

**GOVERNMENT RAILWAYS (ACCESS) AMENDMENT BILL 2000**

*Committee*

Resumed from 17 October. The Chairman of Committees (Hon J.A. Cowdell) in the Chair; Hon M.J. Criddle (Minister for Transport) in charge of the Bill.

**Clause 6: Part 3 Division 1 replaced -**

Progress was reported after the clause had been amended.

Hon NORM KELLY: I wish to make a few points and ask a few questions regarding the proposed office of independent regulator. Proposed new section 14(3) states -

The Commissioner is to notify the vacancy or impending vacancy in such manner as the Commissioner thinks sufficient . . .

People would ordinarily expect the Democrats to look at what sort of advertising provisions are required to advertise such a vacancy. However, we recognise that the role of the independent regulator is a very specialised and specific role. We believe that the current wording of the Bill is sufficient to allow the commissioner the breadth and scope to make his or her own decision as to how such advertising or notification of relevant people should be carried out to make such an appointment.

Proposed section 18 refers to the removal of the regulator. While we support this part of the Bill, it seems to be an interesting methodology for removing a regulator. Proposed section 17 allows for the suspension of the regulator, but removal of the regulator requires a parliamentary process. Proposed section 18(1) states -

- (a) a statement of the grounds of suspension is laid before each House of Parliament during the first 7 sitting days of that House . . . ;and
- (b) each House of Parliament, during the session in which the statement is so laid, and within 30 days of it being so laid, passes an address praying for the removal of the Regulator from office.

The concept of this being laid before Parliament is interesting. I have a general interest rather than a concern about where this provision emanated from, because there are different disallowance-type procedures. This one contains an inadequacy, in that it says “during the session in which the statement is so laid”, and I imagine that, if it is just prior to prorogation, prorogation would have the effect of negating this proposed section. Does the minister have any comment on this proposed section?

Hon M.J. CRIDDLE: This is the same process that we have with the gas regulators; there is no difference between the two. It is a system that is in place.

Hon NORM KELLY: Given the difficulty in getting resolutions accepted in this place, I offer that comment as a point of interest. There is a requirement for this Chamber to actually address and pass the removal. The Land Administration Act springs to mind. This Chamber could simply talk it out and not arrive at a resolution one way or the other. That is possible with this provision as well. This is not as a major concern as this proposed section would be used extremely rarely, if at all.

Proposed section 20A refers to the independence of the regulator. Proposed subsection (2) allows the minister to give directions; proposed subsection (3) limits the ability of those directions to be purely in matters of administration, including financial administration. That proposed section provides a specific limitation as to what types of directions the minister can give.

Hon M.J. Criddle: It refers to operations of the office.

Hon NORM KELLY: That is right. It is more the mundane day-to-day administrative operations. Proposed section 20C(2), conflict of interest, provides that the minister may direct the regulator to resolve a conflict between a direct or indirect interest. The limitation contained in proposed section 20A(3) is perhaps in conflict with proposed section 20C(2), which provides another direction-making power, or perhaps they simply complement each other.

Hon M.J. CRIDDLE: It is my belief that this actually complements the arrangements rather than conflicts with them.

Hon J.A. SCOTT: Proposed section 14(10) states -

If the Commissioner does not nominate any person suitable for appointment or a nomination or further nomination by the Commissioner is rejected, the Minister -

- (a) may recommend to the Governor that -
  - (i) in the absence of a nomination by the Commissioner, a named person; or

- (ii) a named person other than a person nominated by the Commissioner, as the case requires, be appointed to the office of Regulator; and
- (b) is to cause notice of the making of that recommendation, together with the reasons for recommending the named person, to be published in the *Gazette* as soon as practicable.

Does this mean that that is a disallowable instrument?

Hon M.J. CRIDDLE: The answer is no.

**Clause, as amended, put and passed.**

**Clauses 7 to 12 put and passed.**

**New clause 13 -**

Hon M.J. CRIDDLE: I move -

Page 17, after line 12 - To insert the following new clause -

“

**13. *Rail Freight System Act 2000* amended**

Section 89 of the *Rail Freight System Act 2000* is repealed.

”.

This will repeal the provisions to not require public comment on amendments made in the rail access code by section 89 of the Rail Freight System Act. The provision was added in anticipation that the railways access code would be gazetted before the proclamation of the Rail Freight System Act. As it turned out, the code was gazetted after the proclamation of that Act.

**New clause put and passed.**

**Long Title -**

Hon M.J. CRIDDLE: I move -

Page 1 - To delete “*Government*”.

**Amendment put and passed.**

**Bill reported, with amendments and an amendment to the title.**