

Hon George Cash; Mr Tom Stephens; Hon Murray Criddle; Hon Robin Chapple; Deputy Chairman; Hon Tom Stephens:

ELECTRICITY INDUSTRY BILL 2003

Committee

The Deputy Chairman of Committees (Hon Kate Doust) in the Chair; Hon Tom Stephens (Minister for Local Government and Regional Development) in charge of the Bill.

Clause 1: Short title -

Hon GEORGE CASH: I appreciate the response of the minister to the contributions made by those on this side of the House to the second reading debate. I make very clear the Liberal Party position on not only this Bill but also the other two Bills, the further consideration of which has been deferred until next year. Members will be aware that the Liberal Party voted in favour of the second reading of the Electricity Industry Bill 2003. That is consistent with the decision of the Liberal Party room in that regard. We have also been provided with certain amendments to the Electricity Industry Bill, which I will comment on in a few minutes. The Liberal Party voted in favour of the second reading of the Electricity Corporations Bill. We voted in favour of it, as I explained in the second reading debate, to enable the Bill to progress to the committee stage, at which time we will move amendments, if required; or, as I suggested, the Government, through parliamentary counsel, should provide amendments, if it so desires, to achieve the position of the Liberal Party, which is to separate the network by creating the Electricity Networks Corporation and also establishing the Regional Power Corporation.

The Liberal Party has stated its case on the Electricity Generation Corporation and the Electricity Retail Corporation on a number of occasions. It does not support the division of those two entities into separate corporate bodies. I made the point very clearly - but it may not have been fully understood by those who have little or limited understanding of the procedures of this House - that had we not voted in favour of the Electricity Corporations Bill and the Electricity Legislation (Amendments and Transitional Provisions) Bill, they would have been lost there and then on the second reading, and the Liberal Party's decision on the Electricity Networks Corporation and the Regional Power Corporation could not have been put into effect. I say to those who may be confused that we have made some clear decisions, and the voting pattern of the Liberal Party is to achieve the position of the party room, as I have previously stated it.

I also make the point that the Liberal Party is prepared to consider a separate Electricity Networks Corporation and a separate Regional Power Corporation. At all times, however, the reliability, security, quality and safety of the supply of electricity will be at the forefront of our mind. If the Government is not prepared or does not desire to support the position of the Liberal Party, I say now that the Liberal Party will vote against the Electricity Corporations Bill and the Electricity Legislation (Amendments and Transitional Provisions) Bill at the third reading stage. Therefore, let there be no doubt in anyone's mind about the position of the Liberal Party on this legislation. It is sometimes difficult for people who are not members of this House to fully understand the procedures of this House. However, that ignorance should not put them in a position in which they are critical of the way in which members vote in this place. The position that we take will reflect the Liberal Party room decision.

I have been provided with some amendments to the Electricity Industry Bill by the Government and also by Hon Robin Chapple on behalf of the Greens (WA). Those amendments, in keeping with my comments in the second reading debate, were circulated to the shadow Minister for Energy for his advice, and he has provided me with advice on those amendments. However, I was extremely disappointed, soon after receiving the Government's amendments, to hear the Minister for Local Government and Regional Development, Hon Tom Stephens, say in this House that he had not read the amendments that had been circulated in his name on behalf of the Government, but he had still signed them and had them circulated, and he hoped that they would in fact achieve whatever they were meant to achieve. I find that an extraordinary position to be adopted by a minister who is acting for the Government in this House on what is complex legislation, and legislation which, if brought into effect, will cost in excess of \$150 million to achieve the Government's overall objectives. I say that as a preliminary, because it is absolutely critical that Hon Tom Stephens, as the minister in charge of this Bill in this Committee, understand the nature and substance of the Bill and be able to provide realistic answers to the questions that should be put on the Electricity Industry Bill. I need say no more at this stage about the short title, because there will be plenty of opportunity to speak during the committee stage, except to say that the Opposition is keen to progress this legislation, notwithstanding that yesterday I was told by the minister that we would not be going into the committee stage of this Bill. I assumed this was because there was an assumption that more second reading contributions would delay progress. The position of the Liberal Party is that we are ready, willing and able to progress the committee stage of the Electricity Industry Bill and we look forward to government amendments to the other two Bills. I will sit down at this stage, because I know that time is running against us in our efforts to deal with this Bill, to enable other members to speak on the short title.

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Hon TOM STEPHENS: I have now had the opportunity to read the amendments that have been presented to the House in my name, and I accept responsibility for them. I understand the importance of what Hon George Cash has said to the Committee. The pressures of drafting this legislation and these amendments left me in the position I described to the honourable member.

Hon MURRAY CRIDDLE: I would like people to understand the position I took in the vote. It was outlined in my second reading contribution. I want to make it very clear that the National Party is very concerned about the state of the network servicing rural and regional Western Australia. A guarantee needs to be put in the legislation for the upgrade of that network to go ahead. As I have outlined in reflections on some of the meetings held around the State, the conductors and the poles are in a very poor state of repair. The other issue is the expense of connection to the network, which, as far as the National Party is concerned, is right out of order and does not allow the opportunity for people to connect at a reasonable cost and to see the development of industry in the regional areas. They are the two areas we have concerns with. The minister knows that. The people we have been negotiating with also know that. It is all about reliability and safety, as many people have said. I live right at the end of a line, and I can assure members that there is a need for an upgrade of the network poles and conductors. That has been outlined on many occasions. By and large, we do not have a lot of problems with the principles, but the network is the issue that concerns us.

Hon ROBIN CHAPPLE: I will give form to the way the Greens (WA) are determining their position. We have concerns about the Electricity Industry Bill, and we will be seeking to move a number of amendments during the committee stage.

It needs to be restated clearly that the Greens (WA) will not support the passage of the Electricity Corporations Bill when it comes before this place. We fundamentally believe that these utilities, as with any electricity utility, need to be a vertically integrated system under the control of the Government of the day on the basis of meeting the needs of the people of this State. We do not believe that the Electricity Industry Bill will provide in any way, shape or form a benefit for people generally or for industry.

I am not sure whether this is the right time to pose this question; however, I seek to clarify whether the Electricity Industry Bill 2003 before us is able to have carriage in this Committee because it refers in many instances to the Electricity Corporations Act 2003, which the Chamber is yet to pass. With that in mind, I seek clarification from the Chair on whether we can proceed to the third reading of this legislation as it refers on 11 or 14 different occasions to an Act that has not been established.

Deputy Chairman's Ruling

The DEPUTY CHAIRMAN (Hon Kate Doust): I will work through this matter slowly. Even though there is reference to an Act not currently in force, nothing stops this House working through this Bill to its third reading. What may happen in future with that legislation is still up to the Legislative Council to determine.

Committee Resumed

Clause put and passed.

Clause 2: Commencement -

Hon GEORGE CASH: Clause 2 contains two subclauses reading -

- (1) This Act comes into operation on a day fixed by proclamation.
- (2) Different days may be fixed under subsection (1) for different provisions.

Which clauses will come into operation upon proclamation in the first instance, and which clauses will come into operation at a different time? When will that different time occur? I am aware that the minister has some amendments that will pose other questions in due course.

Hon TOM STEPHENS: That question is responded to by the Government's amendment to effectively create a stand-alone Bill that will allow the opportunity for the date to be fixed in reference to paragraphs (a) to (i) on the amendment foreshadowed. The opportunity for the subsequently proposed Electricity Corporations Act to come into operation will create the opportunity for that date to be fixed.

Hon GEORGE CASH: The minister seems to think that by inserting new subclause (3) that will cover all issues. If that is the case, why is subclause (2) still required; and, if it is still required, can the minister indicate the clauses to which that relates?

Hon TOM STEPHENS: Parliamentary counsel has left in subclause (2) to give maximum flexibility if, in the introduction and implementation of this reform program, there is a need to bring in different provisions at different times. On the advice of parliamentary counsel, it creates the opportunity to produce maximum flexibility to implement this legislative reform program.

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Hon GEORGE CASH: If it is for the purpose of flexibility, can the minister tell me to which clauses the flexibility is applied?

Hon TOM STEPHENS: There is scope for this provision to be utilised in reference to parts 4 and 10 of the Bill, which cannot take effect until we have the Electricity Corporations Act.

Hon GEORGE CASH: Was that with the exception of some provisions in parts 4 and part 10 or the whole of the provisions in those parts?

Hon Tom Stephens: I am advised the whole.

Hon GEORGE CASH: With the exception of the whole of the provisions in parts 4 and 10 and those various additional paragraphs listed in the proposed amendment, am I to understand that the balance of the Act is to be proclaimed within a certain period? If the answer is yes, what period is that?

Hon TOM STEPHENS: The answer to that question is yes, and proclamation will follow reasonably soon after the passage of the legislation. I suspect that I am dealing with language that is not as precise as Hon George Cash would like, but that is my advice.

Hon ROBIN CHAPPLE: I have another point of clarification. Is the minister saying that this piece of legislation can be proclaimed in isolation?

Hon Tom Stephens: That is my advice.

Hon ROBIN CHAPPLE: I am interested in finding out what this piece of legislation can do, if the other two pieces of legislation are not proclaimed.

Hon TOM STEPHENS: Electricity licensing framework, access code and framework for the wholesale - at least those for starters.

Hon GEORGE CASH: Given the response to the question asked by Hon Robin Chapple, how is it that the minister says that parts 4 and 10 only are the parts that are not to be proclaimed, in addition to those clauses in proposed subclause 2(3)? The minister's answer seems to be inconsistent.

Hon TOM STEPHENS: My advice is that we can still put in place certain parts of the legislation, but they will not apply to the corporation. An opportunity has been created for at least part of the trilogy of the Bills to be advanced. We have the opportunity to deal with the electricity licensing framework, access code and framework for the wholesale, but we are not advancing the legislation about the corporations in handling this specific Bill.

Hon GEORGE CASH: Can the minister confirm that only part 4, part 10 and the clauses nominated in the proposed amendment will be the parts and clauses that are not subject to proclamation in the immediate?

Hon TOM STEPHENS: That is the intent, subject to confirmation from the Minister for Energy. That is the intent that has been crafted in response to the set of circumstances in which we as legislators find ourselves. We have the opportunity to advance only part of the trilogy of Bills at this point.

Hon ROBIN CHAPPLE: Like my colleague opposite, I am in a bit of a quandary, because part 4 creates a classification of licences and part 7 seeks a requirement for a licence, yet part 7 is not included in either parts 4 or 10, or any of the parts that are raised in the amendment.

Hon Tom Stephens: I do not understand the member's point.

Hon ROBIN CHAPPLE: Obviously, the legislation creates a licence framework for generation, transmission, distribution and retail. It then sets out the requirements for that licence, and that is excluded. If we are setting in place a licence framework and requirements for that licence framework, which are not covered by amendment No 3 - the amendment with which we are dealing - or amendment Nos 4 or 10, there will be a series of licences with no requirement for licence.

Hon TOM STEPHENS: The members' representation of the circumstances is inaccurate. Part 2 will apply. I move -

Page 2, after line 7 - To insert -

- (3) The day fixed for the coming into operation of -
 - (a) section 12(c);
 - (b) section 31(4)(b);
 - (c) section 45(4) and (5) and the definition of "relevant corporation" in section 45(6);
 - (d) the definitions of "new corporation" and "Western Power Corporation" in section 46(1) and section 46(6);

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- (e) sections 55 and 56;
- (f) Part 4;
- (g) the definitions of “Electricity Retail Corporation” and “Regional Power Corporation” in section 67 and section 71(4);
- (h) Part 8 Division 4; or
- (i) Part 10,

is not to be earlier than the day on which the *Electricity Corporations Act 2004* comes into operation.

Hon GEORGE CASH: This amendment relates to a significant number of clauses. We are told that different commencement days are to apply to these clauses, and it is not to be earlier than on the date on which the Electricity Corporations Act 2004 comes into operation. Proposed clause 2(3)(a) refers to clause 12(c), which refers to “a licence held by a body established by section 4(1) of the *Electricity Corporations Act* for any subsidiary of the body as defined in section 3 of that Act”. I understand why that cannot come into effect until such time as the Electricity Corporations Act comes into being - if it comes into being. Proposed “section 31(4)(b)” in proposed clause 2(3)(b) relates to sections 48 and 57 of the Energy Operators (Powers) Act 1979. Those are prescribed provisions as defined in section 45(1) in respect of the licensee. What are sections 48 and 57 of the Energy Operators (Powers) Act and what is the connection between those sections and clause 31(4)(b)?

Hon TOM STEPHENS: Parliamentary counsel is endeavouring to refer us to page 18 of Bill 249-1. The clause in question should be 31(4)(a), not 31(4)(b). Subclause (4)(b) is listed in anticipation of another amendment. For the purpose of this amendment, let us make it clear that we are referring to Bill No 249-1. I would like the amendment in my name to read not “clause 31(4)(b)” but “clause 31(4)(a)”. I seek to further amend my amendment in that way. I thank Hon George Cash for pointing out the drafting error for which I have previously accepted responsibility.

Hon GEORGE CASH: The amendment certainly makes it a lot clearer because it is consistent with other references to the Electricity Corporations Bill 2003. Had the reference been to clause 31(4)(b) we would have been dealing with the Energy Operators (Powers) Act 1979 as it relates to rights of entry onto land in an emergency and supply system emergencies. Members will understand why I was somewhat perplexed by the earlier reference. The next reference in this amendment is to subclause 45(4) and (5). That refers to an extension of the Energy Operators (Powers) Act 1979 to licensees in division 9 of the Bill. Clause 45(4) states -

If the provisions of the *Energy Operators (Powers) Act 1979* referred to in subsection (3) are prescribed provisions in respect of a relevant corporation, Division 8 does not apply to the corporation.

Clause 45(5) deals with the definition of a licensee. I am at a loss to understand how that ties to the comments made by the minister regarding clause 31(4)(a) as it is now. I question whether there is some application of clause 31(4)(b) because it appears that subclauses 45(4) and (5) refer to the Energy Operators (Powers) Act 1979. I seek some clarification on the issue.

The DEPUTY CHAIRMAN (Hon Kate Doust): We are almost out of time. Before that happens, the minister seeks leave to substitute “clause 31(4)(a)” for “clause 31(4)(b)”.

Amendment, by leave, altered.

Hon GEORGE CASH: I suggest to the minister that, while we have agreed to substitute “clause 31(4)(a)” for “clause 31(4)(b)”, there is a need to look at clause 31(4)(b) because there is a link between clause 31(4)(b) and subclauses 45(4) and (5). It may require some time to deal with.

Hon TOM STEPHENS: I hope that, at this point, we have not agreed to the change. It appears there are foreshadowed amendments on the other supplementary notice paper that link to this clause. They effectively have the answer to the questions raised by Hon George Cash. Clearly, we will not have time to deal with those between now and 4.00 pm.

Progress reported and leave granted to sit again.