

**CIVIL JUDGMENTS ENFORCEMENT BILL 2003**

*Assembly's Message*

Message from the Assembly notifying that it had agreed to amendments Nos 1 to 12, 14 and 15, and had disagreed to amendment No 13 and substituted a new amendment now considered.

*Committee*

The Deputy Chairman of Committees (Hon Simon O'Brien) in the Chair; Hon Nick Griffiths (Minister for Housing and Works) in charge of the Bill.

Amendment No 13 made by the Council, to which amendment the Assembly had disagreed, was as follows -

No 13

Clause 106, page 76, lines 5 to 8 - To delete the lines and insert instead -

**“declared areas”** means those areas of the State outside the Metropolitan Area of Perth as defined in the *Metropolitan Region and Town Planning Scheme Act 1959*, which from time to time the Governor has proclaimed to be areas of the State where it will not be practicable to appoint a bailiff unless an indemnity in terms of Section 111 is granted.

The Assembly's substituted amendment is as follows -

Clause 106, page 76, after line 4 - To insert -

**“declared areas”** means those areas of the State outside the metropolitan region (as defined in the *Metropolitan Region Town Planning Scheme Act 1959*) that the Governor proclaims to be areas of the State where it will not be practicable to appoint a bailiff unless section 111 applies to the bailiff;

Hon NICK GRIFFITHS: I move -

That amendment No 13 made by the Council be not insisted on and that the substituted amendment proposed by the Assembly be agreed to.

Amendment No 13 made by the Council amended clause 106 by deleting lines that defined police officers and inserted the following words -

**“declared areas”** means those areas of the State outside the metropolitan area of Perth as defined in the *Metropolitan Region and Town Planning Scheme Act 1959*, which from time to time the Governor has proclaimed to be areas of the State where it will not be practicable to appoint a bailiff unless an indemnity in terms of Section 111 is granted.

The wording that the Assembly has counter-proposed does not defeat the intent of what the Council presented to the Assembly but, it is argued, improves on it. It tidies it up. I suggest that that is fair enough. Further reflection has been given. The wording of the substituted amendment is in these terms -

Clause 106, page 76, after line 4 - To insert -

**“declared areas”** means those areas of the State outside the metropolitan region (as defined in the *Metropolitan Region Town Planning Scheme Act 1959*) that the Governor proclaims to be areas of the State where it will not be practicable to appoint a bailiff unless section 111 applies to the bailiff;

The proposed wording of the other place basically does three things. First, it reinserts the definitions of “police officer” and “public servant”, which it is suggested is necessary to retain for the purposes of clause 107. Clause 107 deals with the appointment of bailiffs and provides that police officers and public servants are among the various categories of persons who may be appointed a bailiff. Secondly, the definition of “declared areas” - this issue arose following a debate during the committee stage in this Chamber - corrects a reference to the metropolitan area by using what is considered to be the correct term for the metropolitan area. That is a technical matter that addresses the wording after appropriate reflection. Thirdly, the amendment corrects the reference to the “Metropolitan Region and Town Planning Scheme Act 1959” by deleting the word “and”, which does not appear in the title of that Act.

Hon PETER FOSS: I ask the minister to clarify one thing. There has been no reinsertion of the automatic indemnity for police and public officers, has there?

Hon NICK GRIFFITHS: Other than where there is a declared area. The substantive law will be the same as the Council proposed to the Assembly. It is merely a matter of tidying up.

Hon PETER FOSS: I thank the minister for that. I was a bit concerned for a little while that it had reinserted the automatic indemnity for police officers and public officers, but that is not the case. They get the indemnity along with everyone else if it is granted. They do not get the indemnity along with everyone else if it is not granted. That being the case, the Opposition agrees with the revised amendment of the Assembly.

Hon BARRY HOUSE: During a previous debate Hon Giz Watson and I raised concerns expressed by bailiffs about the indemnity or the lack of indemnity. We were led to believe that Hon Peter Foss's amendment moved during previous debate on the Bill would cover those anomalies. Since the Bill has been returned to the Assembly, I have had some communication from the bailiff in Bunbury, who is relatively pleased with these changes. However, there still remains a doubt. I understand that the four country bailiffs based in Bunbury, Albany, Geraldton and Kalgoorlie will still operate on the whim of the minister and through those areas becoming declared areas. It is clear that remote areas of Western Australia will be covered quite easily by a minister declaring the areas so that they are serviced. However, there is still uncertainty in more urbanised areas around Bunbury, Albany, Geraldton and Kalgoorlie about the minister of the day being prepared to deem those areas declared areas. Can the minister clear that up? Do I have that situation right?

Hon NICK GRIFFITHS: The appointment of the bailiffs is dealt with under clause 107. The area under discussion deals with clause 106. I know that I made reference to clause 107 when proposing the reinstatement of definitions of certain persons who are otherwise referred to in clause 107 as being eligible to be appointed bailiffs, but the process of appointment is set out in clause 107. That appointment is made by the sheriff. It is not a matter of whim.

Hon PETER FOSS: I think I can assist. I believe it is unlikely that the Governor would proclaim Albany, Bunbury or their immediate environs to be areas in which it is not practical to appoint a bailiff. Therefore, they would not get the indemnity. The reason for that is that there is no public interest support for a particular person getting an indemnity in his business. If, on the other hand, without the indemnity a person considered he could not carry on his business because it would not be worthwhile, it becomes impractical to appoint a bailiff without the indemnity. If that happens, it is just as easy to appoint a public servant or a police officer as it would be to appoint a bailiff. It is merely a matter of the practicality of it. It is really a business decision to be made by the bailiffs. If they think the business is still worth carrying on despite the fact that they do not have the indemnity, they carry on. If they do not think it is worth carrying on without the indemnity, they say so. The question in the mind of the Governor would then be: does he then extend that indemnity or not?

The big problem we have with the previous situation is that in the interests of national competition policy we were creating a disparity in that police officers and public officers always got the indemnity whether a public interest test was satisfied or not. Bailiffs never got the indemnity even if a public interest test was satisfied. It therefore worked against the national competition policy by giving an artificial benefit to government employees, which was a nonsense. I think that is what has been picked up by the amendment and is being continued by the government amendment, but it does not address the wish of bailiffs who, in the ordinary course of business in those areas in which it is practical to have a bailiff, are not given an indemnity. If it is practical to have a person appointed bailiff without the indemnity, they will not get it. It is probably fair to say that in the immediate environs of Albany, Bunbury and Kalgoorlie, they will not get it. Probably some 99.9 per cent of the State will be declared and some 0.1 per cent will not be, but that is where the population will be and that is what makes carrying it out practical.

Hon BARRY HOUSE: The minister seemed to take a little bit of umbrage at my suggestion that it would be at the whim of the minister.

Hon Nick Griffiths: Not a matter of umbrage; I take issue with the proposition that public policy is based on whim. It should never be, and I trust it never will be.

Hon BARRY HOUSE: In many ways the minister's answer did not reassure me. My understanding of the issue goes back to a territorial war, as it were, that seemed to develop between the sheriff and bailiffs. When I was suggesting that policy would be at the whim of the minister - the minister may correct me if I am wrong - I think he said that whether it became a declared area or otherwise would be deemed by the sheriff.

Hon Nick Griffiths: No.

Hon BARRY HOUSE: That is my only reservation.

Hon Nick Griffiths: Fair enough. The sheriff does not decide what would be the declared area. That would be a matter for the Governor, subject to the legislation being passed. I made reference to the appointment of bailiffs. Clause 107 refers to who may be appointed a bailiff. It is the sheriff who appoints the bailiff, but it is the Governor who decides what the declared area would be. The member made reference to a whim. These are not matters that should be dealt with by way of whim. I doubt that they ever have been; I would be very surprised if they ever will be. However, the declared area is not a matter that the sheriff would determine.

Hon BARRY HOUSE: Perhaps “whim” is the wrong word. Perhaps I should have used the words “personal decision” of the minister or the Governor through the minister. I am not sure. I am reporting what has been reported back to me by the bailiff in Bunbury. The words that have been included in the legislation are an improvement but the advice that the Bunbury bailiff received was that the wording is a placebo. Those are the words that he has used in correspondence to me.

Hon Peter Foss: It deals with the issues he raised. It might not give him all that he wants.

Hon BARRY HOUSE: I think that is what he is referring to. He has not got all that he wants.

Hon Nick Griffiths: He has got a lot.

Hon BARRY HOUSE: He has recovered some ground from what was originally proposed. If the amendments to the legislation have achieved that, I am pleased that this Parliament has done its job in protecting some very good, credible business people working as bailiffs in major regional centres.

**Question put and passed; the Council’s amendment not insisted on and the Assembly’s substituted amendment agreed to.**

*Report*

Resolution reported, the report adopted, and a message accordingly returned to the Assembly.