



House of Representatives

Supplementary Order Paper

Tuesday, 5 August 2003

Children's Commissioner Bill

Proposed amendments

Hon Steve Maharey, in Committee, to move the following amendments:

Clause 4

To insert, after the definition of **Convention** (after line 6 on page 3), the following definition:

fees framework means the framework determined by the Government from time to time for the classification and remuneration of statutory and other bodies in which the Crown has an interest

Clause 20

To omit the words "**or subsection (2)(aa)**" (lines 18 and 19 on page 13).

Clause 26

To omit from *subclause (2A)(c)* the word "benefits." (line 11 on page 17), and substitute the words "benefits; and".

To add to *subclause (2A)* (after line 11 on page 17) the following paragraph:

- (d) if the Commissioner has established any committee, the number of members of the committee who, during the financial year, received—
 - (i) fees or other benefits, or both, in their capacity as members, and the total value of those fees and other benefits; and
 - (ii) any compensation or other benefits on termination of their membership, and the total value of the compensation and other benefits.

To insert, before *subclause (3)* (before line 12 on page 17), the following subclause:

- (2B) Information need not be included in the report if it could properly be withheld if a request for information were made under the Official Information Act 1982.

Clause 29

To omit from *subclause (2)(b)* (line 8 on page 18) the word “commencement.”, and substitute the words “commencement; and”.

To add to *subclause (2)* (after line 8 on page 18) the following paragraph:

- (c) subject to any determination made under **clause 3 of Schedule 1** (with any such determination prevailing if, and to the extent that, it is more favourable to the person than any of the conditions of employment referred to in **paragraph (b)**).

To insert, before *subclause (3)* (before line 9 on page 18), the following subclause:

- (2A) The Remuneration Authority is not obliged to make a determination under **clause 3 of Schedule 1** of the salary and allowances of the person to whom **subsection (2)** applies before the time that that person's salary and allowances would have been next reviewed under the conditions of employment referred to in **subsection (2)(b)**.

To omit *subclause (4)* (lines 12 to 15 on page 18).

New clauses 30A to 30C

To insert, after *clause 30* (after line 24 on page 18), the following clauses:

- 30A Review of Commissioner's operations and performance**
- (1) The Minister may review the operations and performance of the Commissioner at any time.
- (2) This section does not limit powers of review in any other Act (for example, in the following Acts:
- (a) Public Audit Act 2001:
- (b) State Sector Act 1988).
- 30B Power to request information in connection with review**
- (1) The Commissioner must supply to the Minister any information reasonably required by the Minister, and requested by the Minister, in connection with the exercise of his or her powers under **section 30A**.
- (2) This section is subject to **section 30C**, and does not limit section 45B of the Public Finance Act 1989.
- 30C Good reasons for refusing to supply requested information**
- (1) A request for information under **section 30B** may be refused if—

- (a) the withholding of the information is necessary to protect the privacy of a person (whether or not a natural person or a deceased person); or
 - (b) the supply of the information would limit the Commissioner's ability to act independently in—
 - (i) making decisions about a particular person; or
 - (ii) carrying out the Commissioner's statutorily independent functions.
- (2) The reason in **subsection (1)(a)** applies only if it is not outweighed by the Minister's need to have the information in order to discharge the Minister's ministerial duties.
- (3) Information may not be withheld under this section if it could not properly be withheld under the Official Information Act 1982.

Compare: 1989 No 44 s 45B(2)

Schedule 1: new clauses 1A and 1B

To insert, after *clause 1* (after line 17 on page 19), the following clauses:

1A When officeholder has private or business interest

- (1) For the purposes of **clause 1(2)**, the officeholder (A) has a private or business interest in a transaction of, or other matter relating to, another person (B) if A—
- (a) is a party to, or will or may derive a benefit from, the transaction or matter; or
 - (b) has a financial interest in another party to the transaction or in a person to whom the matter relates; or
 - (c) is a director, officer, board member, or trustee of another party to, or a person who will or may derive a financial benefit from, the transaction or matter; or
 - (d) is the parent, child, spouse, or de facto partner of another party to, or a person who will or may derive a financial benefit from, the transaction or matter; or
 - (e) is otherwise directly or indirectly interested in the transaction or matter.
- (2) However, A does not have a private or business interest in the transaction or other matter—
- (a) merely because he or she is a board member, director, or an officer of a wholly-owned subsidiary of B; or
 - (b) if his or her interest is so remote or insignificant that it cannot reasonably be regarded as likely to influence him or her in carrying out his or her duties and responsibilities as Commissioner.

1B Consequences of private or business interest or matter

- (1) If, under **clause 1(2)**, the officeholder discloses, or is required to disclose, an interest or matter, then the officeholder must not participate in any activity of the Commissioner that relates to the interest or matter.

- (2) However the Minister may, by prior written notice to the Commissioner, permit the officeholder to do anything otherwise prohibited by this clause, if the Minister is satisfied that it is in the public interest.
- (3) The permission may state conditions that the officeholder or Commissioner must comply with.
- (4) The Minister may amend or revoke the permission in the same way as it may be given.

Schedule 1: clause 2

To omit from *subclause (1)* the word "Commissioner" (line 19 on page 19), and substitute the word "officeholder".

To omit from *subclause (2)* the word "Commissioner" in both places where it appears (lines 22 and 25 on page 19), and substitute in each case the word "officeholder".

Schedule 1: clause 3

To omit from *subclause (1)* the word "Commissioner" (line 27 on page 19), and substitute the word "officeholder".

To omit from *subclause (1)(a)* the words "Higher Salaries Commission" (lines 28 and 29 on page 19), and substitute the words "Remuneration Authority".

To omit from *subclause (1)(b)* the words "Higher Salaries Commission" (lines 30 and 31 on page 19), and substitute the words "Remuneration Authority".

To omit from *subclause (3)* the words "Higher Salaries Commission" (line 4 on page 20), and substitute the words "Remuneration Authority".

To omit *subclause (5)* (lines 8 to 11 on page 20), and substitute the following subclauses:

- (5) This clause is subject to **section 29(2A)** (which relates to the timing of a determination in respect of the person who, immediately before the commencement of this Act, held office as the Commissioner for Children under the Children, Young Persons, and Their Families Act 1989).
- (6) A Judge is not entitled to any remuneration for services as Commissioner in addition to his or her remuneration as a Judge.
- (7) In addition, the officeholder is entitled, in accordance with the fees framework, to be reimbursed, out of the funds of the Commissioner, for actual and reasonable travelling and other expenses relating to the performance of his or her functions and duties as Commissioner.

Schedule 1: clause 4(1)

To omit the word "Commissioner" (line 14 on page 20), and substitute the word "officeholder".

Schedule 3: Higher Salaries Commission Act 1977

To omit the words "**Higher Salaries Commission**" (line 17 on page 52), and substitute the words "**Remuneration Authority**".

Explanatory note

This Supplementary Order Paper amends the Children's Commissioner Bill to—

- allow the Children's Commissioner to disclose any information (including information that the Commissioner has compelled a person to supply under *clause 18*) if the Commissioner considers that the information ought to be disclosed to give effect to the Commissioner's obligations under another enactment:
- provide for the disclosure, in the annual report of the Children's Commissioner, of any remuneration and other benefits paid to members of any committee established by the Commissioner. This amendment had been recommended by the Social Services Select Committee but was not included in the Bill as reported back:
- allow information not to be disclosed in the annual report of the Children's Commissioner if it could properly be withheld if a request for information were made under the Official Information Act 1982:
- ensure the salary and allowances of the incumbent Commissioner appointed under the Children, Young Persons, and Their Families Act 1989 are reviewed, after the Bill comes into force, by the Remuneration Authority (rather than in accordance with review provisions in the conditions of employment, determined under that Act, that applied to him or her immediately before the commencement of the Bill):
- empower the Minister to review the Commissioner's operations and performance and to obtain information from the Commissioner for that purpose:
- make it clear when the officeholder has a private or business interest that must be disclosed, and state the consequences of an interest or matter that must be disclosed:
- make clearer some references to the person who holds office as the Commissioner:
- reflect that, on 1 April 2003, the Remuneration Authority (Members of Parliament) Amendment Act 2002 (2002 No 54) renamed the Higher Salaries Commission (as the Remuneration Authority) and the Higher Salaries Commission Act 1977 (as the Remuneration Authority Act 1977):
- provide that a Judge is not entitled to any remuneration for services as Commissioner in addition to his or her remuneration as a Judge:
- ensure the officeholder's entitlement to be reimbursed for actual and reasonable travelling and other expenses is an entitlement determined in accordance with the **fees framework** (as proposed to be defined in *clause 4*).