

**POLICE AMENDMENT BILL 2002**

*Committee*

The Deputy Chairman of Committees (Hon Adele Farina) in the Chair; Hon Nick Griffiths (Minister for Racing and Gaming) in charge of the Bill.

**Clause 1: Short title -**

Hon DERRICK TOMLINSON: This is the appropriate time for me to advise the House that I had a very satisfactory briefing with the officers of the Police Service today. They gave a thorough and frank explanation of the specific clauses of the Bill and adequate answers to the questions that I put to them. I am grateful for the opportunity that the Government provided me at the conclusion of the second reading debate last night of adjourning the debate until today so that I could meet with the officers for that briefing. I was somewhat flattered that the Commissioner of Police was present, as were the Assistant Commissioner of Police, Professional Standards, Mr Graham Lienert; the President of the Western Australian Police Union, Mr Michael Dean; the counsel who is sitting on the right-hand side of the minister and who shall come to judge the quick and the dead; and the legal counsel of the Police Service. Of course the ubiquitous political adviser of the minister, who seems to be absolutely essential to sit in on all briefings by members of the Police Service or members of any government department when they meet with members of the Opposition, was also present. I sincerely hope that the minister's policy adviser was able to report to her that I was on my best behaviour. With that aside, not only was I flattered that I was outnumbered 6-1 and somewhat intimidated by the heavy artillery that was arraigned against me, but also I was pleased at the level of discussion that we had.

Hon Norman Moore: Imagine what would have happened had you been a criminal! You might have got some constable from somewhere -

Hon DERRICK TOMLINSON: Well, there was not a constable from a backyard police station, and neither did they have bright lights and sit there bashing their hands with their truncheons, and neither did they ask me to undress and spread them.

I will return to my serious appreciation of that opportunity and the serious manner in which the briefing was undertaken. As a result of that briefing, many of the questions that I might have asked in the committee stage have been answered to my satisfaction. I have two options available to me. The first is to go through the whole process again to get it on the record. The second is to acknowledge that I have been satisfied because, under clause 6, proposed section 33Z provides that a review of this part of the future Act will be conducted within 24 months of the commencement day. Therefore, any of the reservations that I may have had before that briefing would no doubt be addressed in the future if the undertakings and explanations that I was given today were unsatisfactory. Therefore, to short-circuit this debate in the committee stage, I will not go through all those matters to which I received satisfactory answers at the briefing today.

I will confine myself to clause 4(2), which is an amendment to section 8, and to clause 6, which on page 15 provides for a proposed section 33T. I repeat my thanks to the Government for the opportunity to have that briefing and, in particular, I thank the officers concerned for the thoroughness and the high standard of the explanation and discussion that we had.

**Clause put and passed.**

**Clauses 2 and 3 put and passed.**

**Clause 4: Section 8 amended -**

Hon DERRICK TOMLINSON: Madam Deputy Chair, at proposed subsection (2) of section 8 there is a matter of profound significance on which I seek your direction. I refer to a grammatical infelicity in that section. I want to know whether that grammatical infelicity will be dealt with as a Clerk's amendment or whether it must be amended here and now. The grammatical infelicity is that proposed subsection (2) of section 8 states -

... subsection (1) can only be exercised if the Commissioner ...

Of course, that is a split infinitive. It should read "can be exercised only if the Commissioner". Will a Clerk's amendment be made, or should it be amended here and now?

The DEPUTY CHAIRMAN (Hon Adele Farina): It will be attended to by the Clerks.

**Clause put and passed.**

**Clause 5 put and passed.**

**Clause 6: Part IIB inserted -**

Hon DERRICK TOMLINSON: I seek clarification on proposed section 33T, adjournment in relation to an appellant charged with a relevant offence. Reference is made in proposed section (1)(a) and (b) to an appellant who has been charged with an offence. There are two types of offence. The first is a criminal offence. A police officer may be charged with a criminal offence. The second is an offence under section 23 of the Police Act, which is a charge on a disciplinary offence. Will the minister give me an explanation of whether the reference to “charged with an offence” is to charged with a criminal offence or charged with a disciplinary offence under section 23(1) of the Police Act, or is it both?

Hon NICK GRIFFITHS: First, disciplinary offences so-called are dealt with under section 23 of the Police Act. When reference is made to the word “offence”, it is in the context of the phrase “offence against the discipline of”. It is a different form of words from the word “offence”. In the context of proposed section 33T, the word “offence” refers to a criminal offence, and that is dealt with in section 67 of the Interpretation Act, which states -

- (1) Offences are of 2 kinds: indictable offences and simple offences.
- (2) An offence not otherwise designated is a simple offence . . .
- (4) The procedure for dealing with simple offences, and matters that are to be dealt with summarily, is set out in the *Justices Act 1902*.

The procedures under section 23 are set out in the Police Act 1892. In any event, they are not procedures before a court as such. Therefore, it is a different sort of offence. It is not an offence in the terms of the Interpretation Act, and the matters dealt with under section 23 are not an offence dealt with under proposed section 33T, which deals with criminal matters.

Hon DERRICK TOMLINSON: I ask for an explanation of one further matter in proposed section 33T(4). Proposed section 33T allows an appellant who has been charged with an offence to apply for an adjournment of the appeal hearing. Under proposed section 33T(4), that adjournment shall be for a period not exceeding 12 months as is requested by the appellant. Under proposed section 33M, which is part of the clause under discussion, an officer who has been served with a notice under section 33L is entitled to receive a maintenance payment for a period of 28 days. That maintenance payment is a discretionary payment calculated on the basis of the salary of the officer at the time of his removal from office. The 28-day period may be extended for a period not exceeding six months as is specified by the minister. If an officer who has been served a notice of dismissal has a maintenance payment extended for a period of six months, and if, under proposed section 33T, that officer who is facing a criminal charge applies for an adjournment of his appeal against the dismissal notice for a period of up to 12 months, will that officer be entitled to a maintenance payment for any longer than the period of six months, or up to six months, as specified in proposed section 33M?

Hon NICK GRIFFITHS: The entitlement to maintenance has a ceiling of 28 days plus a maximum of six months, and no more.

**Clause put and passed.**

**Clauses 7 to 10 put and passed.**

**Title put and passed.**

*Report*

Bill reported, without amendment, and the report adopted.

*Third Reading*

Bill read a third time, on motion by Hon Nick Griffiths (Minister for Racing and Gaming), and passed.