

COVID-19 RESPONSE AND ECONOMIC RECOVERY OMNIBUS BILL 2020

Committee

Resumed from an earlier stage of the sitting. The Deputy Chair of Committees (Hon Robin Chapple) in the chair; Hon Stephen Dawson (Minister for Environment) in charge of the bill.

Clause 1: Short title —

Committee was interrupted after the clause had been partly considered.

Hon Dr STEVE THOMAS: I would like to take the minister to the part of the debate that I raised in my second reading contribution—that is, part 2. I will have more questions to ask about part 2, but, in detail, I am looking for the part of the bill that could prevent a chief executive officer or chief employee of an agency or non-senior executive service organisation being able to, by order, reduce, waive or refund a fee or charge in an individual circumstance or for a select or smaller group of people. After part 7, the main concern in my second reading contribution was how the government could exclude the partial use of the legislation before the chamber today. As I read the legislation, there is no exclusion to say that a chief executive officer may not waive, reduce or extend an individual fee or charge to a particular person or a small subsection or group of people. I am interested to hear how that is precluded in the bill, presuming it is precluded. I understand that the intent of the bill is to waive a class of fees for an entire group of people who may be subject to that fee over time.

Hon STEPHEN DAWSON: I am advised that a waiver would have to be published in the *Government Gazette* saying that fees had been waived for a person or group. I am further advised that CEOs are responsible for managing their agency's budgets. All the normal requirements, such as approvals by the Expenditure Review Committee of cabinet, ministerial approvals, the Public Sector Management Act and public sector code of conduct provisions, apply to fee waivers, as they would to any other aspect of an agency's budget. Any fees waived must be published in the *Government Gazette* and on the department's website. It cannot be done in private.

Hon Dr STEVE THOMAS: Can the minister tell me where in the bill, or a related bill, the requirement to publish in the *Government Gazette* might be found? A second part of my question is that I do not think the answer reflects the original question, which was: could, under this legislation, a CEO reduce, waive or refund a charge to an individual or a group of individuals as a subset of the entire administration charge?

Hon STEPHEN DAWSON: Yes. What the member just suggested could happen, but other ordinary government financial management constraints dictate what needs to take place. For example, it has to go from the Expenditure Review Committee into cabinet, and from cabinet into the ERC. It would be captured by the Public Sector Management Act, the public sector code of conduct and the Financial Management Act. It is likely that there would be ministerial approvals on the way to ERC. In relation to where in the act it appears or elsewhere, it needs to be published in the *Government Gazette*. I am told that the order is subsidiary legislation for the purposes of the Interpretation Act 1984. Also, section 104 of the act states that the order, while in effect, must be published on a website.

Hon Dr STEVE THOMAS: In theory, under clause 8, the chief executive officer could waive a fee for an individual or a group of individuals. It would potentially then have to be recorded in the *Government Gazette* at some point. I do not know whether there is a time frame in which it should be recorded in the *Government Gazette*, but is it possible that a CEO might waive, reduce or refund a fee or charge and use this bill to suggest that we had empowered them to do so, without notification to the minister or government? Is it possible that this bill could provide them with an out because we have empowered them to waive these fees under clause 8(1) without specific reference to the process by which he or she would do so?

Hon STEPHEN DAWSON: The act validates the fee waiver, but if it were done corruptly, there is plenty of other legislation that would capture that corruption. As I indicated, the normal requirements for approvals of waivers or the expenditure of money need to take place. In this case, if the CEO wants to waive a set of fees, they would need to get ministerial approval and it would go up the food chain, so to ERC and then to cabinet.

Hon TJORN SIBMA: Bearing in mind there is another point in this debate at which we can reflect on these issues, for these purposes, if I am to interpret the minister's reply correctly, I get the impression that under existing statute, addressed to some degree by the Interpretation Act, there is a means by which decisions to amend, waive or refund fees are already legitimised and that this bill seeks to provide validation for a class of activity outside these parameters. I assume that activity would have then occurred *ultra vires* or beyond the scope of legal permissibility. Slightly differently from Hon Dr Steve Thomas, I am trying to understand the processes by which the fee waivers and changes authorised by this bill necessitate ministerial involvement—authority—and what process each individual decision has to go through. That is where we lack clarity. If the minister were to give an indication of how that works in one portfolio domain, it would be helpful to inform our position.

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