

WORKERS COMPENSATION AND INJURY MANAGEMENT BILL 2023

Committee

Resumed from an earlier stage of the sitting. The Deputy Chair of Committees (Hon Dr Brian Walker) in the chair; Hon Matthew Swinbourn (Parliamentary Secretary) in charge of the bill.

Clause 11: Diseases of firefighters taken to be from employment —

Committee was interrupted after the clause had been partly considered.

Hon MATTHEW SWINBOURN: Yesterday I indicated to Hon Dr Steve Thomas that we would try to get him a list of regulations as he had asked, and I have that in my possession now. I have a document here, which is an indicative structure of workers compensation and injury management regulations. I hope that this document also illustrates the drafting instructions. I hope it satisfies what the member wants, and if it does not, just let me know behind the chair. Hopefully, it helps out the member. I table that document.

[See paper [2424](#).]

Hon MARTIN ALDRIDGE: We spent quite a bit of time on clause 11 before the taking of questions. It leaves me now to contemplate my amendment on the supplementary notice paper. Obviously, my motivation in drafting this amendment was that in May the government indicated that it accepted the addition of only two cancers to the existing 12, and those were primary site melanoma and malignant mesothelioma. That left us six-and-a-bit cancers short because primary site skin cancer was what the commonwealth had regulated for, whereas we had just gone for a subset of malignant melanoma, from memory.

Obviously, I do not have the ability to make regulations. Maybe one day soon I will. The only power that I have is to bring an amendment to this bill to give effect to the commonwealth standard. In the interim, that forced the government's hand and it acted. I congratulate the government for finally coming late to the party and issuing these new regulations yesterday, and I look forward to the parliamentary secretary tabling them next week. I think he had better go and have a look at the issue of local governments being excluded from the regulations. I am not saying it is being done in an intended way, but I think, in an unintended way, we have excluded local government employees who are firefighters from being covered under the PTSD regulations. I think that is also true in respect of this clause because this clause confines PTSD to firefighting employment within the realm of the state public sector. Therefore, I definitely think we have an issue here. I think that the only way to fix it is to amend the definition of "firefighting employment". Maybe that is something that we can come to after contemplating my amendment on the supplementary notice paper because if we do not amend it now, there is no way that we can cover firefighters who are engaged directly by local government under these presumptive firefighter provisions. That may have been the case since 2013, and that is an oversight that ought to be fixed with respect to not only presumptive firefighter cancers, but also the regulations that the government has made with PTSD. PTSD can be fixed by regulations; presumptive cancers cannot.

With respect to my amendment to clause 11 on the supplementary notice paper, the parliamentary secretary, in his second reading reply speech, addressed the government's response to my amendment. I quote from the uncorrected proof of Tuesday, 8 August. It states —

It is not difficult to understand why we do not do that, when we are in process of making it under the current regulations. We think regulations provide for more immediate action and are the appropriate method to include any additional presumptive firefighter cancers in the future. I suppose for a technical reasoning, if we prescribe them in the bill, as the member proposes in his amendment, and we wanted to reduce the time frames for the presumption, we would have to amend the act rather than change the regulations. It would not allow for flexibility into the future; it would require a new bill to come to Parliament.

I responded —

Those are all very good arguments.

It has always been my preference that regulations be issued, for the reasons the parliamentary secretary has outlined. I do not have the ability to make regulations; I have the ability to amend bills. That will obviously not be necessary in this instance because the government acted yesterday by gazetting the additional eight cancers in regulations. Based on the parliamentary secretary's argument for the government's position for opposing my amendment, why is the government proceeding with including 12 of the cancers in the bill?

Hon MATTHEW SWINBOURN: I take some issue with what Hon Martin Aldridge described as "forcing the government's hand". The member is a politician and I am a politician, and we always put everything —

Hon Nick Goiran: A member of Parliament!

Hon MATTHEW SWINBOURN: Hon Nick Goiran is a member of Parliament, Hon Martin Aldridge is definitely a politician!

Several members interjected.

Hon MATTHEW SWINBOURN: It is a Thursday afternoon!

We are all in our own way politicians as well. Hon Martin Aldridge has characterised the argument most favourably from his point of view, and he has undoubtedly advocated for it, and that is fair enough, but to suggest that he forced our hand is probably overstating the degree of influence he has over the government. I would suggest that the advocacy of the United Professional Firefighters Union probably had a much greater effect on forcing any hands in those circumstances, but if the member feels the need to take credit for it, it is entirely up to him. In relation to the member's question, which was about why the 12 cancers remain in the legislation, the United Professional Firefighters Union has asked that they remain, and we have respected its wishes that they remain, obviously with the limitations identified in my reply to the second reading debate: that when things are put into legislation, they are more difficult to change. But that was what was asked of us, so that is what we have done.

Hon MARTIN ALDRIDGE: We will agree to disagree, parliamentary secretary, because the government has now amended the regulations on three occasions this year, all with respect to related matters, so maybe on the fourth time the government may get them right. The government had the opportunity in May and in July, just last month, to do this and it did not. It is rather a coincidence that on the Saturday before the sitting week, when the opposition was going to move those amendments and government members would have to support or oppose them, that suddenly there was a breakthrough. The Minister for Emergency Services is out there saying that the government is doing the right thing by firefighters, the same right thing he was not prepared to do in July or May or any of the months before that. Anyway, the parliamentary secretary can have his version of events and I will have mine.

Hon Matthew Swinbourn: As I said, that is the nature of the beast.

Hon MARTIN ALDRIDGE: I also find it difficult to accept the parliamentary secretary's argument against my amendment when the government insists on then retaining its 12 cancers in the legislation. This bill is a case in point for why the government does not do it. The only material difference, which the parliamentary secretary identified in an answer to an earlier question from me, is that the qualifying period for primary site oesophageal cancer has changed from 25 years to 15 years, something that can only be changed in a bill that passes through both houses of Parliament. That is a case in point. This is not a potential issue; this is an issue that we are having to deal with now that we will not be able to deal with again until the next time we come back and contemplate the Workers Compensation and Injury Management Amendment Bill 2023. The parliamentary secretary has argued both ways, which is convenient for the government in trying to justify its opposition to my amendment. I take it, then, that the government would not be in favour if I were to move an amendment to delete the table?

Hon MATTHEW SWINBOURN: To be direct, no, we would not support an amendment proposed by the member to remove the table. I come back to the earlier point I made that to continue to include that table in the new act was done at the request of the key stakeholder in this area. It did not ask us to remove the table and put it into the regulations. I will note that this bill contains a five-year review clause that is not in the current act. These issues will be —

Hon Nick Goiran: I am not sure that that is right.

Hon Martin Aldridge: We will put one in.

Hon MATTHEW SWINBOURN: I am told that one was inserted in 2020. The member is correct.

Hon Nick Goiran: I think I might have had something to do with that.

Hon MATTHEW SWINBOURN: Yes, okay. In any event, there is a continuing review clause in the bill that, once passed, will allow these things to be further ventilated and potentially allow parties to make a submission about what is a better way to proceed with this kind of arrangement. It is not straightforward because those who are looking to the coverage of these things will need to have regard to both the regulations and what is in the act, but I suspect that this is a very—I do not mean this in a disrespectful way—niche area for a particular group of workers, and their advocates and representatives will know where to look and find these things.

Hon MARTIN ALDRIDGE: The primary reason why the table must remain is that that is what the United Professional Firefighters Union of Western Australia wants. I have great respect for that union. I was a member of that union for many years. But what does that say about how the union perceives or perhaps trusts the government? The only reason it would insist on having these 12 cancers remain in the statute would be if it distrusted the government when it came to making the regulations. I would take the parliamentary secretary at his word if he were to give me an assurance that when making the regulations, the 20 new cancers, as of today, will be regulated for in the same form. I cannot see any other reason for insisting upon having them in the legislation for all the reasons that he outlined in the government's opposition to my amendment. This is a union that is now affiliated with the Labor Party, and perhaps that might be pondered over the weekend before we resume on Tuesday.

Progress reported and leave granted to sit again, pursuant to standing orders.

