

STATUTES (REPEALS AND MINOR AMENDMENTS) BILL 2010

Committee

Resumed from 22 March. The Deputy Chairman of Committees (Hon Jon Ford) in the chair; Hon Michael Mischin (Parliamentary Secretary) in charge of the bill.

Postponed clause 18: Various Acts amended —

The clause was postponed on 22 March after it had been partly considered.

Hon MICHAEL MISCHIN: On the last occasion, the question was whether the proposed amendment in the bill would have the effect of replicating the status quo or would alter it. I remind members that clause 18 proposes to replace references to “judge” with “judge of the Supreme Court” in three statutes: the Corruption and Crime Commission Act 2003; the Energy Arbitration and Review Act 1998; and the Health Services (Conciliation and Review) Act 1995. The reason for the amendment is that the term “judge” is currently referable to the definition in the Interpretation Act 1984, which defines “judge” as “judge of the Supreme Court” in any case. Hence, by replacing that term we are simply making clear in those three statutes that oaths can be administered only by a judge of the Supreme Court. However, the Standing Committee on Uniform Legislation and Statute Review has pointed out that, in fact, the definition of “judge” in section 5 of the Interpretation Act 1984 embraces not only a judge of the Supreme Court but also an acting judge and an auxiliary judge of that court. Simply replacing the term “judge” with “judge of the Supreme Court” in those three statutes would, without more, limit the administration of oaths to a judge of the Supreme Court and not an acting judge or an auxiliary judge. Parliamentary counsel has considered that argument and there seems to be some merit in it. Two courses of action are available: one is to amend the bill to replace the term “judge” with “judge of the Supreme Court or acting judge of the Supreme Court or auxiliary judge of the Supreme Court”. The alternative is to not proceed with clause 18 in the bill. I suppose a third option is to retain what is in the bill, but that would effect a substantive change in those three acts. Therefore, that is probably not an appropriate course of action to take for an omnibus bill of this character.

In the circumstances, until a policy decision can be made, if one is necessary, to make a substantive change to the law, it is thought fit to maintain the status quo and not proceed with proposed clause 18 of the bill. Therefore, the government opposes the clause.

Postponed clause put and negatived.

Postponed clause 26: *Real Estate and Business Agents Act 1978* amended —

The clause was postponed on 22 March after it had been partly considered.

Hon MICHAEL MISCHIN: The issue with postponed clause 26 is really a matter of drafting style. Perhaps I will start at the beginning. The statute to be amended is the Real Estate and Business Agents Act 1978. If one refers to the definition section in the act, section 4, one sees a reference there to a number of definitions that contain the word “account”. Firstly, as the act stands “Account” means —

... the Board Interest Account established under section 125(1);

If one turns to section 125(1) of the act, one will see that “Account” is, in fact, a thing called the “Board Interest Account”. Section 4 refers to an account with the short definition title of “Assistance Account”. The definition of “Assistance Account” is —

... the Home Buyers Assistance Account established under section 131B;

“Fidelity Account” is also defined in section 4 and means —

... the Real Estate and Business Agents Fidelity Guarantee Account established under section 107;

Section 4 defines “General Purpose Account” as —

... the Education and General Purpose Account established under section 124A;

We have four accounts, three of which contain very long descriptions and titles under the sections in which they are established in the act. The account we are concerned with also has a longer title—“Board Interest Account”. However, the “Board Interest Account” is simply described as the “Account” in section 4(1). It is felt that that might cause some confusion because there are four accounts. Although the accounts have very long titles, they also have shorter and catchier titles for ease of reference. Clause 26 proposes to remove the short definition title of “Account”, meaning “Board Interest Account”, and to replace it with the short definition title of “Interest Account”. As I understand it, the Standing Committee on Uniform Legislation and Statutes Review is concerned that that still might import some confusion. The committee thinks what ought to happen is that in amending the

definition of “Account”, meaning the “Board Interest Account”, the longer or fuller title should be used for all the references in the statute to that particular account. Parliamentary counsel maintains, and the government is comfortable with the approach that parliamentary counsel has adopted, that that is not necessary; all that is necessary is to use the shorter and catchier title of “Interest Account” to refer to the “Board Interest Account” in the same way as shorter titles are used to refer to the other accounts. That will minimise the number of amendments necessary and will be consistent with the manner in which various accounts are referred to in the act. We accept that there is another way that the process could be approached, as suggested and recommended by the standing committee, but the government is comfortable with parliamentary counsel’s approach. Therefore, the government proposes to proceed with the clause as it is set out in the bill.

Postponed clause put and passed.

Title put and passed.

Bill reported, with amendments.