

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

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Witness

Miss R. Armstrong, QC.

The CHAIR—I would like to welcome Ms Rowena Armstrong QC to our committee this evening. Thank you very much indeed for being here with us. I have a preliminary statement to read and then we will invite you to give us an outline and then we would like to ask questions of you.

I welcome Ms Rowena Armstrong 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 five to 10 minutes for you to make any opening comments and anything that you might wish to say and then the committee will then questions of you. So thank you once again very much for being here with us tonight.

Miss ARMSTRONG—Well, by way of opening comment the bill proposed is important legislative measures but it clearly costs money because it seeks to provide compensation to a wider group of people, not necessarily workers, of course, but volunteers as well, so it does cost money. That, of course, is where section 62 comes into play.

The CHAIR—Do you wish to take questions now?

Miss ARMSTRONG—Yes.

Ms PULFORD—Almost any legislation would cost some money, even through the act of its implementation. Do you see any shades of grey in what does and does not cost money, because as the Constitution Act says, it relates to the imposition of a duty, rate, tax, rent, return or impost. Is your view that impost ought be interpreted very broadly?

Miss ARMSTRONG—I think it is quite broad but I see it as meaning that some body, some group of people, will be required to pay or pay more than they presently pay.

Ms PULFORD—Because the legislation does not seek to create a new tax or charge just to apply an existing framework for workers compensation in what I imagine the proponent of the bill, our colleague Ms Hartland, in her presentation to the house of the bill, is just a more effective means of reaching the same end where firefighters with a demonstrable work-related cancer are able to access compensation sooner rather than later, but it is not actually a new charge. It is not a new entitlement, it is a more efficient access to compensation.

Miss ARMSTRONG—But you cannot say that it will not cost the accident compensation fund more. I think there is an important provision in the County Fire Authority Act at section 76 because the scheme depends on contributions to the County Fire Authority from the consolidated fund and from fire insurance companies and—you would know this—the authority has to do an estimate of its costs, its budget for the next year and 22.5 per cent of that comes from the consolidated fund. If one takes the view that it is going to cost more, that actually increases the burden on the consolidated fund.

Ms PULFORD—If I could just follow that up. I wonder if you had the opportunity to review the transcript of our earlier hearing on this bill.

Miss ARMSTRONG—I did.

Ms PULFORD—Without in any way presuming you to be an expert on the Heritage Railways legislation it was put to us in fact that there were a number of precedents where legislation had its origins in the Legislative Council, and legislation that did have some costs associated. The Heritage Railways one stuck in my memory a little more than the others. It is one of those bits of legislation that there was quite memorable debate about old trains and the like. A logical extension of your position on Ms Hartland's legislation would be that it was probably not proper for the Victorian Legislative Council to introduce and pass the Heritage Railways legislation or similar that has clearly got a cost associated with it.

Miss ARMSTRONG—I do not think that follows. What is concerned here is the payment out of quite significant sums of money.

Ms PULFORD—The size of the cost is a relevant consideration?

Miss ARMSTRONG—It is. It is significant. I agree that there are very few things that cost absolutely nothing but where the proposal and the legislation just cannot work without a significant increase in the size of the fund that really does raise the question.

The CHAIR—As a point of clarification to Ms Pulford's question, you are actually suggesting that the cost of the impost is the determinator. Is that right?

Miss ARMSTRONG—You mean the level of cost?

The CHAIR—Yes.

Miss ARMSTRONG—It is a very difficult question. If you take section 62 at its plainest meaning it is an impost in any amount at all.

The CHAIR—Therefore you say in answer to Ms Pulford that in this case it is a substantial amount—

Miss ARMSTRONG—Yes.

The CHAIR—And therefore that would be a determining factor. If it were, say, \$10,000 would that still fit within what you are looking at with section 62 exactly in a pluralistic sense?

Miss ARMSTRONG—No, if you look at section 62 its plain meaning is any impost.

The CHAIR—Thank you. Mr Barber.

Mr BARBER—Back to section 62(1):

A Bill for appropriating any part of the Consolidated Fund or for imposing any duty, rate, tax, rent, return or impost must originate in the Assembly.

It is not your argument that Ms Hartland's bill is a bill for appropriating part of a consolidated fund, is it?

Miss ARMSTRONG—No.

Mr BARBER—It is that second wing.

Miss ARMSTRONG—It is the second bit, yes.

Mr BARBER—Okay. The second wing says 'imposing any duty, rate, tax, rent, return or impost'. Are you saying that this is a duty, rate, tax, rent or return, or are you saying it is just an impost?

Miss ARMSTRONG—I would call it an impost.

Mr BARBER—An impost. Okay. We take out the middle bit, it says that a bill for imposing an impost must originate in the Assembly, which is kind of a tautological expression, because when I look up the definition of 'impost', an impost is actually something that must be paid. According to Webster it actually says 'that which is imposed or a tax, tribute or duty'. When I look at impost I see that as a catch-all for other types of taxes, tributes, duties, rates, rent or returns, rather than an impost being a cost, as you describe it.

Miss ARMSTRONG—Well, it is an increased burden on someone, namely—

Mr BARBER—Yes, but it does not say 'burden'. It says 'impost' which is defined by Webster as a tax, tribute or duty which is pretty much the same as those earlier words.

Miss ARMSTRONG—But when you have a list you look at them in the context of the list. You are not just saying, for imposing an impost, it is in the context of duty, rate, tax, rent, return or impost.

Mr BARBER—Thank you. I am not a lawyer, I am a biologist but I understand you look at the words around the words. You want to understand a word. What I am seeing is the bookend actually for imposing—that is forcing someone to pay—the things in the middle and then the catch-all, the impost defined as the same as those things. That is my take on the meaning of the words.

Miss ARMSTRONG—Yes.

Mr BARBER—I wanted to ask you another couple of questions though. Since Ms Hartland's proposal itself is not actually a tax, it is not changing the rate of stamp duty or whatever. You are effectively arguing, aren't you, a kind of domino effect between the legal provisions requiring the CFA or their insurer to do something, and the extra cost coming out the other end—is that right—the domino effect between the two things that makes this section 62(1)?

Miss ARMSTRONG—Because it costs more, that is right. It is an extra burden. It is an additional, expanding burden.

Mr BARBER—It is not a bill saying, 'Pay \$1,000 to that man,' or, 'Take \$1,000 from that person when they buy their house,' a la stamp duty. What it says is that it weights the balance towards more successful claims. The presumption is that leads to more costs. The presumption is that that leads to higher premiums, and it is those higher premiums that are the actual impost. Am I right?

Miss ARMSTRONG—Yes, because it is the employers who pay the premiums, also, of course, the consolidated fund.

Mr BARBER—So it does not matter really whether the CFA, for example, end up getting the money back from their own source revenue consolidated fund or the insurer, you are saying it is the first domino fall and then it ends up at—

Miss ARMSTRONG—Yes.

Mr BARBER—But you said it is not about the consolidated fund, the first wing of 62(1), you said it is about the impost at the other end.

Miss ARMSTRONG—Yes, it is about the Victorian WorkCover Authority fund out of which payments are paid.

Mr BARBER—So the impost is the Victorian WorkCover Authority.

Miss ARMSTRONG—Well, it is an impost on the people who are required to contribute to the fund.

Mr BARBER—So it does not matter who the impost is on, for the purpose of your legal argument. It could be the CFA, it could be the WorkCover Authority?

Miss ARMSTRONG—Yes.

Mr BARBER—Does it matter if the effect of Ms Hartland's bill is immediate or if there is some long and indeterminate lag?

Miss ARMSTRONG—I do not think that makes any difference because you have to look at what it says.

Mr BARBER—Yes. But 100 years from now, for example, would that matter?

Miss ARMSTRONG—Well, if it requires money to implement it.

Mr BARBER—I do not know if you heard Mr Rich-Phillips evidence but he said they are doing an actuarial assessment. Does it really matter, for your argument, what the result of that assessment is? Is this a factual question or is this a statutory interpretation question?

Miss ARMSTRONG—It is a statutory interpretation question.

Mr BARBER—The facts about this domino effect and how much it all ends up costing does not really matter too much for your argument, you look at a class of legislation that does certain things and you say that is what attaches it to 62(1)?

Miss ARMSTRONG—Yes.

Mr RAMSAY—I just want to be clear: the nuts and bolts is that this proposed new piece of legislation will come at a cost, and we can argue the toss and semantics around 'impost' or 'burden' or whatever other terminology you want to use, but the fact is this is going to come at a cost, and the cost will be borne either through the CFA budget for volunteer firefighters through the CFA, or through professional firefighters through the MFB or through DSE, as we have heard, or other firefighting agencies. It is going to come at a cost. There are going to be more claims under the deeming rule than savings that could possibly be generated out of any administration or anything else that might come up. For me it is quite plain and it is a constitutional matter that infringes section 62 and that should be the end of it. There should be no more moral argument about it. But can I just draw you to a submission that we had from Dr Greg Taylor who provided the committee with a written submission. He argues that a bill must be judged by what its purpose is, not its effect. I would probably argue that is not actually in the spirit of what we are talking about today. He poses the question, 'If a bill doesn't actually impose taxation, even though taxation may be a side effect of that bill's operation'—and I assume he means new taxation—'the bill may be initiated in the Legislative Council.'

From all I have heard from the discussion you have had with Mr Barber it is very clear cut that regardless of the way you express an impost, a new tax or some sort of other generating of money, the fact is that the proposed act comes at a cost through the different channels we talked about. Therefore it infringes section 62 and therefore it cannot be allowed into the Legislative Council. Is that your position?

Miss ARMSTRONG—Not unless it has been through the Legislative Assembly first.

Mr RAMSAY—Yes. It cannot be introduced into the Legislative Council.

Mr FINN—On the same issue, Madam Chair, I want to make it very clear so there is no misunderstanding, it is your view that this legislation is a money bill under section 62 and cannot be introduced into the Legislative Council?

Miss ARMSTRONG—That is my view.

Mr LENDERS—I have a string of questions, one following Mr Barber and one more generally. Miss Armstrong, as I understood your reply to Mr Barber, using the examples of WorkCover Authority—let's assume there are no government authorities of any form that pay premiums. So BHP and 24 milk bars pay

premiums to the WorkCover Authority. Are you saying that if a piece of legislation initiated in the Council that effectively put the premium up for those non-government bodies that that would be in breach of section 62(1)?

Miss ARMSTRONG—Yes, yes.

Mr LENDERS—The second question, I guess, is what is an impost. We had resolutions from both houses declaring gold as the state's mineral emblem, in Bendigo and Ballarat earlier this year or last year. Let's assume that they were a bill rather than resolutions. We have a bill saying that gold is the mineral emblem of Victoria, that bill gets passed. Now, I put to you that is an impost for no other reason that the government—

The CHAIR—Let's just go off the record. They will not go for very long hopefully.

Proceedings suspended from 8.00 pm to 8.02 pm

The CHAIR—At last. I do apologise. Please continue.

Mr LENDERS—To pursue the second part of the argument, the bill. The resolution, making gold the emblem of Victoria, a piece of legislation and they initiate in a Legislative Council. Now, I put to you that on the basis of the impost argument that this gold emblem bill—or pick any other bill like it—will require, amongst other things, once it is passed, it requires if nothing else it requires the clerk of the parliaments to drop to government house; it requires the Attorney-General to advise the governor that it is legal to sign the bill. There is a range of those, if you call them, minute administrative procedures that are an impost on government, even on something as inconsequential as a bill declaring gold the state emblem, or the penguin the state bird, or whatever else it might be. My question to you is, is there any bill under that definition that does not impose an impost, technically?

Miss ARMSTRONG—I do not think you can say that just because the administrative process obviously costs something. I do not think it is the bill itself that imposes an extra cost. I mean, there is a budget for the printing of bills. If you took that argument to its conclusion you would not have any bills in the Council.

Mr LENDERS—That is the point I am making. If you take your argument to the conclusion the Constitution would surely say, 'All bills must be initiated in the Legislative Assembly, and the Legislative Council is purely a house of review.' The reason I make the point is to test it because I understand the principle, you are saying something major, something minor. We could argue, for example, on Mr Rich-Phillips argument that this bill would impose a cost of \$10 million a year on the CFA for its salaried firefighters. I could say then 87½ per cent of that comes from the fire services levy till 1 July and then from the fire services property levy post 1 July, so we are down to 2½ million. What is significant? I think it is an important point because if that is the test we use, I would certainly put it to you and the committee, then the Constitution would say all bills will be initiated in the Legislative Assembly, and it does not.

Miss ARMSTRONG—Yes, it does not say that, so the cost of running the parliament is a given before you introduce any bills. That is part of the working of the house.

Mr LENDERS—I would say to you when the Legislative Council sits extra hours it is \$5,000 or \$10,000 an hour, the president costs it. I am not talking about the parliament itself, I am talking about those extra agencies and in particular, on my example, of the gold emblem bill, or the penguin emblem bill, presumably, even if that is passed, every library in the state will feel compelled to update its records; every 1,600 government schools in the state will feel compelled, that even the most inconsequential bill does impose imposts by definition.

Miss ARMSTRONG—I think in my view that takes it too far because there is a distinction between a bill that actually provides for expenditure or implies expenditure in a positive way for the purpose of a bill and the administrative costs of running government.

Mr LENDERS—I hear your case. I am not convinced but I will not pursue that course of argument.

Thank you.

The CHAIR—Mr Drum.

Mr DRUM—No questions.

Mr LENDERS—Ask about the bill.

The CHAIR—I will give you that indulgence at the end. Mr Melham.

Mr MELHAM—Just a quick question. If the committee is looking for options to overcome the constitutional impediment placed by this bill, clause 5 of the bill was redrafted to directly amend the regulations, for example, other than amending the act, would there be any constitutional issue with the courts?

Miss ARMSTRONG—It would have a lot of difficulty in making these provisions through regulation because if the scrutiny committee was doing its job it would disallow them because it is making an unusual use of the regulations, even supposing that the regulation making power could be interpreted to authorise that. I think there is an interesting case, I think there was a suggestion that you might be able to arrange for a declaration or a proclamation of disease under section 87. That is a very interesting issue because the government's proclamations are not subject to disallowance. On the other hand the government would be taking advice before making a proclamation of that kind.

Mr MELHAM—So if there is a will, there is a way, if you want to find a way for it.

The CHAIR—Could I ask for a clarification, Miss Armstrong, on the back of what Mr Lenders had to say before. Obviously we were getting to almost the ridiculous about the cost of implementing any bill at all. We spoke before about the \$10 million, and I asked you about the \$10,000. Just to clear up this completely, there is an administrative cost for any bill wherever it is actually raised, whether it is in the Assembly or the Council and that is a cost that the parliament must have to have a democracy.

Miss ARMSTRONG—Yes.

The CHAIR—We are actually talking here about any bill at all in the Legislative Council that has any financial implications. We have had different views, as I think Mr Ramsay explained from Mr Greg Taylor, we have had different opinions. Certainly it would seem that it is not as clear cut as it would be convenient for us to decide. It would be very convenient for us to go back to the Council and say categorically this is it. We have a dilemma and I think you understand our dilemma. Could you clarify for us why it is that your opinion is as definite as it is on this Constitution, vis-à-vis what the other proponents are saying.

Miss ARMSTRONG—Well, to take Dr Taylor's instance which I think concerns the solicitors guarantee fund, and the issue with that bill was whether or not a bill introduced in the Council could provide for a payment to the Law Institute for law reform purposes and it is not putting any burden on anybody because it is simply adding an extra purpose to the purposes for which the solicitors guarantee fund could be used. That I think is what he is talking about and I think it is a completely different issue.

The CHAIR—So here with this bill, if we were to recommend to the Council that this bill be re-submitted to the Council, what would be the repercussions of this?

Miss ARMSTRONG—Well, of course the Council can decide that.

The CHAIR—The Senate does.

Miss ARMSTRONG—Yes, I mean, they can do that but in introducing it into the Assembly, the Assembly might well take the view that this is really a breach of their privileges.

The CHAIR—In some respects we could test it.

Miss ARMSTRONG—At the end of the day the Council—

The CHAIR—Because that is in fact what the Senate do. The Senate have a quite different approach.

Miss ARMSTRONG—Yes, there is no prohibition. I mean, there is no consequence, apart from what the Assembly says.

The CHAIR—Fine. The convention here in Victoria has been in fact that we adhere to just the very proposal you are making. However, in different jurisdictions in this country it is treated in a different way, but they have got a different approach to their various roles. Would that be correct?

Miss ARMSTRONG—Yes. This state has taken a very strong view that the Assembly is the house that is entitled to spend money—introduce bills to spend money.

The CHAIR—You believe that the Constitution, section 62, absolutely supports that motion.

Miss ARMSTRONG—Yes.

The CHAIR—I know that Mr Drum has some contentious issue that he and Mr Lenders have had before. With your indulgence could we ask you to listen their case—

Mr BARBER—Sorry, could I—

The CHAIR—I beg your pardon.

Mr BARBER—Did I understand you to say that if a bill is introduced that requires an agency to do something and that agency has already had funds appropriated to it, to do that thing, then that would not necessarily create this problem.

Miss ARMSTRONG—You would have to look at the circumstances very carefully but in the case of the solicitors guarantee fund, that is a fund to which lawyers pay. Is that what you mean?

Mr BARBER—No, I was thinking more of Mr Lenders extreme example that says if you pass a bill that means a bill has to be printed. You said, 'Well, there has already been funds appropriated for that purpose so therefore that doesn't trigger.'

Miss ARMSTRONG—Well, there is an appropriation for the running of parliament and that covers—

Mr BARBER—There is an appropriation for running the CFA too, and they could be asked to do all sorts of weird and wonderful things through legislation.

Mr DRUM—Or ministerial direction.

Mr BARBER—As we roll through the requirements of the Bushfires Royal Commission, for example, all sorts of extra tasks or extra requirements can be put on to an agency.

Miss ARMSTRONG—Yes.

Mr BARBER—Funds are already appropriated that are meant to cover all that stuff, then a bill does not necessarily—it has to create a new and additional impost but it is not an appropriation through the consolidated fund which was kind of my first original question to you.

Miss ARMSTRONG—Well, if the bill is imposing additional duties on the County Fire Authority the consequences of that, the agency needs to be funded and—

Mr BARBER—Many times I have asked a minister, 'What's this measure going to cost?' 'Hey, we

just passed the budget last week. Minister, are you now telling me and you are now asking me to do that.' They may say, 'Look, it's all going to come out of existing ways. We find ways internally to do this additional thing.'

Miss ARMSTRONG—Yes, but it is imposing an obligation on somebody to do something but it is not imposing an obligation to pay for somebody to contribute more or to carry the responsibility for making sure that the fund is big enough.

Mr BARBER—That is what I was initially asking. If Ms Hartland's measure would just come out of the existing appropriation that the CFA already has and they basically just have to suck it up and find some savings somewhere else, that would be different to a knock-on effect to their premiums, and the premiums of other people who are in the WorkCover pool. I was trying to ask you if it matters which source of funds it comes out of.

Miss ARMSTRONG—But if there is an impost on some agency and it comes on the people who pay premiums because the size of the fund has to be sufficient to meet what is anticipated, just the costs of providing compensation and so on.

Mr BARBER—I am not sure if you are now agreeing with me about the distinction or not. If the tax or levy or whatever is everybody's WorkCover premium, and you are saying this domino knocks it out, that is a question of fact.

Miss ARMSTRONG—Yes.

Mr BARBER—It is where the cost goes. Maybe one place it goes is into their existing appropriation and they buy one less fire truck or something, that might not be your definition of an impost.

Mr DRUM—Mr Barber is arguing degrees of costs. If we pass a bill in this house which effectively said consolidated revenue or any government agency had to pay \$1 into anyone else it would be ruled out by the presiding officer.

Miss ARMSTRONG—Because that is appropriating.

Mr DRUM—Thank you.

The CHAIR—Mr Lenders.

Mr LENDERS—This is directly related to Mr Barber and Mr Drum. Last sitting week the Legislative Council passed the Sustainable Forests Bill and initiated it in the Council, still sitting in the Assembly. Amongst other things this requires that the Department of Environment and Primary Industries to do a new form of timber allocation, including for a longer period of time. It also requires VicForests, a government agency, to do a new function completely, timber release plans, which actually are quite extensive administratively and either it will need to absorb it itself, pay less dividends to the state or put an impost on loggers, for want of a better term, for higher licence fees to pay for the timber release plans. This piece of legislation does two specific things—one on a department which has to do new functions or extended functions, and one on VicForests, it has to do completely new functions, timber release plans, which it does not do. One of the tests of an impost or a draw on a consolidated fund, the Sustainable Forests Bill, I would argue, on what we have done to date, could not have been introduced in a Legislative Council. I think it is unequivocal that it does, for both a department, there are extended functions, arguably not extensive cost-wise, but for the agency, VicForests, there are total new functions that will be quite onerous. I put the case, if that is the case that bill could not have been introduced to the Legislative Council.

Miss ARMSTRONG—I would look at it differently. The new obligations and requirements are imposed on them and they can only carry them out to the extent of the funding that they have got.

Mr LENDERS—But in VicForests case it will pass that cost on in its tender and bidding process because it is a new function. I do not know what the timber release plan involves but I would assert it will be a

lot of people hours doing a lot of administrative processes, field work, if it is doing its job correctly.

Miss ARMSTRONG—But the bill itself is not putting that impost on that—

Mr LENDERS—It is requiring the agency to do it which it does not do at the moment.

Miss ARMSTRONG—That is right. It is requiring the agency to do it but it is not imposing the obligation on the licence-holders.

Mr LENDERS—But how is that different from, like, requiring a WorkCover Authority to do something by deeming rather than letting the WorkCover Authority do it by discretion on assessing a claim? I do not see the difference. I am sorry, I just do not see the difference between the two of those.

Miss ARMSTRONG—Well, the forestry one, presumably the bill did not contain a provision that imposed an additional cost on anyone. It said, 'These things are part of your duties' on the wording of the Constitution, although of course there is a cost but it does not directly impose a cost on anyone.

The CHAIR—Ms Pulford has a further question.

Ms PULFORD—In the limits to the Legislative Council in relation to imposing an impost do you see any distinction between the Legislative Council being able to impose something like stamp duty or fines on private citizens or entities, organisations separate to government on the one hand, and on the other hand imposing an impost on government entities, because the employers that we are talking about that would be affected if we accept Mr Rich-Phillips evidence about the claims costs and consequential increases to premiums. The employers are all government entities of one form or another. Do you see any difference in the restriction, or do you think the restriction applies in the same way?

Miss ARMSTRONG—The employers who pay premiums to the WorkCover fund are not government entities. I mean, some of them are but not all of them.

Ms PULFORD—So the MFB, the CFA and the DSE are all in one form or another entities of the Victorian government and somebody can let me know if there is another part of the firefighting workforce that I have omitted but these are entities of the Victorian government. Do you think that makes any difference or not?

Miss ARMSTRONG—No, I do not think so.

The CHAIR—Can you just indulge us to go back to where we started. If Mr Drum and Mr Lenders could have your expert advice—very briefly, I might add because we still have quite a lot of business to go through.

Mr DRUM—It is long gone and we have moved on.

Ms PULFORD—Can I suggest that it is long gone but absolutely pertinent to this question.

Mr DRUM—We introduced a bill into the upper house that would bring teenage smoking in line with teenage drinking. Effectively we wanted it to be a crime for teenagers to smoke, in the same way it is a crime for teenagers to drink; confiscation laws and also smoking in cars. We were going to make it a crime which has subsequently been done by the government anyway, the previous government. It got through in the upper house and was argued down in the lower house because they argued that if somebody was fined and it was deemed to be a mistake and therefore a refund had to be paid out of consolidated revenue to someone who had been incorrectly fined that refund out of consolidated revenue was an impost. So Hulls, Cameron and the like argued that it was going to be an impost and a money bill.

Ms PULFORD—The Council approved it.

Mr DRUM—It was actually going to make money for the government. That is what happened.

Ms PULFORD—Through fines it was going to place an impost on people and the Council passed it anyway.

Mr LENDERS—The only relevance, I guess, to this debate on it—and you forgot to mention Peter Batchelor. The three people who argued, who persuaded the Assembly not to accept the bill ran that argument and the Assembly did not accept it and sent a fairly curt message back to the Council. But the pertinent bit in this case, I submit, where Mr Drum and a majority of the Council argued back three years ago, whenever it was, was that it was the right of the Council to pass that legislation, and the Council did, sent it to the Assembly—the Council did not agonise over whether it was within section 62(1) or not, it sent it to the Assembly—and the Assembly formed a different view. That is the nature of it.

The CHAIR—I think that is the debate we are about to have actually, once Miss Armstrong has departed from here. Would you like to make a comment on that?

Miss ARMSTRONG—I think I did make a comment that the Council is the master of its own business and if it passes the bill, it passes the bill.

The CHAIR—I would like to thank you enormously for being here tonight and for your wise counsel and helping us to get a little closer to making our deliberations. Thank you very much indeed. I have one final comment here, and this brings tonight's public proceedings to a close and, as I said, on behalf of the committee our thanks to the Assistant Treasurer, who is still here, and to Miss Armstrong, for their time tonight. The committee will commence a private meeting in this room in five minutes.

Witness withdrew.

Committee adjourned.