

**SUBCOMMITTEE OF THE
STANDING COMMITTEE ON LEGISLATION**

**MAGISTRATES COURT BILL 2003
MAGISTRATES COURT (CIVIL PROCEEDINGS) BILL 2003 AND
COURTS LEGISLATION AMENDMENT AND REPEAL BILL 2003**

**TRANSCRIPT OF EVIDENCE TAKEN
AT PERTH
MONDAY, 30 AUGUST 2004**

Members

**Hon Giz Watson (Convenor)
Hon Jon Ford
Hon Peter Foss**

Committee commenced at 9.06 am

SMITH, MR PETER
Bailiff, Midland Local Court
294 Great Eastern Highway
Midland, examined:

Hon GIZ WATSON: Good morning. On behalf of the subcommittee, I welcome you to the meeting. You will have signed a document entitled "Information for Witnesses". Have you read and understood that document?

Mr Smith: Yes.

Hon GIZ WATSON: These proceedings are being recorded by Hansard. A transcript of your evidence will be provided to you. To assist the subcommittee and Hansard, please quote the full title of any document you refer to during the course of this hearing for the record, and please be aware of the microphones and talk into them. I remind you that your transcript will become a matter for the public record. If for some reason you wish to make a confidential statement during today's proceedings, you should request that the evidence be taken in closed session. If the committee grants your request, any public and media in attendance will be excluded from the hearing. Please note that until such time as the transcript of your public evidence is finalised, it should not be made public. I advise you that premature publication or disclosure of public evidence may constitute a contempt of Parliament and may mean that material published or disclosed is not subject to parliamentary privilege. Would you like to make an opening statement to the subcommittee?

Mr Smith: The bailiffs are very proud of their system in Western Australia. In introducing these Bills to Parliament the Attorney General stated that our system was the most effective in Australia. Our benefits are our wealth of experience and the fact that we are private; we are not civil servants. This submission is to make one point only; namely, the transitional period in section 148 of the Courts Legislation Amendment and Repeal Bill should be changed from two to five years. The five-year period was first struck in 1997 when the Government of the day undertook a major review of the recovery system in Western Australia. It was stated in recommendation 77 that a smooth transitional period of five years would be required. That five years continued to be an acceptable transitional period until, suddenly, with the stroke of a pen and without consultation, it became two years. In writing to the bailiffs, the Sheriff of Western Australia stated that we were highly experienced, highly regarded and highly recommended. Our question to the Sheriff, therefore, is: why do you wish to delete five years and insert two years when that will not be an effective time in which to implement something under a new Act that will be quite different from the provisions of the old Local Court Act? When he responded to this legislation in Parliament Hon Peter Foss said -

It is a curate's egg of a Bill; parts of it are good. The good parts are the parts in which people who put their minds to giving the instructions had a clear view of what was needed and of how little was needed. However, at other parts of the Bill the process has overcome everything else. There is almost a bureaucratic desire to keep control of every bit of it at all times, which I think will drive people absolutely bonkers. It will drive them mad, will be hugely expensive and will cause a great time delay.

The bailiffs agree with that. Our success at the moment is because we are a private operation and we have very little influence, apart from the creditor and the courts. To put civil servants over the top of us will bring in the bureaucracy that Hon Peter Foss referred to. It will stem our ability. For example, in the past financial year I collected \$1.8 million in what is deemed basically lost debt. In that same time we carried out house sales, arrests, evictions and all sorts of miscellaneous duties as enforcement officers of civil judgments. We were unfettered by any bureaucracy. At the end of the day, the courts have no control over us in that we are creditor driven. The creditor says to the courts, "You have a judgment. We want that judgment exercised." The court then says, "Bailiff, go out and exercise the judgment." The bailiff goes out and exercises that judgment; He collects the money. An interesting parallel is that, last year, when handling all the Supreme and District Court work, the Sheriff's office collected less than \$1 million. My office alone collected \$1.8 million. One almost wonders who will teach whom when the new Act comes into play. It is a situation in which the Sheriff is a level 8 mid-level manager of the Public Service. He has appointed a level 6 former Clerk of Courts to oversee enforcement of judgments.

Hon Peter Foss may well go back to the days of Gerry Boylson, QC, the Sheriff of Western Australia. The bailiffs believe that if we are to have one system to operate civil debt recovery in Western Australia, it must be run by a person of substance who has qualifications. Otherwise, it would be a bit like letting a senior sergeant of the Police Force become the Commissioner of Police. The system will not be adequate and will allow insufficient training. I have nothing against the incumbent but the position needs greater status and experience. In his second reading speech, Mr McGinty referred to provisions such as those that will enable bailiffs to break and enter dwellings. If we are to take those kinds of actions under the law, we need not only protection but also guidance at a very high level. I am the youngest of the bailiffs, having been a bailiff for 10 years. Most bailiffs have years and years of experience. That experience must be tempered with the knowledge of the law and training in practices and procedure that a Sheriff of Western Australia should be able to give us. The current mid-level management of the Department of Justice cannot give us the training we need. It will be a situation in which we will be the trainers. Five years will be needed to train the trainer.

The other reason for allowing a transition of five years is that we are regarded as the best operation in Australia. There is no reason not to give us five years; in fact, it would make a lot of sense. The department should not get the job half done, kick us out of office or advertise our jobs or whatever and then have a situation in which six or 10 new bailiffs are working under a new Act, without sufficient background data or specific empirical data to allow them to do their job.

In the space of five years three bailiffs will probably retire naturally. Five years would allow a very smooth transition in which to change from one Act to the other,

Hon PETER FOSS: Three out of how many will retire?

Mr Smith: Three out of 10.

For the first year of the new Act, the old Act will still operate. The warrants in existence have a life of 12 months. They will not disappear. We will have a parallel system for 12 months and in the next 12 months there will be a flurry of activity; all the positions will be advertised and chaos will reign. Our submission is to phase the system in over five years and let us bed down the new Act. As Hon Peter Foss said, parts of it are very good and parts of it will, to use his words, "drive people bonkers". The bailiffs should be allowed to use their experience to get through that "bonkers" period. Let the bailiffs come to grips with the areas that need some smoothing out. Let us use our experience and have that five years in which we can produce a system in Western Australia that will again be rated as the best in Australia.

Hon GIZ WATSON: Thank you. You said in your comments that there was an understanding that it was to be five years and at the stroke of a pen it was changed. Have you been advised why that change came about?

Mr Smith: No. There was no consultation and no discussion.

Hon PETER FOSS: Do you know how the first figure of five years was arrived at?

Mr Smith: It was based on a report commissioned by the then Attorney General, who I think was Cheryl Edwardes, into the background of the debt recovery system and seeking a better debt recovery system. I think the chairman of the committee was Colin McPhail, the then Sheriff. In consultation with the stakeholders it was deemed that five years would enable a smooth transition.

Hon PETER FOSS: Is that logic stated in the report?

Mr Smith: Yes.

Hon PETER FOSS: That is the conclusion but it does not say why that period was picked.

Mr Smith: Under the heading “Contract Term” in paragraph 20.5 on page 77 of the report it says that the project team is conscious that, to be attractive to private enterprise, a contract, especially when it may involve the need for a contractor to provide infrastructure support, should guarantee the contractor a reasonable period of tenure.

Hon PETER FOSS: It is saying that the actual contract should be five years. What about the initial period?

Mr Smith: There was no rationale in the report. It was merely a recommendation on page 77.

Hon PETER FOSS: Have you examined how much change in process might occur as a result of the Act?

Mr Smith: Yes. Firstly, we must suddenly deal with the Supreme, District and Magistrates Courts. We will be going into two unknown areas. Secondly, the regulations, which will be myriad, have not yet been published. We have no idea what the regulations contain despite the fact that the drafting instructions have been issued. We have been denied consultation or access to those. Garnisheeing of wages, for example, is a new area.

Hon PETER FOSS: Will you be doing that?

Mr Smith: We will serve the documents. It is important for the smooth administration of the Act that the employer understand what garnishee of wages is and why he must attend etc. That is an area of new ground.

Hon PETER FOSS: Your two main areas would be seizure of goods and seizure of land.

Mr Smith: And arrests and evictions. We do four evictions and four arrests a week.

Hon PETER FOSS: Are they arrests for non-payment?

Mr Smith: The arrests are basically for contempt of court or for failure to appear. We also do evictions for antisocial behaviour and/or non-payment of rent. We advertise four houses for sale a week. I have one storeroom separate from my office for seizure of goods and another storeroom at my auctioneers’ office. We are seizing goods at the rate of probably 10 seizures a week.

Hon PETER FOSS: How many goods would you seize as opposed to making people their own bailiff?

Mr Smith: Probably 20 per cent of our warrants involve removal of goods.

Hon PETER FOSS: Is there any overt change in process, leaving aside regulations, caused by the Act in those two areas? It seems to me that most of the change will be in the other areas.

Mr Smith: No. The only one is the right to break and enter.

Hon PETER FOSS: Most of the other changes seem to be in areas such as the examination process, which you would not get involved in.

Mr Smith: We will still run the debtors court for the means inquiries. That is an administrative function.

Hon PETER FOSS: When you say run it, what do you do?

Mr Smith: Provide a bailiff as a court orderly. There will still be a judicial officer.

Hon PETER FOSS: Yes, but you do not have to process in that.

Mr Smith: No.

Hon GIZ WATSON: The subcommittee understands from the explanatory memorandum that once the two-year contracts expire, civilian bailiffs will have to reapply for their positions in a competitive process. Is the subcommittee correct in understanding that your concern is that at that two-year mark, experienced bailiffs will not be reappointed and as such their experience will be lost and cannot be applied to the new processes? We have talked about the loss of experience, but is that one of the components?

Mr Smith: If I had confidence in bureaucracy, I would say that none of the bailiffs have that fear. I do not have confidence in the bureaucracy; therefore, I must consider the worst-case scenario, which is that after two years we could lose 10 experienced bailiffs. The Act will need five years to be properly introduced and bedded down so it will not matter after five years if we lose 10 experienced bailiffs. As I said earlier, probably three will retire within that five years in any event, so there will be a series of smooth transitions. The Sheriff himself will need more than two years to come to grips with a new Act and the administration of 10 bailiffs. The 10 bailiffs look after about 25 000 warrants a year. The Sheriff currently looks after 400 writs a year. He must come to grips with not only a huge increase in volume but also the administration of that volume, the administration of 10 civilian bailiffs plus 90 police officers.

Hon GIZ WATSON: Has the Department of Justice canvassed with bailiffs the issue of training or preparation in anticipation of the commencement of the Civil Judgments Enforcement Bill?

Mr Smith: We have been screaming for conferences and seminars. Tragically, the attitude of the Department of Justice's officers is that it is only a Bill and they do not know what the regulations are so they cannot tell us anything. We find that very disturbing. We look forward to proper training procedures being in place when the Act comes into play by virtue of the administration of the Sheriff. At the moment, we are 10 individual private bailiffs with no cohesive training or trainer of any nature. We do it within our own body and we attend our own courses.

Hon GIZ WATSON: Have we not passed the Civil Judgments Enforcement Bill?

Hon PETER FOSS: We passed it about two weeks ago.

Mr Smith: I think it has come back to you for some minor amendment on your declared areas, Mr Foss.

Hon PETER FOSS: Yes; they changed the declared areas.

Mr Smith: Hopefully to include metropolitan bailiffs.

Hon PETER FOSS: Do you think it is very difficult to get metropolitan bailiffs?

Mr Smith: It is very difficult to get insurance. No-one in Australia will insure us under the new Act

Hon PETER FOSS: Not yet.

Mr Smith: Not yet.

Hon GIZ WATSON: The subcommittee has noted your submission that in section 147(2) the words "entitled to be appointed" should be replaced with "taken to be appointed". Would you please explain why you consider that this amendment is required?

Mr Smith: Between the time the new Act is implemented and we are appointed there may well be a transitional period during which there are no bailiffs. If there are no bailiffs, a warrant could not be executed. Approximately 3 000 or 4 000 warrants could slip out of the loop. As they have done for police officers when there is a carryover, they should ensure that the same type of carryover applies for the bailiffs. The gap might be a second, a minute or a couple of weeks. There should not be a gap.

Hon PETER FOSS: I think they will give you a proclamation date so that you can apply before that date. The only concern is that any act in appointing you as a private person under a new set of conditions may be seen, to some extent, as doing something for a private individual that the Government is not entitled to do. You should be able to get your applications in.

Mr Smith: Our applications will be in. That is an administrative function for the Sheriff. It will not be for our side; it will be from the Sheriff's side. It is an administrative concern for not necessarily the bailiffs. Implementation of the Act should not result in a gap.

Hon PETER FOSS: Do you think the Sheriff might make a mistake in not responding to the request for appointment?

Mr Smith: Correct.

Hon PETER FOSS: It would be drastic if he did not tell you.

Mr Smith: It would not be the first time.

Hon PETER FOSS: If there is no bailiff, there would be a delay until there was a bailiff and then a bailiff could execute. However, if you did not know you had been appointed and went out and executed, that would be nasty.

Mr Smith: That would be drastic. Protection would be well and truly required.

Hon PETER FOSS: Would you not have it then, given you would not have been appointed?

Mr Smith: Correct.

Hon GIZ WATSON: That is all the questions we had. Thank you for your time this morning.

Committee adjourned at 9.21 am