

WESTERN AUSTRALIAN LAND AUTHORITY AMENDMENT BILL 2003

Committee

Resumed from an earlier stage of the sitting. The Deputy Chairman of Committees (Hon Kate Doust) in the Chair; Hon Ken Travers (Parliamentary Secretary) in charge of the Bill.

Clause 8: Section 5A and 5B inserted -

Debate was interrupted after the clause had been partly considered.

Hon JIM SCOTT: I remarked in my earlier comments on clause 8 that the Western Australian Land Authority is not an agent of the Crown and does not have the immunities and privileges that such status entails. I am happy with that situation; however, I do not like it to be presented that somehow or other this status gives a public authority some huge advantage over its competitors in the private sector. In fact, members well know that government agencies have other responsibilities not encountered by private organisations. I will support the clause, but I wished to clarify that matter.

Hon GEORGE CASH: I have a further question. The parliamentary secretary previously gave the reasons for the authority to not be an agent of the Crown. The authority is to be bound by the Corporations (Western Australia) Act. Is that not also a reason for the authority to not be an agent of the Crown?

Hon KEN TRAVERS: I do not have the specific detail to answer the member's question today but I am more than happy to provide him with an answer in due course.

Clause put and passed.

Clauses 9 to 11 put and passed.

Clause 12: Sections 10 to 13 replaced by sections 10 to 13A, and transitional provisions -

Hon GEORGE CASH: Proposed section 11(4) on page 10 refers to certain exclusions from the operation of part II, division 2B of the Industrial Relations Act 1979. Why are those exclusions to be made? Some exceptions to the exclusion are also listed. Why should those particular matters that are described as exceptions be exceptions to the exclusion?

Hon KEN TRAVERS: The advice I have received is that the reason it is being done in this way is to bring it into uniformity with the Port Authorities Act, because that is the way in which these matters have been dealt with within that Act. The Public Sector Management Act will no longer apply, so this amendment is reinstating some of the exceptions. I think it is right that the senior management are excepted from those matters under the Public Sector Management Act. This amendment is putting that provision directly into this Act because the authority will no longer be an agent of the Crown.

Hon JIM SCOTT: Proposed section 10(5) states that the board must get the minister's approval before it exercises any of the powers conferred by proposed subsection (3). Is the approval automatically provided in writing, or could it be just verbal approval?

Hon KEN TRAVERS: The approval could be provided in any form, but would normally be given in writing. I expect that it would be given in writing to cover everybody. I am sure that the minister would want it to be given in writing, as would the board, to ensure that there could be no misunderstanding. Technically, the approval could be provided verbally or by any other means. The custom and practice is for the approval to be provided in writing. I am confident that this provision is similar to the provisions in legislation relating to a number of other statutory boards and authorities. My experience of those authorities is that approval is provided in writing.

Hon JIM SCOTT: Would there be a problem with amending the clause to make it "written approval"?

Hon KEN TRAVERS: I have no instructions to accept an amendment such as that. I do not know that it would necessarily make any difference, in the sense that approval would need to be given in writing anyway. The effect of the provision is that it would be provided in writing; otherwise, there would be no proof that approval was given, which is the key issue.

Hon Jim Scott: If you normally expect something as serious as that to be in writing, why would you have a problem with detailing that in the legislation?

Hon KEN TRAVERS: As I have said a number of times, we try as much as possible to provide uniform legislation for trading enterprises. I am advised that this legislation is modelled on other Acts that do not specify that the approval must be in writing. I am happy to take on board the member's comments and to pass them to the minister and Cabinet so that they can consider whether to ask parliamentary counsel to consider incorporating such a provision within this type of legislation. I have not been given any further advice from

parliamentary counsel on why that would not be acceptable, but I am more than happy to pass on the member's point and ask that it be considered in the future if it is feasible.

Hon GEORGE CASH: Hon Jim Scott has raised a very important matter. I say that in reference to proposed section 10(5), which states -

The board must get the Minister's approval before it exercises any of the powers conferred by subsection (3).

Proposed section 10(3) states -

The powers -

- (a) to appoint and remove the chief executive officer; and
- (b) to fix and alter the terms and conditions of service of the chief executive officer,

are vested in the board.

Hon Jim Scott is projecting a situation in which a person ends up in court to deal with an alleged unfair dismissal claim. If any members have had any dealings with issues surrounding unfair dismissal, they will know that it often comes down to what people said, what people thought people said, what people did not say or what people thought they did not say. It is critical in this case to get in writing something as important as approval for the appointment or removal of a chief executive officer or the fixing or altering of the terms and conditions of service of the chief executive officer, so that the board is very clear that when it acts it acts with the authority required under this legislation. Otherwise, there will be the potential for parties to end up in a dispute in which they must rely on nothing more than verbal communications, which might serve to disadvantage one of the parties - it might be the chief executive officer or it might be the board. As Hon Jim Scott has pointed out, if the approval were given in writing, it would remove any chance of confusion about whether approval was granted. The Opposition would support Hon Jim Scott if he were to move an amendment to proposed subsection (5) to insert after the word "Minister's" the word "written".

Hon KEN TRAVERS: I have received some further advice. The authority would be required to keep written records for corporate governance and audit purposes. Therefore, there would need to be some form of written reference. I would expect it to be a formal written letter from the minister or at least a file note to confirm it. Otherwise, the Auditor General would be onto it. That is the advice I have been given. Certainly, from a corporate governance point of view, the effect is that it would be in writing anyway. I add that to clarify the matter for members.

Hon GEORGE CASH: If that is the case, that is all the more reason for putting in the word "written" to confirm it. We should not have to rely on some corporate governance assumption that an issue will be "written". I am sure the board will keep notes, as is required, and I am sure the minister will keep notes. However, that does not mean that the notes themselves will represent the same understanding on both sides. However, if the minister were required to provide written approval before the board exercised any of the functions conferred by subsection (3), what had or had not been approved would be absolutely clear. I see this as tightening the situation for the minister, the board and, in due course, the chief executive officer, if evidence were ever required to be shown that proper approval was given before those functions were exercised.

Hon JIM SCOTT: I cannot understand why there would be any concern about making that fully clear, if that will be the normal practice. The other thing that strikes me is that if the board were to decide that it wanted to displace the chief executive officer, for whatever reason, and it then decided to remove him, surely the CEO would want to see something written on a piece of paper from the minister saying that the minister approved of that course. I believe it is much better to have that included in the first place, rather than there being an argument after the fact and it ending up in legal challenges and all that sort of thing. Perhaps it would be better if we did not deal with this matter and got a commitment from the parliamentary secretary to perhaps recommit -

Hon KEN TRAVERS: If the will of the committee is to insert the word "written", we should do it now. I do not think there is a need to go back and recommit the clause. I do not think it is necessary to insert the word "written". However, I can assure members that I can count, and if the numbers are there, I will not call a division on it. I do not think it is necessary, and I have put that view to the committee. If the view of the committee is that it wants it included, let us do it now. If the committee is of a different view, we will not put it in, but if the committee's view is that it wants to put it in, let us put it in now.

Hon JIM SCOTT: I move -

Page 9, line 10 - To insert after "Minister's" -
written

Amendment put and passed.

Hon GEORGE CASH: Proposed section 13A on page 12 deals with superannuation. Proposed section 13A(2) reads -

The Authority may make contributions to any fund or scheme referred to subsection (1).

Proposed subsection (1) referred to deals with benefits to members and former members of staff. Can the parliamentary secretary indicate the current rate of contribution paid by the WA Land Authority for its staff members, and whether there is any distinction between seniority of staff members and the rate paid?

Hon KEN TRAVERS: I am advised that the authority uses the standard public sector scheme; that is, nine per cent for new staff and up to 12 per cent for some staff who were employed under previous arrangements and are now under the gold scheme. The rate is based on how long they have been there, rather than their position in the organisation.

Clause, as amended, put and passed.

Clause 13: Part 2 Division 3 inserted -

Hon JIM SCOTT: Proposed section 14B(2) reads -

In complying with subsection (1) the board is to have regard to the principles set out in section 9 of the *Public Sector Management Act 1994*.

What is meant by the words “have regard to”? How strong are those words?

Hon KEN TRAVERS: There will be a change in the nature of the organisation. These words effectively reinstate what the organisation would have had as an agency of the Crown and a public sector agency. The board is obviously required to consult with the Commissioner for Public Sector Standards in determining codes of conduct and the like. The intention is that the board will look at broader government policies on codes of conduct, and ensure that they are picked up. My understanding is that that wording has been used in the Port Authorities Act 1999, and the intention here is to provide uniformity and to ensure that broader government policy on those issues is being adapted as part of the structure changes and that the board does not go beyond or outside the accepted parameters of other government agencies in similar situations. The board must obtain the approval of the Commissioner for Public Sector Standards, which is a double safeguard against it going too far. I am sure that the commissioner will not allow that to occur.

Clause put and passed.

Clause 14 put and passed.

Clause 15: Section 16 amended -

Hon KEN TRAVERS: I move -

Page 16, lines 19 to 27 - To delete the lines.

This amendment is consequential to the amendment to the long title.

Amendment put and passed.

Hon KEN TRAVERS: I move -

Page 17, lines 2 to 10 - To delete the lines.

The explanation for this amendment is similar to that for the previous amendment.

Hon GEORGE CASH: We agree with the amendment, as we did with the last amendment, for the reasons that we gave during the discussion on the long title. This is a consequence of the changes to the long title and will restrict the scope of the Bill.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 16 put and passed.

Clause 17: Section 17 amended -

Hon KEN TRAVERS: I move -

Page 18, line 6 - To delete “in” and insert instead “by deleting”.

Amendment put and passed.

Hon KEN TRAVERS: I move -

Page 18, line 6 - To delete “by deleting “develop, alter and” ”.

Amendment put and passed.

Hon KEN TRAVERS: I move -

Page 18, line 8 - To delete the line and insert instead -

- (b) undertake, plan, provide for, promote or coordinate the subdivision, amalgamation, improvement, development, alteration or management of land, whether or not the Authority holds the land in question;
- (ba) extract minerals from land;

This amendment is fairly self-explanatory. It is about modernising the definitions and the terms and the objects of the organisation.

Amendment put and passed.

Hon GEORGE CASH: Subclause (3) on page 19 of the Bill provides -

After section 17(4) the following subsection is inserted -

“

- (4a) The Authority may -
 - (a) make gifts for charitable purposes or for other purposes of benefit to the community or a section of the community;
 - (b) make any ex gratia payment that the board considers to be in the Authority’s interest;
 - (c) accept any gift, devise or bequest if it is absolute, or subject to conditions that are within the functions of the Authority.

”.

Have any gifts for charitable purposes been made by the authority; and, if so, what is the nature and amount of those gifts? Has the board made any ex gratia payment; and, if so, what is the nature and amount of that payment? The parliamentary secretary probably does not have that information to hand. However, if such gifts or ex gratia payments have been made, he may be able to make a general comment and provide some information in due course.

Hon KEN TRAVERS: My advice is that it is intended more as a reserve power, possibly as some form of sponsorship or community engagement in a development. The member is absolutely correct that I do not have any information on past payments. I will take that question on board and make a point of advising the member in due course. However, it is more about a reserve power to allow -

Hon George Cash: I am not objecting to it; I am just asking what has occurred in the past and will you provide details.

Hon KEN TRAVERS: I am not aware of any example of it occurring in the past that I can give the member at the moment.

Clause, as amended, put and passed.

Clause 18 put and passed.

Clause 19: Section 18 amended -

Hon KEN TRAVERS: I move -

Page 22, line 14 - To insert before “16” -

and related functions under section

Again, this amendment is consequential.

Amendment put and passed.

Hon KEN TRAVERS: I move -

Page 22, lines 14 to 16 - To delete -

and inserting instead -

“ 16(1)(g) ”.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 20: Section 20 amended -

Hon KEN TRAVERS: I move -

Page 22, lines 18 and 19 - To delete the lines.

Again, this is a consequential amendment.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 21: Section 22 replaced -

Hon GEORGE CASH: Proposed section 22 is headed “Subsidiaries”. With regard to proposed subsection (1), can the parliamentary secretary provide examples of potential subsidiaries that the authority may wish to acquire in the conduct of its business?

Hon KEN TRAVERS: At this stage, there is no specific example. However, this provision, in effect, allows LandCorp to set up joint ventures. If LandCorp were to set up a joint venture at the moment, it would take on board the full risk of the joint venture. This provision would allow it to set up a separate company that could involve the joint venture with the private sector, and the risk would then be shared equally. That is the intention of this provision. At this stage, as far as I am aware, there are no formal proposals on the drawing board that might use this provision. However, the provision is there for future use.

Clause put and passed.

Clauses 22 to 24 put and passed.

Clause 25: Section 24A amended -

Hon KEN TRAVERS: I move -

Page 28, line 15 - To insert after “17A” -
applies

Parliamentary counsel identified that this amendment was required to tidy up the provision.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 26 to 44 put and passed.

Clause 45: *Public Sector Management Act 1994* -

Hon KEN TRAVERS: I move -

Page 67, line 17 - To delete “16” and insert instead “16A”.

Amendment put and passed.

Clause, as amended, put and passed.

Title put and passed.

Bill reported, with amendments.

Leave granted to proceed forthwith through remaining stages.

Report

Report of committee adopted.

Third Reading

Bill read a third time, on motion by Hon Ken Travers (Parliamentary Secretary), and returned to the Assembly with amendments.