

# **CORRECTED VERSION**

## **STANDING COMMITTEE ON ECONOMY AND INFRASTRUCTURE**

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

Melbourne—8 May 2013

#### Members

Mrs A. Coote

Mr D. Drum

Mr G. Barber

Ms J. Pulford

Mr S. Ramsay

Mr B. Finn

Chair: Mrs A. Coote

Deputy Chair: Ms J. Pulford

#### Staff

Secretary: Robert McDonald

Research Assistant: Sarah Hyslop

#### Witnesses

Ms C. Hartland MLC, and

Ms L. Ingham.

**The CHAIR**—Welcome, Ms Hartland and Ms Ingham, and I have an opening statement to read at the moment and then we will invite you to address this bill and then we will ask some questions of you. I open the Legislative Council Economy and Infrastructure Committee public hearing. Today's hearing is in relation to the Inquiry into Accident Compensation Legislation Amendment (Fair Protection for Firefighters) Bill 2011. I welcome Ms Colleen Hartland, the sponsor of the Bill, as well as Ms Liz Ingham, who is assisting, here this evening.

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 the committee's website. We have allowed 10 to 15 minutes for you to make any opening comments and the committee will then ask questions in relation to the clauses in the bill.

I would ask the public gallery to turn off any mobile phones that you may have and to also remind you that if there are any interjections you will be asked to leave the hearing. I would also like to remind Ms Hartland what our brief was and it is this:

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 aimed at addressing any constitutional impediment to the bill's introduction to the Legislative Council.

I am sure, Ms Hartland, you understand we are not talking about the policy involved in this bill here this evening, we are talking about the constitutional impediment to the bill's introduction to the Legislative Council. It is now 20 to 9 and I invite you to make a submission, thank you.

**Ms HARTLAND**—I thank the committee for the opportunity to appear and make my contribution and, of course, as Ms Coote said, there are parameters around this presentation, so I am not going to be going through my second reading speech again or go outside the terms of reference to this inquiry, instead I will assume that nobody needs convincing that firefighters deserve the same protection as all other workers and instead I will put my bill into context and address the president's concern.

In the 18 months since the Commonwealth legislation was passed there has been positive action in Western Australia, South Australia and Tasmania to harmonise the new laws across the states which was a key recommendation of the Senate inquiry. I hope that this committee takes courage from the bipartisan nature of the action around the country. In Western Australia the returning Barnett state government was elected on a promise to introduce presumptive legislation. The pre-election policy announcement was detailed and sincere. Key elements were that volunteers would be included, together with career firefighters, and that deeming clauses would be legislated. The Barnett government is already engaging the stakeholders and we have every confidence that the legislation will be introduced and passed.

Last week, the Tasmanian government introduced its own bill. It includes volunteers and puts the deeming clauses into law. In South Australia the situation is pretty much the same as I have outlined in my second reading speech. The bill was introduced by the Greens in the upper house with no constitutional impediment and nobody at this stage has the least issue with it. The bill includes volunteers and the same 12 cancers. The government in South Australia has said that it is in favour of presumptive legislation for career firefighters and has not ruled out supporting the bill. We will find out next week when the bill is expected to go to a vote.

I am now about to make a number of references to the Commonwealth legislation my bill was modelled on, and the Senate inquiry, but some elements of my bill are unique and I am going to ask my assistant Liz Ingham, who I think is known to a number of you, to help us go through the bill if that is what the committee wants.

**The CHAIR**—Yes.

**Ms HARTLAND**—We will do this quite briefly.

**Ms INGHAM**—First of all what I will do is I will take you through very briefly clause by clause. If you require more detail please do ask. I am not sure how much I should presuppose that you are aware of the content of the bill before I start. Ms Hartland's bill was based on legislation that was introduced in the Commonwealth parliament and passed with the support of all parties. The concept of the legislation is that Victoria's accident compensation law is the same as it is in the Commonwealth. If you are injured in your workplace you can get WorkCover compensation. That is the same if you get a disease or cancer in your workplace that you fill out a form and say, 'I got this disease or this cancer and these are the conditions in my workplace. This is where I work. I have worked here for this amount of time and this is why I think that cancer was caused by my workplace.' That is also available for firefighters, supposedly, but the problem firefighters face is that their workplace is in all different places around the state. Today it might be a burning car, tomorrow it is a bushfire, the day after that, you know, the parliament of Victoria is on fire.

The nature of that creates, in effect, a kind of loophole, or Ms Hartland refers to it as an artificial barrier that prevents firefighters from proving—because the onus is on the firefighter—that their cancer was caused by their workplace. What happened in the Commonwealth legislation, which is reflected directly in Ms Hartland's bill, is that it names 12 cancers. If you have the bill in front of you—this is the heart of the legislation in clause 3—there is a table of 12 cancers. It names them—

**The CHAIR**—Can I interrupt you for a moment to remind you that we are looking at the constitutionality of the bill—

**Ms INGHAM**—Okay.

**The CHAIR**—And I do not think we need to go through the detail of the bill because that is not the purpose of this evening. We are talking about the constitutionality of the bill and whether it in fact can go back to the parliament. That is what we are dealing with, not the details of the bill.

**Ms INGHAM**—In that case, the context is that Ms Hartland is about to make references to the Senate inquiry. The Senate inquiry examined a bill that was similar to but had key differences to Ms Hartland's bill. Would it be of assistance to name those or can I assume that you will find them?

**The CHAIR**—As long as it is to go to the constitutionality of the bill I am very happy for it. If it is specifics dealing with differences because of the outcomes of them, that is not the place for that discussion here.

**Ms INGHAM**—Let's move on then.

**Ms HARTLAND**—If we move straight into our assessment of the president's ruling, I think that is probably what you are looking for.

**The CHAIR**—That is exactly what we want, thank you.

**Ms HARTLAND**—One of the most interesting things about the president's ruling is that he takes the trouble to show how any increase in the cost is speculative at best and peripheral to the bill itself. He notes that this is not a bill for an appropriation. He says there would be no impact on the consolidated fund. Instead he says the chances of a successful claim by a firefighter who has contracted cancer in his or her workplace would have the effect of increasing costs which may—and I emphasise 'may'; he says 'may', he does not say it 'will'—result in an increase in premiums for WorkCover policies which are compulsory.

The president says you have to take two speculative steps away from the purpose of the bill before you can get any potential cost increase and you may not find a cost increase at all. Those are the two steps I hope this committee will examine, and there is a third step I will outline later. The first step is to ask whether the cost to WorkCover will in fact increase or whether an increase in successful claims will be so modest they will be offset by other savings like a reduction in costs from contested claims, an outcome which is supported by overseas evidence. The authority, the MFB and the CFA are all impacted by the present cost of contested claims.

The incidence of these 12 cancers in the general population is very low. The 12 cancers are two to five times more prevalent in firefighters but we are still talking about a very low number of claims; indeed a handful of claims. It does not take a big reduction in the cost of contested claims to offset an increase in the benefits to firefighters who get cancer from their workplace and have their cancer treated and return to work. If this committee decides that costs would increase at all in the first step, the second step is to determine whether they would increase enough to have any chance of impacting on premiums.

To take this second step you would want to consider how the authority determines its premiums for firefighters and how the CFA's self-insurance scheme is worked out. What is the size of the firefighting workforce? What injuries do firefighters presently make claims for? When premiums are calculated what amount is already included in the potential claims for workplace cancer? Firefighting is a dangerous workplace. Tragic accidents occur and have occurred and will occur with catastrophic fires. Accidents and injuries are the main business of career and volunteer compensation schemes and they will remain so.

We have a number of documents we would like to hand over, and I think possibly rather than going through them tonight if we give them to the committee and then if you come back to us with any other information that you may want. There also must be a contingency worked into the calculation. What sort of increase would fit into that contingency? Does the authority rely on the Accident Compensation Act which purports to provide workplace injury and disease protection to all workers, or does it rely on an artificial barrier, a loophole, if you will, which makes it harder for firefighters than other workers to make a successful claim for disease.

The third element I would like the committee to examine is the practice of this parliament when it comes to bills with a peripheral impact on cost, whether that impact is speculative or otherwise. The parliament does indeed examine debate and pass legislation introduced into the Legislative Council that causes an increase in cost to individuals, companies, groups, government departments and statutory authorities. The practice of parliament in passing legislation of that kind amounts to a rule of practice in relation to section 62 of the Constitution Act, and Ms Ingham will speak briefly to that issue.

**Ms INGHAM**—Ms Hartland asked me to examine recent bills that have been introduced in the upper house to see if I could find points of commonality with her legislation, as she describes it, with a peripheral or speculative or any cost impact. I found there were several, some of which are worth noting. In particular—and this is just in the last few years—the Tourist and Heritage Railways Bill 2010 was introduced in the upper house. It had quite a few different cost elements. There is a registration fee which is described as being modest, and there are costs of the department which Mr Madden described as being modest and largely absorbed by the department. There are two kinds of cost elements there.

Going to the compulsory nature of an exaction, the registration fee was described as being voluntary but a number of members, like Ms Asher, Mr Mulder and Mr Crisp, noted that it might be voluntary but Ms Asher says:

There is always a catch; that is, if various railways wish to participate in grants, government grants or tourism promotions or advertising, then they must be registered. It's all very fine for the government to say it's voluntary. Technically it is, but in order for these railways to participate in the things that they really want, which is tourism promotion, there will be a requirement to be registered.

There was a registration fee with a quasi compulsory nature. There were leases. The leases are \$104 per annum. That would be modest but it is indeed a cost element. The legislation sets up an advisory group or a board which might have a small cost element. There is a remuneration notice but it is not likely to be high. Ms Pulford noted all the useful things that that board would do.

But the main concern that members had in relation to the legislation was the area of insurance of the not-for-profit ventures. Mr Koch said, 'The only concern the opposition had was with the area of insurance.' Mr Mulder said, after seeing the provisions of the bill, 'I'm not 100 per cent sure how the insurance arrangements are going to be arrived at because it was the advisory board that was going to set up the insurance arrangements.' Once again these cost elements are peripheral to the bill and they are uncertain in their cost, and it is going to be worked out at some later date after the legislation is passed.

**The CHAIR**—Can you tell me the exact date of this legislation? I just want to get it on the record.

**Ms INGHAM**—The exact date?

**The CHAIR**—It is prior to November.

**Ms INGHAM**—Yes, indeed.

**The CHAIR**—What date exactly?

**Ms INGHAM**—It was passed on 12/8/10 in the Legislative Council, then moved to the Legislative Assembly where it was passed on 7/10/10.

**The CHAIR**—Thank you.

**Ms INGHAM**—Mr Crisp also noted the insurance, and Mr Ken Smith said, in relation to a group in Gippsland:

Obviously the insurance problems will have to be sorted out. I know while I was there the group had some difficulties so far as insurance was concerned. If they can be sorted out it would be a great thing. I would hate to think that the insurance side of it would go anywhere near what happened with third party insurance which just about sent a number of sporting clubs broke and closed down a lot of businesses because they could not afford the insurance. I wish the bill a speedy track through the house.

There are a couple of other bills that I possibly will not bore you with but I will—

**The CHAIR**—It is not boring us so much, it is a matter of the time—

**Ms INGHAM**—The time, okay.

**The CHAIR**—And you are now out of time but if you—

**Ms INGHAM**—Can I name some of the legislation?

**The CHAIR**—You can name some of the other legislation. If you could give us the exact dates too that would be useful.

**Ms INGHAM**—The Sustainable Forests (Timber) Amendment Bill which was introduced and passed last night in the Legislative Council had a large number of cost elements, including accident, including impact on WorkCover. The Business Names (Commonwealth Powers) Bill 2011, passed on 10 November 2011; Leo Cussen Institute (Registration as a Company) Bill 2011, passed 10 November 2011; Bail Amendment Bill 2010, passed 12/8/10 in the upper house. Those are the main ones.

**The CHAIR**—Is there anything else you would like to say in summing up?

**Ms INGHAM**—Parliament's willingness to examine debate and pass these laws indicate that there is in effect a rule of practice in parliament that these bills may be introduced and examined, and indeed passed and accepted in the lower house.

**The CHAIR**—Thank you very much. Is there anything else you would like to add?

**Ms INGHAM**—No.

**The CHAIR**—Ms Hartland?

**Ms HARTLAND**—No.

**The CHAIR**—Well, I would invite the committee to ask questions and I will call upon the deputy chair Jaala Pulford, firstly.

**Ms PULFORD**—The trip down memory lane on the Tourist and Heritage Railways Bill did ring a faint and distant bell from the previous parliament, although obviously a debate in a very different context. Thank you for your presentation. Obviously we have to consider the question of cost—and I make this remark really for the benefit of the people sitting behind you, other than the people sitting at the table. This is not for our committee to be determining whether this bill passes or fails. This is literally a question about whether it gets in the front door, nor can we even have the debate about the merits of the policy. We are not getting into the merits of the policy, though be assured we all have opinions on all of that as well. If I can ask then if your bill was to succeed and be passed, do you believe there would be additional firefighters that would be eligible for compensation?

**Ms HARTLAND**—If you took away the current artificial barrier there would be but it would also have to be understood that it is a very small group of people and maybe, Liz, you could talk to that as well. In our discussions it would appear that it is going to be a very small group of people. As we said in our presentation as well the issue is if you take away the costs of the contested claims we think that would be a huge saving that could offset the small number of claims that would occur. We would hope that at some stage Fire Chief Ken Block would be able to be called to give evidence. He is a Canadian fire chief and they have gone through this in quite a rigorous way and they have had their legislation now for about eight years. He clearly has the figures that can prove this case.

**Ms PULFORD**—Okay. You would expect that if the Victorian legislation was changed, as your bill would intend, there would be additional people successfully claiming compensation if that was the case.

**Ms HARTLAND**—Yes.

**Ms PULFORD**—That explains the purpose of it. What further information can you give us about the savings that would be anticipated from the removal of contested claims? Do you have information about how many claims, say, per year are currently before the Victorian WorkCover Authority, what proportion of those are contested in a manner that flipping the onus of proof would acquit straightaway?

**Ms HARTLAND**—We understand that it is a very small group of people but I would clearly suggest that WorkCover would be an obvious government department to call for this.

**Ms PULFORD**—That is not pertinent to the question though.

**Ms HARTLAND**—No, that is true, it is about other injuries, yes.

**Ms PULFORD**—If I can follow up with one final question. The CFA is a self-insurer under the act. Is that right?

**Ms HARTLAND**—Yes.

**Ms PULFORD**—Okay, thanks.

**Mr FINN**—You mentioned that you have had similar legislation—or there has been similar legislation—in Western Australia, Tasmania and South Australia.

**Ms HARTLAND**—Yes.

**Mr FINN**—I presume that that legislation was introduced in Western Australia and Tasmania in the lower house?

**Ms INGHAM**—Western Australia has not yet been introduced. Mr Barnett made a very detailed pre-election promise and was returned as Premier and is setting about preparing the legislation.

**Mr FINN**—Presumably that will be introduced in the lower house?

**Ms INGHAM**—Yes. What we heard from the people engaged in the consultation is that they are not expecting it to be in the autumn session but they have no doubt as to the sincerity of the intention to introduce.

**Mr FINN**—Yes. The Tasmanian legislation was introduced in the lower house?

**Ms INGHAM**—It was introduced by the government, yes, I believe in the lower house.

**Mr FINN**—Okay. What does the South Australian constitution—you mentioned that the South Australian legislation was introduced in the upper house.

**Ms INGHAM**—Yes.

**Mr FINN**—What does the South Australian constitution say on finance bills being introduced in the South Australian Legislative Council?

**Ms INGHAM**—I do not have detailed notes with me but I understand it is broadly similar to Victoria.

**Ms HARTLAND**—But we can confirm that point.

**Mr FINN**—Yes, because I think that is a very important point, because if it is similar legislation and it is a similar constitution then that is a precedent clearly that has to be taken into consideration. But if it is a different constitution then that is also something that needs to be taken into consideration.

**Ms HARTLAND**—We will clarify that for you but we understood it was a similar structure.

**Mr BARBER**—You gave examples of bills that create costs on people and that does not surprise me because we are in the red tape business so pretty much everything we do puts a cost on somebody. But section 62 is quite specific, it says—you can leave out the bit about appropriating and consolidating, we all agree we are not doing that—'A bill for imposing any duty, rate, tax, rent, return or impost.' Now, it is not a duty, a rate, a tax or a rent. An impost is defined as something that must be paid similar to a tax. It is in my little dictionary on my iPad here but I would rather have the *Macquarie* or the *Concise Oxford*. Impost is another way of saying a compulsory tax. That leaves a return, and a return when used as a noun is kind of like a thing which has been given or sent back, so a return is like something I buy from a shop and then sent it back saying, 'I want my money back.' They call it a return, a thing that has been returned.

Is there anything in your bill that is an impost, that is a compulsory thing like a tax, or is there anything in your bill that is really a return, that is a kind of a deliberate returning of something that was once previously sent in the other direction? If not then 62 has really got nothing to do with your bill then, has it?

**Ms INGHAM**—We would say no, but the president's ruling did not specifically say, implied, that the compulsory nature of workers compensation insurance—I was trying to understand what issues we need to address. I took the compulsory nature of the insurance as being the connection he made with it being an impost, because it certainly is not a payment to the government. That is why our argument is, firstly, that costs are not going to go up; secondly, if they did there are offsetting amounts, so in the end there would be no compulsory increase in costs.

**Mr BARBER**—He says, 'In order to accommodate the increased costs'—which there may or may not be—'it may result in an increase in the cost of premiums.' The premium would be the impost, but your bill does not impose that premium. Your bill does some things that makes this authority have some more costs which may lead to the impost, but your bill does not contain the impost.

**Ms INGHAM**—Yes, in the same way that last night everyone was talking about the forest bill and whether or not it might lead to an increase in death or injury to workers. It would be precisely the same issue.

**Mr BARBER**—Regulation that applied in another way to that group, the insurer group, any regulation that made them do anything like buy more cars or insure themselves better or send out forms in

triplicate or whatever it is, anything that gave them more work to do would create a cost, and that cost might then lead to them making the impost, but your bill is not setting up the actual impost. You are not saying premiums will be X or they will go up by X to allow for the thing you want to do.

**Ms INGHAM**—Indeed, no.

**The CHAIR**—Mr Ramsay.

**Mr RAMSAY**—Thank you, Mrs Coote, and can I start by thanking everyone for making themselves available and appreciate the large crowd here. I would also put on the record that I am a CFA volunteer, not a professional but I sympathise with some of the work you are doing and also, given the look of some of those eyes, I sympathise with you that we actually sat until 3 o'clock this morning. If you are feeling a bit tired, we are tired with you.

Having said all that I want to, firstly, respond to Liz. I spoke to the bills you referred to in relation to sustainable timber harvesting last night, and the context of the bill was more about referral of power to big forests, rather than costs to workplace and other things. Certainly the bill itself was not so much associated with the extra costs associated with workplace but we can have that argument down the track. We had it last night and we can do it all again outside the chamber. But my question to Ms Hartland perhaps is in its submission to the Senate inquiry on similar Commonwealth legislation—we have talked a bit about that—the Victorian WorkCover Authority say that 'before making changes in Victoria we would need to examine scientific evidence and consider actual costing of the financial impact of new claims if these cancers were claimed from firefighters, the impact on the overall accident compensation scheme and any possible need to raise employers premiums.'

The real crux of the question I want to ask is the government previously stated that this work is currently being undertaken, so I question why you would bring this bill forward before that work has been done.

**Ms HARTLAND**—Are you referring to the Monash study or the WorkCover?

**Mr RAMSAY**—I am talking about WorkCover.

**Ms HARTLAND**—Well, one of the problems that I see with WorkCover is that nobody has actually seen it. I have asked for it several times now and it has not been made available, so hopefully it will be made available to this inquiry. I think that would be really fantastic. Also the Senate took the view that there was significant evidence 18 months ago to make its decision both on the scientific basis and on the costs. I am a bit perturbed as to why WorkCover has not presented that, considering—as far as I understand very clearly and I believe that the science is in. Since firefighters are battling cancer without the assistance of WorkCover the Commonwealth has acted, and one by one the other states are acting to close the loophole. I would like to see what WorkCover is going to do about this, and I think they should step up to the mark and be doing that as quickly as possible. I do not think we can wait for that to occur, especially as you are a CFA volunteer you are aware of the work being done by career and volunteers. I think WorkCover is the one who has to disprove what we are saying. We do not have that information, I have asked for it on a number of occasions and we are about to do an FOI because we have not been able to access it.

**Mr RAMSAY**—It might well be one of the submitters, I guess, in relation to the inquiry.

**Ms HARTLAND**—That would be excellent if—

**Mr RAMSAY**—My understanding is the work is still being done but I will take advice on that.

**Ms HARTLAND**—It would be great if they submit it.

**Mr DRUM**—I was wondering if it would be possible, could we seek the same outcome that you are looking for, via a new bill, if you were simply to put the 12 diseases or the 12 cancers in the Accident Compensation Act 1975 so we do not need a new bill, but simply put these 12 cancers into, and we list them, so they become—



**Ms INGHAM**—I cannot find my notes of this so I will speak off the cuff. It is quite different. Section 87 contains the deeming clauses. If you go to the regulations that are made, diseases are quite different. They are set out quite differently to this. It has a list of diseases and a list of materials. It says that brucellosis is caused by the brucella bacteria, but not the occupation. It says that one particular thing that you come into contact with might cause one type of disease. The problem is that the science behind this that the Senate inquiry reported on is that it is the occupation of firefighting that is linked with cancer, rather than any particular material, also it is a cumulative effect over a period of years. Unlike the items that are prepared under the deeming clauses it has this cumulative impact. That is all reflected in the structure of the legislation. Also the firefighters say that they want the certainty of having it in the legislation and especially with all of the other states starting to act, and an area of commonality is that they are all legislating the deeming clauses.

**Mr DRUM**—These 12 cancers would be in the legislation.

**Ms INGHAM**—They would.

**Mr DRUM**—In the Accident Compensation Act.

**Ms INGHAM**—That is what Ms Hartland's bill does, but if they used the regulation-making powers under the deeming clauses then they would end up in regulation.

**Mr DRUM**—Okay. Any idea of the numbers? This, to me, when I look through that list seem to be quite common cancers. Am I right in understanding that a long-term volunteer contracts any one of these cancers and instantly would suggest that it is the firefighting that has caused it? Is that how your bill will work? We have 80,000 volunteers—

**Ms INGHAM**—38,000.

**Mr DRUM**—Any of them contract any of these?

**Ms INGHAM**—Well, it is not automatic. They have to go through the other elements that are in the legislation in order to be working as a firefighter. Firefighting duties need to make up a substantial proportion of their duties and they need to meet the qualifying periods, either in one lump or over a period of time, and they have to be exposed to the hazards of a fire scene during that period. They still have to meet all of those other elements just the same as if they were a career firefighter.

**The CHAIR**—Mr Drum, we do not want to get into too much detail with—

**Mr DRUM**—Yes, I understand that. I am done.

**The CHAIR**—I think Ms Pulford has another question.

**Ms PULFORD**—Yes. I am curious to know if the committee comes to the conclusion that the bill does infringe that section of the act, given what you have said about what is going on in other jurisdictions, some of the scientific arguments that have been had in this country and overseas around repeat exposure and occupational risk in making that link, by what other means would you propose to continue to pursue this issue, or by what other means do you think parliament could overcome the deficiency that the legislation seeks to fix?

**Ms HARTLAND**—I think that is fairly straightforward if this committee said this was not constitutional and we could not proceed, the first thing I would be doing is saying that the government should take it up because as far as I am concerned the science is in. This needs to happen. I have presented this bill on behalf of the Greens but I do not particularly care who goes forward with this bill, it is about the bill going forward. If the government wanted to take it and put it in the lower house, I think that would be fabulous.

**Ms PULFORD**—This bill or similar achieving the same goal proposed by the government in the lower house where the constitutional impediments do not exist.

**Ms HARTLAND**—Yes.

**Ms PULFORD**—That would be a satisfactory outcome for you if your bill was unable to jump the hurdle.

**Ms HARTLAND**—Yes. Obviously we believe that we can jump the hurdle but the bill is so much more important than who puts it forward.

**Ms PULFORD**—It is a hurdle that does not exist in the other chamber, that is for sure.

**Ms HARTLAND**—Yes.

**The CHAIR**—I have one final question and it is something I need to raise with you because it is an unusual circumstance, as the president said. In subsection (5) inserted by clause 3 of the bill it provides specifically for an individual stating that if he or his dependents make a claim in respect of one of the 12 primary site cancers specified in this bill which he has suffered or is suffering that these would be deemed to be due to nature of his employment. Now, the president has stated:

My concern is that it is a very different proposition to what we normally have in bills brought before the house because it seems to request that the parliament provide a clinical judgment and can confer a benefit on an individual that distinguishes the right of that individual from the rights of others.

That was in *Hansard* on 6 February 2013. Could you clarify for me please, or for the committee, why this particular individual is specifically referred to in the bill, and to clarify whether you are asking the parliament to make a decision about the cause of his cancer and why the presumption of this individual's cancer was due to his employment and not rebuttable as in the case for other part-timers under your bill.

**Ms HARTLAND**—This will need to be a fairly detailed explanation—

**The CHAIR**—Yes.

**Ms HARTLAND**—By myself and Ms Ingham. I need to do a certain amount of policy obviously. Mr Potter—and I will try not to, I suppose, eulogise here—and he is in the audience and that makes it more difficult—he has been a firefighter since 1964 and he is dying of cancer. This legislation is possible because of his bravery as a whistleblower. The firefighters often refer to this as 'Brian Potter's law', and often when I get media calls that is what it is called, even though obviously that is not what we are naming it. Even after Brian became ill he has continued this fight and he has continued the fight to make sure that other firefighters are not affected in the way he was. Clearly this is because of Fiskville. Anybody who has read the report will see the very clear connection between it.

This is why we have named him, and because Brian is who he is, on two occasions in the last week he has approached my office and said, 'If these clauses stand in the way of this bill going forward we can take them out,' and I think that says a lot about the person because he wants to make sure that the legislation goes forward.

**The CHAIR**—Which is an issue that goes to what the president was in fact alluding to.

**Ms HARTLAND**—Yes, and that is about the parliament making a decision about the cause of his cancer, yes.

**Ms INGHAM**—Yes. I am not sure that is accurate. In fact I think that it is not. If Mr Potter were to make a claim he would still have to show that his primary site cancer was one of the 12 on the list, and those 12 on the list are the ones that the science say is caused by his work, which is firefighting. The effect of the provision would be that parliament declares that he has worked as a firefighter for the qualifying period, so that he will not have to go through his work and volunteer history back to 1964 and test the definition of what parts of his work amounted to firefighting duties, or any of the other things that you might expect the first

person to make a complicated claim to have to go through.

**The CHAIR**—Would you be prepared to amend this by taking out that clause? You said that Mr Potter had given you a directive. Would that be a possibility?

**Ms HARTLAND**—It would be. Also though it needs to be noted that other people have been named in other bills.

**The CHAIR**—I am interested in this one.

**Ms HARTLAND**—Yes.

**The CHAIR**—You would be prepared to expunge this particular clause if that were to—

**Ms HARTLAND**—Yes.

**The CHAIR**—Okay. I think that is important to get onto the record.

**Ms HARTLAND**—It is really important though—I know this is about policy, Mrs Coote, and we are trying to get away from that, but I think it is also really important for me to say that I think a great deal of this legislation has come about because of what Brian Potter did and because of what he did in exposing what had happened at Fiskville, and none of us would have understood the dangers that those people were encountering at training if he had not done that, so he is very special to us.

**The CHAIR**—Thank you, Ms Hartland. That is now on the record, thank you. Do you have another question, Ms Pulford.

**Ms PULFORD**—Yes. If the clauses referring to Mr Potter's circumstances were removed would that be an impediment to him seeking compensation if the act was amended otherwise?

**Ms INGHAM**—I think we are starting to move into dangerous territory because Ms Hartland and I know a little bit about Mr Potter, and if he were to make a claim I would not want my opinion of his case to be examined on the record.

**Ms PULFORD**—Sorry. Perhaps if I can have another go at the question. If the bill was presented to the house without the clauses identifying Mr Potter would a condition - not his condition but a similar condition in an unknown or unidentified claimant—be compensable?

**Ms INGHAM**—Indeed it would and there would be no impediment, but I should say it is some of the other unique elements of this bill that would let somebody like Mr Potter make a claim. If this committee ends up examining some of those unique elements and making recommendations on removal that might also have an effect.

**Ms PULFORD**—The effect of amending the bill to take away those clauses would not neuter the intent of the legislation in a broader sense.

**Ms INGHAM**—Anybody in his circumstance would be able to make a claim and then take their chances—

**Ms PULFORD**—And have it judged on its merits.

**Ms INGHAM**—Yes.

**Ms HARTLAND**—I wanted to add one tiny point and I know it is again policy and it is somewhat emotive and it is again the Brian Potter question. One of the things we have been quite concerned about in any delay in this is because it is quite clear that Mr Potter is very ill and we would like—this is very emotional, I am sorry, but we would really like him to be in a position to be able to see this legislation go through.

**The CHAIR**—Thank you, Ms Hartland. We have a time frame on this bill which is 12 June and we are working very hard to conduct a number of hearings—

**Ms HARTLAND**—Absolutely, and it is so appreciated.

**The CHAIR**—And to get a number of in fact international opinions on this and we will have the report to the parliament on 12 June as is directed. I do not believe there are any further questions but would you like to have a summary comment, either of you?

**Ms HARTLAND**—I would like to say how much I appreciate being able to bring this bill for examination to this committee, that I think this is what the committees should be doing and I am really impressed with the questions that we have received tonight and it indicates to me that people want to get this sorted, and good questions have been asked and it is greatly appreciated.

**The CHAIR**—Ms Ingham, do you have anything—

**Ms INGHAM**—If the committee has any further questions we would be delighted to assist.

**The CHAIR**—Thank you. Before I close the hearings I would like to also thank the gallery for being here and for being so dignified during the hearings. I am sure, as you understand, this is about a constitutional issue and it is our duty to report back to the Legislative Council by 12 June with our recommendations. We are going to call for submissions and we are also going to be interviewing several other witnesses. I do thank you for your attendance, it certainly shows the interest. In closing the hearing tonight, this brings tonight's public proceedings to a close. On behalf of the committee I extend our thanks to Ms Hartland and Ms Ingham for their time tonight. Thank you all very much indeed.

**Witnesses withdrew.**

**Committee adjourned.**