

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

Second Reading

Resumed from 21 March.

HON CHRISTINE SHARP (South West) [12.33 pm]: This Bill has been in the Legislative Council for a depressingly long time from the perspective of the Government. During that lengthy period it has become known by the rather diminutive acronym as the MOG Bill. I will offer some comments that suggest that although this Bill now has a rather sweet name, there is nothing particularly lovable about the construct of it. I say that because I take very seriously the Government's machinery of government objectives. I argue that this Bill, as the first machinery of government legislation, is letting down the exercise. Before I explain why, I would like to say that the Greens (WA) support the structural objectives of this Bill insofar as we support the objective of integrating transport planning with other forms of land use planning in this State. We agree entirely that to build sustainable communities, the planning of the land use and transport must go hand in glove. It is also a very important step forward in overcoming the addiction we have to the use of the private motor vehicle as our fundamental transport mode in our enormously sprawling city.

The Greens (WA) believe that if we are to have new, more sustainable models for human settlement, it is important to integrate transport and planning; therefore, we support the Bill's objectives. Having said that, if we accept the desire to integrate those two important areas, I am not sure whether the machinery arrangement for which the Bill provides is the best way to achieve that. Perhaps integration can be achieved much more simply by having an integrating and coordinating structure to advise the minister rather than bring the departments into such close alliance. I do not know about that; it is not my job to work that through.

The Government has chosen to implement that integration. However, as the first machinery of government Bill before the House, I expected something better. I remind the House of the original report on government structures for better results, released in June 2001 by the task force, chaired by Stuart Hicks, established to review the machinery of Western Australia's Government. It contains a raft of recommendations about how to streamline the public service of Western Australia. Some of the provisions found in this Bill conflict with the thrust of the recommendations of the machinery of government report. For example, recommendation 5 suggests that the State Government should introduce uniform badging for departments of state and related agencies. This Bill falls down here, in that it introduces the concept of a transport coordination authority, which breaches that objective because it is not uniform across the public service. The Government has recognised that. That is one of the reasons that the Bill has been delayed, so that the Government can work out important amendments to deliver the objective of uniformity of badging, which is found in recommendation 5. The Government did not pick up that recommendation; Hon Jim Scott, Hon Murray Criddle and I drew the issue to the Government's attention. Recommendation 8 states -

A statutory authority should be established only if its proposed functions cannot be performed by a department or it would be inappropriate for them to be performed by a department.

Recommendation 9 states -

The functions of each statutory authority . . . should be reviewed before 1 July 2002.

These objectives for the development of the Transport Co-ordination Authority have not been met by the Bill. For example, an important issue still to be debated is whether the establishment of the minister as a corporate entity is necessary at all and whether it will create a superfluous structure. Clearly, creating superfluous structures is very much against the whole nature of the machinery of government exercise.

It was also apparent in the various meetings that the Greens (WA) have had with members of the minister's office - I thank those officers for that assistance - that the instructions to parliamentary counsel to draft the Bill were in no sense informed or educated about machinery of government objectives. Therefore, parliamentary counsel has gone about the process of drafting the Bill entirely in isolation of the important across-government objectives of streamlining the public service. That appears to indicate that the machinery of government exercise encapsulated in the Bill is a very superficial exercise. I get the impression that it is ultimately only about cost cutting; it is not about seriously streamlining the public service with the many noble objectives described in the Hicks report. This Bill is nothing more than a part of an exercise in reducing government costs by amalgamating 46 departments into 23 departments and reducing the number of ministers from 22 to 14. It is amazing, for example, that there was no reference in the second reading speech by the parliamentary secretary on behalf of the minister to whether having a super ministry as established by the Bill is a good thing, why it is a good thing, how

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it will work or why it is a good objective. There is also nothing in the second reading speech about why it is a good thing to amalgamate the transport and planning departments. This Bill provides for a major reorganisation of government, which incidentally calls itself a machinery of government Bill. It neither discusses machinery of government issues nor the benefits of amalgamation. That is why I say it is a very superficial exercise and may well be unrelated to machinery of government issues. It may be related to other embarrassing road safety problems that ministers have got themselves into that have required a reorganisation of departments. I wonder whether that is the reason that the Bill has been brought on so quickly and so poorly drafted.

An editorial published in *The West Australian* on Friday, 22 June 2001, immediately after the release of the Machinery of Government report, begins -

The Government's plans to revamp the public service look fine in theory. They clearly are aimed to save money and promote efficiency through streamlining. These are worthy aims which should draw few valid objections.

But the Government will be judged on its actions, not on its intentions. It faces a test of political will in its efforts to carry out the whole of its program of change.

That is how the editorial began. The editorial then finished with the following words -

Half-measures will create only confusion.

I suspect that the Bill before us today is very much a half-measure. It is poorly constructed, poorly drafted and lets down the whole machinery of government exercise. If the Government were serious in its intent, the minister's comments would have given greater acknowledgment to proposals such as are found in the thirty-sixth report of the Standing Committee on Government Agencies. I will get myself some points, I am sure, from the Clerk by mentioning that matter, as members know well that it is one of his favourite documents that have come from the standing committee process.

I raise this matter because of the interesting proposal in the appendix to that thirty-sixth report, which is a proposed model for a state agencies Bill. If we are serious about streamlining the way we conduct the public service, we would ensure that all authorities have not only a real function and that superfluous ones are removed, but also that the retained authorities have identical functions and powers. For example, uniformity across the public service would provide identical meaning to the word "authority", whether it related to the planning, transport or environment portfolios. That is the way the Premier should approach the issue, rather than the half-measure that we see in the Bill before us today.

I feel quite strongly about this matter because I was impressed by the Government's taking on the machinery of government task. It is not a glamorous task and there are not necessarily a lot of political gains to be made from it. When I was asked by a commentator prior to Christmas last year what I considered was the best achievement of the Gallop Government in its first year in office, I said the main thing that had impressed me was Gallop's decision to take on the very admirable task of reviewing and reforming the public service. I am therefore extremely disappointed because I thought that at last we have a Premier who is a political scientist and maybe we will now see the implementation of the best political science in order to achieve good governance. However, we find that that is not what is happening with the machinery of government review and that the whole exercise has been a way to justify budget cuts. During debate on the budget, Hon George Cash mentioned the saving of \$852 million. That is what the Premier had in mind, and it had nothing more to do with the reform and review of the way government agencies operate in this State.

There are three areas in which the Bill has essentially failed to ensure a machinery of government approach. The first is that to my mind - other members have commented on this in their speeches - it removes accountability by increasing the delegation of power. Clearly, if a minister oversees a huge bureaucratic empire, it is almost inevitable that the ability to delegate power will be increased. Not only does the Bill remove some of the immediate accountability of the minister, but also it seeks to delegate delegations. The minister at the top of the chain will be doubly removed from what is taking place on the ground in the administration of the megadepartment that is being established. That is why I say that it is superficial; the Bill has not attempted to justify that this is workable. During the past 15 months, the number of cabinet ministers has been reduced and super-ministries have been created. I am sure that in that time every member in this place would have had the experience, if not multiple experiences, of ministerial offices not working efficiently. It has become almost impossible to get a timely response from ministers' offices, let alone meet with ministers, because the ministers have found their workloads extremely hard to administer. Not only should the Government justify why it has gone for this super-ministry model, but also this Bill should justify it. Where is that discussed in the Bill? I cannot see it anywhere. I cannot find it in any of the government comments. Therefore, the actual foundation of the Bill remains speechless, and I am quite speechless about that.

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The second way in which the Bill offends the MOG objectives is one to which I have already referred; that is, the Bill offends the principle of uniform badging that has been proposed because it seeks to establish an entity called the Transport Co-ordination Authority. My concern is that in many other examples across government, an entity known as an authority is used in the opposite way to the entity that is being established in this Bill. In this Bill, the entity known as the Transport Co-ordination Authority is in fact the minister. However, in every case that I can think of, whether it be the various port authorities or the Environmental Protection Authority, an authority always consists of persons other than the minister. The nature of the concept of an authority is that it is an alternative structure with responsibility other than the minister. It offends the notion of an authority and also offends the objective of providing uniformity in government, which is absolutely fundamental to the machinery of government exercise.

Lastly, I again refer to the Transport Co-ordination Authority. It is not clear whether at law a separate entity should act as a substitute for the minister - in this case, the Transport Co-ordination Authority is an alter ego of the minister - when the minister is involved in commercial contracts and other business-type arrangements, or whether that just adds further confusion for people. Instead of making our state agencies and ministries work better, it adds to the confusion because it is not clear to someone who enters into a commercial contract whether there is a difference in the powers and commitments of a minister when the minister makes a commitment as a minister as opposed to as a body corporate. That is not explained in the Bill before us, nor is it able to be grasped very easily by people in the community. For example, it would give the impression that government policies on matters for which a minister has entered into a commercial arrangement cannot be changed. I suspect that is a highly misleading confusion that could be very costly. It could be very dangerous for some entities to involve themselves in that situation with government.

The Bill's failure to deliver the machinery of government exercise has led to its delay in this place. In part 9 of the Bill, which includes clause 39, the minister has the immunity of the Crown; whereas a similar entity set up in the Regional Investment Fund Bill does not have the same immunity. In the drafting that is coming out of government at this time, different departments and ministers are doing different things under the same name. If that does not create confusion and undermine the machinery of government exercise, I do not know what does. That is why there has been a delay of several months. That is why today's Notice Paper contains several important amendments that seek at least to clarify some of the nomenclature that is used in the Bill. We will support those amendments, but they will not necessarily go to the heart of the matter as much as a well-thought-out approach could have done. We have been told that we are stuck with the overall structure of the Bill before us today, that it is urgent and that we need to deal with it as soon as possible. Therefore, we must deal with what was called a "half-measure" in the editorial that I quoted.

Sitting suspended from 1.00 to 2.00 pm

Hon CHRISTINE SHARP: I will finish by asking three questions about this Bill. Does this Bill improve accountability? I suggest it does not. Does this Bill ensure that a minister is a super-minister, able to keep on top of what is really happening on the ground in these enormous departments that one minister will now be accountable for? Again, I suspect not. Lastly, does this Bill streamline the public service, as is the objective of the machinery of government exercise? Clearly, it does not, which will be highlighted in amendments that will be debated in the House shortly.

Could the parliamentary secretary representing the minister in charge of the Bill comment on the following point: given that this Bill creates such an enormous amount of structural change in terms of who does what and who is responsible for what, would the minister and the Government consider it appropriate that a review of this legislation take place within two years? This would determine whether the changes that affect the amalgamation of planning and transport are working satisfactorily and whether other changes need to take place to deliver the objectives that are supposed to be achieved under the Bill. The heart of the structures established by the Bill are always in other Acts and are not readily accessible through this amendment process. Therefore, putting a review clause into this Bill would not work because it is almost a jigsaw-type of Bill. However, it is important that the Government give serious consideration to reviewing the efficiency of this department and new administrative structure, and I would appreciate a comment from the parliamentary secretary on that matter.

Lastly, I thank the parliamentary secretary for his cooperative approach on this Bill. Hon Graham Giffard has spent a lot of time with me, my colleague Hon Jim Scott, and other members of the House not only explaining the Bill but also listening to concerns, taking them up with the ministry and returning with the proposed changes. He has done his minister a good service. If he had not performed that pro-active and cooperative role, it would have been necessary to send this Bill to a committee for inquiry. Because of the work that he has performed and his commitment, the amendments that will be debated shortly will at least sort out the worst anomalies. This has saved the Bill and will allow it to proceed through the House.

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HON GRAHAM GIFFARD (North Metropolitan - Parliamentary Secretary) [2.06 pm]: The Bill before the House assists in the integration of the transport planning functions of government. It assists that process by making arrangements for the statutes that are amended by this Bill to be more logical and to stand by themselves. Each of the statutes that are amended by the Bill currently draw their administrative power from the Transport Co-ordination Act. The purpose and effect of the Bill is to break that nexus so that each statute will have its own powers that were talked about during the second reading debate.

I was interested in the comments made by Hon Christine Sharp just before the adjournment about the reasons for having the Bill, and the policy behind it. I disagree with what she said. In the second reading speech, which was delivered in this place last December, we explained what we are trying to achieve with the Bill and the logic of putting transport and planning functions together in a coherent way. The second reading speech also went on to explain that this Bill is part of the framework that we are moving towards and assists in that process. The Bill passed last night also adds to that framework. This Bill is not in itself a complete statutory package but is part of that framework.

I refer to some of Hon Derrick Tomlinson's comments in the second reading debate. I do not know how serious this particular comment was, although, I know that Hon Derrick Tomlinson is always very serious about his contributions in this place. Early in his second reading speech he expressed concern that the Bill would allow for future amendments without the need for the Act to come back to Parliament. I can assure members that that is not the case. This Bill breaks the nexus between a number of statutes that will allow the Government of the day to structure the public service in a manner that it considers will deliver the best outcomes to the people of Western Australia. The reason for that is that the structuring of the Executive is the responsibility and prerogative of the Government. The diversity of those statutes can be seen in the Bill. I am advised that the diverse list of statutes tied to a specific minister through the Transport Co-ordination Act is an exception rather than the norm. The established practice is that in the absence of any particular imperative, the statutes should provide flexibility to enable responsibility for their administration to be transferred as needs be.

A number of members also expressed concern about the Bill allowing the director general to delegate powers to persons outside the department without reference to the minister. I am advised that those provisions are not unusual. However, in response to those concerns, the Government has framed some amendments that appear under my name on the supplementary notice paper. I will not go into the detail of those amendments, but the Government has agreed to provisions that will ensure that the director general will require the approval of the minister to delegate power. We will also remove doubt about the Bill preventing any subdelegation of delegated power. I note that some members had raised that as a potential difficulty.

Financial accountability issues associated with the contracting out of government functions are of concern to members. I understand that the Financial Administration and Audit Act places a clear responsibility on the accountable officer to include appropriate mechanisms in any such arrangements to enable the Auditor General to ensure that accountability requirements within the Act are complied with.

Some members also expressed concern about funding arrangements under the Perth Parking Management Act. This Bill will not alter the arrangements for the administration of the Perth parking licensing account or the purposes for which the credit of that account can be used. The Bill transfers the account from the transport co-ordination fund to a trust account under the Financial Administration and Audit Act. Importantly, and this issue was raised during the second reading debate, control of the fund will remain with the minister responsible for the administration of the Act. In this case, the responsible minister is the Minister for Planning and Infrastructure. Management of the fund will be transferred from the Department of Transport, where it currently resides, to the Department for Planning and Infrastructure.

Members have also expressed concern about the renaming of the corporate alter ego of the minister as the Transport Co-ordination Authority. That was mentioned by Hon Christine Sharp a few minutes ago. The Government has responded to that concern as well. To avoid any misconceptions about the nature of the corporate entity, an amendment in my name on the supplementary notice paper refers to the Transport Co-ordination Ministerial Body. I hope that amendment is to the satisfaction of members and removes the ambiguity alluded to during the debate.

Hon Murray Criddle expressed concern that the Commissioner of Main Roads would no longer be a member of the Western Australian Planning Commission. The Government's view is that it wants the Department for Planning and Infrastructure to provide strategic planning for all transport infrastructure. Therefore, it does not believe it appropriate for the Commissioner of Main Roads to continue to serve on the Western Australian Planning Commission. Having said that, to ensure that the expertise of the Commissioner of Main Roads is not lost to the commission or the State, he or she will remain a member of the transport committee, which is a

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statutory committee of the commission, created under section 19(1e) of the Western Australian Planning Commission Act.

I also assure Hon Murray Criddle that this Bill will not allow funds held in the main roads trust fund to be used for purposes other than those set out in the Main Roads Act. The honourable member also expressed his concerns about the financial arrangements for the transport trust fund. Until recently, the trust fund created under section 62A of the Transport Co-ordination Act was used only as a holding account in which vehicle licence fees, collected on behalf of the Commissioner of Main Roads, were held until disbursed. Section 22 of the Road Traffic Act requires that any funds held by the director general in payment of vehicle licence fees be paid to the main roads trust fund. However, since 1 July, licence fees collected on behalf of Main Roads have gone directly to that agency and this account has become redundant. The Bill does not affect the Treasurer's ability to allocate funds to Main Roads. It abolishes the transport trust fund, which had become redundant.

The Bill will not alter the administration of the taxi industry development fund or purposes for which moneys standing to the credit of that account may be used. The Bill merely transfers the account from the transport co-ordination fund to a trust account under the Financial Administration and Audit Act.

A couple of members referred to the removal of the Lord Mayor of the City of Perth from membership of the Western Australian Planning Commission. This implements a recommendation of an earlier review process, which was foreshadowed back in 1998 at the Western Australian Planning Commission workshop. It was also recommended by the commission itself in 1999, in its strategic review of the role and functions of the Western Australian Planning Commission. Discussions have been held with and correspondence sent to the current Lord Mayor. I am advised that the Lord Mayor supports the amendments. I hasten to add that the City of Perth will retain input in the commission through its continued membership of the Central Perth Planning Committee. The composition of the commission does not affect the membership of the Western Australian Municipal Association. I understand that the association has changed its name, but I point out that the association was created under the provisions of the Local Government Act and until that Act is amended, it must continue to be known as the Western Australian Municipal Association for the purposes of the Bill. As to the question of the number of people on the commission, I am advised that the commission is not formed on the basis of working out a delicate balance of voting strengths. Indeed, the practice of the commission is to resolve issues by consensus. In such circumstances, it is unnecessary simply to rely on the numbers on the commission to achieve an outcome. Notwithstanding a decision of the commission - this probably goes to the concerns raised about the environment - the processes under the Environmental Protection Act 1986 ensure that the EPA will have final approval over any developments that have an environmental impact.

Concern has been expressed about the capacity proposed in clause 69 to make retrospective regulations in respect of the transitional arrangements under the Bill. In principle, the Government accepts that retrospective regulations are undesirable. Given the limited circumstances contemplated by this provision, and given the safeguards that have been built in, an exception should be permitted in the interests of the public. That is because under the Transport Co-ordination Act 1966, the Department of Transport has entered into many and varied contractual arrangements with companies and individuals that relate to functions under other statutes. The transitional provisions of the Bill enable those arrangements to continue. Given the number and diversity of the arrangements, and despite every effort taken by the department and by parliamentary counsel, the risk remains that specific agreements of a particular type may inadvertently fall outside the normal transitional provisions. In order for such arrangements to continue, it is highly desirable that the Government make regulations of this type, the effect of which will restore the status quo.

Hon Murray Criddle asked why the legislation is necessary if nothing unlawful has happened. He also asked whether things have happened that should not have happened, and why must we progress this matter today. I am advised by the department that the legislation should be passed today to enable sufficient time for the Bill to return to the other place - the Legislative Assembly's time will be taken up with estimate hearings next week - and be debated. It must then receive assent, be proclaimed, have an order to abolish the Department of Transport, and to then be published in the *Government Gazette*. It is desirable that this be done by 30 June 2002 so that we do not have to duplicate our accounting procedures and annual reports in the next financial year.

Hon Derrick Tomlinson: It is desirable but not imperative.

Hon GRAHAM GIFFARD: Yes, it is desirable. The Government believes it will be more efficient and less costly for this matter to be progressed sooner rather than later.

Hon Murray Criddle: Have the changes occurred before they were allowed by the statutes? We will not revisit something that has already happened.

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Hon GRAHAM GIFFARD: Members can be reassured that nothing has happened that should not have happened. The machinery of government report recommended that the Government do what it could to make interim measures under the existing legislative arrangements, and to move towards the revised structure it recommended for agencies within the planning and infrastructure portfolio. Following the report, and after consultation with the Crown Solicitor, the Director General, the Department of the Premier and Cabinet, and the Under Treasurer, the decision was made to create the Department of Planning and Infrastructure under the Public Sector Management Act 1994. That occurred on 1 July 2000. The new department inherited the resources and staff of the Ministry for Planning, which was abolished. It also inherited most of the resources and staff of the Department of Transport, including those dealing with policy and planning. The Department of Transport has continued in existence with staff and resources relating chiefly to licensing and to the Office of Road Safety. Although the arrangements are lawful and endorsed by the Solicitor General, they are interim in nature, and they are not as elegant or efficient as they could be if the legislation were passed. Essentially, the Government does not want to continue operating with these inefficiencies in the next financial year. It would also be in the best interests of the public if this matter were dealt with by the end of the financial year.

Hon Christine Sharp suggested that because the Bill is a machinery of government Bill, and has a degree of complexity, that it should be reviewed. I am unable to agree to a fixed date or time line for a review. I understand the honourable member's concerns. The Government is aware that it must monitor the effects of the Bill once it has been passed. The Government will act if it believes that the legislation must be changed. Indeed, if Hon Christine Sharp forms the view that there could be some tinkering with or improvements to the legislative framework, I invite her to raise such issues with the Government. The Government wants the legislation to be framed in an effective and efficient manner, and if Hon Christine Sharp identifies an area in which the legislation could and should be improved, the Government will look seriously at the issue.

As I said, there are a number of amendments on the Notice Paper that address significant issues that have been raised by a number of members in this place. I will not refer to them now. The Government has attempted to respond to these issues as best it can. I hope members appreciate the Government's genuine attempt to accommodate such concerns. I thank all the members who have participated in the discussions with me and the staff from the ministerial office. I thank them for being forthright, and for putting forward in the discussions what they have suggested are attempts to improve the legislation and seek a resolution. I commend the Bill to the House.

Question put and passed.

Bill read a second time.

Committee

The Chairman of Committees (Hon George Cash) in the Chair; Hon Graham Giffard (Parliamentary Secretary) in charge of the Bill.

Clause 1: Short title -

Hon MURRAY CRIDDLE: While the basis of this Bill is quite good, I had some problems with the way in which it was presented. I was contacted by the minister's office after making my second reading speech, and quite a bit of negotiation took place, as Hon Christine Sharp has said. Hon Derrick Tomlinson has also been involved in the discussions, and I understand Hon Jim Scott is handling the legislation for the Greens (WA). Most of the issues I raised have been covered to some extent. I will be discussing other issues as they come up during the consideration of the amendments on the supplementary notice paper. Most of my concerns were about the delegation of powers from the minister. I have always been of the view that the minister should be responsible in the portfolio and the delegation of powers should always end up with the minister having the responsibility. The possibility of different ministers having control of the departments mentioned exists in this legislation. The Bill came about in somewhat unfortunate circumstances, but I will not pursue that. Yesterday the House dealt with the Road Safety Council Bill 2001, which has some connection with the present Bill. Perhaps the parliamentary secretary could explain that link. I would like to hear other comments of the parliamentary secretary on the other issues.

I spoke in my second reading speech about clause 69(3), which reads -

Regulations including a provision described in subsection (1) may be expressed to have effect before the day on which they are published in the *Gazette*.

I know that has been an issue with the planning amendment Bill currently also before the House, and that will need some discussion later on.

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Hon DERRICK TOMLINSON: The Opposition has signified its general support for this Bill in two ways. In my second reading speech I indicated the support of the Opposition, and I reinforced that by indicating that the previous coalition Government has initiated a process of rationalising government in a similar way. Regrettably, that was never finalised before the change of Government. The Opposition supports the Bill in principle, but there are matters of detail about which I will be seeking clarification or reassurance that my interpretation and the Government's statement of its intention are confirmed and on the record. I join with Hon Christine Sharp in her quite laudatory comments about the parliamentary secretary for the manner in which he has managed the Bill. At all times he has been willing to listen and to respond, and where necessary he has drafted amendments and run them past the parties in the House to make sure our concerns were met. I commend the parliamentary secretary on the courtesy he has shown to all of us. I recommend that courtesy to senior ministers, who sometimes do not show the same sort of cooperation.

The other matter on which I would like further clarification has already been touched on by Hon Christine Sharp and Hon Murray Criddle. The parliamentary secretary has indicated part of the answer. The question is: why does this Bill have such urgency? The parliamentary secretary indicated that he was desirous of having it passed by 30 June, though this was not imperative. My question relates not to why this Bill has such priority over others on the Notice Paper. The Opposition keeps on saying to the Government that the Notice Paper, and the order in which matters are dealt with in the House, are matters for the Government. I am concerned that a process of review of the machinery of government and a restructuring of departments has taken place. This is entirely a decision of the Government, not of the Parliament. Parliament provides the resources, and may require accountability for the functioning of government, but the structure of government is entirely a matter for the Government.

Having gone through that process of review and restructure of the Government, this Bill is being brought forward to deal with the new Department for Planning and Infrastructure, bringing together several agencies and changing the administrative responsibility and functional authority of those agencies. However, other agencies have been amalgamated; for example the Water and Rivers Commission has been amalgamated with the Department of Environmental Protection. To paraphrase what Hon Christine Sharp said, why has this section been taken out of the process of restructuring of government and made the subject of a Bill entitled the Machinery of Government (Planning and Infrastructure) Amendment Bill 2001 and why has it been given such urgent priority? Just as this Bill shifts authority and changes authority structure, other changes of administrative authority and structure have taken place in other new departments that have been created. I want to hear the parliamentary secretary's explanation of why this decision has been taken. I do not want to hear him say "simply because it is desirous". A lot of things are desirable, but why does this have such priority?

Hon J.A. SCOTT: I note the comments of the parliamentary secretary in the second reading stage. As is evident, there is much goodwill in the Chamber among all parties to get this legislation right. The parliamentary secretary has addressed a lot of those concerns to some degree. In some ways, this is a difficult Bill to deal with. The best way to describe the Bill is to use one of my favourite words - schiamachy. It means to chase shadows.

Hon Derrick Tomlinson: What's that?

Hon Ljiljana Ravlich: Do not worry; he made it up.

Hon J.A. SCOTT: Yes. Rather than see a laid out format for the area of government we are dealing with - planning and infrastructure - we see a deconstruction. It was initially confusing to grapple with the concepts involved. It certainly was for me; it may not have been for more brilliant minds. There is still confusion about the double role of the minister. The authority and the minister have had a change of title. Hon Christine Sharp mentioned the need for continuity of terminology between departments. As Hon Derrick Tomlinson pointed out, this is a template that the other "deconstructions" will be based on. It is important for the understanding of members and the community that when we use a term, everyone knows what we are talking about. It is good to hear there will be an attempt to ensure there is consistency in the use of terminology. I am confused as to why we need that dual role. I have not heard a proper explanation of the double role of the minister as a body corporate and as a minister. As far as I can see, there is no need for it. It adds a layer of uncertainty. The explanatory memorandum talks about a statute creating a minister of the Crown as a body corporate for certain purposes and the confusion that may arise as to whether an agreement has been entered into by a minister in that capacity or as a minister of the Crown. There would be far less confusion with a single entity. People would know exactly who they were talking to whether it was a minister or a ministerial body. That sounds rather esoteric. I am still confused as to why that is needed. I am not convinced that we need a separation between those capacities. When looking at the Crown Suits Act it was put to me that there could be difficulties for people who wanted to take legal action against the minister. It would be difficult and confusing unless the minister was established as a separate body corporate. From my reading of the Act I can not see any difficulty with just the minister having that role. I am interested in the parliamentary secretary's comments on that.

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Hon GRAHAM GIFFARD: Hon Murray Criddle asked about linkages between this Bill and the Bill passed yesterday. There is no direct linkage between the Bills. This Bill reconstitutes the Western Australian Planning Commission, which is consistent with the machinery of government reforms. It also facilitates the abolition of the remnants of the Department of Transport. This Bill also creates the administrative authority in a number of Acts.

The Bill passed yesterday concerned the relationship between the Transport Co-ordination Act and the Road Safety Council. The linkage is that there are amendments to the Transport Co-ordination Act.

Hon Murray Criddle: What about funding?

Hon GRAHAM GIFFARD: I do not believe there are funding linkages. Clause 69(2) contains a definition of transitional matter. A transitional matter is a matter that needs to be dealt with in Acts that will be affected after this Bill is enacted. As I indicated previously, some matters may not be discovered until the time of the transition. It is easy to mention a problem that may have to be dealt with by a solution that applies from when the new provisions replace the old. Clause 69(4) removes the objectionable nature of the retrospective legislation and protects people from adverse effects.

The only thing I can add to the issue raised by Hon Derrick Tomlinson about why this needs to be done now is that the Bill needs to be passed because the Director General of the Department of Transport is named in the Transport Co-ordination Act and because of the unusual extent of links between the Transport Co-ordination Act and the other Acts named in this Bill. Therefore, completing that movement from pre-machinery to machinery structures must occur, and this Bill must be passed to achieve that.

Hon Derrick Tomlinson: So, it is not being done because you have done something you should not have done.

Hon GRAHAM GIFFARD: No. I assured the member of that a moment ago. It is designed to enable that process to be completed. That is why we must deal with the matter as soon as possible.

Clause put and passed.

Clauses 2 to 4 put and passed.

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

Hon GRAHAM GIFFARD: I move -

Page 3, after line 28 - To insert -

- (3) If a person is not employed in the Director General's department, a power or duty can only be delegated to the person under this section if the person has been approved by the Minister for the purposes of this section.
- (4) An approval under subsection (3) may be given in respect of -
 - (a) a specified person or persons of a specified class; or
 - (b) the holder or holders for the time being of a specified office or class of office.
- (5) A person to whom a power or duty is delegated under this section cannot delegate that power or duty.

This amendment addresses the concerns raised by members that in its current form the Bill would allow for the director general to delegate his powers and duties to a person outside the agency, without any need to gain the approval of the minister. Obviously, the concern is that that would lead to a diminution of ministerial responsibility. The powers exercised under this provision are routine administrative powers, such as the power to issue a drivers licence, to licence a vehicle and so on. The amendment ensures that any delegation outside the director general's department must be with the approval of the minister and that there can be no subdelegation of a delegation. I commend the amendment.

Hon MURRAY CRIDDLE: This amendment deals with the issues that I raised in my second reading contribution. We are not dealing with legislation that applies solely to the present minister; this legislation could be in force well into the future. That is the basis of my concern. As the Bill is drafted, a contractor could get the permission of the director general without direct responsibility resting with the minister. That is another concern. I am happy with the amendment.

Hon J.A. SCOTT: I am very happy that the parliamentary secretary has agreed to amend this provision. It would have allowed the delegation of the director general's delegation powers. Proposed subsection (5) provides -

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A person to whom a power or duty is delegated under this section cannot delegate that power or duty.

This is a very important amendment, and I support it.

Amendment put and passed.

Hon DERRICK TOMLINSON: In some respects the matter I want clarified is similar to the matter we have just dealt with relating to delegation. Provisions similar to proposed section 4B are included in other parts of this Bill. One generic answer satisfies the concerns raised about proposed section 4A. However, there are differences in the legislation relating to the performance of these functions. Because they differ, a generic answer will not suffice.

The Bill repeals section 4A of the Control of Vehicles (Off-road Areas) Act, which provides that the functions of the director general are to do what the Act directs he shall do. That is not the functions of the director general as the chief executive officer of the department arranging for the polishing of the front door handles, the appointment of the cleaning staff or the corporate manager and so on. It means the functions as specified in the Act. Those functions are referred to in section 7, which deals with the registration of vehicles; section 29, which deals with the registration procedure; and section 32, which refers to refunding registration fees.

The Bill deletes section 4A and inserts proposed new section 4B, which provides -

The Director General may enter into an agreement providing for the Director General's functions under this Act that are described in the agreement to be performed on behalf of the Director General.

That proposed section refers to the functions contained in the sections of the Act to which I have just referred. The director general may enter into an agreement or contract for the performance of those functions and that agreement may be with the Commissioner of Police. It would make sense for the registration of off-road vehicles to be undertaken and conducted on behalf of the director general or the ministry of government under the Control of Vehicles (Off-road Areas) Act by the police and likewise local government. However, proposed section 4B(2) states -

... or any other person or body, whether or not the person or body has itself functions of a public nature.

What persons might perform which functions under contract with the director general? I recognise that a police officer or a local government authority might properly carry out the functions of registration. What functions might a person who does not have functions of a public nature carry out, bearing in mind that that person is going to collect public moneys?

Hon GRAHAM GIFFARD: I have been provided with an example: a mechanic might be able to inspect a vehicle for roadworthiness. Under that contract, mechanics would be authorised to do that. That is the type of person who could perform that type of function.

Hon DERRICK TOMLINSON: I commend that. That would mean that the inspection of vehicles for licensing could be privatised. I think that is highly desirable and I understand that that was in train. I am pleased that the Government has a mind towards the privatisation of those functions and is making it possible by this amendment to the Bill. However, does it also include section 32 of the Control of Vehicles (Off-road Areas) Act, which states -

32. Refund of registration fees

- (1) The Director General may refund a fair proportion of the registration fee paid in respect of any vehicle ...

I can anticipate that in some circumstances it might be desirable, for example, in a remote location, for a person other than a police officer or local government officer to be authorised to receive licence fees and issue licences. However, does the parliamentary secretary anticipate that the task of refunding registration fees might also be contracted out?

Hon GRAHAM GIFFARD: In theory, we do not agree with that. The contract or the agreement could be constrained in any way that it would need to be constrained. I understand the member's point; however, we do not anticipate those types of arrangements. It is not simply a contract exercise. The powers under section 32 of the Control of Vehicles (Off-road Areas) Act can be constrained in any way that the director general sees fit when entering into that contract.

Hon DERRICK TOMLINSON: It would not be desirable to extend all the powers of the director general and the contract would specify the nature of the powers of the authorisation. Although that may not be desirable and is

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not a value that the Labor Party would intentionally pursue, does it not make it possible? A general instruction in proposed section 4B(1) states -

The Director General may enter into an agreement providing for the Director General's functions under this Act that are described in the agreement . . .

Under proposed section 4B, is it still possible that it would be lawful to contract out the refund of fees? Could that authority be given to a person who is not even a public officer under some other Act?

Hon GRAHAM GIFFARD: As I indicated in my previous answer, it is possible. I do not dispute the point made by Hon Derrick Tomlinson. Currently, under section 15C of the Transport Co-ordination Act, the scenario that the member suggested is possible. This is not a new provision; the same provision appears in the Transport Co-ordination Act.

Hon Derrick Tomlinson: We have made it clear that it is possible.

Hon GRAHAM GIFFARD: It will be as possible as it is now.

Hon MURRAY CRIDDLE: Proposed clause 5 of the amendment does not cover that eventuality.

Hon GRAHAM GIFFARD: The member is right.

Clause, as amended, put and passed.

Clauses 6 to 13 put and passed.

Clause 14: Sections 4 and 4A replaced -

Hon GRAHAM GIFFARD: I move -

Page 7, after line 26 - To insert -

- (3) If a person is not employed in the Director General's department, a power or duty can only be delegated to the person under this section if the person has been approved by the Minister for the purposes of this section.
- (4) An approval under subsection (3) may be given in respect of -
 - (a) a specified person or persons of a specified class; or
 - (b) the holder or holders for the time being of a specified office or class of office.
- (5) A person to whom a power or duty is delegated under this section cannot delegate that power or duty.

Hon J.A. SCOTT: I would like some clarification. I note that almost identical things are happening. Proposed section 4A(4) states -

If the performance of a function is dependent upon the opinion, belief, or state of mind of the Director General it may be performed under the agreement upon the opinion, belief, or state of mind of the body or person with whom the agreement is made or another person provided for in the agreement.

I am having trouble understanding that. It appears to mean that something can be dependent on the value judgment of the director general, and that that value judgment can be passed on to the delegated person. Is that right?

Hon GRAHAM GIFFARD: The short answer is yes. I remind the honourable member of the example of the mechanic who is contracted to inspect vehicles. That would fit into that scenario.

Hon DERRICK TOMLINSON: I shall deal with proposed section 4A, even though we are dealing with the amendment to proposed section 4. That amendment may or may not have implications for proposed section 4A. Sections 4 and 4A of the Motor Vehicle Drivers Instructors Act 1963 are to be repealed and replaced with new ones. Existing section 4A provides the director general's functions, which are given to the director general by section 4, and relate to the administration of the Act. The section also states -

. . . the functions of the Director General include the exercise and performance of all powers, duties and responsibilities vested in or imposed on the Director General . . .

Those functions relate principally to licences, similar to the powers relating to the control of vehicles on off-road areas, with which we just dealt. Under this Bill and with the agreement of the director general, other persons

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may carry out the functions of the director general. Section 7(7) of the Motor Vehicle Drivers Instructors Act states -

The Director General may, by notice sent to the holder of a license, revoke or vary any conditions attached thereto or attach new conditions to the license.

The director general may revoke or vary a licence or can attach conditions to that licence. Under this Bill, that power could be contracted to a person who is not a public officer. That person, by agreement, could have power to revoke a motor vehicle drivers instructors licence. Is that the Government's intention?

Hon GRAHAM GIFFARD: I do not take issue with what Hon Derrick Tomlinson is saying. The approach taken in the drafting of this Bill was to enable the director general to have those delegation powers generally. We are not trying to anticipate or particularise every aspect of what that delegation discretion will allow. We want a general power of delegation, relying on the provisions of oversight and accountability to which officers are subjected, to ensure good administration of policy. We do not, in this provision, intend to provide a list of what those contracts might be and draw a line under them. We are providing a general ability to act.

Hon DERRICK TOMLINSON: It makes good sense to have legislation that allows that sort of flexibility in administration within the parameters set out by that legislation. I do not quibble with that at all. However, we are looking at some of the consequences of the Bill and then anticipating the unintended consequences. Proposed section 4A allows for not an authorisation or delegation but an agreement. The parties involved in that agreement might be an agency, a police officer, a local government authority or any other person, who may not necessarily be a public officer. If the Bill is passed, an agreement could be entered into allowing those people to issue licences for a motor vehicle drivers instructor. I have no quibble with that. That is desirable. The conditions of the agreement will be determined by the director general, and the agreement will set the limits to what the other person may or may not do. However, does the Government anticipate that a person who enters into an agreement to issue licences could have the authority to revoke the licence? Proposed section 4A(5) states -

For the purposes of this Act . . . the performance by that body or person under the agreement . . . is as effectual as if it had been done by, to, by reference to . . . the Director General.

In other words, that person could have the authority and legal power to revoke a licence, and be required to face any legal consequences of revoking the licence.

Hon GRAHAM GIFFARD: I agree that the scenarios painted by Hon Derrick Tomlinson are possible. He asked if I anticipate those things happening. The answer is no. He is alluding to something that might be possible; we certainly do not anticipate it happening.

Hon Derrick Tomlinson: Perhaps we should.

Hon MURRAY CRIDDLE: The further we go the more concerned I get. Who has the responsibility in the process outlined by Hon Derrick Tomlinson?

Hon GRAHAM GIFFARD: If the director general enters into a contract with a private person and things go wrong, the statutory responsibilities remain with the director general.

Hon MURRAY CRIDDLE: If the director general has that responsibility, what is the responsibility of the minister for a person who has the powers of the director general, as the powers may well be delegated?

Hon GRAHAM GIFFARD: In the instance of a person entering into a contract with the director general, the responsibility lies with the director general, who is then responsible to the minister. That person under contract is not responsible directly to the minister.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 15 and 16 put and passed.

Clause 17: Section 3QA and 3QB inserted -

Hon GRAHAM GIFFARD: I move -

Page 10, after line 26 - To insert -

- (3) If a person is not employed in the Director General's department, a power or duty can only be delegated to the person under this section if the person has been approved by the Minister for the purposes of this section.
- (4) An approval under subsection (3) may be given in respect of -

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- (a) a specified person or persons of a specified class; or
- (b) the holder or holders for the time being of a specified office or class of office.
- (5) A person to whom a power or duty is delegated under this section cannot delegate that power or duty.

The comments I made about the amendment to clause 5 also apply to this amendment.

Hon DERRICK TOMLINSON: We may have struck a hook. So far we have dealt with generic terms of the Bill dealing with what are essentially similar functions to the issue of licences and so on. I accept all the comments made by the parliamentary secretary. However, proposed section 3QA(1) states -

The Director General may enter into an agreement providing for the Director General's functions under this Act that are described . . .

The functions of the director general in the Motor Vehicle (Third Party Insurance) Act 1943 include those in section 3R headed "Issue of policies of insurance". Section 3R(2) states -

No person other than the Director General, on behalf of the Commission, shall issue any policy of insurance under or for the purposes of this Act, and subject to this Act it shall be the duty of the Commission to cause policies of insurance to be issued . . .

The Director General is directed to remit the total amount of insurance to the commission and he is also directed to pay the Treasurer. They are the functions of the director general under the Act, as section 3R(2) states -

No person other than the Director General . . .

What then are the consequences of proposed section 3QA, which states that -

The Director General may enter into an agreement providing for the Director General's functions under this Act that are described in the agreement to be performed on behalf of the Director General.

Hon GRAHAM GIFFARD: I am advised that the contracts that Hon Derrick Tomlinson is referring to are prescribed under the Motor Vehicle (Third Party Insurance) Act, which I may need to check. Regarding the question of insurance policies, difficulties would arise with the issuing of a licence if the director general were not able to make those contracts. The functions provided for under section 15C of the Transport Co-ordination Act enable the making of the contracts to which Hon Derrick Tomlinson is referring. As I said before, these are not new arrangements or provisions in that sense.

Hon DERRICK TOMLINSON: Are we moving into new territory different from that which was previously considered? I refer to the Motor Vehicle (Third Party Insurance) Act 1943 and section 3R, which is headed "Issue of policies of insurance". The difference here is that there is a prohibition: no person other than the director general. It does not say that the director general, on behalf of the commission, may issue any policy, but that no person other than the director general can do that. That is a clear prohibition. That clear prohibition under section 3R is now to be followed by an agreement under proposed section 3QA, which states -

- (1) The Director General may enter into an agreement providing for the Director General's functions under this Act that are described in the agreement to be performed on behalf of the Director General.

The director general's function is to issue an insurance policy. I know that motor vehicle third-party insurance policies are issued at the same time as motor vehicle registrations. My wife pays motor vehicle registration annually. She pays her motor vehicle third-party insurance policy, which is issued by the director general of the department, at the same time. My concern is that we are using generic phraseology. However, that generic phraseology seems to be in conflict in proposed section 3QA and existing section 3R. Section 3R is not amended by the Bill; it remains intact. The prohibition under section 3R(2) is clear, and states -

No person other than the Director General . . .

If no person other than the director general may do those things, the director general cannot enter into an agreement to have somebody else do those things on his behalf.

Hon GRAHAM GIFFARD: Under section 15C(2) of the Transport Co-ordination Act, it is possible for agreements to be made with other persons -

. . . providing for such of the functions of the Director General under the Acts referred to in subsection (1) -

That includes the Motor Vehicle (Third Party Insurance) Act -

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as are set out in the agreement to be performed for and on behalf of the Director General.

There is no substantive change to the effect of that provision.

Hon MURRAY CRIDDLE: I was becoming concerned before, but now I am a little more than concerned. We need to get a clear resolution of where we are going before we can go much further in this debate. There needs to be some clarity of the situation. There seems to be a conflict between words in one section and words in another section. I will not be happy unless we can get a resolution to that.

Hon DERRICK TOMLINSON: I apologise to the parliamentary secretary but I was distracted while he was answering my concern. Can he assure me that the prohibition contained in section 3R(2), that no person other than the director general should carry out that function, is legally compatible with the agreement for the conduct of that function?

Hon GRAHAM GIFFARD: Hon Derrick Tomlinson referred to an anomaly. Although I do not hold up these arrangements as ideal ways to construct legislation, the approach in drafting the Bill has been to make only necessary changes to give effect to the intent of the Bill. The provisions and mechanisms that we are now looking at in proposed sections 3QA and 3QB are arrangements that can be entered into by virtue of section 15C of the Transport Co-ordination Act. At some stage down the track we might look at addressing that or tidying it up - whatever term one uses. The point I make is that it is a minimal change to the processes that currently exist. That was the general approach to the Bill.

Hon DERRICK TOMLINSON: What appears to be a simple tidying up of the legislation may have serious consequences for persons caught by it. The law, under section 3R(2) of the Motor Vehicle (Third Party Insurance) Act, states -

No person other than the Director General, on behalf of the Commission, shall issue any policy of insurance under or for the purposes of this Act -

If the director general, acting under the powers of proposed section 3QA, which is in conflict with a prohibition in section 3R, were to allow a person other than himself to issue an insurance contract, would that contract be void or valid? If my wife were to pay her motor vehicle registration fee with a third-party insurance component and then write off her car, the neighbour's car and do all sorts of irreparable damage to other people, would she find that she was not covered because the insurance policy was issued by a person other than the person authorised to issue it? Although the Bill might simply be tidying the legislation, my concern is that while that process is occurring, or while we are waiting for it to occur, there might be some legal implications for innocent parties.

Hon PETER FOSS: The point that has been raised by Hon Derrick Tomlinson is valid. The stated intention of this Bill is to break the nexus between a Bill and a particular minister. We would all agree that, with a few exceptions, there are good reasons for doing this. It is certainly a more orderly way of handling government. If this were a general Bill that allowed for any person to be changed, I would disagree. The Attorney General has control of certain matters of which he should continue to have control. During this session of Parliament, we have placed some matters under the control of the Attorney General. As a general rule, that is good. The Bill seeks to provide that where a power has been given to the chief executive officer, the chief executive officer can delegate the power. Indeed, this is starting to happen more and more, and, in many instances, such measures are sensible. It would not be a good business process if everything had to be done by a chief executive officer. Indeed, we have all had to sign vast quantities of documents. However, as with a minister, there are also exceptions. There is a provision to delegate power because when somebody is granted a power they are not normally granted the power to delegate.

We seldom find an express prohibition in an Act of Parliament. Hon Derrick Tomlinson has pointed out that there is an express prohibition in the Motor Vehicle (Third Party Insurance) Act 1943. The Government is not just tidying up the ordinary machinery of government; this is a major change in policy, because the Act specifies that power cannot be delegated. Past practice may have been to ignore the express prohibition of Parliament. We are being asked to pass legislation that will put in place the process that is being followed on the ground. We have reason to be concerned. Firstly, in practice, has Parliament's express prohibition been ignored? I would certainly like to know whether Parliament's express prohibition has been ignored in the past. Secondly, why is the Government going beyond what is an omnibus-type arrangement and dealing with the machinery of government, not the policy of the Act? The Government should not be going beyond the machinery provisions that allow for the freeing up of whom the minister can appoint. Indeed, it is inserting a general power of delegation and reversing an express prohibition of Parliament. Such provisions should not be in the legislation. This matter must be clarified. The point made by Hon Derrick Tomlinson is that the two conflict; the Act states "no person" other than the director general. That is fairly clear. If it states "no person", we must read it to mean

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“no person”. If there is a conflict, do we intend to change the policy of what is in the Act? If so, what is the reason for changing the policy?

Hon GRAHAM GIFFARD: As I said, the Government is not seeking to insert new policies or provisions. The approach of the Bill is to transfer the general powers from the Transport Co-ordination Act into the Motor Vehicle (Third Party Insurance) Act. I am unable to provide a legal opinion about the issues raised by Hon Derrick Tomlinson. The provisions that are contained in the Transport Co-ordination Act enable the same measures that are being proposed under the delegation powers. The Government is not seeking to override a general prohibition.

Hon Peter Foss: Are you saying there will be no power for any other person to do it?

Hon GRAHAM GIFFARD: It allows the ability to enter into the contracts.

Hon Peter Foss: So, it does allow delegation?

Debate interrupted, pursuant to standing orders.

[Continued on page 11098.]

Sitting suspended from 3.45 to 4.00 pm