

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

*Consideration in Detail*

Resumed from an earlier stage of the sitting.

**Clause 4: Section 3 amended -**

Debate was interrupted after the clause had been partly considered.

**Clause put and passed.**

**Clause 5: Section 4A replaced by sections 4A and 4B -**

Mrs EDWARDES: It appears that the explanation for this clause is similar to that pertaining to clause 4.

Ms MacTIERNAN: I confirm that the amendment is being made for the same reason.

**Clause put and passed.**

**Clauses 6 to 10 put and passed.**

**Clause 11: Section 43 amended and transitional provisions -**

Mrs EDWARDES: This clause deals with the formation of a trust fund. This type of amendment will be made to respective legislation. Although subclauses (2) and (3) are within this Bill, will they become sections of the Control of Vehicles (Off-road areas) Act or, because they are not amending anything, will they remain in the Machinery of Government (Planning and Infrastructure) Amendment Act 2001?

Ms MacTIERNAN: I understand that this amendment is in line with a move that is taking place across government in relation to trust funds. The amendments have been made at the behest of Treasury under the Financial Administration and Audit Act to form a standardised arrangement.

Mrs Edwardes: That is not the question. Where will we find subclauses (2) and (3) once this Bill is passed?

Ms MacTIERNAN: They will be footnotes to the legislation, not part of the text of the Act.

Mrs Edwardes: How will we know that they will form a footnote rather than being left behind once this Bill becomes an Act?

Ms MacTIERNAN: Subclauses (2) and (3) will not amend the principal legislation. They are not amending provisions. There is no suggestion in the way they are drafted that they will be incorporated into the principal legislation. By their very nature they will become footnotes referred to in the legislation.

Mrs Edwardes: From a drafting point of view why will they become footnotes rather than be left behind? They will not be amending provisions in the Machinery of Government (Planning and Infrastructure) Act 2001.

Ms MacTIERNAN: I understand that all the other provisions amend the principal legislation. Subclauses (2) and (3) form part of this legislation, but they will not amend the principal legislation. All the other clauses repeal, amend or insert. These do none of that; they basically stand-alone. When the principal legislation is printed it will refer to the relevant sections that formed part of the amending legislation.

**Clause put and passed.**

**Clause 12 put and passed.**

**Clause 13: Section 3 amended -**

Mrs EDWARDES: This is an amendment to the definition of “director general” under the Motor Vehicle Drivers Instructors Act 1963 that will make the definition different from some other definitions. The new definition reads –

**“Director General”** means the chief executive officer of the department of the Public Service principally assisting the Minister in the administration of this Act;

The minister referred to this in her second reading speech. Some of these people will be allocated to the Minister Assisting the Minister for Planning and Infrastructure in the administration of this Act. Is the member for Armadale the minister administering this Act and, therefore, is “the minister” the Minister for Police and Emergency Services - the Minister Assisting the Minister for Planning and Infrastructure?

Ms MacTIERNAN: Currently the minister assisting is the minister administering this legislation. When the legislation goes through, it is understood that portfolio will be transferred to me by way of a reconfiguration of our ministerial responsibilities.

Mrs Edwardes: This Act is currently under the portfolio of the minister assisting, but this portfolio will come back to you?

Ms MacTIERNAN: That is right.

Mrs Edwardes: The definition reads -

**“Director General”** means the chief executive officer of the department of the Public Service principally assisting the Minister in the administration of this Act;

Ms MacTIERNAN: Yes, and that will be the Department of Planning and Infrastructure.

**Clause put and passed.**

**Clauses 14 to 31 put and passed.**

**Clause 32: Section 41 amended and transitional provisions -**

Mrs EDWARDES: This clause again deals with a taxi industry development account that will be established as a trust account under the Financial Administration and Audit Act. That is not in question; I understand the process that is occurring. That will again become a footnote, as we talked about earlier.

Ms MacTiernan: That is correct.

**Clause put and passed.**

**Clauses 32 to 35 put and passed.**

**Clause 36: The Act amended -**

Mrs EDWARDES: What will be achieved by part 9 of the Bill, which deals with the Transport Co-ordination Act? I understand that a Transport Co-ordination Authority will be established, and part 9 deals with what that authority will do. I understand also that the authority is the minister. Upon what advice will the minister make these recommendations, and what will be achieved? I gather that the Transport Co-ordination Act deals with many of the public transport licensing provisions. It also involves a great deal of coordination with the Police Service through either the Commissioner of Police or the Minister for Police.

Ms MacTIERNAN: The fundamental provision in part 9 is the creation of the Transport Co-ordination Authority, which is essentially, as the clause notes explain, the alter ego of the minister. Apparently in the past when the minister has entered into contractual arrangements under these provisions, there has been some lack of clarity about whether the minister is entering into these arrangements as a minister of the Crown or as a body corporate. This part will create a body corporate that is by definition the minister so that when the minister enters into a contractual arrangement it will be very clear that it is not the minister per se but is the body corporate.

Mrs EDWARDES: Why will the legal entity be changed from the minister as the body corporate to the Transport Co-ordination Authority?

Ms MacTIERNAN: Because apparently confusion exists in determining whether an agreement has been entered into by the minister as a body corporate or by the minister as a minister of the Crown in right of the State. A distinction needs to be made between the minister as a body corporate and the minister as a minister of the Crown in right of the State.

Mrs EDWARDES: Can the minister give an example? In clause 39, the Transport Co-ordination Authority will replace the minister as the body corporate in order to avoid confusion between the two when the minister is signing agreements. What agreements are we talking about for which we will need the Transport Co-ordination Authority as opposed to the minister as a minister of the Crown?

Ms MacTIERNAN: There is a range of contracts for the acquisition of infrastructure such as land that we might acquire for the hook-up of road trains, for example, and that we would enter into contracts to purchase and would subsequently hold. The view of the Office of the Crown Solicitor is that some benefit will be gained from our holding that land as a body corporate rather than as a minister of the Crown in right of the State.

Mrs EDWARDES: I know what the Bill is seeking to achieve, but what are the reasons for going down that path?

Ms MacTIERNAN: It will allow for continuity. The title of the minister may change. The title is currently the Minister for Planning and Infrastructure, but the Liberal Party may come into government and decide it wants the title to be the minister for planning and land or the minister for planning and transport. By having a body corporate that is separate from the ministerial position we will have continuity and will not need to change all of the contracts that the minister may enter into whenever there is a new title for the minister and the portfolio.

This part identifies various functions under this legislation and provides that different ministers may perform these functions. It will create a body corporate that can enter into contracts and hold land under that corporate title so that regardless of what changes may be made subsequently, we do not need to go down the path of amending the contracts.

**Clause put and passed.**

**Clauses 37 and 38 put and passed.**

**Clause 39: Section 7 replaced by sections 6, 6A, and 7 -**

Mrs EDWARDES: I refer the minister to proposed section 6A on page 21 of the Bill, which deals with the purpose and nature of authority. Would the minister explain the meaning of proposed section 6A(2)?

Ms MacTIERNAN: It is very much the same issue that I addressed under the last provision. The new clause states -

The Authority is established to provide a body corporate through which the Minister can perform any of the Minister's functions under this Act that can more conveniently be performed by a body corporate than an individual.

This essentially is the issue we addressed in the previous discussion we had on this matter. It is more convenient to operate as a body corporate because there is a continuity of title.

Mrs Edwardes: Why are those people not officers for the purposes of public management?

Ms MacTIERNAN: They are not officers because this device is being used for the reasons we have already outlined. The device of the body corporate is to provide continuity of contracts and titles; it is not an organisation that requires chief executive officers. Under the Public Sector Management Act, statutory authorities require a raft of personnel and arrangements to be set in place. Although a body corporate is the alter ego of the minister, I do not need a CEO of the alter ego. This proposed clause would make it absolutely clear that they are not required. Under one reading of the Public Sector Management Act, we have created a statutory authority; therefore, all of these other provisions would come into play. I make it clear that this is not a statutory authority that requires a range of ministerial officers.

Mrs EDWARDES: Will the functions of those persons not be taken outside of the Public Sector Management Act? Will those persons who will operate and assist under the minister's authority not be considered as an entity as defined by the definition of an organisation under the Public Sector Management Act?

Ms MacTiernan: That is right. They will not be in the department. Under this statutory authority, no people will be specifically assigned to fill those functions because it is only a device for convenience.

**Clause put and passed.**

**Clauses 40 and 41 put and passed.**

**Clause 42: Section 8 replaced -**

Mrs EDWARDES: Clause 42 will replace section 8 of the Transport Co-ordination Act, which deals with the use of other services. I refer the minister to proposed subsection 3 on page 24 of the Bill. What is the purpose of sections 66 and 100 of the Public Sector Management Act? What is contemplated by "or any other provision"?

Ms MacTIERNAN: Section 66 of the Public Sector Management Act deals with the secondment from departments or organisations of public service officers other than executive officers. The seconding authority may enter into arrangements with another employing authority or with an employer outside the public sector for the secondment of a public sector officer, other than the executive officer, into the department or organisation. It allows for some secondment of staff. Section 100 of the Public Sector Management Act sets out the powers of an employing authority. It states that an employing authority may engage a person under contract for services on such terms and conditions as the employing authority determines. An employing authority may, in accordance with approved procedures, employ people on a casual basis subject to relevant written laws or binding awards. That section provides that when the chief executive officer is not the employing authority, they may delegate to that chief executive officer or chief employee any of the powers or duties under this Act. Section 33 of the Act applies to the delegated powers of chief executive officers. They are the provisions that relate to powers of employing authorities.

Mrs Edwardes: Does it stop you doing that in order to carry out their functions under the authority?

Ms MacTIERNAN: No.

**Clause put and passed.**

**Clauses 43 to 46 put and passed.**

**Clause 47: Section 15C replaced -**

Mrs HODSON-THOMAS: Proposed subsection (1) states -

The Minister may provide facilities that the Minister considers to be necessary for the purpose of facilitating the movement of vehicles, under this Act . . .

However, more specifically, proposed subsection (2) states -

The Minister may impose terms and conditions, including the payment of charges, for the use of any facilities provided under subsection (1).

Would the minister give some examples of what that might be?

Ms MacTIERNAN: Fundamentally, this picks up a provision in the existing legislation; therefore, it does not constitute a change. The provisions in this legislation are also found under section 7D of the Transport Co-ordination Act. The payment of charges could encompass a road train breakdown facility if the Government owns that facility. At present, we do not charge for the use of the breakdown facilities, but theoretically we could. Theoretically, if a component of transport infrastructure used by commercial entities or others is provided by the Government, it has the power to charge for them if it is deemed appropriate.

Mrs HODSON-THOMAS: Is this part of the Transport Co-ordination Act just being transferred to a different section?

Ms MacTiernan: Yes, that is correct.

**Clause put and passed.**

**Clauses 48 to 54 put and passed.**

**Clause 55: Section 5 amended -**

Mrs EDWARDES: I have just gone through the Western Australian Planning Commission's annual report of 2001. I refer to the table that was provided. We are dealing with those who are currently on the left-hand side. The chairperson is Mike Harris; Terry Tyzack is the local government representative for the metropolitan area; Elizabeth Eaton is the representative from outside the metropolitan area, nominated by the Western Australian Municipal Association; and Dr Natrass is the Lord Mayor of the City of Perth. The next two refer to relevant planning experience. Avril O'Brien is a community affairs representative and Ray Turner is in business development. Is that where they slot in?

Ms MacTiernan: I understand that is correct.

Mrs EDWARDES: The CEO of the Planning Commission is Paul Frewer, the CEO of the Water and Rivers Commission is Roger Payne, the CEO of the Department of Environmental Protection is Dr Bryan Jenkins, the Commissioner of Main Roads is Greg Martin, the Director General of Transport is Gary Hodge, and the member nominated by the regional minister is Geoff Klem. Are they the 12 members.

Ms MacTiernan: Yes.

Mrs EDWARDES: Under the proposed changes there will be a chairperson, a metropolitan representative of the Western Australian Municipal Association, an outside metropolitan area representative of WAMA, the Lord Mayor of the City of Perth will be deleted, and two members with relevant planning experience will be nominated by the minister. Are they being retained?

Ms MacTiernan: Do you mean is the position remaining?

Mrs EDWARDES: There are no changes under the proposal.

Ms MacTiernan: No .

Mrs EDWARDES: The CEO of the Planning Commission will also be the CEO of the department administering the Transport Coordination Act - they will be one and the same person.

Ms MacTiernan: Under our arrangement, they will be.

Mrs EDWARDES: The next one referred to on the "WA Planning Commission - Structure" document is the CEO of the department administering the Water and Rivers Commission Act and the Environmental Protection Act. In fact, the CEO Conservation and Land Management Act on the left-hand side of that document should have been CEO of the DEP. Under the legislation those positions will be reduced from two to one. The document then refers to the "member nominated by the Regional Minister" on the left-hand side with the

proposal, based on current public sector structure, being a “member from the public sector with experience in urban and regional planning”. That will provide nine members of the commission.

Ms MacTiernan: Exactly.

Mrs EDWARDES: Under the previous arrangement there were six public sector and six private sector members; under the new arrangement there will be four public sector and five private sector members.

Ms MacTiernan: The Municipal Association is a local government organisation. I do not know whether the member can necessarily describe that as private sector.

Mrs EDWARDES: Then there will be two from the public sector, two from local government, and five from the private sector?

Ms MacTiernan: There will be three from the public sector -

Mrs EDWARDES: Where am I going wrong?

Ms MacTiernan: There will be a planner, and the CEO of DPI, which is one at this time, but will be two. The CEO of the Water and Rivers Commission is three. Three are designated public sector and two are designated private sector.

Mrs EDWARDES: With planning experience?

Ms MacTiernan: Yes. Then there will be two from local government. The chair could come from either. The nominated member by the regional minister might be private or public. The nominee that was put in place by your Government was a public sector nominee.

[Leave granted for the member’s time to be extended.]

Mrs EDWARDES: I will explore that point further. Industry does not want the balance changed, unless it is in its favour, of course.

Ms MacTiernan: It would be. It certainly would not be in the other direction. If anything, the balance will go more towards the favour of non-state government. They certainly will not be disadvantaged.

Mrs EDWARDES: That was the point I wanted to make. People reading the legislation will get to know that the intention of the Government is not to balance it up with the public sector but to go the other way.

Ms MacTiernan: It certainly is not our intention to change the balance.

#### **Clause put and passed.**

#### **Clause 56: Section 5A amended -**

Mrs EDWARDES: Clause 56 removes the Lord Mayor of the City of Perth by deleting section 5A(1)(b). I take it that some of the concern was his inability to always attend commission meetings and the like, and no power was provided under this legislation for delegation by that member. Deputy members are referred to in section 5A. How are they used? I thought that section 5A(1)(b) provided the opportunity for that delegation. Was one of the reasons for the removal of the Lord Mayor of the City of Perth - I am not doubting his commitment or his ability - the fact that he was not always able to attend meetings?

Ms MacTIERNAN: I did go into this issue fairly extensively during the second reading debate. I made the point that of the issues raised by the WA Planning Commission, and which are deliberated on by the Planning Commission, only a relatively small number are issues that affect the City of Perth. There is a very real question mark not only in the mind of the Lord Mayor but in government generally about whether it is appropriate for the City of Perth to have a specific nominee on the commission. The member might argue that Western Australian Planning commission deals with many more matters from the City of Wanneroo than from the City of Perth. Therefore, why does the City of Wanneroo, which is the largest local authority, not have a specialist seat on the board? While there are some unique characteristics of a capital city, and that is recognised in the formation of the central area planning committee, those unique concerns do not give the City of Perth any unique capacity to contribute to the deliberations of planning matters from Wyndham to Albany.

Mrs Edwardes: The issue was just a policy.

Ms MacTIERNAN: It is a policy issue. It is true that the Lord Mayor has found it difficult to attend. Frankly, there would be little incentive to attend when the vast majority of issues discussed did not concern the City of Perth. That is not a criticism of the Lord Mayor. The Government does not believe there is any sound argument.

During the second reading debate, I discussed the history of the way the City of Perth traditionally viewed itself vis-a-vis local government. It did not consider itself to be part of the general local government sector, and it was

not an active player in that sector. It also had direct representation, which encouraged its continued separation from general involvement in local government. We have deputies for local government members because they do not attend as representatives of their shires but as representatives of the interests of local government across the State. If they cannot attend, local government must be represented. There is a very important distinction. The previous structure reflected an earlier time; that is, when the City of Perth had a recognition and status vis-a-vis the other local authorities that those authorities would not find acceptable today.

Mr WALDRON: I asked a question about the Commissioner for Main Roads, but I had to leave the House on parliamentary business and missed the minister's response. The member for Merredin relayed the minister's answer. I have a problem with the Commissioner for Main Roads not being included in the membership of the commission. This legislation will bring together agencies involved in the planning process. It is important that the commissioner be a part of that commission.

Ms MacTIERNAN: I am happy to explain it again; it was a good point.

Mr Waldron: That is not necessary.

Ms MacTIERNAN: I want to explain it because it is very important. It is not something about which the Government wavered, asking "Will we or won't we?" It was a deliberate and conscious decision not to include the Commissioner for Main Roads. This goes to the heart of the way in which the Government sees the Department for Planning and Infrastructure and Main Roads WA operating.

For a considerable period before the election, the Labor Party made it clear it believed that transport and land-use planning needed to be integrated, along with planning for the different modalities of transport. The government focus should be to identify various transport tasks. Having done that, it should then find the appropriate modality to deliver the desired result. Traditionally, we have had a separate road empire that received all the money. If a transport problem arose, in an overwhelming majority of cases it was solved by the construction of a road because the other possibilities were not resourced in the same way. That has not led to a positive and rational allocation of resources across the various modalities. Therefore, it is important to take Main Roads out of the planning equation.

The Government has transferred the Main Roads personnel responsible for planning. That planning involves asking whether we need, for example, a southern link road between Brookton, Albany and the South Western Highway leading to Tonkin Highway. If we do, where should it go? That sort of planning is the responsibility of the Department for Planning and Infrastructure. When the Labor Party came to government, Main Roads had that responsibility. Likewise, Main Roads made decisions about the Fremantle Eastern Bypass and Roe Highway, even though those questions intimately involve land-use planning and planning for other transport infrastructure. It was inappropriate to have a separate agency doing planning when the issues it was addressing had enormous consequences for land use and other transport modalities.

Mr Waldron: Have the Main Roads personnel been transferred?

Ms MacTIERNAN: Yes, they are now in the Department for Planning and Infrastructure. That is not to say that technical personnel in Main Roads WA will not have input. A project such as the southern transport corridor comes to mind. The first decision to be made is whether we have such a corridor and the second is where it will be located. One would expect Main Roads personnel to have input about the various alignment options from a technical point of view. They would be able to provide costings.

Mr Waldron: Would the WAPC see that information?

Ms MacTIERNAN: No. That is the technical input that would be required by the planners to make the ultimate decision.

The Government has said that it wants Main Roads WA to be an operational agency responsible for building and maintaining the road network. It does that very well. It also administers the heavy-haulage industry that uses those roads. Those functions are not the responsibility of the WAPC. If we were to include them within its functions, we would confuse the message being sent by the establishment of the Department for Planning and Infrastructure and the transformation of Main Roads WA into an operational unit rather than a strategic unit.

**Clause put and passed.**

**Clauses 57 and 58 put and passed.**

**Clause 59: Section 19A inserted -**

Mrs EDWARDES: This clause deals with delegation of ministerial approval. Section 19 provides for the establishment of committees by the commission, the appointment of members to that commission, the identity of the committees and so on. Under this legislation, the minister is delegating to a person or body - that is, to the

commission itself, which is the appropriate body - the power to appoint committee members and so on. I understand that the commission established the committees, but that the minister fulfilled those functions.

Ms MacTIERNAN: Strictly speaking, the commission appoints the committees under the legislation. This clause refers to approvals that the minister would be able to delegate to the commission.

**Clause put and passed.**

**Clause 60: Section 46 amended -**

Mrs EDWARDES: Section 46 provides -

The Commission shall not without the consent of the Minister, in respect of any one work, make a contract or incur any expenditure the consideration or cost of which exceeds \$500 000.

The types of purchases the Western Australian Planning Commission is involved in are quite extensive. Is the minister approached for approval?

Ms MacTiernan: Yes.

Mrs EDWARDES: In respect of the reporting mechanisms for purchases above and below \$1 million, how is the minister advised about properties that are purchased?

Ms MacTiernan: There is no specific mechanism. It is accounted for in the annual reports. Purchases of \$500 000 require us to be involved. The plethora of paperwork makes it a nonsense. It is just a matter of keeping up with increasing costs. During the premium property tax debate members on the other side of the House claimed vehemently that the average fibro shack will be worth \$1 million in two years. Maybe the Government should have made the limit \$2 million.

**Clause put and passed.**

**Clauses 61 to 69 put and passed.**

**Title put and passed.**

Ms MacTIERNAN: I thank members opposite for their constructive participation in the debate. I thank my three advisers as they have been engaged for quite some time in what has been a complex task. It has entertained them for many hours. I appreciate their work in getting this legislation right.

*Third Reading*

Bill read a third time, on motion by Ms MacTiernan (Minister for Planning and Infrastructure), and transmitted to the Council.