

CORRUPTION AND CRIME COMMISSION AMENDMENT AND REPEAL BILL 2003

Committee

Resumed from 11 December. The Chairman of Committees (Hon George Cash) in the Chair; Hon Kim Chance (Leader of the House) in charge of the Bill.

Progress was reported after new clause 40 had been agreed to.

Postponed clause 48: Transfer of assets and liabilities to Commission [was Clause 32] -

The clause was postponed after Hon Kim Chance (Leader of the House) had moved the following amendment -

Page 147, lines 8 and 9 - To delete the lines.

Hon PETER FOSS: The Government proposes an alternative to the wording in the Bill. I will not be happy to have this deleted until such time as we have the alternative version. I suggest what we do at this stage is confirm this clause and then go back to reconsider the clause in which the wording is to be inserted, plus any other changes, plus this clause. Once that is in, I am happy to have it taken out. For the time being I will vote on the clause.

The CHAIRMAN: We are moving to delete lines 8 and 9 on page 147.

Hon PETER FOSS: It is not a clause, is it, but a part within a clause? We will be voting no on that, so it will not be deleted, but then the minister will have to move a recommittal anyway to make some other changes. At that stage, if he recommits this clause as well, we would be happy to have those lines taken out with the new clause in, provided it is in the form in which I have suggested it be amended.

Amendment put and a division taken with the following result -

Ayes (7)

Hon Kim Chance
Hon Jon Ford

Hon Graham Giffard
Hon Ljiljana Ravlich

Hon Tom Stephens
Hon Ken Travers

Hon Ed Dermer (*Teller*)

Noes (15)

Hon Alan Cadby
Hon George Cash
Hon Robin Chapple
Hon Murray Criddle

Hon John Fischer
Hon Peter Foss
Hon Frank Hough
Hon Barry House

Hon Robyn McSweeney
Hon Simon O'Brien
Hon Barbara Scott
Hon Jim Scott

Hon Derrick Tomlinson
Hon Giz Watson
Hon Bruce Donaldson (*Teller*)

Pairs

Hon Kate Doust
Hon Louise Pratt
Hon Sue Ellery
Hon Nick Griffiths
Hon Adele Farina

Hon Norman Moore
Hon Bill Stretch
Hon Ray Halligan
Hon Christine Sharp
Hon Dee Margetts

Amendment thus negatived.

The CHAIRMAN: There are three more amendments in the name of the minister. They are amendments Nos 52, 53 and 54. They are consequential upon those lines being deleted. The lines were not deleted so there is no need to move them.

Clause put and passed.

Further Report

Bill again reported, with further amendments, and, by leave, the report adopted.

Further Recommittal

On motion by Hon Kim Chance (Leader of the House), resolved -

That the Bill be recommitted for further consideration of clauses 2, 8, 21 and 48.

Committee

The Chairman of Committees (Hon George Cash) in the Chair; Hon Kim Chance (Leader of the House) in charge of the Bill.

Clause 2: Commencement -

Hon KIM CHANCE: I move -

- (1) Page 2, line 13 - To delete “the Corruption” and insert instead
 - (a) the Corruption
- (2) Page 2, after line 15 - To insert the following -
 - (b) each member of staff has -
 - (i) become an officer of the Commission;
 - (ii) become an officer of an organisation (other than the A-CC) within the meaning of the *Public Sector Management Act 1994*;
 - (iii) been registered under Part 4 of the *Public Sector Management (Redeployment and Redundancy) Regulations 1994*; or
 - (iv) resigned.

In this case I will go through the amendment, because members need a little time to get their head around its significance. Perhaps I need to work my way through the purpose of the two parts of the amendment so that it comes together. This amendment is an attempt by the Government to meet the issues that were raised by the Opposition about the security of the rights and interests of those people currently on the Anti-Corruption Commission staff. The Government’s bottom line in this is that the Corruption and Crime Commission should have the right to choose its staff on merit, not on the basis of their current employment, because the CCC has a different role from the ACC, and not all members of the ACC staff will fit in the CCC. It is as simple as that.

Hon Derrick Tomlinson: The staff would have had a different role.

Hon KIM CHANCE: Quite a different role, and to assume that those people should be moved regardless of their skill and competency base over to the CCC is a nonsense. The Government accepts that those people who are currently with the ACC but who may not have a place in the CCC need to have their interests looked after, the same as any other member of the public service. We have attempted, with these amendments, to ensure that that will take place. The Government has moved as far as it possibly can in the interests of fairness to those employees. To go further than that would create quite a dangerous precedent for the future of people in a public sector agency affected by a change in legislation.

Hon PETER FOSS: Because both the amendments have been moved, I have an amendment to make to the second amendment. I think it will be better to put the first, because I wish to amend the second.

Amendment (1) put and passed.

Hon PETER FOSS: I move -

- Amendment (2), after proposed paragraph (b)(iii) - To insert -
- (iv) reached the end of a fixed term contract; or

I have to go on to the next part of the minister’s amendment to explain my amendment. When that amendment was first put to us, it did not include the words “other than on a fixed term contract”. In between putting this proposition to us, and moving it in the House, the Government has removed fixed-term contract staff from the ambit of this clause. What is the impact of doing that? It means that those people on fixed-term contracts will be sacked by an Act of Parliament. They will not be entitled to due process; they will not even be entitled to be paid out. They will be sacked. The minister has said that the Government accepts that one must be fair to these people, but we have moved a long way from what was originally said. It is appropriate for staff to be transferred to the replacement body, but we have moved to put in place the undertaking, in general terms, that the Attorney General gave.

The only difference is that the Chamber is asked to change an undertaking into law. One might wonder why an undertaking should be turned into law. This amendment shows why. The Opposition suspected some weaseling was going on. The Attorney General is not prepared to give due process to the small number of people he wants to get rid of. He wants them sacked by us. He wants us to do his dirty work for him so he need do nothing other than say, “An Act has been passed and you’re gone. You’ve been eliminated by an Act of Parliament. Sorry about that.” That would be totally unfair. The Attorney General must either do the right thing and say that these people are incompetent and he will proceed to have them sacked, or he must pay them out to leave early. That would be fair; that would be due process.

I am happy to have these officers treated differently in that they will not be entitled to have more than if they served out the terms of their contract, but, as a member of Parliament, I am not prepared to sack them. The Government should do that. If the Government does not want people to be in its employ, and these people have

time remaining on their contracts, and the Government cannot sack them because they have done nothing to justify the sacking, the Government must pay them out. People are entitled to that treatment. That is why I have moved the amendment. I have not moved to delete the “or” in paragraph (iii) as I trust that that can be done as a Clerk’s amendment. I have moved to insert new paragraph (iv) which will make the current paragraph (iv) paragraph (v). Once the words “other than a fixed-term contract” have been deleted in a later amendment, people will still be dealt with, but not by an Act of Parliament. They will be sacked because they deserve to be sacked or they will have to be paid out to go early. Alternatively, their contract will expire. I cannot see why we should bring a fixed-term contract to an end. That is the purpose behind my amendment on the amendment.

Amendment on the amendment put and a division taken with the following result -

Ayes (13)

Hon Alan Cadby
Hon George Cash
Hon Robin Chapple
Hon Murray Criddle

Hon Peter Foss
Hon Barry House
Hon Robyn McSweeney
Hon Simon O’Brien

Hon Barbara Scott
Hon Jim Scott
Hon Derrick Tomlinson
Hon Giz Watson

Hon Bruce Donaldson (*Teller*)

Noes (10)

Hon Kim Chance
Hon Paddy Embry
Hon John Fischer

Hon Jon Ford
Hon Graham Giffard
Hon Frank Hough

Hon Ljiljanna Ravlich
Hon Tom Stephens
Hon Ken Travers

Hon Ed Dermer (*Teller*)

Pairs

Hon Ray Halligan
Hon Bill Stretch
Hon Norman Moore
Hon Dee Margetts
Hon Christine Sharp

Hon Adele Farina
Hon Kate Doust
Hon Louise Pratt
Hon Nick Griffiths
Hon Sue Ellery

Amendment on the amendment thus passed.

Hon KIM CHANCE: I have a real concern now whether the Government can continue to support this amendment in its current form.

Hon Peter Foss: Would you like to explain why?

Hon KIM CHANCE: Yes. Given the decision of the Committee, the Government has no choice other than to retain those persons on fixed-term contracts and to transfer them into the Corruption and Crime Commission, where there may be no need for them. We are now stuck with them until 2008.

Hon Peter Foss: Why don’t you pay them out?

Hon KIM CHANCE: Hon Peter Foss knows perfectly well that in circumstances like this the remedy lies within the contract. The remedy is contractual; they are contractual positions. If their positions are terminated, there is a means of dealing with that under the contract.

Hon Peter Foss: Then why don’t you move an amendment to say that those contracts are terminated.

Hon KIM CHANCE: We have now excluded them from that process and I have real concerns -

Hon Peter Foss: Why don’t you say that then or suggest an amendment when I put it up. All you have said is that you are being fair. If you have an amendment -

Hon KIM CHANCE: The member introduced an amendment -

Hon Peter Foss interjected.

The CHAIRMAN: Order, members! One at a time.

Hon KIM CHANCE: Hon Peter Foss introduced an amendment, which I think is unworkable. While considering that amendment, I had to get my own thoughts clear. Unfortunately I did not have my thoughts in order by the time the vote was called. I now find myself and the Government caught in an invidious position, where a number of people will be given quite extraordinary beneficial treatment, which has never been made available - as far as I am aware - to any other person working in the public sector. This is not the Government’s preferred way of doing things. I intend to vote against the amendment.

Hon PETER FOSS: I find this extraordinary. I raised this point when the amendment was moved. The Government has entered into a contract to engage these people in employment until 2008. If a business - or the Government, under normal circumstances - entered into a contract to engage somebody until 2008, it would be obliged to either employ that person until 2008 or to terminate his employment and pay him damages.

Hon Kim Chance: But we did not have the mechanism to do that.

Hon PETER FOSS: I do not think the minister has read this amendment. All it says is that the Government cannot get rid of the Anti-Corruption Commission until such time as it can certify all those things.

Hon Kim Chance: You are presuming that the ACC has the will to do that; the ACC may prefer not to terminate. That is not something the Government controls.

Hon PETER FOSS: It will have a bit of a problem shortly because it will not have any money.

Hon Derrick Tomlinson: The CCC will be the ACC under a different flag.

Hon PETER FOSS: It could have been done that way, if they had been transferred. The minister must think this one through. The Government will not be allowed to terminate a contract by an Act of Parliament. I remind the minister that the Government put up a clause that we accepted - in fact, I suggested it - and he came to me during lunchtime with his amendment. This matter was raised immediately after lunch, while I was still asking the minister what his view was. If the minister has something else he wishes to add to the amendment to make it clear that these contracts can be terminated, I do not have a problem with that, but I do have a problem with terminating these contracts by an Act of Parliament, because it is not fair to enter into a contract with these people until 2008 and for the Government to then complain that it has engaged them until 2008. That is the contract that was signed. To try to terminate by Act of Parliament and to take away the Government's responsibility for five years of that contract is wrong. If they are terminated in less than that time, obviously they have an obligation to mitigate their damage and to try to find another job.

Hon Kim Chance: The ACC engaged them. You make it sound as if it were the Government.

Hon PETER FOSS: I do not care. The ACC is an agent of the Crown. The ACC is the Government of Western Australia. It may have been set up as a corporation, but these people are employed by the State of Western Australia. They are not employed by Joe Bloggs Pty Ltd or BHP. In reality, it does not matter how many corporations the Government sets up, they are agents of the Crown. This is the responsibility of the Crown. An agent of the Government set up this contract, and the Government is now trying to terminate it by Act of Parliament. I am happy to come up with any practical solution, and I have asked the minister to comment on this amendment. Had the minister proposed a comment on the amendment, it would have been useful. I do not believe the minister is correct, because I believe the ACC can terminate these contracts, and would be obliged to, because it does not have any work for them and it does not have any money. It must terminate them. If the minister wants to add extra words, all he has to do is ask. We have been more than reasonable in all of this, because it was I who suggested that this was the way to get the wretched minister out of this stupid political problem he had created for himself, having committed himself to do something. It was his face we were saving. Why we bother, I do not know. However, I came up with a solution that would enable this Government's minister to carry out his malicious little attack on these people and save face, because it seemed a way of cooperating. I am happy to cooperate, but I am not prepared to see these people duded by this Government, simply because it is not prepared to talk to me in the cooperative manner in which I have been prepared to talk to it.

The CHAIRMAN: If there are additional words that could be added that might speed resolution of debate on this Bill, that would be helpful, because as I understand it, we have agreed to attempt to complete another Bill. I am not trying to restrict people. If there are additional words and they will solve the problem, the sooner they are brought forward the better.

Hon DERRICK TOMLINSON: I am only after some information. The Leader of the House made a statement on behalf of the Attorney General, which indicated that it was the Government's intention that the staff of the CCC would be employed by merit. Given the specialist skills of the ACC officers, most of them will be employed on merit and there will be no unfair competition.

Hon Peter Foss: No discrimination.

Hon DERRICK TOMLINSON: There will be no discrimination of the investigators or personnel of the royal commission in spite of previous public statements. We accept that. The subsequent impasse was to be resolved by an amendment that I received before the lunch break. I admit that I was outside the House at that time so negotiations may have occurred to which I was not a party. I came back after the luncheon break and found that those people who are on contract will not be employed. Now I hear that the Corruption and Crime Commission will not employ people who are on contract until 2008. Will the CCC employ most of them but not those on contract?

Hon Kim Chance: No.

Hon DERRICK TOMLINSON: That is what the minister is saying. Will the minister clarify it for me? How many employees of the Anti-Corruption Commission are on contract? How many of them are on contract to 2004, 2005, 2006, 2007 and 2008? What positions do they hold within the ACC? I know it is unrealistic to expect the minister to have that information at his fingertips because it is not his field of responsibility. He might not be able to get the information immediately; nonetheless, it is crucial information.

Hon Kim Chance: I can substantially answer it.

Hon DERRICK TOMLINSON: In that case, I will sit down and listen to the minister's substantial answer.

Hon KIM CHANCE: In general terms, some staff are on fixed-term contracts. At least one staff member's fixed-term contract extends to 2008. However, those employed on a fixed-contract basis are a distinct minority of the whole of the ACC work force. It is a misrepresentation to suggest that the only people who will be excluded from transferring to the CCC will be those on fixed-term contracts. Their mode of employment will not affect their transferability. That is not implied by the amendment. The only requirement of the Government in respect of the CCC is that appointments should be merit-based, not automatic transfers from the ACC.

Hon PETER FOSS: I have read the Leader of the House's proposed amendment. It is definitely an improvement. I take it the minister does not intend to grant a new right of termination other than that which is available under the contract. The following might be better wording -

The chief executive officer of the Department of Premier and Cabinet shall have the same right to terminate the fixed-term contract of any member of staff as though the CEO of the Department of the Premier and Cabinet were the employer.

That is what I think the minister is intending to say. If the minister is prepared to put that, I will be happy with it because there is then no extra contractual right over what they currently have either way.

Hon KIM CHANCE: Given that we do seem to have agreement in broad terms around the next amendment, I withdraw my opposition to the adoption of the amendment currently before us.

Amendment, as amended, put and passed.

Sitting suspended from 2.50 to 2.58 pm

The CHAIRMAN: Members, we are dealing with clause 2. The question is that clause 2, as amended, be agreed to. I believe the Leader of the House is about to move amendments to page 2, after line 18.

Hon KIM CHANCE: Thank you, Mr Chairman. That was a perfectly reasonable assumption on your behalf, but I am not about to do that. I intend to move a further amendment prior to moving the amendment you have mentioned. I move -

Page 2, after line 15 - To insert -

- (vi) had his or her contract terminated.

Amendment put and passed.

Hon KIM CHANCE: I move -

Page 2, after line 18 - To insert the following -

- (5) In this section -
"member of staff" means a person who is in the employment of the A-CC on the coming into operation of section 6.
- (6) For the purposes of the *Public Sector Management (Redeployment and Redundancy) Regulations 1994* the chief executive officer of the Department of the Premier and Cabinet is taken to be the employing authority of the members of staff.
- (7) The chief executive officer of the Department of the Premier and Cabinet shall have the same right to terminate the fixed term contract of any member of staff as if the chief executive officer were the employer of that member of staff.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 8: Section 7 amended -

Hon KIM CHANCE: I need to make a short explanation prior to moving my amendment. When I read the words “To delete the lines and insert instead”, the lines to which I will be referring are the lines that were adopted yesterday by amendment.

For the sake of precision, the lines state -

- (3a) The Premier is to recommend the appointment of a person -
 - (a) whose name is on a list of 3 persons eligible for appointment that is submitted to the Premier by the nominating committee; and
 - (b) who, if there is a Standing Committee, has the support of the majority of the Standing Committee and bipartisan support.

That needed to be stated for certainty. I now move -

Page 12, lines 29 to 32 - To delete the lines and insert instead -

- (3a) Except in the case of the first appointment, the Premier is to recommend the appointment of a person -
 - (a) whose name is on a list of 3 persons eligible for appointment that is submitted to the Premier by the nominating committee; and
 - (b) who, if there is a Standing Committee, has the support of the majority of the Standing Committee and bipartisan support.

Page 13, line 9 - To delete “Before” and insert instead -

Except in the case of the first appointment, before

Page 13, after line 15 - To insert the following -

- (4a) In the case of the first appointment, before the appointment is made the Premier is to consult with the leader of the Opposition.

Hon PETER FOSS: I do not have a problem with this amendment, although I do think it is totally unnecessary. As I think was pointed out in the debate, the Attorney General has the opportunity to do this simply by not proclaiming the Act until such time as he has made the appointment, because we are amending the current Act. The only question I have is on the second amendment. I should have looked at this amendment. Does the amendment to page 13, line 9 involve an acting inspector?

Hon Kim Chance: No.

Hon PETER FOSS: What does it relate to? Why are there two of those? This is an amendment to the original Act, not to the unamended clauses.

The CHAIRMAN: It is an amendment to the Green Bill.

Hon KIM CHANCE: Does Hon Peter Foss want an answer to that question?

Hon Peter Foss: Could you? I am not sure what we are changing.

Hon KIM CHANCE: If Hon Peter Foss turns to page 13 -

Hon Peter Foss: I am happy with it now.

Amendments put and passed.

Clause, as amended, put and passed.

Clause 21: Section 34 amended [new Clause 14] -

Hon KIM CHANCE: I will give the same explanation that I gave for the previous amendments; that is, when I refer to deleting the lines, I am referring to the lines that were adopted by amendment yesterday. I move -

Page 123, lines 27 to 32 and page 124, lines 1 to 3 - To delete the lines and insert instead -

- (1) The Parliamentary Inspector is to be appointed on the recommendation of the Premier by the Governor by commission under the Public Seal of the State.
- (2) Except in the case of the first appointment, the Premier is to recommend the appointment of a person -
 - (a) whose name is on a list of 3 persons eligible for appointment that is submitted to the Premier by the nominating committee; and
 - (b) who, if there is a Standing Committee, has the support of the majority of the Standing Committee and bipartisan support.

(3) The Parliamentary Inspector is to hold office in accordance with this Act.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 48: Transfer of assets and liabilities to Commission [was Clause 32] -

Hon KIM CHANCE: I move -

Page 147, lines 8 and 9 - To delete the lines.

Page 147, line 11 - To delete “, (b) and (bas)” and insert instead -
and (b)

Page 147, line 19 - To delete “, (b) and (ba)” and insert instead -
and (b)

Page 147, line 23 - To delete “, (b) and (ba)” and insert instead -
and (b)

Amendments put and passed.

Clause, as amended, put and passed.

Bill again reported, with further amendments.

Leave granted to proceed forthwith through remaining stages.

Further Report

Further report of Committee adopted.

Third Reading

Bill read a third time, on motion by Hon Kim Chance (Leader of the House), and returned to the Assembly with amendments.