

**STATUTES (REPEALS AND MINOR AMENDMENTS) BILL 2001**

*Consideration in Detail*

Resumed from an earlier stage of the sitting.

**Clause 91: *Parliamentary Commissioner Act 1971* amended, validation and savings -**

Debate was interrupted after the clause had been partly considered.

Mr R.F. JOHNSON: Before the debate was interrupted, I had been asking the minister about Chris Read, who was the whistleblower who was working in the Ombudsman's office, and who we believe was treated very unfairly. I think at some point the parliamentary secretary talked about what this omnibus Bill will mean with regard to a person such as Chris Read who was working in another government department and was, say, a level 6, and who then went to the Ombudsman's Office and managed to reach a level 7. Prior to the enactment of this legislation, a person such as Chris Read could not stay a level 7 when he returned to the public sector after he had been dismissed by the Ombudsman. He had to go back to the lower level he was at before he went to the Ombudsman's office. Was that the case?

Mr J.C. Kobelke: Was what the case?

Mr R.F. JOHNSON: The minister was not listening. I will repeat it.

Mr J.C. Kobelke: Succinctly.

Mr R.F. JOHNSON: I was very succinct. I understand that Chris Read - I will be corrected if I am wrong - was at a level lower than a level 7 prior to being seconded to the Ombudsman's office. After spending time in the Ombudsman's office, I understand he rose to level 7. However, when he was dismissed by the Ombudsman, he could not go to another government department at a level 7. He had to be reduced to the level he was at before he went to the Ombudsman's office. Is that correct?

Mr J.C. Kobelke: My understanding is that that is correct, except for the fact that he was not dismissed; he was on secondment, the secondment was not renewed and he returned to the public sector.

Mr R.F. JOHNSON: I also understand that people who were seconded to the Ombudsman's office were virtually regarded as secondees with three-year rolling engagements. If they wanted to stay there, they could, but that did not happen in the case of Chris Read because he was dismissed and his contract was disallowed. He was basically dismissed by the Ombudsman because he blew the whistle on the inappropriate procurement that was taking place in the Ombudsman's office. He blew the whistle because the office was not complying with government procurement guidelines - I think about \$500 000 was spent that should not have been spent - and he was dismissed by the Ombudsman. If people go to the Ombudsman's office, they will be at the level they are on at the time. If they reach a higher level while they are in the Ombudsman's office and then wish to leave and return to another government agency, under the amendments in this clause will they continue at that level and not be reduced to the level they were at previously? That is the second part of the question that I need the minister to answer. In other words, if the amendments to the Parliamentary Commissioner Act in this Bill had been in operation at the time of Chris Read's employment in the Ombudsman's office, would he have suffered in the same way?

Mr J.C. KOBELKE: I know the member tried to make it very simple, but when he colours his remarks with words such as "suffered" - I am not suggesting that Mr Read did not suffer - that is a value judgment. I cannot speak to that particular case, although it may be useful to use that case to draw out the point that the member wants to make. Section 10(5) of the Act currently states -

... he shall, if his term of office expires by effluxion of time and he is not reappointed, be entitled to be appointed to an office under Part 3 of the *Public Sector Management Act 1994*, not lower in status than the office which he occupied immediately prior to his appointment as Commissioner or Deputy Commissioner ...

This subsection provides that when a commissioner or deputy commissioner leaves the Ombudsman's office to return to a public sector agency, he cannot be appointed to a position lower than the one he held prior to going to the Ombudsman's office. It does not say that that person will continue to hold a position at whatever increased level he may have achieved in the Ombudsman's office when he returns to a public sector agency. That is what currently occurs for the commissioner and the deputy commissioner. The provision is silent on the situation for officers. The current provision means that if somebody is seconded to the position of commissioner or deputy commissioner, when he returns to another public sector position it cannot be to a level lower than the one from which he was seconded. We are now saying that that will apply to officers of the commission as well.

Mr R.F. Johnson: As I understand it, in the case that I am referring to, he was told that he could not be appointed as a level 7 or paid on that basis by any other means because his promotion to level 7 occurred within the Ombudsman's office and not in accordance with public service processes. As I understand it, this excuse is no longer valid in the light of this Bill. Is that the case?

Mr J.C. KOBELKE: No.

Mr R.F. Johnson: It is good to receive an answer because people need to know these answers.

Mr J.C. KOBELKE: Yes.

Mr R.F. JOHNSON: I will make it very simple. I have some questions that the Leader of the Opposition wishes me to ask. Was the validation amendment inserted following the Read case? What impact would the amendment have had on the Read case?

Mr J.C. Kobelke: We are not in a position to provide an answer. This Bill has been around since some time early in 2001. It has been through the upper House committee. There have been amendments etc. The Chris Read matter unfolded during that time. It has had a huge history of development. I cannot confirm whether the Read case had any influence in terms of making changes to this section. There was a need for validation. You have raised that validation was an issue with the Read case. I do not know whether that influenced the development of this amendment.

Mr R.F. JOHNSON: I cannot ask the minister to tell me what he does not know. What impact would the amendment have had on the Read case?

Mr J.C. Kobelke: As far as I know - I am not an expert on the Read case - it would have had no material effect because he returned to the public sector anyway. This provision simply validates that he would have had the right to return at a position not below the position he previously held in the public sector. My understanding is that that is what happened to him. I cannot see how this change would have materially affected his case.

Mr R.F. JOHNSON: I want the answers to these questions put on the record because the member for Kingsley wishes to know them. Aside from the direct amendments raised in this Bill, what protection and obligations will apply to seconded people that did not apply before?

Mr J.C. Kobelke: The extra protection is what I indicated earlier; that is, currently the Act provides that protection to some degree. Upon returning to a job in the public sector agency, a commissioner or deputy commissioner is guaranteed that he must return to a position at either the same level, or better, as he previously held within that public sector agency. He cannot be employed below that level. This amendment guarantees that provision for officers. The Read case was not a transgression of that principle, because it was applied to him. There could be other cases in which, upon returning to the public sector agency, because of the lapse of time or a range of other things, people were offered employment at a lower level. I do not know of any specific cases in which that has happened. This amendment will make sure that that cannot happen. A person must return to a position that is not lower than the level of the position he held prior to going to the Ombudsman's office.

Mr R.F. JOHNSON: Chris Read maintains that he was offered a position that was not less than the position that he held prior to going to the Ombudsman's office, but he could not be offered a better position. The minister is saying that he cannot be employed in a lesser position, but he can be employed in a better one. Chris Read said that he was only offered a position at the lower level that he was on before he went to the Ombudsman's office and he was told that he could not be employed at the level he had obtained while he was there.

Mr J.C. KOBELKE: The member is confusing other requirements with this one. This provision does not preclude someone from being employed at a higher level. However, in order to gain the substantive position at a higher level, the person has to meet the required procedures. The member is seeking to apply this case to the principles. A range of different principles applies. The member is confusing those by drawing them to this instance. This amendment does not preclude a person who returns to the public sector from gaining employment in a higher position. However, he must go through the required procedures to gain that higher position. I presume - I am not familiar with the Read case - that the member is saying that Mr Read was told he could not be employed at the higher position on the basis that he did not meet the other criteria required, which would include applying for the position by means of a competitive application and meeting any other provisions set out in the public standards and human resources requirements.

Mr R.F. Johnson: As I understand it, that is not quite the case. He was told categorically - so I am told - that under the Act he could not be employed at a higher level than he had been employed at prior to going to the Ombudsman's office.

Mr J.C. KOBELKE: I am not saying that is untrue; I am simply saying that is not a requirement of the Act and the amendments with which we are now dealing. They could be the legal requirements of the Public Sector Management Act.

Mr R.F. Johnson: The amendments before the House show clearly that a person can obtain a higher level -

Mr J.C. KOBELKE: They do not preclude it.

Mr R.F. Johnson: Was it precluded prior to the amendments that are before the House now?

Mr J.C. KOBELKE: Not in the sections of the Parliamentary Commissioner Act 1971 that we are currently dealing with. My understanding is that the requirements of other legislation must be met.

Mr R.F. Johnson: Would the amendment before the House today have assisted Mr Read?

Mr J.C. KOBELKE: As far as I am aware, no. The minimum standard required is the right of return at a level not lower than that which the person had in the public sector. That was accorded to Mr Read and, therefore, nothing in these amendments would change the circumstances in which he was returned, according to my limited knowledge of them.

**Clause put and passed.**

**Clauses 92 to 119 put and passed.**

**Clause 120: *Transfer of Land Act 1893* amended -**

Mr R.F. JOHNSON: I am asking a question and making a comment on behalf of the Leader of the Opposition who cannot be in the House at the moment. I hope that this is the relevant clause rather than clause 129. If the minister bears in mind clause 129, it may save our dealing with that clause. Does the amendment in this clause or clause 129 enable LandCorp to retain any money received for land sold, over and above the expenses of selling the land, rather than the money going to consolidated revenue?

Mr J.C. Kobelke: The matters the member raises may be issues of some concern and of some substance, but these amendments are simply correcting a grammatical error in the Act.

Mr R.F. JOHNSON: What is the grammatical error?

Mr J.C. KOBELKE: Clause 120 amends section 62 of the Transfer of Land Act, which I will not read because it is quite long. However, towards the end of the section it states -

The Commissioner in any case within the last preceding section in which members of any a corporation that is a friendly society within the meaning of section 16C of the *Life Insurance Act 1995* of the Commonwealth are interested

The phrase "section in which members of any a corporation" contains the grammatical mistake. When it was drafted the Act should have read "of any corporation" or "of a corporation". It does not need both words. Therefore, we are taking out "any", so the section will read "members of a corporation". It is therefore purely a grammatical mistake.

Mr R.F. JOHNSON: On behalf of the Leader of the Opposition, I ask a general question about the Land Administration Act, which is amended by clause 72. My notes state that, in its first report, the Legislative Council's Legislation Committee supported the amendment. It is a significant amendment as it changes a very longstanding process whereby money from crown land sales is directed to the consolidated fund and used to fund capital works in the budget. Under the proposed change, the money will be treated as departmental revenue. Why is that?

Mr J.C. KOBELKE: The explanation I am given is that the proceeds - or money - are currently received by the minister. Following this amendment, the money will be received by the department for the purposes of the Financial Administration and Audit Act.

Mr R.F. Johnson: Did the money received by the minister go into consolidated revenue to fund capital works?

Mr J.C. KOBELKE: Yes.

Mr R.F. Johnson: Will that happen when the money is received by the department? Will the department hold on to it?

Mr J.C. KOBELKE: Normally, yes. I understand that under the FAAA, which I am not an expert on, the Treasurer can make determinations that the money be returned or retained by the agency.

Mr R.F. Johnson: That is a deviation from past practice. In the past, the minister received the money, which he would normally pass on to the consolidated revenue fund via the Treasurer for use on capital works. It will now be received by the department rather than the minister, and the department will be able to hang on to that money unless the Treasurer directs otherwise. Is that correct?

Mr J.C. KOBELKE: Yes.

Mr R.F. Johnson: We will need a good Treasurer to do that.

Mr J.C. KOBELKE: Fortunately, we have a very good Treasurer.

**Clause put and passed.**

**Clauses 121 to 152 put and passed.**

**Title put and passed.**

*Third Reading*

Bill read a third time, on motion by Mr J.C. Kobelke (Leader of the House), and passed.