

CORRECTED VERSION

STANDING COMMITTEE ON ECONOMY AND INFRASTRUCTURE

Inquiry into the Accident Compensation Legislation Amendment (Fair Protection for Firefighters) Bill 2011

Melbourne—29 May 2013

Members

Mrs A. Coote	Ms J. Pulford
Mr G. Barber	Mr J. Lenders
Mr C. Melham	Mr S. Ramsay
Mr D. Drum	Mr B. Finn

Chair: Mrs A. Coote

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Witnesses

The Honourable Gordon Rich-Phillips, MLC, Assistant Treasurer;

Mr J. Nott, Department of Treasury and Finance; and

Ms P. Dedes, Victorian WorkCover Authority.

The CHAIR—I would like to welcome The Honourable Gordon Rich-Phillips, the Assistant Treasurer, tonight. Thank you very much indeed for being here. You are not unaccustomed to our committee and we do thank you for giving up your time as you have indeed done in the past. We have a series of questions, as you know, which we shall be asking. He is joined by Mr Jeremy Nott, Department of Treasury and Finance, welcome, and Ms Penny Dedes, Victorian WorkCover Authority. Thank you both indeed for being here. I apologise for this strange timing but we are constrained by time. That is why we are having to meet at this time. I would also like to acknowledge the sponsor of the bill, Mrs Colleen Hartland, who is in the gallery here. Thanks, Colleen for being with us.

I have some preliminary comments to make and then I will open up the meeting for discussion. I welcome our witnesses, as I just said, to the Legislative Council, Economy and Infrastructure Legislative Committee public hearing. Tonight's hearing is in relation to the inquiry into the Accident Compensation Legislation Amendment (Fair Protection for Firefighters) Bill 2011. The terms of reference for the inquiry are as follows:

The Accident Compensation Legislation Amendment (Fair Protection for Firefighters) Bill 2011 as introduced into this house by Ms Hartland and ruled out of order by the president on 20 February 2013 for infringing section 62 of the Constitution Act 1975 be referred to the Economy and Infrastructure Legislation Committee for consideration and report by 12 June 2013 on measures and addressing any constitutional impediment to the bill's introduction into the Legislative Council.

All evidence taken at this hearing is protected by parliamentary privilege as provided by the Constitution Act 1975 and, further, subject to the provisions of the Legislative Council Standing Orders. Therefore you are protected against any action for what you say here today but if you go outside and repeat the same comments they may not be protected by this privilege. All evidence is being recorded. You will be provided with proof versions of the transcript within the next week. Transcripts will ultimately be made public and posted on this committee's website. We have allowed for you to make about five to 10 minutes of an opening comment if you wish and then the committee will then ask questions in relation to the constitutional issues pertinent to the bill. I invite you to make an opening statement should you wish.

Mr RICH-PHILLIPS—Thank you, Mrs Coote, and I would thank the committee for the opportunity to talk about these issues, the constitutional issues, associated with Ms Hartland's bill. I understand, having read the transcript of your previous hearing that that is the area you are focusing, rather than the policy aspects of the proposal and I am happy to answer the committee's questions.

The CHAIR—Thank you very much indeed. We will start with our deputy chair, Ms Pulford.

Ms PULFORD—As we were saying in the transcript from the previous meeting and also in some of the debates around very similar issues in parliament, we have to a degree been trying to explore this idea about the cost impact of this legislation and in our last meeting we heard evidence that there are indeed quite a number of precedents around bills being introduced into the Legislative Council that had cost implications. It will be a task for our committee to grapple with about whether there is any difference about the size and scope of the cost. We were interested in exploring what advice you had received from the Victorian WorkCover Authority around the likely cost. The VWA's submission to the Senate committee on a similar question indicated that actuarial costing would be required before similar legislation could proceed in Victoria.

Similar legislation is proceeding in other jurisdictions in various degrees of completeness, so I am sure it is an issue that the VWA has considered and it would be great if you could update us on where the VWA is at in terms of numbers.

Mr RICH-PHILLIPS—Certainly. Thank you, Ms Pulford. I guess there are really two aspects to look at with respect to the potential cost implications of this type of proposal: one is the direct cost impact on the WorkCover scheme, and to put this in some context, the WorkCover scheme provides workers compensation for employees essentially. In this context if claims were to arise under this proposal they would relate to professional firefighters who might be employed by, most likely MFB, possibly DSE, possibly CFA. If compensation was payable in respect of those professional firefighters it would be paid by the Victorian WorkCover Authority as the insurer for those employers.

The second element of the proposal is how it impacts upon volunteer firefighters. Under the CFA Act—and I am not the minister responsible for that act—there is a provision in the CFA Act which basically provides in

layman's terms that a CFA volunteer is entitled to compensation as if they were an employee under the WorkCover scheme in accordance with the entitlements of the Accident Compensation Act. That is a separate element which is not managed through the VWA. It does not impact the VWA scheme, it is effectively a cost borne by the CFA as if they were covered by the VWA scheme. On the question of cost, in relation to the VWA scheme, some actuarial work has been done by PriceWaterhouseCoopers and the preliminary figures suggest the cost to the scheme would be in the order of a \$10 million annual cost and a liability impact on the scheme because scheme costs are, for VWA, the whole of life cost is calculated in terms of the future liabilities against the scheme. That has been assessed at around \$120 million impact on the liability. Separate to that, CFA would have costs associated with this proposal. Those are not VWA numbers, they are CFA numbers.

Ms PULFORD—Do you know if these numbers have been—

Mr RICH-PHILLIPS—Numbers have been prepared by the CFA. Now, they are not my numbers because I am not able to give those numbers to you, but to put it in some context the cohort of CFA volunteers I think is around—active—33,000. By comparison, the active professional firefighter is around 2,400, so it is a substantially larger cohort in terms of numbers of people.

Mr BARBER—Minister, would you make Victorian WorkCover Authority's actuarial assessment available to the committee?

Mr RICH-PHILLIPS—I thought you would be the first to ask me that question, Mr Barber. I will actually take it on notice, and the reason I will take it on notice is because I want to be certain as to what we can release from the actuarial assessment and what would be commercially sensitive information.

Mr BARBER—Which parts of the actuarial assessment are commercially sensitive as opposed to just assumptions based on—presumably you have statistics on how many people are dying of the cancers mentioned in Ms Hartland's bill which would be one basic input. Are there are other inputs that are commercially sensitive?

Mr RICH-PHILLIPS—I will have to take it on notice, Mr Barber, and get some advice on that. If I can make it available, I will.

Mr BARBER—Thank you. In WorkCover's submission to the committee they state that the claim's experience causes premiums to increase or reduce for a given employer, employer client. It would be the case that whatever the actual claims there would be an attempt to recover those by upping the premiums on that one client. You do not spread them across all clients.

Mr RICH-PHILLIPS—In the case of large employers, there are two factors that come into calculating the premiums. One is what happens across the industry—and in this case it is a fairly small industry, there is a small number of employers—and what happens with that individual. Both those factors determine the premium. Yes, if there was a cost increase in the industry in total that would put pressure on premiums, and if there was a cost increase in terms of claims for an individual employer, that would have an upward pressure for the employer.

Mr BARBER—As you say it is a small industry with a number of like bodies that are pretty much all run by governments, so you think would try and recover it from the employer, in this case being the CFA, MFB and DSE.

Mr RICH-PHILLIPS—Well, it would depend because the total claims in an industry sector, under the industry classification, will impact the industry rate. There would be flow-on effects to the other employers in that cohort but the big impact would be felt by the employer that had the big increase in claims costs.

Mr BARBER—The CFA submission says that they effectively self-insure a certain part of the claim and then they reinsure off to VMIA. This is for the volunteers now. They self-insure a certain amount of each claim and then they reinsure off to VMIA. Do I read that right?

Mr RICH-PHILLIPS—I am not in a position to answer that for you, Mr Barber, as to the CFA's arrangements. They are outside the Accident Compensation Act.

Mr RAMSAY—Can I say from the outset I think Ms Hartland's motion is very commendable for looking at ways to provide some support for those career firefighters and volunteer firefighters that have or will contract any particular sickness in response to their activities is commendable. Having been—and still am—a CFA firefighter I support certainly whatever we can do for our volunteers. The question to you, Treasurer, is a clarification in the roles of insurance in relation to the CFA professional, the CFA volunteer, which I understand is funded through the CFA budget; the career firefighter which I think you said is mainly through the MFB and the workers compensation fund and—correct me if I am wrong in your response—it is suggested by Ms Hartland in some discussion we had at the last meeting that her view was that in the likelihood of this motion to move a new act in relation to those identifiable cancers that only a handful would potentially seek compensation of what was a new act.

I would probably dispute that because my understanding is that in fact right through the different compensation pathways, be it through CFA or through workers compensation, in fact there would be a number of potential claimants that would have a significant impact, both for the fund itself, its yearly premiums and also the CFA budget. I guess the crux of the matter is what impact, if in fact this became an act rather than a regulation, would that have to either the fund itself, the compensation fund, through career firefighters or the CFA budget through volunteer firefighting. If it does have a significant financial impact then obviously it contravenes, or it supports, the president's ruling in relation to why this was brought to this committee. Could you respond to that.

Mr RICH-PHILLIPS—Thank you, Mr Ramsay. To go back to your opening point about the structures, yes, it is correct that employee firefighters, for want of a better term, are covered by the Victorian WorkCover Authority scheme through their employers paying premiums. Volunteers are covered under the CFA Act, under the scheme which essentially mirrors the provisions of the WorkCover scheme. That is the distinction between the two. The CFA volunteer coverage is not undertaken through the WorkCover scheme. That is a separate matter for the CFA budget.

In terms of the cost, as I indicated in answer to Ms Pulford's question, PWC, who are the actuaries for the Victorian WorkCover Authority, have estimated that the cost of a proposal like Ms Hartland's would be around \$10 million annually to the WorkCover scheme and would have a liability impact because the cost of future claims also have to be calculated and built into the liability of the scheme. That is estimated to be around \$120 million.

Mr RAMSAY—The expectation of potential applicants to the fund, if in fact we sat under this new act, it was suggested a handful of them. I am perhaps suggesting to you there would be simply more than a handful. Is there any way you could judge what the potential liability would be?

Mr RICH-PHILLIPS—Well, basically it is hard not to get into the policy issues in talking about this, and your opening point around making compensation available to firefighters being commendable, not wanting to get into the policy side of things but I can say that already firefighters who contract cancers as a consequence of working as a firefighter are entitled to compensation now and in fact have received compensation. What Ms Hartland's bill seeks to do is make a blanket position that if you have particular cancers and you have served as a firefighter for a particular period of time you are automatically deemed to have contracted that cancer as a consequence of being a firefighter, so it is changing the way in which compensation is payable rather than necessarily creating a new entitlement, that is creating a broad entitlement to compensation rather than necessarily creating a new entitlement.

To the extent that currently if a person makes a claim for compensation on the basis of contracting cancer as a firefighter, those individual claims are assessed and determined on an individual basis. Under Ms Hartland's proposal it would automatically be deemed to be a valid claim. To that extent you would expect there would be more claims because there would not be a rejection of claims.

Mr RAMSAY—My understanding is there are other states that have been looking at similar type

legislation but there is a significant variation between what has been proposed here as to what other states are looking at. I am trying to understand the difference. That blanket approach—the ownership and responsibility is passed to the applicant, or rather to the employer, which has to prove that in fact they are not responsible for contraction of the disease. There is a significant difference between this proposal and what other states are looking at in effect.

Mr RICH-PHILLIPS—Again that goes to the policy questions of the subject-matter. I understand there are differences between different proposals in different states, qualification periods, extent to exposure to firefighting activity et cetera, and retrospectivity come into play. There are a number of different proposals in different states.

The CHAIR—Ms Pulford has something that she would like to follow up on.

Ms PULFORD—Further to your comments about an existing group of claimants who are successfully establishing the relationship between their work as employee firefighters and their illness, are you suggesting then that there are claims suppression going on because of the complexity in establishing the link, because you are saying there is an acknowledgement that repeated exposure for firefighters can and does contribute and cause some types of cancer. You are also saying that the passage of this legislation in your area alone, putting aside the CFA volunteer firefighter part of the equation, would cost in the order of \$10 million a year. If there are new people with new illnesses establishing this, is that because currently there are people who would perhaps be entitled to compensation who are not succeeding in pursuing their claims?

Mr RICH-PHILLIPS—Yes, there have been a cohort of claims made. Some of those claims have been successful, some of those claims have not been successful. Under a deemed model those claims would be deemed to be successful, would deem to be accepted. It would necessarily be a larger cohort with successful claims.

Ms PULFORD—There would also I think be an argument that could be made, particularly in relation to treatment for cancer, that early treatment will result in better outcomes for patients and therefore lower costs in the long run. What do you say to that?

Mr RICH-PHILLIPS—That is not something I could comment on. That would really go to the nature of the cancer and everything else. I think it is probably a bit beyond the scope of what we are talking about here.

Ms PULFORD—It is a question about timely access to compensation, isn't it? The main purpose of the bill is to reverse the onus so that connection, that relationship between the cancers and the work is established and can perhaps be litigated case by case.

Mr RICH-PHILLIPS—The issue here—and it goes to the policy question—is what is a cancer, what is a workplace related cancer as opposed to a cancer that is not workplace related. Under the existing legislation, a cancer which is related to workplace activity is compensable but that is established on an individual basis, looking at individual circumstances of each case. For example there can be lifestyle factors which come into play which may lead to a higher risk of cancer rather than the workplace exposure. If a person is a long-term smoker, for instance, would be something that would be potentially a factor to consider.

The CHAIR—With all due respect, Assistant Treasurer, we are being drawn into the policy area. We have time constraints here tonight and a number of the other members want to ask questions. If I can go to Mr Finn.

Mr FINN—Can I say, Assistant Treasurer, denying firefighters compensation for a cancer or disease that they contracted during the course of their duties would be the last thing that I would want to do, but I do not see that as the question that we seek to discover the answer to. Clearly the question is regarding whether this is a constitutional bill. You have made it clear that you believe it would cost the taxpayer \$10 million. Is that what you say?

Mr RICH-PHILLIPS—\$10 million, yes.

Mr FINN—Is there any way that you could see this described as anything other than a financial bill?

Mr RICH-PHILLIPS—That is really a question for the committee. Section 62 of the Constitution Act describes what is a money bill—rent, tax et cetera—and that is really a matter for the committee to determine if the cost of this legislation is in fact a rent, tax et cetera as defined in the bill. Certainly the advice that I have received from the VWA and from Treasury that there would be a cost implication of this bill being the \$10 million annual cost to the VWA scheme, the liability impact, and there would be a consequential impact on the CFA for the volunteers, but it is really a definitional issue for the committee as to whether that cost represents those disqualifying factors as set down in section 62 of the Constitution. That is why I am interested to hear the evidence of your next witness.

The CHAIR—Thank you. Indeed.

Mr LENDERS—I would like to follow up on questions from Mr Barber and Ms Pulford. Minister, you have said to us that you have an assessment from the VWA and you have taken it on notice. But I think Ms Pulford's question is very pertinent. It really is what are the assumptions of your assessment. We know there are multiple illnesses that people have that early intervention actually means you reduce the cost by dealing with it early, without me going into examples of that. What I am interested in is you have given us a figure of \$10 million, you have mentioned there are 15 times as many volunteers, and presumably it is not 15 times the cost simply because they are not exposed to such lengths of periods of time, and also 87½ per cent of that cost is not appropriated, it actually comes through the fire services property levy but anyway that is a separate issue and there is still a portion that is obviously from the consolidated fund. But my material question though is the figure of \$10 million, how can we as the committee have any confidence in that figure when without the assessment that Mr Barber has asked for, or actuarial evidence, how do we know that that is the lowest figure possible, because it takes into account early intervention and therefore a reduction in medical and whole of life, and all it does is support costs that come with any form of treatment of cancer. My question is you have given us a figure but we really do not know the assumptions behind that figure to have any great confidence in it.

Mr RICH-PHILLIPS—I certainly take your point. I am not suggesting that it is necessarily the lowest figure and any actuarial assessment will depend on the assumptions that underpin it. That is always the case with the actuarial assessments around the VWA scheme. Although I would say to the committee, if you accept the proposition that the bill you are looking at provides compensation for people who, in Ms Hartland's view, are not otherwise receiving compensation that will be at a cost, whether it is the \$10 million assessed by PWC or whether it is a different cost, that will be at a cost which will be borne, in the case of professional firefighters, via the VWA scheme back to the employers and, in the case of the volunteers, through the mirror scheme managed through the CFA.

Mr LENDERS—The assumption that the minister is operating on is that there is no early intervention. The deeming provisions, by definition, mean there is an earlier intervention, so we are being asked as a committee to accept the figure of \$10 million, which I do not dispute that is the figure, but what I do not understand is how it has been factored in, the early intervention that comes by nature of the deeming. My assertion—because I do not have the report in front of me—is that early intervention could actually bring down the cost significantly. It could equally raise it but it could bring down the cost by early intervention before these cancers accelerate. The minister is asking us to accept the \$10 million figure which we need to, on face value, coming from a government that has a position it wants to enforce, when we cannot investigate it until Mr Barber's question is answered.

Mr RICH-PHILLIPS—The other side of that equation is including, if you add to the cohort of people who received the compensation, is that additional cost going to be greater than the reduced cost associated with early intervention and those are all assumptions which underpin in the actuarial assessment.

Mr DRUM—Following on from the \$10 million per annum and \$100 million liability have you done any modelling to work out what impact that is likely to have on premiums?

Mr RICH-PHILLIPS—In terms of premiums the committee asked for a sample around a \$500,000

cost imposed on one of the employers, and the advice back from VWA with respect to if there was an additional \$500,000 worth of claims costs imposed on the MFB that the premium impact would be an additional \$295,000—a bit over \$295,000—per annum in terms of premium because of the way in which individual costs are then assessed for the likely future claims cost and the impact that has on the premium. That is indicative of the sort of impact on premiums.

Mr DRUM—Is it as simple to simply modify that by 20 times?

Mr RICH-PHILLIPS—I would have to take some advice on that. The calculation of premiums is a very complex area. The formulas are very complex. We can get some advice back to the committee on whether that would be the case. Now, of course, that \$10 million figure relates to all the employers, that is an assessment of the industry, not one particular employer, and it would depend on the WorkCover rates for the individual employers. I do not know if they are the same across the firefighter employers.

Mr MELHAM—I have two questions. The first question is what data has been relied on to basically assess the \$10 million or the \$120 million? Are we looking at the number of claims that have been rejected or are we just doing a general—do we have any data to basically tell us how many—what do we base that on, perhaps some sort of data for the cost. The second part of the question is if the bill is successful do the firefighters—otherwise known as the forest firefighters employed by DSE and Parks Victoria, for example, would they be covered by the scheme?

Mr RICH-PHILLIPS—On the first question of what data, PWC as the actuaries work with the Victorian WorkCover Authority. On an ongoing basis they do all of VWA's major actuarial work. They have access to claims data and they would take into account what is relevant in calculating those actuarial assessments. As I indicated to Mr Barber I will take advice on that. We can provide that actuarial work to the committee. On your second question around DSE firefighters, this provision—word inserted in the Accident Compensation Act—would apply to any person working as a firefighter, irrespective of who their employer was so, yes, it would pick up DSE firefighters.

The CHAIR—Are there any further questions?

Mr BARBER—Rapid fire question.

The CHAIR—We would be disappointed if you did not.

Mr BARBER—Have you examined the claims and pay-out history of the federal scheme in the 12 months since an advanced bill was applied to federal Commonwealth firefighters?

Mr RICH-PHILLIPS—No, we have not.

Mr BARBER—Okay. These unsuccessful claims that you are getting now you presume that most if not all of them would be successful after Ms Hartland's bill passed into law. Are you able to tell me how many of those unsuccessful claims there are now relating to the cancers listed in Ms Hartland's bill?

Mr RICH-PHILLIPS—There have been around 17 claims since the start of 2012. I understand about 11 have been rejected, some are still pending and some of them were accepted.

Mr BARBER—Thank you. The last question: employers who are hit with a large increase in their premium or want to avoid a large increase in their premium often do things proactively, don't they, to make sure that their WorkCover premiums do not go up?

Mr RICH-PHILLIPS—Well, certainly it is one of the objectives of the scheme that if they do incur claims, and that does flow through to their premiums—

Mr BARBER—In a generic workplace they might do things so that they do not have as many claims.

Mr RICH-PHILLIPS—If they avoid claims, yes.

Mr BARBER—Thank you.

Ms PULFORD—I did not hear you, 17 claims since the start of 2012, 11 accepted?

Mr RICH-PHILLIPS—No, 11 rejected, some still pending and four or five have been accepted.

Ms PULFORD—Again if you have that information—11 rejected. How many of them are being contested and continuing through the dispute resolution processes?

Mr RICH-PHILLIPS—We will go through our notes.

Ms PULFORD—Thank you.

The CHAIR—If there are no further questions I would like to indeed thank you, and there are several issues that have arisen tonight that you said you will come back to us with on notice. We have time constraints on the answer to the parliament by 12 June. Speedy answers would be most welcome. If you could deal with our secretariat and they will explain our time constraints in greater detail but we would be very appreciative of early answers. That would be very helpful.

Mr RICH-PHILLIPS—Certainly.

The CHAIR—We do have further witnesses tonight, so I would like to thank the three of you for being here and for your answers. Thank you very much indeed.

Mr RICH-PHILLIPS—Thank you.

Witnesses withdrew.