STATUTES (REPEALS AND MISCELLANEOUS AMENDMENTS) BILL 2008

Second Reading

Resumed from an earlier stage of the sitting.

MR C.C. PORTER (Bateman — Attorney General) [2.39 pm]: I am sure that we will now witness the house slim down somewhat as we move from the budget to the Statutes (Repeals and Miscellaneous Amendments) Bill 2008! Before the lunch break we were discussing clause 27 of the Statutes (Repeals and Miscellaneous Amendments) Bill 2008, which makes an amendment to the Cemeteries Act 1986 by inserting the word "a" between two other words to correct a typographical error.

Two further matters were raised during the second reading debate. One was with respect to clause 54 of the bill. That clause makes an amendment to section 111 of the environmental protection act 2003.

Mr C.J. Tallentire: The amendment act?

Mr C.C. PORTER: Yes, that is right, the Environmental Protection Amendment Act 2003. Clause 54(2) will delete section 111(4) of that act. I am informed that the section that the member referred to in the new section 70 of the Environmental Protection Amendment Act 2003 is section 70(4), on page 137 of the act. This bill is deleting section 111(4) on page 140 of the act, meaning the Environmental Protection Amendment Act 2003. I do not know whether that assists the member.

Mr C.J. Tallentire: It is still not clear, though, where you would be inserting section 70(3)-(11).

Mr C.C. PORTER: If that explanation does not satisfy the member—I accept that it does not—that is something that perhaps needs to be dealt with during consideration in detail with the advisers. But it seems to me that the section we are deleting was not needed because it was overlooked when section 70(6) was reworded. The correct words are included in the new section 111(5). If we need to go into detail, we will do our best to clarify that for the member.

The member for Mindarie raised another matter during the second reading debate which pertained to part 3, clause 18 of the present bill, which, in turn, amends the Adoption Act 1994. As I commenced by noting, omnibus bills are meant to deal with matters that are non-substantive and uncontroversial. I suppose whether or not somebody considers this amendment to the Adoption Act uncontroversial and non-substantive is a matter of taste. I will describe what the amendment does. In the Adoption Act there is a section that pertains to required age differentials that cannot be exceeded by adoptive parents. Section 52(2) of the Adoption Act sets out the age differentials. I will refer to that section for the benefit of the house. Section 52 is entitled "Restriction on placement", and section 52(1)(a)(iii) states —

> is not more than 45 years older than the child in the case where the prospective adoptive parent is the younger of prospective joint adoptive parents who, as a couple, have not adopted a child before;

I am by no means an expert, but my reading of that is that when a couple who are prospective adoptive parents have not previously adopted a child, then the older of that couple cannot be 45 years older than the child they intend to adopt. As I understand the history of that section and the reason why this bill contains an amendment to that section, it is that there was a view that that section was unclear and did not deal with other ancillary matters. Members will see that the Statutes (Repeals and Miscellaneous Amendments) Bill 2008, at clause 18, places, after section 52(2) of the Adoption Act, the following text, which is meant to clarify and add to, by way of explanation, that which I will call for short the 45-year rule. The new section to be added states —

> (3) For the purposes of subsection (1)(a)(iii) the age differential requirement is that the prospective adoptive parent —

It then lists paragraphs (a), (b), (c), (d), (e) and (f). By way of summary of those, it appears that what is intended by those is that in a situation where a couple have not adopted a child before, the older of the two persons in the couple cannot be more than 45 years older than the child. I will read (b) in full —

> is not more than 50 years older than the child in the case where the prospective adoptive parent is the older of prospective joint adoptive parents who, as a couple, have not adopted a child before; or …

And (c) states —

> is not more than 50 years older than the child in the case where the prospective adoptive parent is the younger of prospective joint adoptive parents who, as a couple, have adopted a child before; …

It seems that what is meant, by way of expanded explanation of what presently exists in the Adoption Act, is that if a couple has not adopted a child before, then the older of the couple must be within 45 years of the age of the child; but if they have adopted a child before, then that time limit goes out, and the older of the two prospective

parents must be within 50 years of the age of the child. I think some view was taken, when this matter went through the Legislative Council, that this probably added to the Adoption Act in a way that was substantive enough to not warrant its description as merely uncontroversial or insubstantial, because the Council returned the bill the Legislative Assembly with a slight rewording of that which now appears in the bill. The original bill made amendments to the act that the upper house committee considered were not suitable for an omnibus bill—that is outlined in paragraph 2.46 of its report. The offending amendment was withdrawn and a new and more acceptable amendment was prepared by parliamentary counsel. It is arguable, having regard to what was said, whether or not the committee was satisfied, but the upper house committee produced this new version that we see in the bill, and recommended that the amended clause be passed. That is recommendation 2. The amendment adds, in a moderate way, to what is in the Adoption Act, but as I understand the history of it, it was meant to clarify some confusion as to what the age differential should be.

I do not know whether I can add further in this second reading response to the matters that were raised. I think perhaps—other than the issue that pertains to the Environmental Protection Amendment Act—the answers have been satisfactory, at least to my mind, but I am still, I must confess, a little bit confused about the matter that the member for Gosnells raised. The Minister for Police may think I have been overgenerous.

Mr R.F. Johnson: You have indeed, as always!

Mr C.C. PORTER: That is very nice of the minister. I do not know whether it is time to now move to consideration in detail, but I think the bill could most likely go to the third reading stage.

Mr R.F. Johnson: It is your bill!

Ms J.M. Freeman: It's not my bill!

Mr R.F. Johnson: It was a Labor Party bill that went through this house and the other house!

The SPEAKER: I call the Leader of the House and the member for Nollamara to order.

Mr P. Papalia interjected.

The SPEAKER: I call the member for Warnbro to order!

Question put and passed.

Bill read a second time.

Leave not granted to proceed forthwith to third reading.

Consideration in Detail

Clause 1 put and passed.

The SPEAKER: I am prepared to spend a little time at this moment while the member for Nollamara identifies the clause that she wants to deal with. I also note that the member for Nollamara has amendments to clauses 39 and 86. Members will be apprised of those amendments very shortly. In the meantime, I will put the question that clauses 2 to 38 stand as printed.

Clauses 2 to 38 put and passed.

Clause 39: *Construction Industry Portable Paid Long Service Leave Act 1985* amended —

Ms J.M. FREEMAN: I apologise to the house about this. I was going to put these amendments on the notice paper, and I had discussions with the Clerk about doing that, so that members would be aware of the amendments. Basically, my amendment seeks to delete from section 6(1)(c) of the act "the Trades and Labor Council of Western Australia" and insert "UnionsWA". That is simply on the basis that the previous amendment in clause 39 is to change "The Confederation of Western Australian Industry (Incorporated)" to "the Chamber of Commerce and Industry of Western Australia (Inc)". I am simply trying to make the bill more contemporary in the name of the employee organisation also.

Mr C.C. PORTER: I have enormous sympathy for what the member for Nollamara is attempting to achieve in the nature of consistency. My only reservation about accepting her amendment is: what if she is wrong? She may well be right, but sometimes these things are more complicated than they at first appear. If she were perchance to be wrong about this, we would have to amend our amendment in a future omnibus bill, which would create further problems. I am by no means an expert on the Trades and Labor Council of Western Australia, but my first question would be—I do not have the answer to this—whether the relevant legislation that deals with the Trades and Labor Council itself has been amended to reflect the name change that the member has raised, or whether it is a situation of the ilk whereby it is the Trades and Labor Council trading as UnionsWA or anything

of that nature. I am uncertain as to whether the member is correct. Had I been given some notice of the matter, I could have checked. However, time is insufficient now to do that.

Mr R.F. Johnson: It can be changed in the upper house if necessary; it can be amended.

Mr C.C. PORTER: This bill has come from the other house, so that opportunity is not afforded to us.

Ms J.M. FREEMAN: In the workers' compensation legislation amendments, it was put through as UnionsWA. UnionsWA has been incorporated as a business. There is no legislation that actually sets out the Trades and Labor Council. The Industrial Relations Act 1979 names it as a section 51 party, and that does not stand amended. However, it is not like a union, such as the Construction, Forestry, Mining and Energy Union, which has to submit its constitution to the Industrial Relations Commission. So that the legislation is contemporary, given that that is what we are trying to do, perhaps we could put "Trades and Labor Council of WA trading as UnionsWA", if that is what the Attorney General would prefer and if that assists. I will not prevent things occurring. I am just trying to assist. I move —

Page 17, after line 26 — To insert —

(3) In section 6(1)(c) delete "the Trades and Labor Council of Western Australia" and insert:

UnionsWA

The SPEAKER: If it is the member's preference, she might want to adjust the wording to more accurately reflect the comments that she has just made to the Attorney General. She will need to withdraw this amendment and submit another one. That is the process that we have to follow. For all our sakes, it is a far easier way to do things.

Mr C.C. PORTER: On balance, I will not support the amendment, simply because I am not satisfied that it is absolutely correct. The point of this legislation is to make things absolutely correct. I understand the member's grievance that we may be leaving something in the legislation that is incorrect. However, amending this legislation now could also have the effect that it will be required to be sent back to the Legislative Council. This bill has been in the system since 2003, and, if it has to be returned, I run the risk of breaking the heart of every drafter in the state who wants to see it go through. Perhaps I will give the member an undertaking. With the next omnibus bill, which will be the omnibus bill of 2009, the first order of business will be to determine whether the member is correct; and, if she is, the first of the operative clauses of that bill will amend the relevant legislation to ensure that the name change is effected.

Ms J.M. FREEMAN: I am quite happy with that. I am happy to withdraw my amendment on that basis.

Amendment, by leave, withdrawn.

Clause put and passed.

Clauses 40 to 53 put and passed.

Clause 54: *Environmental Protection Amendment Act 2003* amended —

Mr C.J. TALLENTIRE: I seek clarification of where section 70(3) to (11) from the Environmental Protection Act will be inserted into the Environmental Protection Amendment Act 2003.

Mr C.C. PORTER: I am now looking at the Environmental Protection Amendment Act 2003—the member obviously has a copy of that act—and I am looking at page 140. Subsection (4) is second from the bottom on that page. That is, in effect, section 111(4) of the Environmental Protection Amendment Act. There is a reference in the act to "section 70(3) to (11)". We seek to delete the whole of section 111(4) and insert the words "section 70(3) to 70(11)". That cross-references to the earlier section 70(3) to (11), which is not a prosecution section in any event. Does that clarify the matter?

Mr C.J. TALLENTIRE: I am almost there. It still is not clear where section 70(3) to (11) will be inserted because clause 54(3) of the Statutes (Repeals and Miscellaneous Amendments) Bill states —

In section 111(5) delete "Section" and insert:

The word "section" does not appear in section 111(5) of the Environmental Protection Amendment Act 2003. It is not clear where those words will be inserted.

Mr C.C. Porter: What page are you on?

Mr C.J. TALLENTIRE: This section appears on page 138 of the version of the Environmental Protection Amendment Act that I was given.

Mr C.C. PORTER: We are not amending that section. We have the same pagination. I direct the member to page 140 of the act and then cross-reference it to the present bill. We seek to delete section 111(4) completely. In section 111(5) we delete the word "section" and insert "sections 70(3) to (11)", which cross-references back to the sections the member was looking at on page 138. We are not inserting those sections into section 111(5). We are cross-referencing back to those sections, by virtue of a change to section 111(5).

Mr C.J. TALLENTIRE: I think that clarifies things. I am still uncertain exactly where that will be located. I see the issue on page 140 but when I read page 138, that is where I find section 111(5).

Mr C.C. Porter: Once this bill is passed, section 111(5), which is at the bottom of page 140, will read "Sections 70(3) to (11) and 74A, Part VA." All it is doing in that section is referring the reader back to the sections that the member mentioned on page 138.

Clause put and passed.

Clauses 55 and 56 put and passed.

Clause 57: *Fire and Emergency Services Authority of Western Australia Act 1998* amended —

Mr C.J. TALLENTIRE: Clause 57 of the bill before us refers to the Fire and Emergency Services Authority of Western Australia Act 1998. It is suggested that we delete section 36U(3). Section 36U(3) of the Fire and Emergency Services Authority of Western Australia Act 1998 states —

> Subsection (2) —

Of the Fire and Emergency Services Authority of Western Australia Act —

> has effect despite section 6.9(3) of the *Local Government Act*.

We are being asked to delete that. I am concerned that that is not such a trivial matter as to be legitimately part of a bill of this nature. We are being asked to tamper with the mechanisms to enable local governments to retain interest on investments relating to levies that are credited to trust funds.

Mr C.C. PORTER: The information that I have at this stage is by way of the explanatory memorandum, as the member has noted, which states —

> Committee amendments were made to that Act —

I presume that it is referring to the Fire and Emergency Services Authority of Western Australia Act —

> while it was in Parliament which rendered s.36U(3) unnecessary.

I take that to mean that a new section was inserted or amended somewhere else in the act that meant that we did not need the belt-and-braces approach of this clause. If I take a moment to read the act, I might be able to give the member some further information.

Section 36U(3) is effected without the existence of section 36U(3). The effect that is intended by that provision appears somewhere else in the parent act, rendering this nugatory. It is sometimes the case that if two sections in different parts of the act are trying to do the same thing, it causes confusion and they can, as a matter of interpretation, have the ability to negate each other. I do not know whether that gives the member some satisfaction. I take the explanatory memorandum to be an accurate depiction of what is occurring. It says, in effect, that this section is unnecessary because what it is trying to achieve is achieved somewhere else in the parent act.

Clause put and passed.

Clauses 58 to 68 put and passed.

Clause 69: *Hairdressers Registration Act 1946* amended —

Ms J.M. FREEMAN: I thank the Attorney General for his indulgence. I want some clarification of why the act has been changed for only particular areas and not the whole of Western Australia. He probably cannot give me that information at the moment. I understand that at some stage in the future the Hairdressers Registration Act will be under question in its entirety. I understand that the changes sought in this bill were to bring into line some of the areas that had been changed by proclamation. I am wondering why, for the sake of simpler drafting, this did not apply to the whole of Western Australia.

Mr C.C. PORTER: There is no need to apologise, because I love legislation. The explanation reads —

> Section 3 currently provides that the Act applies only within 25 miles from the Perth GPO plus areas specified by proclamation. This amendment consolidates all current proclamations.
>
> Section (3) of this Bill revokes all proclamations made under s.3(2) of the *Hairdressers Registration Act 1946* prior to 9 March 2004.

> Five proclamations have been made since 1946, bringing Bunbury, Geraldton, Albany, Kalgoorlie and the South West under the jurisdiction of the Act.

Proposed new section 3(1) states —

> Subject to subsection (2), this Act applies only within —
>
> (a) the South West Division under the *Land Administration Act 1997*; and
>
> (b) the area that is within 8 km of the Post Office at Kalgoorlie.

I think what has occurred there is, given the gazettal of certain specified places outside a 25-kilometre radius of the Perth GPO, certain matters have been gazetted and are now no longer gazetted. However, by adding in this legislative change, which is to say that it applies only within the south west division and within eight kilometres of Kalgoorlie post office, it applies to the same hairdressers but we are doing it by legislative provision rather than by regulation.

The way it reads to me is that the areas that are presently gazetted—Bunbury, Geraldton, Albany, Kalgoorlie and the south west—will mimic the south west division under the Land Administration Act and an area eight kilometres within the post office at Kalgoorlie. The only area that might not be included is Geraldton, but I cannot give an explanation as to that.

Ms J.M. FREEMAN: I read the same explanatory memorandum and I came to the same question: why is it restricted to those areas, given the proclamations for those areas, and why are other areas not covered by the same Hairdressers Registration Act? I understand the Attorney General is saying that the south west division includes Bunbury, Albany and Kalgoorlie, although I would question whether the south west is within eight kilometres of the post office at Kalgoorlie. It seems to be a very convoluted way of simplifying an omnibus bill. I am happy to take advice outside of today's consideration in detail stage.

Mr C.C. PORTER: This clause will revoke previous proclamations and substitute the proposed subsection. The only anomaly seems to be Geraldton. However, the way I read the explanatory memorandum is that it is meant to maintain the status quo. One possible explanation could be that the Geraldton proclamation has previously been revoked. When the explanatory memorandum states that five proclamations have been made since 1946, that is not to say that one or all of them have not been revoked independent of this legislation—I do not know. It is not an act in my portfolio, but I can undertake to talk to the minister who is in charge of the relevant act. It is an act that, in the wide ambit of the debate overall—if we take the view of Australian business under regulation—gets the finger pointed at it with some regularity. For the same reasons that I gave the member before for simply wanting to progress this bill, I am not willing to accept any amendment to it. However, I can undertake to find out for the member whether and how this clause maintains the status quo, as that is what I read from the explanatory memorandum.

Clause put and passed.

Clauses 70 to 140 put and passed.

Clause 141: *Zoological Parks Authority Act 2001* amended —

Mr C.J. TALLENTIRE: My confusion with this clause is that I could not find the note referred to in the explanatory notes as "see note for *Legal Practice Act 2003* s.251 for details".

Mr C.C. PORTER: I think the member, with his keen eye for detail, has picked up perhaps an anomaly in the explanatory memorandum itself. Looking at that amendment, the following words in section 14(4) are deleted —

> A copy of a direction transmitted to the Clerk of a House is to be regarded —
>
> (a) as having been laid before that House; and
>
> (b) as being a document published by order or under the authority of that House.

Instead, a new subsection (4) would go in, which is —

> A copy of a direction transmitted to the Clerk of a House is taken to have been laid before that House.

It is meant to simplify the previous position as a matter of drafting elegance. I am uncertain as to why the explanation relates to an act unrelated to the change.

Ms J.M. Freeman: It is all through the document. There are a number of changes put into the document in the explanatory memorandum.

Mr C.C. PORTER: Fortunately I do not have to bring legislation into the house to tidy up explanatory memoranda, but I agree that it is unfortunate that in a document meant to fix other legislation, the explanatory memorandum contains errors. I will reprimand the Parliamentary Counsel's Office very sternly!

Mr C.J. TALLENTIRE: I wish to put on the record that I did find the explanatory memorandum very confusing and poorly written, with errors, and that greater efforts do need to be made in the future.

Clause put and passed.

Title put and passed.

Leave granted to proceed forthwith to third reading.

Third Reading

MR C.C. PORTER (Bateman — Attorney General) [3.18 pm]: I move —

That the bill be now read a third time.

MS J.M. FREEMAN (Nollamara) [3.18 pm]: I wish to make a few concluding remarks at the third reading stage. I want to place on record also that I found the explanatory memorandum slightly confusing and in a couple of places wrong. Clearly it is not for the Attorney General to amend it. There were a couple of occasions when we were amending the Workers' Compensation and Injury Management Act and the explanatory memorandum used the wrong terminology—the Workers' Compensation and Rehabilitation Act. I therefore became confused until I read the primary bill, which is obviously the art to understanding terminology when reading an explanatory memorandum. I commend the Attorney's intention to use contemporary language in the next omnibus bill. It is probably likely that a number of pieces of legislation do not have contemporary stakeholder titles. I would like to put on the record that that should definitely be one of the Standing Committee on Uniform Legislation and Statutes Review's roles when it comes to considering making language in bills contemporary. I also wonder whether, in making language contemporary, it can be simplified. I realise that it can be difficult to simplify the intent in legislation; it does not always involve a simple change. The amendments to the Hairdressers Registration Act 1946 have almost made it more complex than it was because the reader now has to know the boundaries and areas involved, whereas previously proclamation would have encompassed particular areas. It seems a bit strange that we go about updating an act by making it more complex.

I also commend the committee and the Attorney General for changing an imperial ratio to metric in section 55(3) of the Health Act. I suppose I will hold the Attorney General to his assumption that this is the last of many acts that have been examined. It is really important that legislation does not contain measurements that could be confusing because they can sometimes cause differences that can be the cause of an argument. We as members of Parliament all know that some of the worst arguments are about neighbourhood fences. Legislation should therefore reflect the integrity that is required, which I believe also includes gender-neutral language.

Mr R.F. Johnson: Is that new material? You can't introduce it in a third reading speech.

Ms J.M. FREEMAN: I apologise. It is now on the record, but I thank the Leader of the House for pointing that out.

Mr R.F. Johnson: I was trying to be helpful.

Ms J.M. FREEMAN: It was not necessarily new material because I was talking about the consequence of measurements being metric in relation to the integrity of legislation, and that is another aspect of that integrity. Nonetheless, I thank the Leader of the House very much for pointing that out to me so that I can frame my arguments in the appropriate way in this place.

Mr C.J. Barnett: Don't take any notice of him!

Ms J.M. FREEMAN: Other people have told me that also! Now that the Premier has said it, I will place more emphasis on it! I have probably taken up enough of the Parliament's time. But I want to commend the people who did this work; it was tiresome and difficult work. I especially thank parliamentary counsel. I have been involved in drafting three bills that have been introduced into this place, and I know that the arguments we can have over one word amaze the best of us. The people who draft the legislation should be acknowledged in this place, and I thank them.

Question put and passed.

Bill read a third time and passed.