

**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 -**

Progress was reported after the clause had been partly considered.

Hon DERRICK TOMLINSON: I am starting to feel guilty. I discussed today's proceedings with various people and indicated that I thought this Bill would be dealt with in an hour, or two hours at the most. I was genuine in that belief. I am now being accused of unnecessarily delaying its progress. It is not my intention.

Hon Kim Chance: It was not my intention to give that impression.

Hon DERRICK TOMLINSON: However, this matter must be clarified.

The explanatory memorandum of the Bill states -

The proposed section 3QA substantially mirrors the current provisions of section 15C of the *Transport Co-ordination Act*. It will allow the Director General (the CEO of the department administering the licensing provisions of the *Road Traffic Act*) to appoint agents to issue motor vehicle third party insurance policies on his or her behalf. This power is necessary to enable licensing functions to be provided by shires and Australia Post.

Section 15C(2) of the Transport Co-ordination Act states -

The Minister, on the recommendation of the Director General, may enter into an agreement with the Commissioner of Police or any other person or body providing for such of the functions of the Director General under the Acts referred to in subsection (1) as are set out in the agreement to be performed for and on behalf of the Director General.

We are transferring the provisions of the Transport Co-ordination Act 1966 into the proposed section. I thought I heard the parliamentary secretary say that they were inserted by Act No 76 of 1996. Did I hear the member correctly?

Hon Graham Giffard: No.

Hon DERRICK TOMLINSON: It is substantially correct that they were inserted by 1996. However, I am in a dilemma. Bear in mind that the director general in the Transport Co-ordination Act is the director general in the Motor Vehicle (Third Party Insurance) Act 1943. Section 3 of that Act states -

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

A prohibition under section 3R of the Motor Vehicle (Third Party Insurance) Act states -

(2) No person other than the Director General, on behalf of the Commission, shall issue any policy  
...

Whereas according to the explanatory memorandum of the Bill, the provision introduced in 1996 states -

This power is necessary to enable licensing functions to be provided by shires and Australia Post.

The licensing function, which is legitimate, is concurrent with the insurance function because the third party insurance and the motor vehicle registration are issued in the same certificate. Despite what may have been the practice since 1996, the prohibition is that only the director general, not the local post office and not the local government authority, may issue on behalf of the commission a third party insurance policy. If that prohibition is correct, it opens up the possibility - I will leave it to the lawyers to argue this - that any of those policies issued by other than the Director General of Transport may not be valid policies. I hope the Government's explanation is that they were issued on behalf of the Director General of Transport rather than others actually doing the issuing. However, if those policies are unsafe, it would be wrong for this Parliament to now proceed with another unsafe provision because there is already an unsafe provision. If the provision is unsafe and uncertain - so far we have not had a satisfactory answer to that question - we have two options available: we can either try to amend it before we proceed or we can defeat it now and send it to the other place. In the meantime, the mischief might be corrected by amendment, and a safe amendment could be returned to this Chamber. I suggest that the more prudent action is to defeat this clause and give members time to prepare an amendment while the Bill is dealt with in another place. We could then bring back the amended provision for this Chamber to deliberate

upon. It would be improper for this Chamber to continue debating what might be unsafe legislation because the unsafe practice derives from another unsafe decision of 1996.

Hon GRAHAM GIFFARD: I agree with the member's earlier comments that we have probably talked enough about this clause. I am advised that the director general can send out the policy directive about who can collect the money and who can have contact with Australia Post.

Hon Derrick Tomlinson: An agent.

Hon GRAHAM GIFFARD: Yes. However, the Insurance Commission is the only body authorised to provide the insurance cover. That is the restriction. We could play ping-pong, but that is what I understand the situation to be. The member is clear about how he sees the situation and I am advised that what I have said is how these things work.

Hon J.A. SCOTT: To bring this matter to a resolution, we would need an assurance from the parliamentary secretary that he would take the issue back to the minister and ask her to consider whether an amendment was necessary. The parliamentary secretary could ask the minister to provide such an amendment. If we can be assured that it could be done quickly if required, we could bring this matter to an end.

Hon GRAHAM GIFFARD: Prior to the member making that suggestion, I had resolved in my mind that I needed to raise this issue with the minister to find out whether the proposed section could be better expressed. I am not saying that it is wrong or that it must be changed; however, the issue must be raised with the minister. I assure members that I will raise with the minister the need to at least consider the idea and to discuss whether the proposed section can be improved.

Hon Derrick Tomlinson: Will you give that assurance before we proceed?

Hon GRAHAM GIFFARD: I give members my assurance that I will. I would like to proceed with this matter now. I give members my assurance that I will raise the matter with the minister.

Hon Derrick Tomlinson: After the deed is done, it is too late, darling.

Hon GRAHAM GIFFARD: We do not think it needs to be changed. It might be more appropriately worded.

Hon Derrick Tomlinson: Send it back to the other place and let it work it out.

Hon GRAHAM GIFFARD: I assure members that I will raise the matter directly with the minister.

Postponed clause put and a division taken with the following result –

Ayes (16)

Hon Kim Chance	Hon Adele Farina	Hon Dee Margetts	Hon Tom Stephens
Hon Robin Chapple	Hon Jon Ford	Hon Louise Pratt	Hon Ken Travers
Hon Kate Doust	Hon Graham Giffard	Hon Ljiljanna Ravlich	Hon Giz Watson
Hon Sue Ellery	Hon N.D. Griffiths	Hon J.A. Scott	Hon E.R.J. Dermer ( <i>Teller</i> )

Noes (14)

Hon Alan Cadby	Hon John Fischer	Hon Barry House	Hon Derrick Tomlinson
Hon George Cash	Hon Peter Foss	Hon Norman Moore	Hon Bruce Donaldson ( <i>Teller</i> )
Hon Murray Criddle	Hon Ray Halligan	Hon Barbara Scott	
Hon Paddy Embry	Hon Frank Hough	Hon Bill Stretch	

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Pair

Hon Christine Sharp

Hon Robyn McSweeney

**Postponed clause thus passed.**

**Title put and passed.**

*Report*

Bill reported, with amendments, and the report adopted.

*Third Reading*

By leave, Bill read a third time, on motion by Hon Graham Giffard (Parliamentary Secretary), and returned to the Assembly with amendments.

*Sitting suspended from 6.05 to 7.30 pm*