

**MACHINERY OF GOVERNMENT (PLANNING AND INFRASTRUCTURE) AMENDMENT BILL
2001**

Committee

Resumed from an earlier stage of the sitting. The Chairman of Committees (Hon George Cash) in the Chair; Hon Graham Giffard (Parliamentary Secretary) in charge of the Bill.

Postponed clause 17: Sections 3QA and 3QB inserted -

Debate was interrupted after Hon Graham Giffard (Parliamentary Secretary) had moved an amendment.

Hon DERRICK TOMLINSON: When we earlier discussed powers in the Motor Vehicle (Third Party Insurance) Act 1943 that provide for the issuing of insurance policies by anyone other than the director general, the parliamentary secretary indicated that section 15C of the Transport Co-ordination Act 1966 gives the director general under that Act the functions conferred on the director general under the Motor Vehicle (Third Party Insurance) Act. He intimated that there was an agreement. According to section 3 of the Motor Vehicle (Third Party Insurance) Act -

“Director General” means the Director General of Transport referred to in section 8 of the *Transport Co-ordination Act 1966*;

It is one and the same person. There is not a transfer of authority from one director general to the other. One position of director general is established, and that person carries out the responsibilities conferred on him by two separate Acts.

Hon GRAHAM GIFFARD: I am not sure if Hon Derrick Tomlinson needs a response from me.

Hon Derrick Tomlinson: It was just information.

Hon Peter Foss interjected.

Hon GRAHAM GIFFARD: In relation to the point we were talking about before question time, I have indicated that we have in a minimal way picked up the provision in the Transport Co-ordination Act and replicated it in this Bill. In our view, this will enable the director general to enter into the contracts we were talking about. We do not believe that the solution is to make a subsequent amendment to the amendment before us or to section 3R(2) of the Motor Vehicle (Third Party Insurance) Act.

Hon PETER FOSS: Can we have an answer to the question about whether any person other than the director general currently issues policies?

Hon GRAHAM GIFFARD: I think the answer to that lies in an understanding of the term “issuing” of licences or policies. As I understand it, the basis for section 3R of the Motor Vehicle (Third Party Insurance) Act arose when the department essentially became the sole issuer of third party insurance policies. Section 3R(2) historically gives effect to the principle that no private provider can issue compulsory third party insurance. That is my understanding of why section 3R(2) is in the Act. I understand that it is not intended to prevent local government authorities, for example, providing people with receipts and stickers for their cars. Those authorities are not underwriting or issuing policies as an insurer. That is the distinction between the two, and explains the confusion that arises with the question of the issuing of a policy. If the member looks at it in that context, he will see that section 3R(2) and proposed section 3QA are not necessarily in direct conflict with each other.

Hon DERRICK TOMLINSON: I think we have spent far too much time on this clause. Section 3R(2) of the Motor Vehicle (Third Party Insurance) Act clearly prohibits what is laid out in proposed section 3QA. There is clear prohibition, which is stated as follows -

No person other than the Director General . . . shall . . .

Even the answer of the parliamentary secretary reflected the uncertainty surrounding the issue. Given the uncertainty about the legal consequences of proceeding with proposed section 3QA, and given that trying to amend the Act without careful consideration is in itself hazardous, the best course of action is for us to not proceed with proposed section 3QA; that is, for the Government and the Opposition to agree to vote against it. It would have no consequence on the issuing of policies by the director general, because that is already covered by the Transport Co-ordination Act and the Motor Vehicle (Third Party Insurance) Act, which create the single director general. He becomes the person designated under the new machinery of government Act, so it has no effect upon that. By eliminating proposed section 3QA we get rid of that uncertainty. At some future date when the Government has had a chance to reconsider, it may come back to the Parliament with a more acceptable provision. However, to expedite this matter I suggest that we defer consideration to some later date by voting against the clause.

Hon Derrick Tomlinson; Hon Graham Giffard; Hon Peter Foss; Chairman; Hon Murray Criddle; Hon Jim Scott

The CHAIRMAN: In regard to the procedural issue and not the substance of the argument, we are dealing with an amendment that has been moved, which is the question before the Chair. The amendment relates to proposed section 3QB, which is further on in the Bill than proposed section 3QA. If any course of action is to be taken on proposed section 3QA, it would require the clause to be recommitted in due course. The question is that the words proposed to be inserted be inserted.

Hon PETER FOSS: I agree with Hon Derrick Tomlinson and disagree with the parliamentary secretary. The provision does not say no person other than the commission can issue a policy. It says no person other than the commissioner can issue a policy. If it had said commission, I would accept that it has the consequence that the parliamentary secretary says it has. It may have been intended that the provision say that, but it is not what it says. Therefore, I agree with Hon Derrick Tomlinson.

Hon GRAHAM GIFFARD: I agree with Hon Derrick Tomlinson in that we have spent a considerable amount of time on this point. However, I do not agree that the amendment should be voted down. All members have had an opportunity to listen to the points made in the debate and I urge them to support the amendment I have moved.

Hon MURRAY CRIDDLE: We are dealing with an amendment to proposed section 3QB. If we go ahead with it, will there be further discussion on this clause?

The CHAIRMAN: Once we have dealt with the amendment, there will be further discussion on clause 17, as amended. However, technically we should not go back prior to line 26 on page 10 of the Bill, because the Committee will have agreed with it up to that point. There will be the opportunity for general discussion on the amended clause.

Hon DERRICK TOMLINSON: Once we deal with the amendment, we will then deal with clause 17, as amended. Clause 17 deals with proposed sections 3QA and 3QB, which will be dealt with in toto rather than seriatim. To not proceed with proposed section 3QA would require me to move an amendment. I foreshadow that such an amendment would delete the words from page 9, line 22 to page 10, line 20.

Amendment put and passed.

Hon DERRICK TOMLINSON: I would like to move to delete proposed section 3QA.

The CHAIRMAN: I understand what Hon Derrick Tomlinson is trying to do. However, the only way we can now deal with proposed section 3QA is to vote against the whole clause, as amended. We have passed the point of making amendments to proposed section 3QA. An alternative is to seek to recommit the clause at the end of the Bill, if members want to consider clause 17 again. However, we have passed the stage where we can delete those particular lines.

Hon DERRICK TOMLINSON: If the Committee were of the mind to reconsider the clause at a later stage, would it then be appropriate to move the deletion of proposed section 3QA, as I have indicated.

The CHAIRMAN: No.

Hon DERRICK TOMLINSON: Then the only thing we can do - I regret having to suggest this course of action - is to vote against clause 17. It introduces unsafe legislation, which is a bit like the curate's egg - it is good in parts. It is not the role of this Parliament to introduce unsafe legislation.

Hon J.A. SCOTT: I am concerned about progressing along this path in the area of motor vehicle third-party insurance, which could have important consequences on -

Hon Derrick Tomlinson: No, the third-party legislation is still safe.

Hon J.A. SCOTT: If we were to agree to this amendment and then found problems with it, I would be worried. I am not happy about progressing without having a firmer position from the Government on what can be done to sufficiently establish the liability of a third-party insurer so that people are not left in a dangerous position. I am not happy about proceeding down the path of passing this clause on that basis.

Hon GRAHAM GIFFARD: I am mindful of what members are saying. In relation to the point that Hon Derrick Tomlinson made, we do not agree that this clause introduces any new provisions that create an ability to enter into these agreements.

The CHAIRMAN: The parliamentary secretary could defer this clause until the end of consideration of the Bill. The same question would be asked when the clause is brought back on, but deferral would give the parliamentary secretary time to work something out.

Hon GRAHAM GIFFARD: I move -

That further consideration of the clause be postponed.

Hon Derrick Tomlinson; Hon Graham Giffard; Hon Peter Foss; Chairman; Hon Murray Criddle; Hon Jim Scott

Hon DERRICK TOMLINSON: This is a procedural motion and cannot be debated. The Chairman has already indicated that the clause cannot be amended, even after deferral, in the form I have suggested, so all that would happen if we were to defer consideration of this clause is that the debate would be revisited at a later stage. The alternative to deferral might be to vote against the clause now, send it back to the other place, have the other place propose a satisfactory amendment - there will be sufficient time in which to do that - and for that satisfactory amendment to come forward, rather than to try to argue two irreconcilable positions and a clause that we cannot amend anyway.

The CHAIRMAN: I will take that as a point of clarification. The position at the moment is that the parliamentary secretary has moved that clause 17 be postponed until after clause 69. I am happy to put that question. Hon Derrick Tomlinson is right. When we have dealt with clause 69, the same question will be asked on clause 17. The issues raised by Hon Derrick Tomlinson can be dealt with in due course. There may be time for the parliamentary secretary to consider some other options.

Further consideration of the clause postponed until after clause 69 had been considered.

[Continued on page 11104.]

Clauses 18 to 24 put and passed.

Clause 25: Section 57A inserted -

Hon GRAHAM GIFFARD: I move -

Page 14, after line 24 - To insert -

- (3) If a person is not employed in the Director General's department, a power or duty can only be delegated to the person under this section if the person has been approved by the Minister for the purposes of this section.
- (4) An approval under subsection (3) may be given in respect of -
 - (a) a specified person or persons of a specified class; or
 - (b) the holder or holders for the time being of a specified office or class of office.
- (5) A person to whom a power or duty is delegated under this section cannot delegate that power or duty.

The initial comments I made on the amendments to clauses 5, 14 and 17 apply also to this amendment.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 26 and 27 put and passed.

Clause 28: Sections 6A and 6B inserted -

Hon GRAHAM GIFFARD: I move -

Page 15, after line 24 - To insert -

- (3) If a person is not employed in the Director General's department, a power or duty can only be delegated to the person under this section if the person has been approved by the Minister for the purposes of this section.
- (4) An approval under subsection (3) may be given in respect of -
 - (a) a specified person or persons of a specified class; or
 - (b) the holder or holders for the time being of a specified office or class of office.
- (5) A person to whom a power or duty is delegated under this section cannot delegate that power or duty.

My comments on the previous amendments apply also to this amendment.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 29 to 36 put and passed.

Clause 37: Section 4 amended -

Hon GRAHAM GIFFARD: I move -

Page 20, lines 11 and 12 - To delete the lines and insert instead -

“Ministerial Body” means the Transport Co-ordination Ministerial Body established by section 6;

This amendment deals with an issue that was raised by a number of speakers during the second reading debate, who indicated the potential confusion about the nature of the body corporate to be created by the Bill. This amendment will remove the reference in the Bill to the Transport Co-ordination Authority and insert instead a definition that includes the term “Transport Co-ordination Ministerial Body”. In essence, that body will be no different from the body corporate created by section 7 of the Transport Co-ordination Act. In the past the way of naming this corporate entity has been problematic for a number of reasons. Firstly, the name of the body corporate changes with any change to the designation of the minister, as occurred when the minister responsible for the Transport Co-ordination Act ceased to be the Minister for Transport and became the Minister for Planning and Infrastructure, who in turn was replaced by the Minister Assisting the Minister for Planning and Infrastructure. Confusion and uncertainty results when contracts and property are held in the previous name of the corporate entity, particularly for those who deal with government on a commercial basis. Secondly, it can be unclear whether references in documentation are to the minister of the Crown with responsibility for the relevant Act, or to the body created by that Act, which has the same name as the minister of the Crown but is limited in its powers and functions by the terms of the Act. In the Government’s view, it is preferable for the name of the body corporate to be fixed by statute and not, for example, to be the Minister for X, which in this case is the Minister for Planning and Infrastructure. When the designations of the ministers of the Crown change, a situation can arise in which the minister responsible for an Act has a different name from the body corporate created by that Act. That is currently the case under the Marine and Harbours Act 1981. Under section 8, for the purposes of that Act the body corporate is created under the name of the Minister for Transport. There is no longer a minister of the Crown with that designation. The minister responsible for that Act is now the Minister for Planning and Infrastructure. For those reasons, and in the light of serious issues raised by members during the second reading debate and most recently by Hon Christine Sharp, the Government has proposed this amendment. It believes that it will not diminish the effect that the Government is seeking to achieve, but provides greater clarity of the situation for all parties, and particularly for private parties and organisations that have dealings with Government. I commend the amendment to the Committee.

Amendment (words to be deleted) put and passed.

Hon MURRAY CRIDDLE: Does this amendment standardise these authorities across the portfolios? That discussion occurred with the regional investment fund.

Hon GRAHAM GIFFARD: I cannot answer that question across the whole of government. I understand that the issue with the regional investment fund has been raised and an amendment is proposed to change it to the same name. A consistency is emerging from the two Bills about which I am aware. For that reason, it is being introduced. I cannot say what will emerge with other Bills, particularly those outside the area of planning and infrastructure.

Hon Kim Chance: I think they are the only two, and they have been fixed.

Hon GRAHAM GIFFARD: Where it has been raised, there is consistency across the two Bills.

Amendment (words to be inserted) put and passed.

Clause, as amended, put and passed.

Clause 38 put and passed.

Clause 39: Section 7 replaced by sections 6, 6A, and 7 -

Hon GRAHAM GIFFARD: I move -

Page 21, lines 5 and 6 - To delete the lines and insert instead -

6. Transport Co-ordination Ministerial Body

(1) The Transport Co-ordination Ministerial Body is established.

As with the amendment moved to clause 37, the transport coordination ministerial body will, in essence, be no different to the body corporate created by section 7 of the existing Transport Co-ordination Act 1966. The amendment allows for the establishment of the body. Establishing a statutory corporation of this type allows for isolating and defining ministerial powers.

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Hon DERRICK TOMLINSON: We might need further amendments to proposed subsections (2) to (5) of proposed section 6. The amendment to clause 37 deleted lines 11 and 12, which defined “authority” - therefore, an authority no longer exists - and inserted instead a “ministerial body”. Proposed subsections (1) to (5) of proposed section 6 refer to the authority. However, the authority has been deleted by amendment. I assume the authority should now become the body, so the body is a body corporate. Therefore, proposed section 6(3) should read that proceedings taken against the body in its corporate names, and 6(4) should read that the body is to be governed by the minister - thank God my body is not being governed by the minister. Proposed section 6(5) should read that the body is an agent of the State. Does the parliamentary secretary agree that these changes should be made?

The CHAIRMAN: The issues to which Hon Derrick Tomlinson referred can be considered as a Clerk’s amendment, insomuch as the House has made a clear decision on the deletion of the word “authority” and the substitution of the words “ministerial body”. As a consequence, where the word “authority” appears in the Bill, it will be changed to a “ministerial body”.

Hon DERRICK TOMLINSON: Thank you, Mr Chairman. It is a Clerk’s amendment and will proceed as such.

In his introductory comments, the parliamentary secretary indicated that the purpose of the Bill is to rectify some of the problems that have arisen from the interpretation of section 7 of the Transport Co-ordination Act 1966. Clause 39 seeks to replace section 7 with proposed new sections 6, 6A and 7. I accept that. However, is proposed section 6A(1) clear? It reads -

The Authority is established to provide a body corporate through which the Minister can perform any of the Minister’s functions under this Act that can more conveniently be performed by a body corporate than an individual.

I am sure that that is clear to some people; however, it is not clear to me. I have a pedestrian mind, so perhaps the parliamentary secretary can clarify this issue for me. My real concern is with proposed section 6(5). The ministerial body that is to be established is a body corporate with perpetual succession. Proceedings can be taken against the body in its corporate name, and the body is to be governed by the minister. This replaces section 7(1) of the Transport Co-ordination Act, which states -

The Minister administering this Act shall for the purposes of this Act be a body corporate and shall be known by such designation as is conferred on him by the Governor under the *Constitution Acts Amendment Act 1899* and -

- (a) shall have a seal; and
- (b) is capable of acquiring, holding, giving security over and disposing of real and personal property and of suing and being sued in his corporate name.

These aspects seem to be retained in the amendment. However, after having said that proceedings may be taken against the body in its corporate name, proposed section 6(5) introduces an immunity. The body is an agent of the State and has the status, immunities and privileges of the State. Will the parliamentary secretary clarify the meaning of “immunity” in terms of the proceedings being taken against the body as a corporate body?

Hon GRAHAM GIFFARD: Proposed section 6(5) is an explicit statement about the status of the ministerial body. It does not seek to give it anything other than what it has already received from a minister of the Crown.

Hon DERRICK TOMLINSON: If, as the parliamentary secretary has indicated, the minister of the Crown has immunity and privileges, is it correct that he is immune from being sued? If the minister, for the purposes of the Transport Co-ordination Act, becomes the transport coordination ministerial body and as a body corporate is capable of being sued, is there a conflict between the immunity of the minister as minister and the capacity of the minister to sue and be sued as a corporate body? If there is, why is there capacity to take proceedings granted in proposed section 6(3), and then withdrawn by conferring upon the body the immunities of the minister that exist by virtue of his being minister?

Hon J.A. SCOTT: This is a question that puzzled me for some time. Why was a separate entity being set up if it was then to be provided with immunity against one of the very reasons it was proposed? I was advised to have a look at the Crown Suits Act 1947. Hon Derrick Tomlinson may find it of interest that section 5 of that Act reads -

5. Crown to sue and be sued as subject

- (1) Subject to this Act, the Crown may sue and be sued in any Court or otherwise competent jurisdiction in the same manner as a subject.
- (2) Every proceeding shall be taken by or against the Crown under the title “the State of Western Australia”.

Hon Derrick Tomlinson; Hon Graham Giffard; Hon Peter Foss; Chairman; Hon Murray Criddle; Hon Jim Scott

I assume from that, that one can sue a minister of the Crown in the same way as any other subject. I still do not see the need for this whole new persona.

Hon GRAHAM GIFFARD: If I understand what Hon Derrick Tomlinson is saying, immunity as defined in proposed section 6(5) would somehow relate to immunities against prosecution. I am advised that it does not do that. It makes explicit the general standing of rights to immunities to which an agent of the State is entitled. It might, for example, be exempt from a local government rate if, as an agent of the State, it had that entitlement. That is what is meant by immunities. It is not in conflict with proposed section 6(3), which is manifestly obvious, and is not diminished by proposed section 6(5).

Amendment put and passed.

Hon MURRAY CRIDDLE: I move -

Page 21, lines 12 and 13 - To delete "State" in both places and substitute "Crown".

Hon GRAHAM GIFFARD: The Government does not support the amendment, preferring the expression "State".

Amendment put and negatived.

Clause, as amended, put and passed.

Clauses 40 to 54 put and passed.

Clause 55: Section 5 amended -

Hon DERRICK TOMLINSON: I reassure the parliamentary secretary that this is the last point of clarification I will seek, and I will not be rising to discuss any other matters. My point of clarification is fairly straightforward, and I am sure the parliamentary secretary will deal with it expeditiously. Clause 55 reduces the number of members of the Western Australian Planning Commission to a chairperson and four other members, as opposed to a chairperson and five other members. The office to be deleted is that prescribed by subparagraph (iii), the Lord Mayor of the City of Perth. Could the parliamentary secretary explain why the Lord Mayor is being deleted from the Western Australian Planning Commission?

Hon GRAHAM GIFFARD: As I indicated during my second reading speech, it is proposed to remove the Lord Mayor of Perth from the Planning Commission. The city of Perth no longer covers the vast area it once did, and no longer holds the pre-eminent position that it used to have in metropolitan planning. This move was foreshadowed in 1998 and 1999 by the Planning Commission's workshop, and then in its report. As time has moved on, it is no longer viewed as appropriate for the Lord Mayor to sit on the Planning Commission. As I indicated in the second reading speech, the city will retain input to the commission through its continued membership of the Central Perth Planning Committee. As I have also indicated, discussions have been held with the Lord Mayor, and I am advised that he is agreeable to the changes. For those reasons, it is proposed that the Lord Mayor of the City of Perth no longer sit on the Western Australian Planning Commission.

Hon DERRICK TOMLINSON: I accept that explanation; whether the City of Perth accepts it is another question. However, that is not our concern.

The other matter of concern is the reduction in the number of members from six other members to "the least number of other members" including the person holding the position or acting as the chief executive officer of the Department of Transport, the chief executive officer of the department administering the Environmental Protection Act and one other person. The administration of the Environmental Protection Act now embraces the Water and Rivers Commission, so that will eliminate one of the positions. The least number of additional persons can be reduced from six to three. That will make a possible total of the chairman plus eight other members as opposed to the chairman plus 11 other members.

Hon GRAHAM GIFFARD: I agree with Hon Derrick Tomlinson. The positions of the Director General of Transport and the chief executive officer of the department assisting the administration of the Western Australian Planning Commission will go to the Department for Planning and Infrastructure. The new Department of Environment, Water and Catchment Protection represents the second position and the Commissioner of Main Roads is the third position. It will reduce the number of members from six to three, as the member said.

Clause put and passed.

Clauses 56 to 67 put and passed.

Clause 68: Delegations under former *Transport Co-ordination Act 1966* section 18 -

Hon GRAHAM GIFFARD: I move -

Page 38, after line 10 - To insert -

- (c) any Ministerial approval that would have been required in order for the delegation to be made under the new provision of the relevant Act had been given.

This amendment is necessary as a consequential amendment to the amendments made to sections 5,14, 25, 28 and, hopefully, 17 of the Transport Co-ordination Act. The effect of the amendment will be to provide that when a delegation given under the previous provisions of the Transport Co-ordination Act would, if pursuant to the provisions of this Bill, require ministerial approval, the approval will be deemed to have been given. The provision is necessary to ensure that the existing delegations remain in place and that the issuing of new delegations complies with the new requirements. I commend the amendment to members.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 69 put and passed.

Postponed clause 17: Sections 3QA and 3QB inserted -

Resumed from an earlier stage of the sitting.

Hon GRAHAM GIFFARD: Before I deal with this clause I will make a few comments. Members have referred to an apparent conflict with section 15C of the Transport Co-ordination Act. My understanding is that section 15C overrides the prohibition contained in section 3R(2) of the Motor Vehicle (Third Party Insurance) Act. The Insurance Commission of Western Australia operates on the basis that the director general can send out policies and collect premiums, but the only body authorised to provide insurance cover is the Insurance Commission. That puts into context what I said earlier about why section 3R was included in the Motor Vehicle (Third Party Insurance) Act in the first place. The most appropriate and prudent action is to preserve the situation that has existed since 1996 by taking the provisions of section 15C of the Transport Co-ordination Act and placing them in this legislation. It may be that section 15C was introduced by the former Government partly to resolve problems that might arise from a strict interpretation of the prohibition in section 3R of the Motor Vehicle (Third Party Insurance) Act. It is not for me to say why the previous Government put in the provision, but it may well be an explanation for members if they continue to seek an answer for that.

My fear is that, if we were to reject clause 17, local governments, Australia Post or whoever undertakes this work these days might be prevented from issuing registration stickers. The Government is seeking to ensure a smooth transition of the provisions from the Transport Co-ordination Act into the Motor Vehicle (Third Party Insurance) Act. The most prudent course would be to lift the provisions from the Transport Co-ordination Act and insert them in this legislation, so that the arrangements for the renewals, issuing of stickers and receipts and so on can continue to be done without fear that with the stroke of a pen those arrangements will cease. This is not the tidiest piece of legislation I have seen, but that is what the Government inherited. We have tried to introduce changes in a way that causes minimal disruption. For those reasons, I ask members to support the clause.

Hon J.A. SCOTT: The parliamentary secretary has said that he believes this legislation will take precedence over the other legislation if a conflict arises. That makes me happier. Proposed section 3QA(4) provides -

If the performance of a function is dependent upon the opinion, belief, or state of mind of the Director General it may be performed under the agreement upon the opinion, belief, or state of mind of the body or person with whom the agreement is made or another person provided for in the agreement.

It relies on judgment. We must understand and it must be clear that, if it is enacted, this legislation will take precedence over the Motor Vehicle (Third Party Insurance) Act, as explained by Hon Derrick Tomlinson. I see him nodding. I think the parliamentary secretary believes that is the case. Is that a strong belief or is there some uncertainty?

Progress reported and leave granted to sit again at a later stage of the sitting.

[Continued below.]