

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

Second Reading

Resumed from 14 March.

HON J.A. SCOTT (South Metropolitan) [3.05 pm]: The Greens (WA) have for some time wanted changes to the bureaucratic hierarchy of the departments responsible for planning and transport in Western Australia. We have serious concerns that the existing structure does not produce sensible planning outcomes, or even sensible planning objectives. The current system does not lead to the best balance between accessibility and mobility and the most efficient mix of transport - whether it be public or private transport. Agencies such as Main Roads are acting as planners with their own budgets and agendas. The Greens strongly support change that will ensure planning has precedence over transport and transport has precedence over each of the separate modes of transport - that is, rail, buses and Main Roads in its role representing private car use and road freight.

The Greens' policy platform at the last election contained policies similar to those espoused by the Labor Party. That was very pleasing. Those policies included establishing a planning and transport infrastructure commission by amalgamating the agencies responsible for transport and planning. The policy states -

- require membership of the PTIC and its regional and district committees to include stakeholder and community representatives chosen by these groups; establish WestRail, TransPerth and Main Roads as construction, maintenance and operations agencies under the PTIC;
- require meaningful community and stakeholder participation in land use and transport planning and funding from the concept stage to implementation, including at regional and district committee level;
- require meetings of the PTIC and its regional and district committees to be public with the minutes published promptly; . . .
- abolish appeals to Ministers on planning and transport issues and create an independent Land and Environment Tribunal to adjudicate on planning and transport appeals

That policy differs in some respects from the ALP policy, but the differences relate to the level of public involvement. We would require greater participation than the Government is proposing, although the Minister for Planning and Infrastructure is keen to involve the community in the planning process.

When I first read this Bill, I was confused about how the objectives might be achieved. The Bill does not directly deliver the desired outcomes. It also leaves many issues to be dealt with by Cabinet and in regulations. Of course, that makes it difficult to move amendments to ensure, for example, community and stakeholder participation in committees. Those issues are very hard to work into a Bill of this type. As I said, the minister is seeking community and stakeholder participation in the planning area. I have attended a number of functions that the minister has held to address freight reviews. The objective of those reviews is to recommend options for the future. That process is attracting a good level of community input. I am not quite sure how that works out in the long run, but it certainly starts out on a good basis. However, that is not contained in this Bill. The Bill does not set up a hierarchy. If the Bill is passed, it will give Cabinet the freedom to set up any hierarchical structure that it deems suitable without changing the Acts.

When I initially looked at the Bill, I was concerned that the freedom to shuffle agencies and departments around like a deck of cards might make it rather difficult to tie down responsibilities to a minister, chief executive officer or director general of a department. I therefore sought some assurance from the parliamentary secretary, who provided me with a briefing.

The Greens (WA) are concerned that the terminology used to describe the minister when acting as a corporate body is rather confusing, to say the least. It is confusing partly because some agencies use different nomenclatures to describe ministers in their corporate body roles. The word "authority" is used to describe bodies consisting of a number of members acting as corporate directors, as is the case in the Water Corporation. People get a completely different understanding of the name. It is very confusing if there is no consistency. The parliamentary secretary is looking at providing consistency of names throughout various departments by way of machinery of government changes, not just with this Bill but in legislation in the future, so this can be easily understood.

As a result of the second briefing, I was convinced that many of my fears were unfounded and that a new name could be found by the authority. However, after hearing the contributions to the second reading debate by Hon Derrick Tomlinson and Hon Murray Criddle my concerns returned. I therefore sought a third briefing from the

Hon Jim Scott; Deputy President; Hon Alan Cadby; Hon Murray Criddle; Hon Derrick Tomlinson; Hon Ed Dermer; Hon Kim Chance

parliamentary secretary. At that briefing most of my concerns were allayed. However, when I went away and discussed the matter with my colleague Hon Christine Sharp and sought some advice, a number of areas continued to concern me. One of those related to the delegation of powers under the Road Traffic Act, as set out in clause 28. Proposed new section 6A(1) refers to the director general delegating to a person any power or duty of the director general under another provision of the Act. I understand that that enables the delegation of power to not only another officer of the department but also a contractor. The ability to do that might not sheet home the final responsibility to the director general. I understand that, although the director general may be seen to be irresponsible in handing over that role, he would not be held liable for the acts carried out by the delegated person or body. That is of considerable concern. It is important that this issue be dealt with properly, because other clauses enable the director general to perform functions through an officer or agent, so the responsibility for those functions would remain with the director general. I wonder why we need this clause under which the director general will not be held liable. That question needs to be looked at carefully.

Another issue on which we sought clarification at the briefing was the need for the minister to have a schizoid personality because he can act as both the authority and the minister.

Hon Derrick Tomlinson: We are told that the minister can carry out some functions better as an authority rather than as the minister.

Hon J.A. SCOTT: As Shakespeare said, what is in a name?

We asked why the provision was necessary. It was pointed out that it was easier for a person to take action against a corporate minister than against a minister of the Crown. In fact, we were told that a person could not take action against a minister of the Crown, but we now understand that may not be the case. Whether or not it is the case needs to be clarified.

Although the provision might or might not give a person or an organisation the ability to take action against the authority in a normal case, a clause takes away that ability. It states that the authority is an agent of the State and has the status, immunities and privileges of the State. That provision puts back the immunity. If the reason for having two separate bodies is to make that difference, why on earth are we now putting that immunity back in? It is nonsensical. Although we generally like what the Government is seeking to do with this Bill, that provision needs to be carefully looked at before we can give it our full support.

We are thrilled with the principles and the models that have been drawn up of the hierarchy that will be put together under this minister. The provisions are similar to those that we would have and we would certainly include them. We would probably create a land and environmental tribunal to adjudicate on planning and transport appeals, but that does not seem to be included in this proposal. Although some of the smaller details involved in the setting up of the department are not the same as those that we would have chosen, we are very pleased with the major aspects. We think the provisions will make a big difference and will improve planning and result in better outcomes for the people of Western Australia. The bureaucracy of the organisation will operate far more efficiently. We want to see proper accountability measures put in place. I understand that Hon Murray Criddle will be moving that this Bill go to a committee. We would prefer that the issues be dealt with here and now, so that the Bill can be passed.

We must ensure that these issues are resolved before we reject the proposal to refer the Bill to the committee. After all, this is a very important Bill, which sets up a very important department. Not only since becoming the Greens (WA) spokesperson on planning and transport but also when I was the shadow minister for “the meaning of life” and covered everything, I found that planning issues were overwhelmingly the most important issues to the electorate. People continually expressed their frustration at the planning processes. It is very important that if the Government wants people to be satisfied with the Department of Planning and Infrastructure, proper accountability must be exercised and the processes handled properly so that it functions well immediately. We do not expect perfection but we expect the department to function very well once this legislation has been passed.

Hon Murray Criddle: It is very important legislation, so it must work well.

Hon J.A. SCOTT: Yes. It is important that the Government responds to that question. Although the Greens support the Bill, we want those issues responded to by the minister through the parliamentary secretary before supporting passage of the Bill without it being referred to a committee.

Debate adjourned, on motion by Hon Graham Giffard (Parliamentary Secretary).

The DEPUTY PRESIDENT (Hon George Cash): Order! The question is that the Road Safety Council Bill be read a second time.

Hon Jim Scott; Deputy President; Hon Alan Cadby; Hon Murray Criddle; Hon Derrick Tomlinson; Hon Ed Dermer; Hon Kim Chance

Hon ALAN CADBY: I was informed only two minutes ago that we would not be debating this Bill now.

Hon MURRAY CRIDDLE: What was the resolution on the previous question?

The DEPUTY PRESIDENT: That the debate be adjourned until the next sitting of the House.

Hon DERRICK TOMLINSON: The motion was that the debate be adjourned. The vote was taken and Hon Murray Criddle asked because he did not hear - neither did I - what was the result.

The DEPUTY PRESIDENT: The result of the vote was that I gave the vote to the ayes.

Hon MURRAY CRIDDLE: It was my intention to divide at that point.

The DEPUTY PRESIDENT: That may be the case, but I did not hear anyone say “divide” so I proceeded to the next item of business.

Hon MURRAY CRIDDLE: I did not hear the result of the vote.

Hon DERRICK TOMLINSON: The Opposition intended to divide on that motion to adjourn. We did not call “divide” because we did not hear the result.

Hon E.R.J. Dermer: It was very clear.

The DEPUTY PRESIDENT: I put the question and asked those voting with the ayes to signify and those voting with the noes to signify. I then gave the vote to the ayes. Is Hon Derrick Tomlinson suggesting he did not hear me give it to the ayes?

Hon DERRICK TOMLINSON: I am not suggesting that I did not hear it; I am saying that I did not hear it.

The DEPUTY PRESIDENT: That may be the case, but I did give it to the ayes. The Government Whip confirmed that.

Hon E.R.J. DERMER: I am very pleased to confirm that.

The DEPUTY PRESIDENT: I do not think there is a dispute. Some members did not hear me give the vote to the ayes. That is fair enough; however, I did give it to the ayes and I then moved to order No 147, the next item of business.

Hon MURRAY CRIDDLE: I am not disputing any of that, but at the point we did not hear your resolution, Mr Deputy President, we could not take the opportunity to say “divide”.

The DEPUTY PRESIDENT: Hon Murray Criddle may not have heard the result, and I apologise for that. However, the fact is the vote was given to the ayes. I clearly did not hear the word “divide”. That may have been for a number of reasons, one of which may have been that no-one on my left heard me say that the decision was given to the ayes. The fact is, it was given to the ayes, there was no call for a division and we have since moved on. I think Hon Murray Criddle is seeking my view on whether there is some remedy. There is no remedy because we have moved on. The only way to get back to Order of the Day No 145 is for the Leader of the House to so move. I have moved on to Order of the Day No 147. In so doing, there seems to be some confusion about whether that Order of the Day will be the next Order of the Day. I seek the view of the Leader of the House.

Hon KIM CHANCE: I understand there is some concern about moving on to Order of the Day No 147, even though it is the next item of business on the Notice Paper. I was unaware that there was a difficulty in proceeding to debate that item.

Hon Norman Moore: You told us we were not going to debate it.

Hon KIM CHANCE: If there is a problem I will move to debate Order of the Day No 124. I move -

That Order of the Day No 124 be now taken.