenote_eliminationofenvironmentaltobaccosmoke_workplace_nohsc3019-2003_pdf.pdf),

cardiovascular and respiratory diseases). People may adopt more risk-averse behaviour if agencies clearly noted the long-term risks of exposure.

Suitability of WHS regulations, industrial provisions and related guidelines

WHS regulations—standards and guidance for dealing with poor air quality

20. The following material published by SafeWork NSW and SafeWork Australia is relevant to assessing the risk of airborne contaminants:
- a. *Work Health and Safety Act 2011* (NSW), Division 2—Primary duty of care
 - b. *Work Health and Safety Regulation 2017* (NSW), Division 6—Remote or isolated work and Division 7—Managing risks from airborne contaminants
 - c. Code of Practice (SafeWork NSW)—Managing the work environment and facilities
 - d. Code of Practice (SafeWork NSW)—Managing risks of hazardous chemicals in the workplace
 - e. Workplace exposure standards for airborne contaminants (SafeWork Australia)
 - f. Guidance on the interpretation of workplace exposure standards for airborne contaminants (SafeWork Australia)
21. Two specific issues arise for consideration by the Committee:
- a. whether current exposure standards satisfactorily codify the safe limits of exposure to poor air quality caused by bushfire smoke; and
 - b. whether current regulations, codes of practice and other material provide a clear framework outlining the control measures necessary for employers to take as poor air quality levels rise, including when a stop-work is required.
22. In the AWU's view, the current material issued by workplace safety regulators is unsatisfactory on both scores.
23. Firstly, the workplace exposure standards do not outline the risk thresholds for exposure to generalised particulate matter of 2.5µm or less (**PM2.5**) or between 10µm and 2.5 µm (**PM10**). The focus is instead on exposure to specific kinds of contaminants.
24. This, understandably, is aimed at work environments in which the person conducting the business or undertaking (**PCBU**) can monitor and control emission of contaminants into the ambient atmosphere. By contrast, no PCBU can control the spread of PM2.5 and PM10 in an

outdoor work environment caused by bushfire smoke. Current guidance material does not adequately address this hazard and must be updated before the next bushfire season.

25. Secondly, at present, New South Wales' workplace safety advice is reliant on material provided by other agencies on air quality levels, DPIE and NSW Health. As noted above, these agencies respectively monitor the air quality indices (**AQIs**) across New South Wales and set public health guidelines on responding to poor air quality.
26. The SafeWork NSW webpage dedicated to bushfires smoke refers to both agencies for guidance on how to respond to the presence of bushfire airborne contaminants in the work environment.
27. In our view, it is appropriate that *specific WHS guidance* be developed to give PCBUs and workers clear rules on when heightened PM2.5 and PM10 levels require a stop-work or the implementation of control measures, such as personal protective equipment.
28. While such measures are already required to comply with the primary duty of in the *Work Health and Safety Act 2011* and the air quality obligations in the *Work Health and Safety Regulation 2017* (Div 7), these generalised and abstract obligations are far less likely to be complied with in the absence of clear rules about the interaction of exposure levels and required action.
29. For this reason, the AWU submits that, by the start of the next bushfire season, SafeWork NSW should implement, in consultation with worker and employer organisations and relevant health agencies, a new Code of Practice which specifically deals with the *health risks of outdoor work in areas affected by bushfire smoke*. SafeWork NSW should also give consideration to amending the *Work Health and Safety Regulation 2017* (NSW) to incorporate specific obligations on PCBUs to limit worker exposure to unsafe air quality in the workplace.
30. Two documents issued by regulators in response to recent fire events may assist in developing this framework.
31. Firstly, the California Occupational Safety and Health Standards Board issued an emergency regulation in July 2019 to protect employees from exposure to unsafe levels of wildfire smoke. It would appear the impetus for this development was a petition filed with the Board by unions and community advocates, in light of the unprecedented fire season experienced by the state. (A copy of this emergency regulation is annexed to this submission.⁸)
32. The emergency regulation requires certain actions to be taken whenever wildfire smoke is present and PM2.5 levels are 151 or higher, unless a workplace is exempted from compliance

⁸ In addition, an official summary of the regulation is available at:
<https://www.dir.ca.gov/dosh/doshreg/Protection-from-Wildfire-Smoke/Wildfire-smoke-emergency-standard.html>.

(e.g., because work is performed in an enclosed building with effective air filtering systems).

The actions include:

- a. requiring the employer to engage in monitoring of PM2.5 levels before each shift commences and periodically thereafter by reference to government monitoring data (or direct measurement at the worksite if available);
 - b. informing employees of the PM2.5 levels at the worksite and all protective measures available;
 - c. encouraging employees to inform the employer of worsening air quality and any adverse health symptoms experienced such as asthma attacks, difficulty breathing and chest pain;
 - d. requiring employers to offer and encourage use of respirator masks if PM2.5 levels reach 151
 - e. making respirator use mandatory if PM2.5 levels reach 501.
33. The California Division of Occupational Safety and Health is now undertaking a formal consultation process to formulate permanent regulations to address the risks of exposure to wildfire smoke.⁹ An exposure draft prepared for public consultation (copy annexed) reduces the PM2.5 threshold for compliance, including provision of respirator masks, to 101 (from 151) and the threshold for mandatory respirator use to 301 (from 501).¹⁰
34. The proactive approach of the California safety regulator should serve as a starting point for the tripartite consultation to be undertaken in NSW to ensure better preparation for the 2020/21 bushfire season.
35. Secondly, WorkSafe Victoria issued a guidance document during the recent crisis: *Health risks of outdoor work in areas impacted by bushfire smoke* (15 January 2020, copy annexed). This represents an urgent response to the fires and is necessarily limited in scope and content, but serves as a useful starting point within a similar legislative framework.

⁹ The consultation website is located at: <https://www.dir.ca.gov/dosh/doshreg/Protection-from-Wildfire-Smoke/>.

¹⁰ The exposure draft (with proposed amendments highlighted) is available at: <https://www.dir.ca.gov/dosh/doshreg/Protection-from-Wildfire-Smoke/Discussion-draft-2019-08-13.pdf>.

WHS regulations—issue resolution procedures and bushfire-related hazards

36. Where workers and managers reach an impasse in relation to a safety dispute, the mechanism available under the *Work Health and Safety Act 2011* (NSW) (the **WHS Act**) to resolve the matter is referral to an inspector.¹¹ Currently, there is no required timeframe for attempted resolution by the inspector, and there is no capacity for the inspector to issue a binding decision to resolve the dispute (unless empowered by another statutory decision).
37. The risk of inaction is especially high when the hazard (bushfire smoke making all outdoor work in an area unsafe) inherently affects a significant proportion of the workforce and the local economy. A PCBU and its workers would all have to accept the significant loss of revenue and wages associated with a closedown of operations until the weather has improved.
38. While the AWU is aware of businesses that took appropriate steps during the height of the bushfire smoke, we are aware of other cases where no action was taken. For example:
- a. At a Sydney commercial construction site, workers were directed to withdraw stop work and seek respite in air-conditioned crib rooms because of exposure to hazardous air quality caused by bushfire smoke. Unfortunately, the number of workers exceeded the housing capacity of the crib rooms and many workers were forced to wait outside, until union intervention instigated a decision by the PCBU to direct the workers to leave site.
 - b. At the same site, there remained ongoing contention between workers and the PCBU as to what properly constituted the level of hazardous air quality that would trigger a withdrawal from the worksite.
 - c. At a warehouse in Sydney, workers continued to work throughout hazardous air levels despite inadequate control of the internal air supply. The air quality was so poor that smog was visible inside the warehouse. Workers did not have access to masks or any other PPE to limit exposure and work did not cease.
39. The independent report into the operation of the model WHS laws was completed by the reviewer, Marie Boland, in December 2018 and published by Safe Work Australia on 25 February 2019 (the **Boland Report**).¹²
40. The Boland Report directly addressed deficiencies in the existing issue resolution framework.¹³

¹¹ *Work Health and Safety Act 2011* (NSW) ss 82 and 89.

¹² *Review of the Model Work Health and Safety Laws: Final Report* (2018, Safe Work Australia), accessed at https://www.safeworkaustralia.gov.au/system/files/documents/1902/review_of_the_model_whs_laws_final_report_0.pdf. (New South Wales is a model law state, with certain State-specific provisions retained. Victoria and Western Australia are the only jurisdictions not to adopt the model law, although legislation is currently before the Parliament of Western Australia to adopt the model law with modifications.)

¹³ Boland Report, Chapter 3, pp 74-79.

41. The AWU is aware that Ministers are meeting later this year to discuss the full implementation of the Boland Report's recommendations. However, we wish to highlight one critical recommendation which should be enacted in New South Wales as a priority in light of the recent bushfires crisis.

42. Recommendation 13 of the Boland Report is:

Amend the model WHS Act to provide for:

a. disputes under ss 82 and 89 of the model WHS Act to be referred to the relevant court or tribunal in a jurisdiction if the dispute remains unresolved 48 hours after an inspector is requested to assist with resolving disputes under the default or agreed procedures and with cease work disputes

b. a PCBU, a worker, an HSR affected by the dispute or any party to the dispute to notify the court or tribunal of the unresolved issue they wish to be heard

c. the ability for a court or tribunal to exercise any of its powers (including arbitration, conciliation or dismissing a matter) to settle the dispute, and

d. appeal rights from decisions of the court or tribunal to apply in the normal way.

43. The reviewer explained her reasoning for the recommendation as follows:

I found that an overwhelming response to the issue resolution provisions was that the role of the inspector was ineffective due to a lack of power to definitively decide the issue. I note in this context that inspectors can use their compliance powers when assisting in resolving disputes; however, for the most part, it appears that parties to disputes have been left feeling frustrated at a lack of enforcement action.

44. This observation is consistent with the AWU's experience. Inspectors do not have mandatory powers to resolve a dispute by issuing a determination and there is no recourse for an aggrieved party (including a worker or HSR) if the inspector is unable to resolve the dispute by agreement.

45. As explained in the Boland Report, the aim of this recommendation would be to increase incentives for all parties to reach a resolution at the worksite level, to avoid escalation to the tribunal and consequent time and expense. While worksite-level resolution is clearly to be preferred, there is currently little reason for employers to change practices due to the absence of an independent adjudicator able to overturn its decisions (as a last resort).

46. In the context of WHS issues caused by environmental air quality, the risk of inaction is especially high for the reasons given at [37]. Urgent implementation of this recommendation

would ensure workers have access to an effective and quick mechanism to resolve any safety issues caused by rapidly changing environmental factors.

47. In addition, industrial associations should be authorised to participate in issue resolution procedures under the WHS Act on behalf of their members, as their default representatives. This would bring the safety provisions into line with practice in other areas of industrial relations. It is unfair to expect individual workers, even HSRs, to escalate disputes with their employers (often large corporations), without the benefit of union resources and expertise.
48. Industrial associations are empowered under various provisions of the *Fair Work Act 2009* (Cth) and *Industrial Relations Act 1996* (NSW) to notify disputes and institute proceedings on behalf of employees. They have similar rights under s 46P(2)(c) of the *Australian Human Rights Commission Act 1986* (Cth) and s 87A(1)(c) of the *Anti-Discrimination Act 1977* (NSW). The WHS Act is anomalous in requiring individual employees to bring complaints in their own name.

Industrial provisions—wages during stand down

49. Industrial relations in New South Wales is governed by a combination of State and federal statutes. While private sector employment is principally subject to the *Fair Work Act 2009* (the **FW Act**), there are specific carve-outs for matters including WHS, workers compensation and emergency services leave.
50. The WHS Act has effect throughout private sector workplaces in New South Wales by reason of this carve-out. It creates the framework for the regulation of industrial relations insofar as they relate to health and safety in the workplace.
51. The WHS contains two provisions which permit workers to cease work in unsafe conditions:
 - a. section 84 permits a worker to cease work if they have a reasonable concern about an immediate or imminent safety risk to themselves; and
 - b. section 85 permits a health and safety representative (**HSR**) to direct workers in their work group to cease work if they have a reasonable concern about an immediate or imminent safety risk to the group.
52. In the AWU's experience, only in worksites with very high levels of industrial independence will elected HSRs speak directly to management to seek action on safety issues, including the continuation of work in unsafe conditions.
53. In addition, Part 3-5 of the FW Act permits employers to stand down employees without pay where there is "a stoppage of work for any cause for which the employer cannot reasonably be held responsible". As such, action taken under ss 84 or 85 of the WHS Act is likely to lead to a loss of wages for employees, as employers seek to minimise their losses.

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54. This arrangement places the entire burden of lost productivity due to natural disasters on employees. The inclement weather provision in clause 23 of the federal *Building and Construction General On-site Award 2010* (the **BCGO Award**) is more equitable, splitting the burden between both parties—employers up to a certain number of hours per 4-week cycle, and employees thereafter.¹⁴
55. The AWU considers that industrial provisions across industries involving outdoor work should be amended to adopt the provision in the BCGO Award, rather than requiring employees to bear the full burden of lost work.

Related guidelines—national public health advice

56. Currently, there is no nationally-consistent guidance on unsafe levels of exposure to bushfire smoke (PM2.5 and PM10). The health agencies of each jurisdiction appear to issue their own guidance without reference to a national framework.
57. Better coordination of public health guidance on exposure to bushfire smoke would facilitate meaningful discussions between safety regulators and the social partners at the national level. The ultimate goal should be nationally-harmonised WHS guidance.
58. However, the goal of national standards should not stand in the way of immediate action by the State Government to provide guidance in advance of the 2020/21 bushfire season.

Safety Issues for Rural Firefighters: NPWS And Forestry Corporation

Differences in PPE provided to rural and metropolitan firefighters

59. The AWU represents firefighters employed by the National Parks and Wildlife Service (**NPWS**) and Forestry Corporation (**FCNSW**).
60. During the bushfire crisis, these field officers fought alongside firefighters from the Rural Fire Service (**RFS**) and Fire and Rescue NSW (**FRNSW**). Unfortunately, it is likely they were exposed to greater risk than their FRNSW colleagues due to stark differences in the quality of personal protective equipment (**PPE**) provided by their respective agencies.
61. The NSW Government owes special obligations to these workers, as employees in the service of the Crown engaged to protect life and property during bushfire emergencies. Most NPWS and FCNSW field officers are not solely employed as firefighters: they are multi-skilled operators

¹⁴ The BCGO Award can be accessed at: <http://awardviewer.fwo.gov.au/award/show/MA000020>.

who also perform a number of other critical tasks in the management of the national parks estate and state-owned forest tracts.

62. While FRNSW firefighters are equipped with P3 respirators (which screen out 99.95% of airborne particles), NPWS field officers are issued P2 masks, the same devices used for domestic renovations or painting a house (which screen out only 94% of airborne particles).¹⁵
63. In the context of back-to-back 12-hour shifts in catastrophic air quality, the greater health risks of P2 masks (and exposure to nearly 6% more airborne particles) are self-evident. Significant media publicity arose during the crisis when RFS brigades began ‘crowdfunding’ to purchase P3 respirators to replace their issued P2 masks.¹⁶ In other states, rural volunteer firefighters have raised concerns about use of P2 masks in previous Parliamentary inquiries.¹⁷
64. The AWU on behalf of its members at NPWS have requested a review of masks on several occasions. The disparity in equipment between firefighters in different services requires urgent attention from the NSW Government. The higher FRNSW standards for PPE should be applied to all firefighters working by or on behalf of the State of New South Wales.

Inadequacies in training of rural firefighters—structural fires

65. In addition to the equipment disparities, there is a significant training gap between FRNSW and other agency personnel when it comes to structural (building) fires. NPWS field officers are not trained to fight structural fires, yet they are required to perform property protection duties as part of their emergency response function.
66. The air quality issues associated with structural fires differ from those associated with natural fires. Many older structures contain asbestos and other harmful substances.
67. We are aware of cases where NPWS field officers have fought a structural fire alongside FRNSW personnel. The NPWS field officers were wearing their usual P2 respirators, while the FRNSW officers had full breathing apparatus with attached oxygen.

¹⁵ Burton et al., *Respiratory Protection - Are our Standards Protecting Worker Health or Providing a False Sense of Security* (2016, University of Wollongong, Final Report for Coal Services CSHST Grant 20634, accessed at: https://www.coalservices.com.au/wp-content/uploads/2017/03/Project-20634_CSHST-Grant-Final-Report-Submitted.pdf), p 15 and Table 2.3.

¹⁶ See, e.g., *NSW firefighters crowdfunding upgraded face masks amid claims RFS gear insufficient* (ABC News, 11 December 2019, accessed at: <https://www.abc.net.au/news/2019-12-11/nsw-bushfires-firefighters-raise-money-to-buy-face-masks/11790096>).

¹⁷ See Submission of the Samford Rural Fire Brigade to the Queensland Parliament’s Finance and Administration Committee *Inquiry into the Workers’ Compensation and Rehabilitation (Protecting Firefighters) Amendment Bill 2015 (Q)*, extracted in the final report at p 30. Accessible at: <https://www.parliament.qld.gov.au/documents/committees/FAC/2015/B7-WorkCompandRehabProtectFirefighters/rpt-009-08Sept2015.pdf>.

68. Certain firefighters should not be exposed to greater risk of health problems than others simply because of the agency they work for. Legislation now recognises firefighters' greater risk of cancer through their exposure to smoke, yet readily available PPE control measures have not been adopted by all agencies to protect their employees' health.¹⁸

Screening for smoke-related illnesses

69. Firefighters have a heightened risk of developing respiratory illnesses and certain cancers. Despite this known issue, our members have informed us that NPWS and FCNSW field officers are not provided with adequate health screening by their respective agencies.
70. Better policies and procedures must be developed to ensure proper screening for smoke-related illnesses, to maximise the prospects of improved prognosis through early intervention. The NSW Government must ensure sufficient funding to properly roll-out these policies and procedures.

Conclusion and Recommendations

71. The AWU submits that the Committee should adopt the following recommendations:

Recommendation One (Research Funding)

The NSW Government fund additional research into the health impacts of exposure to bushfire smoke, specific to the Australian context.

Recommendation Two (WHS Code of Practice and Regulations)

- A. SafeWork NSW issue a Code of Practice to specifically address the health risks of outdoor work in areas impacted by bushfire smoke.
- SafeWork NSW engage in tripartite consultation with social partners (trade union and industry associations) and government health agencies in drafting this document.
 - SafeWork NSW implement this document before the start of the next bushfire season (2020/21).
- B. SafeWork NSW give consideration to amendments to the *Work Health and Safety Regulation 2017* (NSW) to incorporate specific obligations on PCBUs to limit

¹⁸ See *Workers Compensation Legislation Amendment (Firefighters) Act 2018* (NSW).

worker exposure to unsafe air quality in the workplace, having regard to the regulations adopted in California.

Recommendation Three (Issue Resolution Procedure)

- A. The NSW Parliament amend the *Work Health and Safety Act 2011* (NSW) (the **WHS Act**) to adopt the Boland Review Recommendation 13 (dealing with timely attendance by inspectors and escalation to an appropriate tribunal, to ensure enforceable safety outcomes).
- B. In particular, the Act be amended to provide that safety disputes are automatically referred to the Industrial Relations Commission if an inspector is not able to resolve a dispute within 48 hours from the time of referral.
- C. The NSW Parliament amend the WHS Act to state that an association registered under either the *Fair Work (Registered Organisations) Act 2009* (Cth) or the *Industrial Relations Act 1996* (NSW) is the default representative of its members in respect of safety issues and is a party to safety issues involving its members.

Recommendation Four (Improved Stand Down Rules)

- A. The NSW Government support variations to industrial awards (federal and State) dealing with outdoor work to share the burden of lost work between employees and employers more equitably.
- B. In particular, the NSW Government support the inclusion of provisions requiring an employer to pay employees for days lost due to inclement weather or natural disasters up to a specified limit (and, if necessary, amend the Public Sector Wages Policy to allow this to occur without employee cost savings.)

Recommendation Five (Firefighter Safety)

- A. The Premier issue a direction that FRNSW safety standards for (a) training in structural fires and (b) personal protective equipment (including respirators) be implemented by all NSW paid and volunteer fire agencies, with appropriate modifications for different firefighting contexts. (Such modifications are not to reduce the efficacy of the measures.)

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- B. Implementation of these safety standards by fire agencies (NPWS, FC, RFS) be subject to consultation with firefighters' trade unions (AWU, PSA and FBEU), the RFS Association and SafeWork NSW.
 - C. The Office of Industrial Relations and SafeWork NSW establish a cross-agency standing committee on fire safety standards consisting of agency and union representatives and representatives for Public Sector Industrial Relations and SafeWork NSW, to review safety standards on an ongoing basis.

Recommendation Six (Firefighter Health Checks)

- A. The NSW Government fund appropriate levels of health screening for field officers engaged in firefighting duties for NPWS and FCNSW.
- B. NPWS and FCNSW review their policies and procedures on health screening for smoke-related illnesses in consultation with firefighters' trade unions.

Annexures

1. California Emergency Regulation, Section 5141.1—*Protection from wildfire smoke* (July 2019)
2. Proposed Revisions to California Emergency Regulation, Section 5141.1—*Protection from wildfire smoke* (August 2019)
3. WorkSafe Victoria, *Health risks of outdoor work in areas impacted by bushfire smoke* (January 2020)
4. Yu et al, "Bushfires in Australia: a serious health emergency under climate change" in *The Lancet Planetary Health* (2020), Vol 4(1), pp e7-e8.