

**PUBLIC TRUSTEE AND TRUSTEE COMPANIES LEGISLATION AMENDMENT BILL 2006**

*Consideration in Detail*

**Clauses 1 to 4 put and passed.**

**Clause 5: Section 1A inserted -**

**Ms S.E. WALKER:** Is the object of the act as outlined in proposed section 1A any different from the current object of the act?

**Mr J.A. McGINTY:** I am told there is currently no objects clause in the act. This clause inserts a new section 1A, headed "Object" -

The object of this Act is to provide community services in respect of trusts, estates and related matters.

The purpose of this proposed new section is to add to people's understanding of the services that are provided by the Public Trustee.

**Clause put and passed.**

**Clause 6: Section 2 amended -**

**Ms S.E. WALKER:** This clause will amend section 2 of the act by inserting a number of definitions. One of those definitions is "client". Does the act currently contain a definition of client?

**Mr J.A. McGINTY:** The act currently contains no definition of client. This no doubt reflects the relative age of this legislation and the fact that it does not appear to have been properly reviewed over time. I am told that paragraphs (a) to (g) of the definition of client describe the kinds of people on whose behalf the Public Trustee may provide services. The proposed definition is somewhat broader than the current conception of client, because a number of additional services will now be provided by the Public Trustee.

**Ms S.E. WALKER:** Who are the current clients of the Public Trust Office? What additional categories of client are envisaged?

**Mr J.A. McGINTY:** I am told that two examples of clients of the Public Trustee are contained in paragraphs (f) and (g) of the definition; namely, a person who has appointed the Public Trustee to act as the person's agent, or a member of a class of persons prescribed by the regulations. It is envisaged that, depending upon the nature of the new services that will be provided to the community by the Public Trustee, people in addition to those listed in paragraphs (a) to (g) may also be included.

**Ms S.E. WALKER:** There is currently no class of persons prescribed by the regulations. Therefore, we do not know who those persons may be.

**Mr J.A. McGINTY:** It will depend upon the nature of the new services that the Public Trustee will be providing.

**Ms S.E. Walker:** What types of new services are envisaged?

**Mr J.A. McGINTY:** That will be contained in the annual agreement between the Attorney General and the Public Trustee. At this stage, because the legislation has not been passed, there is obviously no annual agreement. Therefore, it would be speculative to answer that question at this stage.

**Ms S.E. WALKER:** The Attorney General has brought in this bill, but we do not know what services the Public Trustee will be providing.

**Mr J.A. McGINTY:** Yesterday, I described a range of services, particularly on the investment front, that the Public Trustee cannot currently provide but that it is intended the Public Trustee will provide in the future. The provision of investment services is a fairly important part of the functions of the Public Trustee. A range of services that are not currently being provided will be able to be provided under the more expansive framework that is proposed in this legislation.

**Ms S.E. WALKER:** There is no list of the range of services that may be provided.

**Mr J.A. McGINTY:** That is because that is speculative at this stage. The Public Trustee gave a briefing to members on the sorts of services that he envisages will be provided.

**Ms S.E. WALKER:** I am asking for the sake of the public record.

**Mr J.A. McGINTY:** I do not have a list.

**Ms S.E. WALKER:** Perhaps the Public Trustee could answer that question. I want the Attorney General to put on the public record, because it is not before the Parliament, what new services the Public Trustee may be

providing to Western Australians. It is proposed in this bill to expand the range of services that may be provided by the Public Trustee. However, we do not know what that range of services will be. We also do not know who the clients may be, because a client may be a member of a class of persons prescribed by the regulations, but as yet we know nothing about the regulations. What is the possible range of services that may be provided by the Public Trustee?

**Mr J.A. McGINTY:** I am advised that the services are estate planning, financial planning, investment management and deceased estate services.

**Ms S.E. WALKER:** Does that mean that the Public Trustee will be competing with the private sector in the provision of these services?

**Mr J.A. McGINTY:** To some degree the Public Trustee already competes with other providers of trustee services.

**Ms S.E. Walker:** In what way?

**Mr J.A. McGINTY:** The drafting of wills, to give one simple example, and all the other services that are provided at the moment, which I understand the member has been briefed on.

**Ms S.E. WALKER:** It does not matter whether I have been briefed, Attorney General. I want to get this on the public record. Is it intended under this legislation that the Public Trust Office will do further forays and compete with the private sector in providing services that other trustee companies and insurance companies are currently providing?

**Mr J.A. McGINTY:** The pejorative language used by the member is not something that I would agree with.

**Ms S.E. Walker:** Which part of my language was pejorative?

**Mr J.A. McGINTY:** "Forays" is one example.

**Ms S.E. WALKER:** Come on, Attorney! The Attorney General may have read three long second reading speeches this morning, but he is very testy. I want to get this on the public record, because there is an important philosophical shift in this legislation in relation to the moneys of vulnerable people. A lot of money is at stake. I presume the Attorney General has not read the KPMG report on the Public Trust Office. That report refers to the relationship between the private sector and the Public Trust Office. I am asking a simple question about whether the Public Trust Office will be extending further the range of services that it provides and thereby drawing upon the same client base as the private sector.

**Mr J.A. McGINTY:** The extension of services in the areas that I have indicated is substantially in response to the request of existing clients who want to access these types of services. Certainly, the provision of expanded investment services is at the request of existing clients who believe they are not getting the return on their investments that they should be getting. In each of those areas it would be for the same clients. Given the expanded range of available services and the more attractive basis upon which they can be offered, I expect the client base may well be expanded.

**Ms S.E. WALKER:** Is it true that the government has introduced this bill not just for existing clients? Is estate planning already done by the Public Trust Office?

**Mr J.A. McGinty:** Only for people for whom the Public Trustee is the executor. There is a demand to also provide that service for people for whom the Public Trustee is not the executor.

**Ms S.E. WALKER:** The Attorney General mentioned demand. How many people have asked for that?

**Mr J.A. McGinty:** I do not know.

**Ms S.E. WALKER:** The Public Trustee is sitting next to the Attorney General.

**Mr J.A. McGinty:** I do not know the answer to that.

**Ms S.E. WALKER:** Is the Attorney General saying that he did not know that the Public Trustee was sitting next to him?

**Mr J.A. McGinty:** You asked me how many people have made that demand. I do not know the answer to that.

**Ms S.E. WALKER:** I am asking the Attorney General to ask his advisor.

**Mr J.A. McGinty:** I could ask, but I have already given you the answer.

**Ms S.E. WALKER:** The Attorney General is not going to ask the Public Trustee?

**Mr J.A. McGinty:** I have given you the answer.

**Ms S.E. WALKER:** The Attorney General said that the government has introduced this legislation because of demand. What is the demand? I overheard the Public Trustee say that he does not have the statistics.

**Mr J.A. McGinty:** That was the initial answer I gave you.

**Ms S.E. WALKER:** No, the Attorney General said that he did not have the answer.

**Mr J.A. McGINTY:** I move -

Page 4, lines 19 and 20 - To delete the lines and substitute -

**“Common Account”** means the account established and continued under section 39A(1).

**Ms S.E. WALKER:** This amendment seeks to delete the word “fund”. I want to establish that the common fund and common account are one and the same. The annual report of the Public Trust Office refers to common fund. It is generally known as the common fund, but in the act it is known as the common account. Is that why the amendment has been moved?

**Mr J.A. McGINTY:** As a result of the commencement of the Financial Management Act 2006, it is necessary to amend the Public Trustee and Trustee Companies Legislation Amendment Bill 2006. These amendments have no effect on the purpose and intent of the changes to the Public Trustee Act 1941. The amendments flow from the requirements of the new Financial Management Act 2006 that apply to a number of related pieces of legislation, including the Public Trustee Act. The amendments are essentially of a technical nature involving minor drafting amendments that change the terminology from “fund” to “account” and the substitution of the new Financial Management Act 2006 for the repealed Financial Administration and Audit Act 1985. Specifically, in respect of clause 6, these changes are required to ensure consistency with the terminology used in the Financial Management Act 2006. The changes will delete the words “common fund” and replace them with “common account”, which means the account established and continued under section 39A(1); define the word “fund” to be the common account for strategic common account; and define “strategic common account” as an account established under section 39B(1) in place of a fund established under section 39B(1).

**Ms S.E. WALKER:** I am aware of the changes that came about as a result of the Financial Management Act. Page 65 of the 2005-06 Public Trustee annual report refers to investments in loans and investments in the common fund. Is that the same as the common account?

**Mr J.A. McGinty:** Yes, it is.

**The ACTING SPEAKER (Mr A.P. O’Gorman):** The question is that -

**Ms S.E. WALKER:** Attorney General -

**The ACTING SPEAKER (Mr A.P. O’Gorman):** The member for Nedlands does not have the call because she sat down.

**Dr K.D. HAMES:** I think the member for Nedlands would like to ask something else.

**Ms S.E. WALKER:** Is the common fund that is referred to at page 65 of the 2005-06 annual report the same as the common account that under section 42 of the Public Trustee Act 1941 is guaranteed by the state?

**Mr J.A. McGinty:** Yes, that is right.

**Amendment put and passed.**

**Mr J.A. McGINTY:** I move -

Page 4, lines 23 and 24 - To delete the lines and substitute -

**“Fund”** means the Common Account or a strategic common account.

**Amendment put and passed.**

**Mr J.A. McGINTY:** I move -

Page 4, lines 27 and 28 - To delete the lines and substitute -

**“strategic common account”** means an account established under section 39B(1).

**Amendment put and passed.**

**Clause, as amended, put and passed.**

**Clause 7: Section 3 amended -**

**Ms S.E. WALKER:** Can the Attorney General explain why the government is repealing section 3(2) of the principal act?

**Mr J.A. McGINTY:** Parliamentary Counsel’s Office suggested this change to simply modernise the Public Trustee Act. Schedule 1 shows the extent to which the acts set out therein have been repealed or amended. Those acts are therefore simply no longer relevant to the operation of this act.

**Ms S.E. Walker:** What are the acts? Are you referring to acts that existed prior to the Public Trust Act coming into being? Why are those being repealed in the schedule? Is there reference to the Lunacy Act?

**Mr J.A. McGINTY:** Yes, the Lunacy Act is included in the schedule.

**Ms S.E. Walker:** Why are the Mental Treatment Act and the Curator of Intestate Estates Act being removed?

**Mr J.A. McGINTY:** My understanding is that they have all been repealed. We want to modernise the legislation.

**Ms S.E. WALKER:** Is it not an historical record?

**Mr J.A. McGINTY:** They are no longer of any relevance; therefore, we do not want a provision in the act that does not have any meaning.

**Ms S.E. Walker:** When I did some research I decided that it had meaning because it underpins why the act came into being in the first place.

**Mr J.A. McGINTY:** Parliamentary Counsel decided that it was a redundant provision.

**Clause put and passed.**

**Clause 8 put and passed.**

**Clause 9: Section 4 amended -**

**Ms S.E. WALKER:** I am pleased that the Attorney General has put this provision in the bill. It states -

The Public Trustee is an agent of the Crown in right of the State and enjoys the status, immunities and privileges of the Crown.

Can the Attorney General tell me why he has included that provision?

**Mr J.A. McGINTY:** There are a number of reasons; for instance, the liability to pay certain taxes and things of that nature that flow from the status of the organisation and whether it is -

Debate interrupted, pursuant to standing orders.