



Statute Law (Miscellaneous Provisions) Bill (No 2)

Second Reading
In Committee

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STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL (NO 2)

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Second Reading

The Hon. IAN MACDONALD (Parliamentary Secretary) [8.45 p.m.]: I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.

Leave granted.

The Statute Law (Miscellaneous Provisions) Bill (No 2) continues the well-established statute law revision program that is recognised by all members as a cost-effective and efficient method for dealing with amendments of the kind included in the bill.

The form of the bill is similar to that of previous bills in the statute law revision program. Schedule 1 contains amendments arising from policy changes of a minor and non-controversial nature that the Minister responsible for the legislation to be amended considers to be too inconsequential to warrant the introduction of a separate amending bill. The schedule contains amendments to 31 Acts. I will mention some of them to give honourable members an indication of the kind of amendments that are included in the schedule.

Schedule 1 amends the Adoption Act 2000 in a number of respects. The amendments remove references to approved "Aboriginal adoption consultative organisations" and replace them with references to persons approved by the Director-General of the Department of Community Services to provide advice and assistance to Aboriginal families or kinship groups in relation to care options for Aboriginal children. These amendments are made because it is difficult to locate "Aboriginal adoption consultative organisations". The concept of adoption is traditionally unknown in Aboriginal societies. It has also acquired offensive historical connotations to many Aboriginal people through the removal and placement of Aboriginal children in non-Aboriginal families.

For consistency, the same amendments are made in relation to Torres Strait Islander adoption consultative organisations.

Schedule 1 also amends the Real Property Act 1900 so as to give statutory force to the Registrar-General's current administrative arrangements in relation to the lapsing of certain caveats. As many honourable members will know, in this context a caveat is a notice on a certificate of title for land that prevents the taking of certain specified action in respect of the land (for example, the registration of a transfer of ownership of the land) if that action would affect the rights relating to the land that are claimed by the person who lodged the caveat (the caveator). At present, the Act requires a person seeking the lapsing of a caveat to serve on the caveator a notice (prepared by the Registrar-General) warning that the caveat will lapse unless the caveator, within a specified time, obtains an order of the Supreme Court extending the operation of the caveat. The amendments to the Act require lodgment with the Registrar-General of evidence of service of the warning notice on the caveator. The Registrar-General may refuse to take any further action in relation to the proposed

lapsing of the caveat if evidence is not provided.

A further amendment relates to the lodgment of certain caveats. The Act requires the caveat to specify an address in New South Wales at which notices may be served on the caveator. Frequently, caveats are lodged by solicitors on behalf of their clients, and the solicitors provide a document exchange number as the address for service of notices. However, persons who are not members of the document exchange cannot use the exchange to serve a notice. The amendment ensures that, if a document exchange number is specified as the address, an alternative, non-document exchange address must also be specified.

Schedule 1 also amends the Ombudsman Act 1974. The amendments will permit "relevant agencies" (which are specified in a schedule) to refer complaints among themselves and to share information held by them. However, information may be shared only to the extent that the sharing is reasonably necessary to enable the agencies concerned to carry out their functions. The initial relevant agencies are the Community Services Commission, the Health Care Complaints Commission, the Legal Services Commissioner, the Ombudsman, the president of the Anti-Discrimination Board and the Privacy Commissioner. The schedule of relevant agencies may be amended or replaced by proclamation.

Schedule 1 also amends the Unlawful Gambling Act 1998. Section 15 of that Act creates the offence of possessing, or permitting the use or operation of, a "prohibited gaming device". The Act is amended so as to permit State-owned museums and similar institutions to hold, display and demonstrate the operation of such gaming devices in certain circumstances without being guilty of an offence under section 15.

Schedule 1 also changes the name of the Education (Ancillary Staff) Act 1987 to the Education (School Administrative and Support Staff) Act 1987 and makes consequential amendments to that Act and to the regulation made under it. The changes give statutory recognition to terminology that has been used by both the Department of Education and Training and the Public Service Association since late 1996. The new name more accurately reflects the range of work undertaken by the staff concerned.

Schedule 1 also amends the Public Trustee Act 1913. At present, the person appointed to the position of public trustee is appointed for an indefinite term. The amendment provides that the appointee is to be appointed for a specified term (which is not to exceed 5 years). However, there is no limit on the number of times that the appointee may be reappointed (if otherwise qualified) to the office.

The last schedule 1 amendments that I will mention are the amendments to the Occupational Health and Safety Act 2000 and the Passenger Transport Act 1990, which are both amended in relation to penalty notices. The Passenger Transport Act 1990 is amended so as to permit the regulations under that Act to prescribe different amounts of penalties for different offences or classes of offences, and to prescribe different amounts of penalties for the same penalty notice offence (for example, according to whether the offender is a corporation or a natural person, or according to the circumstances in which the offence is committed). The amendment to the Occupational Health and Safety Act 2000 makes the second amendment only, since that Act already provides that the regulations made under it may prescribe different amounts of penalties for different offences or classes of offences.

Schedule 2 deals with matters of pure statute law revision consisting of minor technical changes to legislation that the Parliamentary Counsel considers are appropriate for inclusion in the bill. Examples of amendments in schedule 2 are those arising out of the enactment or repeal of other legislation, those updating terminology, those inserting missing words or omitting superfluous words, those correcting typographical errors and those correcting numbering.

Schedule 3 repeals a number of Acts, provisions of Acts, and statutory rules. The schedule repeals Acts (including amending Acts) enacted in 2001 or earlier that contain no substantive provisions that need to be retained or that are no longer of practical utility. The schedule also

repeals certain uncommenced provisions of Acts.

The Acts that were amended by the Acts being repealed are up-to-date on the legislation database maintained by the Parliamentary Counsel's office and are available electronically.

Schedule 4 contains provisions dealing with the effect of amendments on amending provisions, savings clauses for the repealed Acts and a power to make regulations for savings and transitional matters, if necessary.

The various amendments are explained in detail in explanatory notes set out beneath the amendments to each of the Acts concerned. Rather than repeat the information contained in those notes, I invite honourable members to examine the various amendments and accompanying explanatory material and, if any concern or need for clarification arises, to approach me regarding the matter. If necessary, I will arrange for Government officers to provide additional information on the matters raised. If any particular matter of concern cannot be resolved and is likely to delay the passage of the bill, the Government is prepared to consider withdrawing the matter from the bill.

I commend the bill to the House

The Hon. PATRICIA FORSYTHE [8.46 p.m.]: I shall make a few remarks about the provisions relating to the exemption under the freedom of information [FOI] legislation for the Child Death Review Team and the transfer of the powers of the Child Death Review Team to the New South Wales Ombudsman. The Opposition has concerns about this part of the bill, as it did in 1995 when it was first proposed that the Child Death Review Team would be exempt from FOI applications. At that time we expressed concern but we agreed not to oppose the bill being considered; we indicated that we would keep the issue under review. Although I indicate that the Opposition will not oppose those provisions in this bill, I advise that one of the first acts of a Coalition government will be to review the process and introduce FOI provisions with appropriate ancillary provisions to protect Child Death Review Team investigators from defamation.

The Opposition believes that there needs to be some access for families seeking information in relation to the death of children. It is clear to us that transparency has not always been a feature of the work of the Child Death Review Team, because the Government has interfered in the process. We know that the Government has interfered in the process because in the past a member of the Child Death Review Team went public in a major media review of the work of the Child Death Review Team as part of an investigative journalist's report into the Department of Community Services. On that occasion Pam Greer, a member of the Child Death Review Team, spoke publicly about alleged ministerial interference in the publication of the Child Death Review Team's report.

Two years ago it seemed that details of child deaths when the children had previously been reported to DOCS or were known to DOCS more generally were deliberately left out of the report after the then Minister, the Hon. Faye Lo Po', allegedly interfered and sought removal of the data. One of the most important aspects of freedom of information is transparency. That is not a feature that one would associate with the Carr Government and the work of many of its Ministers, but it is appropriate. So while we will not oppose the provisions exempting the functions of the Child Death Review Team from freedom of information and transferring the functions of the Child Death Review Team to the Ombudsman's Office, we have the same concerns we had in 1995, that is, they remove transparency and enable interference to occur.

Our evidence in support of that contention has come from people who have been involved in the process. In the absence of being able to obtain further information through FOI, it is clear that matters such as ministerial interference have been covered up. While statute law (miscellaneous provisions) legislation is usually non-controversial, this bill is marginal. However, as this is probably one of the last bills to be dealt with before the end of the session, the Opposition will not seek to excise those provisions at this time. The Coalition has given the commitment that in government it will review this provision.

Reverend the Hon. FRED NILE [8.49 p.m.]: The Christian Democratic Party has no concerns

about the Statute Law (Miscellaneous Provisions) Bill (No 2) and we support it.

The Hon. IAN MACDONALD (Parliamentary Secretary) [8.50 p.m.], in reply: I thank honourable members for their contributions to this important debate and commend the bill to the House.

Motion agreed to.

Bill read a second time.

In Committee

Clauses 1 to 6 agreed to.

Schedule 1

The Hon. IAN MACDONALD (Parliamentary Secretary) [8.51 p.m.]: I move Government amendment as circulated:

Page 13, schedule 1.9 [2], lines 12-21. Omit all words on those lines.

Insert instead:

- (1) Following a determination under Division 5 of Part 5 of the EPA Act, the Minister is to revise the draft fishery management strategy for the designated fishing activity concerned and make any amendment that is necessary to reflect the result of the determination.

As honourable members will be aware, proposed amendments in statute law bills are removed if a member opposes them. The Hon. Richard Jones has expressed a concern about this amendment. Accordingly, the Government is happy to remove it from the bill.

The Hon. GREG PEARCE [8.51 p.m.]: The Opposition supports this amendment. Any amendment that removes extra powers from the Minister for Fisheries is to be applauded.

The Hon. JENNIFER GARDINER [8.51 p.m.]: For the reasons advanced by my colleague, and other equally good reasons, we do not oppose this amendment. We have no objection to the other amendments to the Fisheries Management Act in the bill.

Amendment agreed to.

Schedule 1 as amended agreed to.

Schedules 2 to 4 agreed to.

Title agreed to.

Bill reported from Committee with an amendment and passed through remaining stages.

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