

GOVERNMENT RAILWAYS (ACCESS) AMENDMENT BILL 2000

Second Reading

Resumed from 21 June.

HON TOM STEPHENS (Mining and Pastoral - Leader of the Opposition) [8.57 pm]: The Bill amends the Government Railways (Access) Act 1998 and does so by responding to the concerns of the National Competition Council and stakeholders as well as the Opposition in establishing a truly independent Office of the Western Australian Independent Rail Access Regulator. The minister in his second reading speech stated that the regulator is currently defined as the person who holds or is acting in the position of the Director General of Transport. He said that recent developments had prompted the need to reconsider whether the Director General of Transport should be the regulator or whether it is more appropriate to establish an independent office to oversee the implementation of the access regime.

The National Competition Council has indicated that it does not consider the Government's current regulator - the Director General of Transport - as sufficiently independent. It is of the view that there are potential conflicts of interest in the Department of Transport's overall role in transport policy and advice as well as rail safety, which view has also been expressed by other stakeholders.

This Bill is the latest demonstration of the fact that this Government has been unable to get transport infrastructure right. The minister's speech in one sense must be viewed as completely ironic because he talked about recent developments which had occurred which had prompted the need to reconsider where we are up to with this legislation. Where we were up to was well known in November 1998, which is why the arguments on this legislation to which I will quickly refer seem somewhat familiar; that is, nothing relevant has happened since the legislation was introduced.

What is known now was known then; that is, we need to pass these amendments. That was pointed out to the Government at the time by everyone, including the Opposition, the National Competition Council and all the other stakeholders in the industry. The Government introduced the Government Railways (Access) Bill in 1998. It sought to establish a regulator to govern and set policy for third party access to rail. The Government wasted parliamentary time, and did not take notice of the arguments that we presented then, and now it must make time available in the House to accept our arguments and effectively introduce our amendments. The Government said it was acting because it was keen to foster competition on rail. However, we know that the Government was forced to produce access legislation by the NCC, which wanted to declare the standard gauge line open to competition. The Government's original 1998 legislation contained the fabulous idea that the Director General of Transport, who is a public servant, would be the independent regulator. During the debate the Government conceded, when the Opposition pointed it out, that this would not pass muster with the NCC and had been opposed by the industry players who believed a public servant whose appointment was made and renewed by the minister of the day could not qualify as a person independent of government. The Opposition made it clear that, if the Government did not listen to and support the changes it wished to make, this legislation would not be approved by the NCC. The Government needed that approval to prevent the east-west line being declared and made available for unfettered public access.

Point of Order

Hon NORM KELLY: I draw your attention to Standing Order 83.

The PRESIDENT: It reads -

Except when introducing a Bill or by leave of the President, no Member shall read his speech.

The Leader of the Opposition is aware of the standing order. I was not following closely enough to say whether he was reading his speech. There seemed to be some interjections. I will leave it to the Leader of the Opposition in the first instance.

Hon TOM STEPHENS: I intend to draw heavily on my copious notes. I thank the member for a display of his charming manner and thorough knowledge of the standing orders of the House. I will miss him when he is gone! I intend to be quick with my remarks, as I have told the minister. I hope that by drawing heavily on these copious notes I will be able to avoid the need to waste too much of the time of the House.

Debate Resumed

Hon TOM STEPHENS: The House did not listen to me last time I presented these arguments, and I hope members do not mind my saying "I told you so!" I thank Hon Norm Kelly for his interest.

Hon W.N. Stretch: You might be able to return the favour one day.

Hon TOM STEPHENS: In the Assembly the Government responded to this in two ways. There was an interjection from the Leader of the House who said that the Government did not care about that because regulators should not be independent. He said the Government was concerned about too much power moving away from the Government and it did not particularly want an independent regulator. On the other hand, the Minister for Local Government, who was representing the Minister for Transport, said it was an independent position. The Opposition knows, and the minister admitted - reports of which are contained in *Hansard* - that the NCC had expressed concern about this model and said it was unlikely to provide the relevant degree of independence to the process of regulation to satisfy national competition policy. Notwithstanding that, and acknowledging that other players within the industry were also opposed to this model, the Government pressed on with it. Two years later we are in the position that the Opposition predicted then; that is, we are wasting parliamentary time amending legislation that was so self-evidently flawed that it would never pass muster.

It also says something interesting about the Government's view of the Director General of Transport. At one level the current Government must be of the view that the Director General of Transport is substantially under-employed and can take on a significant new role in addition to the considerable duties in that current role. There may be a number of reasons that the Government proceeded down the track it did. The Government obviously was not keen to use a model that would require expenditure. It had so mismanaged the finances of the Transport portfolio that it was trying to get a regulator on the cheap by using an existing public servant. The Government did not want an independent regulator at all, and the view of the Leader of the House prevailed that the Government should go through the motions of making the regulator look independent but not providing for that independence. Perhaps the Government was keen to keep an independent regulator away from Westrail's books. For a regulator to do his job he would have to do a thorough analysis of the accounts and the cost structures of Westrail. It would become evident to anyone from the outside who looked at Westrail's accounts over at least the past five years that the books had, effectively, been cooked.

I digress to a point that worries me from a recent report of the Auditor General; that is, the handling of Westrail's accountability to Parliament. It is a nagging worry I have about that report and I want eventually to go back to some of the issues I have raised in this Parliament that were canvassed by the Auditor General, because I suspect that I will find some discrepancies that flow from this notion of the books being effectively cooked.

One way they have been cooked that is relevant to this debate, and what is the cause of the vast bulk of Westrail's debt, is that items of maintenance have been recharacterised as capital and have been funded out of borrowings. One such example is a range of sleeper replacement programs. The aim of that exercise has been to manufacture a profit for Westrail while at the same time allowing the debt to balloon. The debt of Westrail's freight division has doubled over the past five years even though there has been very little real capital expenditure. This would have been obvious to an independent regulator who, under the legislation, must examine the cost of the operation. An important part of the charade that the Government presented to the public was that it had turned Westrail into a profit making organisation, and it had to sell Westrail while it was operating successfully otherwise Westrail would not cope and would produce a huge debt burden that the Government would not be able to service. The flaw in this argument is that if Westrail were a successful operation why would it be vulnerable to competition from far less experienced operators? The Government has been careful to conceal the true facts of Westrail's finances from independent scrutiny. It has over the past five years removed Westrail's accounts from any examination by Parliament, despite the fact that it has no answerable board. Although Westrail is not a corporatised body, the Government refuses to make it accountable for either its recurrent or capital expenditure. Effectively, the agency is using vast amounts of taxpayers' dollars - \$120m a year - at the same time as it is increasing the State's exposure to debt, which is now in excess of \$1b. The imposition of an independent regulator would represent a threat to this situation. It would mean that the 1998 legislation was a delaying tactic, because the Government believed it was about to sell Westrail freight. Once this Bill goes through, it is not likely that the regulator will be up and running before the next election.

Hon Norm Kelly: The interjections are missing.

Hon TOM STEPHENS: Perhaps Hon Norm Kelly could interject on cue.

The regulator will not be in a position to look at Westrail's accounts and express the concerns that have been expressed by many other people.

The Opposition supports the principle of third-party access and the principle, as we did in 1998, of the independence of the regulator of third-party access, and that a public servant would not qualify for that degree of independence.

We support the basic thrust of the amending legislation. However, we do not believe that a third-party access regime and code of conduct, even with an independent regulator, will work in a situation of vertical integration, which we know is the Government's preferred model and the only model it will seriously consider. We know the Government was forced to appear prepared to consider other options, particularly that of allowing the

Australian Rail Track Corporation to do a deal with one of the consortia for the management of the east-west line. The original structure of the legislation precluded the ARTC, or any other government-owned body, from having an equity role in any consortium. However, the Minister for Transport has tried to undermine the ARTC and clearly has compromised its position by providing to the Chamber of Commerce and Industry of Western Australia and the Chamber of Minerals and Energy of Western Australia copies of its confidential offer to lease and upgrade the Kwinana-Kalgoorlie line. This was despite the fact that the minister would not table in the Parliament the same document that he was prepared to circulate to those two bodies, as had been requested on 23 September last year.

The Opposition believes that because the Government was reluctantly dragged to the position where it will allow the ARTC to make a bid, the ARTC does not have a realistic chance of getting in on the act, and it has made sure of that fact by releasing copies of its confidential offer. By acting the way he has, in our view the minister has ensured that even the small window of opportunity for any degree of vertical separation on the Kwinana-Kalgoorlie line has disappeared, and realistically the east-west line is probably the only line on which any real competition will occur.

If an important part of transport infrastructure is to operate as a monopoly, it should not be in private hands. In the Opposition's view, it should be in public hands. The regulator will need to try to control third-party access, and the company that is managing the rail infrastructure will also be running a rail operation. One little paragraph has been included in the Bill in recognition of some of the inherent difficulties of trying to do that. It is found in proposed section 20(3), which reads -

Without limiting subsection (2), the powers given by this Division extend to financial information relating to a railway owner's own use of railway infrastructure to which the code applies.

This recognises that a regulator will have some difficulty in trying to do a proper costing of third-party access when there is a vertical integration. The very real possibility will always exist of transfer pricing. We may well ask: At what point of the company's total overall costing will there be proper accountability of costs of the above-line operation and costs of the below-line operation? That proposed subsection of the Bill is a cursory attempt to deal with the issue. It is a recognition of the difficulty involved. It will also be difficult to get access to the documentation to do the analysis.

We have been told by the Government that the track manager will maintain the line according to the contract requirements, to the satisfaction of the owner - that is, the State - and that the State will need to give assurances to the users of the line that the track will be maintained to an appropriate standard. However, there is no legislative obligation for the Government to give that sort of information to the users, so there is no guarantee that will occur. The Government was not able to provide a list of the performance indicators required of the contractor, and the Minister for Transport should now take the opportunity of providing that list.

A further and very important issue is the difficulty of a regulator governing the proper costings of third-party access. That difficulty arises from the possibility of changing the maintenance regime to suit a particular set of rolling stock. To provide reassurance, the minister needs to provide all the performance indicators for the required maintenance standards, standards that presumably will be objectively assessable. The minister should also advise whether there is any proposal to have a performance bond in the contract, given that the Deputy Premier and the Government have so far been unable to do so. The existence of a performance bond will ensure that the performance standards are met, and this in turn will affect the capacity of the regulator to ensure that there is a level playing field for the different operators on the line, given the privileged position that the companies that are associated with the track manager will have as an above-line operator.

The Opposition has some concern about the degree of independence, even under the new model. We do not object to the minister's having the ultimate capacity to determine who will be the regulator, but this Bill will allow the minister to conceal the fact that he has made a direct appointment. Therefore, in our view the relevant provision should be deleted. The only real hope for the rail network in Western Australia is that there is a change of government before this iniquitous sale goes through. Even if the sale does not go through, there is still a place for third-party rail access, and we are very keen to have vertical separation on the east-west line and to have a number of companies compete for the work on that line, because that will benefit the entire State. Westrail has an operational staff that is second to none, and with a revamp of its management it will be more than able to hold its own in that competitive environment. The Opposition suspects that the real reason the Government is selling Westrail is that it has a huge Transform WA debt for road building.

Hon M.J. Criddle: One is funded out of an initiative that is quite clear to everybody.

Hon TOM STEPHENS: Originally the Government indicated it would be able to get in excess of \$1b from the sale of Westrail. That amount has been gradually reduced to \$800m and is now down to about \$600m. I do not

know what the Government would get for Westrail in the current climate, particularly in light of the situation facing potential customers this year. It would be intriguing.

Hon Barry House: How much do you think you would get for it if you delayed the sale?

Hon TOM STEPHENS: We are not proposing to expedite the sale.

Hon Norm Kelly: Do you intend to sell it at all? I did not think the ALP position was to sell.

Hon TOM STEPHENS: That is right. We are not proposing to expedite a sale.

Hon N.F. Moore: Are you going to buy back AlintaGas too?

Hon TOM STEPHENS: We certainly would not have embarked upon a strategy of losing as much money as members opposite have just lost for the people of Western Australia.

Hon N.F. Moore: Rubbish!

Hon TOM STEPHENS: The Government has underestimated the return from that sale and has effectively caused great loss to the people of Western Australia.

Hon N.F. Moore: If you believe that, you will believe anything.

Hon TOM STEPHENS: Some individuals made stag profits today, but that is effectively a loss for the ordinary mums and dads and families of Western Australia, who had their asset sold off effectively below value; and that is the truth of that situation. The Government also underestimated the value of the annual return of that utility to the people of Western Australia. That return will now be made up by reducing government support for the infrastructure of hospitals and schools, and for the area of community safety.

As the Opposition has been proved right in relation to the office of the independent regulator, I believe that in the future it will also be proved right in relation to the other privatisation debates that will continue to rage in this State until the next state election and during the next state election campaign. In the Opposition's view, the proposal to sell Westrail will prove to be a short-sighted arrangement. One can only hope there is a change of government before this privatisation is put into effect. However, these amendments deserve the support of the House in the context of the Government's agenda; and even in the absence of that agenda, there is still a role for a regulator, as proposed by these amendments.

HON NORM KELLY (East Metropolitan) [9.18 pm]: It is reassuring that the Australian Labor Party's position on this Bill is remarkably consistent with the position that it took in the other place. I suppose, as a point of clarification, the reason that I called that earlier point of order was probably more as a matter of envy that the Australian Democrats do not receive the additional resources that the ALP and the government parties receive to enable them to do research and, for that matter, to cut and paste. The Australian Democrats will also be supporting this Bill, which is one that we are revisiting from 1998, when the Government brought forward its Rail Access Bill 1998.

Hon Tom Stephens: That is tedious repetition.

Hon NORM KELLY: One of the reasons the minister gave for the introduction of this Bill was that -

Recent developments have prompted the need to reconsider whether the Director General of Transport should be the regulator or whether it is more appropriate to establish an independent office to oversee the implementation of the access regime.

Hon Tom Stephens: Are you drawing on Alannah MacTiernan's speech too?

Hon NORM KELLY: No; I thought we might alternate.

The minister went on to say -

The National Competition Council, in reviewing the Western Australian application for certification, has indicated that it does not consider the regulator, being the Director General of Transport, as sufficiently independent and that it is of the view that there are potential conflicts of interest with the Department of Transport's overall role in transport policy and advice as well as rail safety. This view has also been expressed by other stakeholders.

It is a pity that the minister neglected to point out the findings of the Standing Committee on Constitutional Affairs on the Government Railways (Access) Bill 1998. The committee's report highlights the need for an independent regulator. The committee was somewhat hamstrung in that, although it was aware of the Government's intention to sell Westrail freight, its terms of reference limited its ability to address that issue. However, recommendation 14 of the committee's report states -

... the Committee agrees with the NCC's concerns regarding the independence of the Regulator. Moreover, the Committee considers that Western Australia should adopt a model similar to South Australia in order to comply with the CPA requirement that a Regulator of an access regime be independent.

The Australian Democrats stated during the debate two years ago that there should be an independent regulator. We did not think that the Director General of Transport should be the regulator, nor did we think that the Commercial Tribunal of WA was a suitable regulatory body in this area. The minister went on to say -

In order to satisfy the NCC on the level of regulatory independence, either very extensive and prescriptive information on how the regulator will undertake his responsibilities in an independent manner would need to be incorporated in the regime, or an independent office of the Rail Access Regulator would need to be established.

The Australian Democrats applaud and appreciate the fact that the Government has introduced this legislation to establish the Western Australian Independent Rail Access Regulator. Although it may be a couple of years too late, at least it is happening and we appreciate that.

During previous debates I remember asking the minister about the development of an office of regulator general in this State. I believe that such an office has been established in Victoria. The office would incorporate the access regimes of the various utilities and bodies such as those dealing with gas, water, rail and the like. The minister's response to the proposition that that would be a better way to go was that there was some agreement but that more time was needed to develop the policy. Now, two years on, I would like to know what progress has been made in establishing an office of regulator general.

The appointment and independence of the regulator are issues of concern, but it would be more appropriate to address them in the committee stage. I could speak at length about the privatisation of Westrail, but I will deal with that at another time.

As I said, the Australian Democrats welcome this Bill. We are disappointed that it has taken so long to reach the Parliament. However, now that it has been introduced, we are happy to help expedite its passage.

HON J.A. SCOTT (South Metropolitan) [9.25 pm]: I am in an interesting position. We debated the Rail Freight System Bill and similar amendments, but they did not comply with constitutional requirements and we ended up with this Bill. I had not thought through the philosophical aspects of appointing an independent regulator as opposed to the Director General of Transport. Although I was previously happy with the idea of having an independent regulator, a number of points in the second reading speech have rung alarm bells, and I would like some assurances on those issues.

The National Competition Council is obviously a very powerful body in Australian lawmaking, but I do not always agree with what it is trying to do. Its rulings suggest that it fails to understand that the Government's role is not to facilitate business but to look after the people for whom it governs. Sometimes those two things do not mesh. The NCC has said that the Director General of Transport is not an appropriate person to appoint because he would not be independent. I wonder what that means. Surely the Director General of Transport would be acting as a public servant on behalf of the people of this State. If not being independent means he is acting in the interests of the people of the State and against the interests of the rail users, the rail freight operators or operators of -

Hon Norm Kelly: He may have interests in road transport as opposed to rail transport.

Hon J.A. SCOTT: That might be the case. I wonder whether the NCC has articulated what that lack of independence might be. Hon Norm Kelly is correct; I have thought of that aspect. I wonder whether the NCC was worried about the appointee's acting as a public servant on behalf of the people of this State. An interesting philosophical change is occurring in the way we do things in this State - we are moving away from governing for the people. Public servants are supposed to act on behalf of the people, but I sometimes wonder whether that is happening. The NCC sees the independent regulator's role as arbitrating for the rail freight providers and very little else. The second reading speech specifically states that this person will not be a public servant because, if he were, he might serve the public. I wonder about that. Philosophically, where are we going? What is wrong with somebody in the Public Service being an independent arbitrator? Is that something to do with the minister's ability to direct that person?

The Bill states that the regulator will be appointed and removed by the Governor, but I guess that is balanced out pretty well by the fact that the second reading speech says that that will be confirmed by both Houses of Parliament, so that is a reasonable check. However, dealing with the philosophical aspect, the second reading speech says that the independent regulator will take an oath or make an affirmation that he or she will impartially perform the functions. I have no problem with that. It says that the regulator will be entirely independent of

direction or control by the Crown. It also says that the minister can give directions, but they may relate only to the regulator's management responsibilities and may not constrain or impair the regulator's independence. During this debate, I was assured that the reason the freight system in Western Australia was being sold was to improve the service to the people, the users of the freight system. If the minister's role to ensure that the freight rates are proper and that the people of this State receive a decent service is impaired by his inability to direct our rail systems in the way they carry out their business, where are we?

Hon M.J. Criddle: I think you are confusing the management of the office and the decision-making process.

Hon J.A. SCOTT: Okay. I hope the minister will explain that to me.

Hon M.J. Criddle: That is the explanation.

Hon J.A. SCOTT: The minister is saying that, under the minister's directions, the minister could direct the regulator to ensure, for instance, that farmers on a backwoods rail line somewhere would get a reasonable rate, in the same way as they do today under the Grains Logistics Committee system. I wonder how Westrail will be able to operate with this lack of ability to direct.

Although I am very much in favour of somebody being impartial in his dealings with the various groups using the rail system, I have concerns about how far the minister and the Governor can go to ensure that the level of service to the people of Western Australia is adequate and that the rail systems are properly maintained. I am a bit concerned about the way in which the language is framed in this second reading speech. Knowing full well that the National Competition Council believes that if we leave everything to the market the world will be a better place and that everyone will achieve nirvana in that way, I sometimes worry about the outcomes. I hope that the minister will explain how far that management direction can go.

Hon M.J. Criddle: The regulator deals with the principles. An upper and a lower limit are set, and when there are problems with the actual determination of the prices and so forth, that goes to the arbitrator. The Institute of Arbitrators and Mediators Australia will supply somebody to do that. Therefore, do not confuse the two. That is the explanation for that. If you want a further explanation, I will go through it with you.

Hon J.A. SCOTT: Yes. I suggested that the person may not be able to be a public servant, because I take it that, if he were, he would be bound under the Act to be directed in the wrong sorts of ways by the minister.

Hon M.J. Criddle: We need somebody who is totally independent, and under this legislation we have someone who is totally independent.

Hon J.A. SCOTT: Is it the view that, normally, public servants are not independent?

Hon M.J. Criddle: Obviously, they go by rules. When you become a minister, you will understand.

Hon J.A. SCOTT: I will hang in here for a while and see whether it happens. I am concerned about the philosophical direction in which we are going regarding the NCC directives about putting the free marketeering system in front of the needs of the community.

Although I have expressed those concerns, I will support the Bill because it has checks and balances that allay a number of my fears. The minister interjected that, in management matters, he can direct the regulator sufficiently to ensure that this State gets adequate service.

HON M.J. CRIDDLE (Agricultural - Minister for Transport) [9.36 pm]: I thank members for expediting this legislation and for their agreement to it. I need to touch on a couple of issues. As many members have outlined, the former Minister for Transport, my colleague Hon Eric Charlton, introduced and second read the Government Railways (Access) Bill in the Legislative Council in June 1998. When the Government announced its intention to sell Westrail freight on 30 July, after the cabinet decision, the NCC did not insist on an independent office prior to or immediately after the sale of Westrail was announced. In fact, early advice from the NCC after the sale was announced was that the privatisation of Westrail would remove the perceived conflict of interest as Westrail would no longer report to the minister. Therefore, there was that separation.

In November 1998, the access Act was amended to address the issues arising from the sale of Westrail. The Government negotiated with the NCC on access issues, to the extent that the NCC released its draft recommendations regarding certification in its September 1999 report. Of course, we have recently developed a code, which was put before the House on 28 September, I think. The Leader of the Opposition dealt with an issue concerning performance indicators. Schedule 3 of the code deals with that. The Leader of the Opposition may not have that.

Hon Tom Stephens: Have you got it?

Hon M.J. CRIDDLE: Yes. I was looking at it a while ago. That is where it is dealt with. We are putting an independent regulator in place. That is the vital issue here. Of course, the effectiveness of that independent regulator is vital to the arrangement that we have in place. That is the issue that we needed to deal with.

Hon Norm Kelly referred to a regulator general. We will deal with the cost effectiveness of that as we develop the opportunity for that to happen. I am sure that at some time in the future there will be an office of regulator general.

Hon Norm Kelly: Has there been any progress on that in the past couple of years?

Hon M.J. CRIDDLE: The Government has discussed it. Obviously, as a result of discussions, there will be moves in that direction. However, it is not imminent at present. I would like the opportunity to talk Hon Jim Scott through all those issues. We have an arbiter who deals with cost arrangements, and the role of the regulator was outlined in the second reading speech. The Supplementary Notice Paper contains the amendments that we will deal with, most of which are very minor, although one is of some significance. As a result of discussions with members opposite, we have come to an arrangement that will see the Bill progress rapidly through the Parliament. I look forward to the early passage of the Bill.

Question put and passed.

Bill read a second time.

Committee

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

Clause 1: Short title -

Hon TOM STEPHENS: The only matter I raise is performance indicators. The minister's officer showed me page 5196 of the *Government Gazette* of 8 September 2000. From my quick reading of it, it does not adequately respond to the queries I related to the Chamber. Although it refers to the need for performance indicators and says that they shall be the subject of an agreement, they will not be contained in schedule 3 but will be in some access agreement that we are yet to see. The shadow Minister for Transport made the point and I have made it again: The performance indicators are yet to be made public. The Minister for Transport must accept that he has not yet made the performance indicators available. I do not know what the process is for making access agreements public, but until they become public the performance indicators will not be made public.

Hon M.J. CRIDDLE: They would become available if the lease agreement were made available, and that is the issue.

Hon Tom Stephens: Is it required that the lease agreement will be made public?

Hon M.J. CRIDDLE: No.

Hon TOM STEPHENS: Is the Government's intention to make the lease agreement available publicly at any point or will it be of a commercially sensitive nature?

Hon M.J. CRIDDLE: We are considering the release of the lease agreement. We have not made a final decision on that at this time. I move -

Page 2, line 3 - To delete "*Government*".

The amendment deletes "Government" from the title of the Government Railways (Access) Amendment Act.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 2: Commencement -

Hon M.J. CRIDDLE: I move -

Page 2, lines 6 to 13 - To delete the words after "which" and insert instead -
it receives the Royal Assent

This amendment is to amend the commencement provisions of the Act so that it comes into operation on the day of royal assent rather than by linking it to when the Rail Freight Systems Act comes into operation.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 3: The Act amended -

Hon M.J. CRIDDLE: I move -

Page 3, line 4 - To delete "*Government*".

This is similar to the amendment to clause 1.

Amendment put and passed.

Clause, as amended, put and past.

Clauses 4 and 5 put and passed.

Clause 6: Part 3 Division 1 replaced -

Hon TOM STEPHENS: I move -

Page 4, lines 18 and 19 - To delete the lines and insert instead -

- (2) On submitting the request to the Commissioner, the Minister may advise the Commissioner of any

I had not looked at the amendment very thoroughly but it seems to lend itself to support. I rely on no greater authority for why it should be supported than the Deputy Premier and Leader of the National Party and his comments in the other place.

Hon M.J. CRIDDLE: The Government supports the amendment.

Amendment put and passed.

Hon TOM STEPHENS: I move -

Page 5, lines 23 to 27 - To delete the lines.

The intention of deleting subclause (9) is that once the minister has rejected the initial nomination, he is required to proceed to subclause (10). In the absence of a nomination acceptable to the minister from the commissioner, the minister would then go directly via proposed subsection (9) to the Governor rather than to the commissioner. I commend the amendment.

Hon NORM KELLY: The arguments that the Australian Labor Party has put forward with regard to this amendment are based on the expectation that if proposed subsection (9) remained in the Bill, it would require the commissioner to make a recommendation to the minister which would actually be the minister's recommendation. If the minister rejects the commissioner's original recommendations the minister would be in a position to not so much direct but enforce the commissioner to provide a recommendation that would simply be the minister's preferred person for that appointment. That is not how I read this proposed subsection.

On my reading, the proposed subsection would give the commissioner the ability to revisit the assessment process to consider more broadly other persons who could be recommended to the minister. Proposed subsection (9) could have been better worded; if the point is reached that the commissioner must revert to proposed subsection (2), he will need to recommence the whole assessment process. However, the Australian Democrats are happy with the existing wording of the proposed subsection. It provides sufficient scope for the commissioner in that if he has ruled out certain persons as unsuitable or not in the highest category to be recommended to the minister, he may to revisit those other persons who may not have made the final shortlist. We therefore do not support Hon Tom Stephens' amendment.

Hon M.J. CRIDDLE: The explanation given by the member is correct. Under this proposed section, if the minister is not satisfied he can go back to the commissioner and ask him to provide another person's name. We oppose the amendment moved by the Leader of the Opposition.

Amendment put and negated.

Hon J.A. SCOTT: Proposed section 14(4) on page 4 reads -

The Commissioner is to cause applicants to be examined, but nothing in this section requires the examination of all applicants.

I realise that the intention of this proposed subsection is that people who are unlikely to get the job need not be examined. However, would the wording of that subsection enable an applicant to be selected without examination?

Hon M.J. CRIDDLE: This proposed subsection refers to a shortlist. It does not mean the applicants must be examined in detail. There could be a shortlist and the credentials of those people on that list could be examined.

Hon J.A. SCOTT: I realise it enables that to happen, but the proposed subsection written in that way also enables someone to be selected without examination.

Hon M.J. CRIDDLE: I understand the Commissioner for Public Sector Standards has a very good look at the applicants. The first part of the proposed subsection covers it by stating -

The Commissioner is to cause applicants to be examined . . .

However, nothing in the proposed subsection requires all applicants to be scrutinised.

Progress reported and leave granted to sit again, pursuant to standing orders.