APPROVALS AND RELATED REFORMS (NO. 1) (ENVIRONMENT) BILL 2009

Second Reading

Resumed from an earlier stage of the sitting.

HON GIZ WATSON (North Metropolitan) [5.03 pm]: Before we broke for questions I was in the middle of a sentence, and if I do not finish the quotation, it will not make sense. Did the Minister for Transport say something?

Hon Simon O'Brien: It was brewing, but I did not dare utter it.

Hon GIZ WATSON: I was quoting the Conservation Council of WA on this legislation. The sentence reads —

> However the most important aspect of appeals against the level of assessment is determining the amount of time the public should reasonably have to investigate the environmental case presented by a proponent, consult and prepare a considered response. The ability to have the response time extended to reflect the scale and complexity of the proposal will be lost with this provision.

The quote continues —

> The Minister —

That is, the Minister for Environment —

> has indicated that there will be an additional administrative step providing for 'consultation' on the level of assessment. This step (if genuine) may well take longer than allowing for appeals and does not have the certainty of legislative backing.

That is really important. As much as we acknowledge that it is a useful addition to the process to have that consultation up-front, as it were, in the assessment process, it does not have a legislative backing and it can be changed at any time. The Greens, and others, are really concerned that we may be relinquishing this provision on the promise of an administrative alternative that has no standing and can be changed in the future at any time. As a consequence, we are likely to face a situation in which the government soon removes these administrative procedures with no public or parliamentary scrutiny or right of appeal.

The Conservation Council summaries its concerns about this bill —

> It is extremely unlikely that this Bill will meet the Governments stated objective of improving the timeliness and certainty associated with the existing project 'approvals' process ... On the contrary it is likely that these proposed changes will lead to further delays and uncertainty for developers, including the heightened prospect of court challenges to decisions.
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> … This Bill would significantly reduce public transparency, accountability and involvement in environmental decision-making … at a time when the Western Australian public are becoming increasingly aware of, and interested in decisions that affect the environment, and at a time when enhanced public participation will be crucial in finding solutions to the environmental crises we face globally.
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> … This Bill is directly at odds with pre-election commitments made by the Barnett Government to 'open and accountable Government' and 'best practice' environment legislation.

And, finally, the council states that to allow passage of this bill at this time would be irresponsible as it must be considered in the context of the full suite of changes to the Environmental Protection Act and other important legislation that is part of this package that this government is pursuing. These other legislative changes are part of the approvals reform agenda, as has been flagged by the Premier. The passage of this bill should at least be delayed until such time as the Parliament and the WA public have a full understanding of the proposed changes in totality. That would be an open and accountable process, in our view, and would best serve the public interest and indeed the interests of good environmental management in this state.

Unfortunately, I do not see that that is going to happen, but I look forward to the more detailed analysis of this bill in the committee stage and flag that the Greens (WA) are supportive of the recommendations that have been made by the Standing Committee on Uniform Legislation and Statutes Review and will be supporting the amendments recommended by the committee.

HON MAX TRENORDEN (Agricultural) [5.08 pm]: I will put in a quick effort on behalf of the National Party. I am sorry to say that I was here in 1986—I was not in this chamber, but I was down the road a bit—so I have seen the Environmental Protection Act over the full time of its operation. I have to say—I say this tongue in cheek—that a lot has matured since then, including me. We have seen 25 years of practice, which is important to

note. The legislation came into being under a lot of controversy, and it is now operating fairly perfunctorily. Many of the arguments today are that some of the provisions that are being removed from this legislation have either never been used or rarely been used. It is important to review legislation after a passage of time. From the National Party's point of view, this review is overdue, and we welcome it.

The press, the internet and public meetings are the main conduit for the public. That approval role has evolved over the 25 years since the inception of this legislation to become a smooth process. People who get involved in the environmental approval process know the rules, and both sides know exactly what they are doing. It is now a smooth process. In recent years there have been very few contentious outcomes from the Environmental Protection Authority. It is important to look at how we should handle this bill. Getting environmental approval is an extensive and expensive process and warrants speeding up. Time is important in all matters. The National Party is not going to stand before this house and say that time is or is not important in going through key processes. We want the time to be taken. On the other hand, we do not want time to be wasted. Our argument is that when it is clear that a matter is going to progress, let it progress. Where there is contention, there will be contention, and this bill allows for that contention to go on.

Any argument that we should not progress the Approvals and Related Reforms (No. 1) (Environment) Bill before the federal Parliament has had a look at it must be put to us with tongue in cheek; there is almost no chance that the federal government will oppose the provisions of this bill. That is simply not the way that state and federal governments interact with each other. When this bill has passed—and it will pass—and is examined in a collaborative manner by the state and federal governments, it will be passed in that context as well, as sure as the sun will rise tomorrow morning. Therefore, we do not agree that we should wait for any federal process. It does not matter who wins in a few weeks because, again, this will be a decision made by bureaucrats in the Western Australian process and bureaucrats in the federal process, so it does not pose any particular problem.

Time, as I said, is important to many people. The old saying is "time is money", but time is many other things. Many projects have important time considerations other than the time-is-money factor. All sorts of international agreements and other mechanisms have to be taken into account in drawing up a proposal; therefore, the National Party will support any speeding up of the process.

This mechanism has been used for 25 years; therefore, the removal of parts of the act used only a handful of times in 25 years is the correct way to handle this legislation. If provisions in the act are not being used, they should be taken out. The land-clearing provisions for country regions are the area of the legislation that causes the Nationals the most pain; therefore, having people deal with only the Department of Environment and Conservation is an improvement. In the past the problem was that it was too easy for the Environmental Protection Authority and DEC to pass the ball, leaving the proponent not really knowing whether the fundamental objection was from the EPA or DEC and unable to find out that information. I have had personal interaction with a range of people who became very ill in trying to deal with this mechanism because they could never quite grasp the nub of the problem. I do not intend to speak for long on this issue, but I could tell members of many individuals who for many years, the better part of 20 years—most of the life of the act—had been trying to find out what the main cause for not allowing them to clear land was, and they never ever had those issues substantiated. There are few changes to the land-clearing provisions, except that land clearing will become DEC's responsibility, which, as far as we are concerned, is a step in the right direction; at least people will not have to deal with two agencies on this matter.

Despite the emotion involved in environmental conflict, the important point is that this legislation has been around for 25 years. We have dealt with this legislation for 25 years and the volatility, heat and great tensions around this legislation that I experienced when I was first in this place have dissipated over the years. This legislation has now come down to a function and a purpose, and the review of that function is important; therefore, we support the passage of this bill. I read the Standing Committee on Uniform Legislation and Statutes Review report, and we can talk about that as the day goes on, but in general the passage of this bill has National Party support.

HON LYNN MacLAREN (South Metropolitan) [5.14 pm]: I rise to comment on the Approvals and Related Reforms (No. 1) (Environment) Bill, to support the comments made by Hon Giz Watson and to oppose this bill.

I will make a couple of points about this legislation. The government is attempting to push through the environment approvals and related reforms. Members will be well aware that I spoke strongly about the planning approvals and reforms that, unfortunately, went through and are currently being considered in the other place again because of changes that we discovered in this house were necessary through very careful assessment in the time that we were allowed to look at the Approvals and Related Reforms (No. 4) (Planning) Bill. I remind members that in the planning bill the government posed the idea that the local government sector cannot be

trusted to make proper decisions in many cases so it should take those decisions away from local government. Less explicit, but still a factor, was that the State Administrative Tribunal somehow could not be trusted to oversee local government decision making either, so the government had to invent these new planning bodies called development assessment panels. The parallel with this environment bill is that the premise seems to be that community appellants cannot be trusted to use all of their appeal rights; therefore, if they cannot use them properly, the government will take some of them away. I do not believe that this bill will take any rights away from the proponents, and I think that is an indication of which lobby group is calling the shots for this government.

There are other parallels between the planning bill and this environment bill. The planning bill centralises the planning powers at the expense of local government. It says to the community to trust the state decision makers more—we know best—and that there are some inadequacies amongst the local government decision makers; therefore, the state decision makers are superior in their decision making. In the environment bill we are seeing this again in that it says to the community to trust the Environmental Protection Authority more; therefore, it says that this authority is actually better at making decisions than members of the community. In some cases this bill says that we are to trust the environment minister more as well. That is perhaps false logic.

Despite what Hon Max Trenorden just indicated to us, this environment legislation has not served the environment in Western Australia well. We are on the precipice of losing lots of threatened species. We have seen degradation of the environment at great cost to our ecosystems. We are currently seeing threats to our groundwater from overdevelopment. I question whether the logic that Hon Max Trenorden has just presented is at all valid. In fact, this bill says that good governance is not about trust per se; it is about making decision makers accountable in case mistakes are made. In the planning bill, the government looked to improve transparency; yes, that is true; we will give it that. We will be able to see those decisions; they will be transparent. However, the bill removes accountability. Therefore, rather than being able to make decisions based on the information tabled—we will not be in a decision-making capacity—we will be able to only look at it. The environment bill uses the word "accountability" at times, but in reality the bill will reduce accountability in that it either simply retains the current accountability mechanisms or replaces them with transparency mechanisms in the same way that the Approvals and Related Reforms (No. 4) (Planning) Bill does.

Finally, I make the point that environmental groups and concerned individuals will have the capacity to find out about the environmental damage that they can expect in their areas of interest, but they will have even less capacity to actually do something to try to prevent that harm. Therefore, I oppose the Approvals and Related Reforms (No. 1) (Environment) Bill 2009.

HON ALISON XAMON (East Metropolitan) [5.20 pm]: I also wish to express my concerns about the Approvals and Related Reforms (No. 1) (Environment) Bill 2009. I will not repeat all the things that have been extensively covered by my colleague Hon Giz Watson. I feel that she has very thoroughly outlined the concerns of the Greens (WA) about this bill. I certainly share those concerns. I also share the concerns voiced by my colleague Hon Lynn MacLaren. When this Liberal government came into power, one of the things that it made very clear was that it had a key commitment to be more open and accountable as a government. I think this bill fails to meet that commitment. I am very concerned about that. This bill is retrograde in the way that it deals with environmental approvals. It is taking away our appeal rights. I do not think that is governing in good faith. It will have a negative impact on environmental accountability and public participation within the planning and approvals system. The proposed changes will remove the right for members of the public to appeal against the levels of assessment for proposals, which are likely to have a significant effect on the environment in cases in which there is concern that the Environmental Protection Authority has assessed the level of assessment required as being too low. I have personally taken advantage of these provisions in the past and have been successful in having EPA assessments upgraded as a result. Personally, I am concerned that these may be removed, because it has been a very important element in the act. I think this has been an appropriate appeal right and it really needs to be maintained.

I am also concerned about the changes to derived proposals; namely, if proposals are declared as derived, they will not be able to be appealed because the declaration of derived is, in effect, determining that the impacts of a proposal have already been adequately assessed. I also know from speaking to many people that numerous other concerns have been expressed by the community and by environmental groups about how people will be notified about assessment and about time frames for appeal. I am concerned that the proposed amendments simply do not recognise the sorts of limitations that environmental and community groups and individuals already have to work within when they feel that they need to appeal.

The Environmental Protection Act has long been considered to be best practice nationally. I have no problem with the idea of undertaking a review of the act if necessary. I do have a problem if it means that the review will

simply result in weakening those provisions further rather than looking at ways to genuinely improve and upgrade those processes. As I said, community and environmental groups already have an uphill battle if they are concerned about environmental approvals. They are desperately under-resourced, or often they have no resourcing whatsoever. It has been frustrating for me over the years both as an activist in this area and now as a parliamentarian that when I am giving advice to these community groups that are saying that they want to appeal, they want to know what their rights are and they want to know what they can do as they are very concerned about what is going on. The best that I can do is refer them to the Environmental Defender's Office. For those members who do not know anything about the EDO, it is a community legal centre that provides advice to community groups on issues of environmental law. It is grossly under-resourced. It has been under-resourced for years. I used to be on the board, so I know firsthand the sorts of problems that it has been dealing with. Importantly, it is never in the position of being able to run actual cases. All it can primarily do is give advice to community and environmental groups.

We are already talking about people who are battling—in this instance, often developers who have a lot of money, pretty deep pockets and the will and the tenacity to make things happen even if that is contrary to what is best for the environment and what is best for local communities. In my opinion, the last thing that we should be doing is looking at weakening the act to the extent that those rights will subsequently be taken away even further. I have considerable concern about that. I also have ongoing concerns about funding for the Environmental Protection Authority. I would argue that the funding for the EPA has been inadequate for years. I am also aware that it will need to assess a huge number of applications as a result of all the development that is occurring, particularly up north—we are also now looking at mines being developed all over the state. That will add even more pressure to the EPA at a time when we are also removing community rights.

We are absolutely going in the wrong direction. It seems to me that the act as it has existed for all this time achieved a happy medium, the correct medium. I say that because for years and years I heard people talk about how they wished that the act could be strengthened to improve the capacity for people to appeal even further. Clearly, we are seeing the opposite side of the coin whereby developers are concerned that they felt it was too stringent. It seems to me that we must have been right and it was working. It has been working. It has achieved that happy medium. It is incredibly disappointing that we are messing with something that has worked for so long and that has been considered to be best practice nationally for decades. I will certainly be opposing this bill. I urge the government to reconsider its whole approach.

HON DONNA FARAGHER (East Metropolitan — Minister for Environment) [5.28 pm] — in reply: I thank members for their contributions to the debate on the Approvals and Related Reforms (No. 1) (Environment) Bill 2009. Much has been said by all members who have spoken about the report of the Standing Committee on Uniform Legislation and Statutes Review. I intend to respond to some of the main recommendations, albeit, as has been noted by Hon Giz Watson, I have tabled the government response. Some of it will be duplicated but I am happy to go through it in any event.

Before I go through some of the detail of the recommendations of the report, I wish to respond to some of the comments that were made during the second reading debate. In general terms, the proposals that have been put forward in this legislation were developed as part of the director general's working group, but the specific environment-related matters were developed by the Director General of the Department of Environment and Conservation and the chairman of the EPA, who also sits on the director general's working group. It is fair to say that the director general of the department, as well as the chairman, live and breathe the Environmental Protection Act and are obviously very considered and very experienced in their advice to me on the provisions within that act. They also reflect discussions that have been had in other forums. They reflect proposals put forward through the EPA. I will elucidate further on this later. They reflect further on the intentions of the previous Labor government, albeit in a slightly different way. It is interesting that in some of these elements members opposite have indicated their opposition to those quite sensible amendments.

Some of the contributions to the debate indicated that the Approvals and Related Reforms (No.1) (Environment) Bill 2009 will not solve all environmental impact assessment problems whether an assessment involves a third-party appellant or a proponent. I never suggested that it would. However, the government believes that the bill provides sensible amendments that complement the work that is being done by the Environmental Protection Authority and the Office of the Environmental Protection Authority and, specifically, the report that it released in March of last year. Its recommendations, which it is following through, include moves to more outcomes-based conditions, risk-based assessments, time line improvements and all those sorts of things. It also complements other initiatives that are being considered by the government through the recommendations arising from the Environmental Stakeholder Advisory Group, which was chaired by Dr Bernard Bowen. There has been a suggestion that the government has not taken on board any of the views expressed by that group. That is incorrect. Indeed, the first report that was provided by that group to me as minister included the very significant

matter of the role of the Environmental Protection Authority. Last year this government made a significant decision to establish the Office of the Environmental Protection Authority. I note that Hon Giz Watson is looking at me. She will probably agree with me when I say that when it comes to environmental issues, it is not often that there is bipartisan support from one end of the spectrum to the other. It is fair to say that the government's decision to establish the office received broad support across all sectors of the community. I am sure that Hon Giz Watson agreed with that decision.

Hon Giz Watson: I made that comment in my second reading contribution. My only concern relates to the resourcing and whether it will be adequate, not the separation.

Hon DONNA FARAGHER: I am making the point that, as part of the group, clear advice was provided to us, which we took on board. I note that Hon Sally Talbot also supported that move; I was pleased to hear that. During her contribution to this debate she said that the Labor Party was going to do exactly the same thing. I will digress for a moment to say that Hon Sally Talbot often says that the Labor government was going to do something even though it never did. When Hon Sally Talbot says those sorts of things, I check the accuracy of her comments by talking to a range of people, including officials. When I do so, that comment is met with some surprise. Clearly, the Labor government's decision to do exactly the same thing was very secretive because no-one else seemed to know anything about it.

The bill complements the work that is being done by the Environmental Protection Authority and the department to improve application time lines, whether they relate to part IV and the environmental impact assessment process or issues relating to clearing permits. When we came to government, it took more than 100 days for the department to deal with clearing permit applications. The department now deals with clearing permits in about 60 days. I am pleased to say that in the June quarter that figure was reduced to about 32 days. That is a positive step, because whether or not a person likes a decision, certainty in the process is important. I as the minister also have a responsibility to make decisions. If I do not make decisions, it counts for nothing. In that regard, in the past year I determined more than 560-odd appeals against 118-odd proposals. That is more than double the number completed in 2007 and twice the number of ministerial statements that were issued in 2007 under the previous government. Some people might ask why we need this bill given that the time lines have improved. We need these amendments. They are sensible amendments that deal with current and continuing issues with respect to the operation of the act.

I turn to the committee report. The government is of the view that the appeal rights that the bill seeks to remove are not essential to achieving the principles of transparent decision making. Furthermore, it is our strong belief—this is backed by advice from the Environmental Protection Authority—that the bill can proceed without finalising the bilateral agreement with the commonwealth. That was discussed at length in the report and is particularly dealt with in recommendations 6, 7 and 8. Under the legislation, rights of appeal will remain on the decision of the EPA not to assess a proposal other than when the EPA's decision recommends that the proposal be dealt with under a clearing permit and on its report and recommendations to the Minister for Environment under section 44 of the act. With respect to the recommendation 1 of the committee report, section 43 of the Environmental Protection Act provides that the minister may direct the EPA, after consultation with the EPA, to assess or reassess a proposal more fully or more publicly when the EPA has considered that a proposal should not be assessed by it, or during or after the assessment, but before the statement is issued under section 45. This bill proposes no change to that section of the act.

With respect to recommendation 2, a "strategic proposal" is defined in section 37B(2) of the act. I advise the house that the assessment processes under part IV, division 1 of the act for referral and assessment of proposals also apply to these proposals. In addition, the levels of assessment listed in the administrative procedures and appeal rights on the decision of whether to assess, as well as the report and recommendations of the EPA, also apply to strategic proposals.

Hon Adele Farina: Can I clarify whether that means that someone can appeal the level of assessment on a strategic proposal?

Hon DONNA FARAGHER: Yes.

With respect to recommendations 3 and 4—there was obviously considerable discussion within the committee about the role of the Department of Mines and Petroleum—DMP deals with environmental matters under the Mining Act and the various petroleum acts, but it does not undertake environmental impact assessments within the meaning of part IV of the act. Importantly, there is a memorandum of understanding between the Environmental Protection Authority and the Department of Mines and Petroleum that provides guidance as to where impacts are likely to be significant and that therefore trigger the requirement for referral. As I understand it, that MOU has been in place for many years.

A delegation can be made under section 20 of the Environmental Protection Act of a number of the CEO of DEC's powers in respect of part V, division 2 to the director general and separately to the office of the director of the environment division in the Department of Mines and Petroleum. This delegation applies to clearing done as a result of mining and petroleum activities carried out under the authority of the Mining Act and various petroleum acts or a government agreement administered by the Department of State Development. Under that delegation, the DMP administers the clearing provisions in accordance with the requirements of the act and decisions are made according to the same principles and rules as those made by the CEO of the Department of Environment and Conservation. The appeal rights for those decisions are the same as the appeal rights for decisions made by the CEO of the Department of Environment and Conservation. They are dealt with through the Office of the Appeals Convenor. I receive appeals regarding the granting of permits by the Department of Mines and Petroleum. That is not proposed to be changed under this legislation.

With respect to recommendation 5, under clause 2 of schedule 6 of the act, clearing in accordance with an implementation agreement or a decision made by the minister under section 45 is an exemption from the requirement for a clearing permit; in other words, the Environmental Protection Act envisages that clearing will be dealt with either under the environmental impact assessment process under part IV, or under a clearing permit process under part V. In the case of works approvals and licences—I think there was perhaps some misunderstanding within the committee—there is no such exemption, and activities relating to prescribed premises may require both ministerial consent under section 45 and a works approval and licence under part V, division 3 of the act. In addition, there are no appeal rights against the grant of a works approval or licence, as appeal rights attach only to the conditions of the works approval or licence or refusal. Therefore, it is fair to say that the range of appeal rights is not as broad as those that apply for a clearing permit.

With respect to recommendations 9 and 10, the administrative procedures are based on the powers in section 122 of the Environmental Protection Act, and are an expression of the principles of the environmental impact assessment process and the procedures to guide the administration of that assessment. The administrative procedures set out procedures that increase public involvement, availability of information and reporting over and above that required by the act.

Hon Adele Farina: But they can just as easily reduce public involvement.

Hon DONNA FARAGHER: I will get to that. The transparency of the environmental impact assessment process ensures that any inconsistency with the administrative procedures would be apparent to both the proponents and the community, and, importantly—this is a recommendation that has been made, and I know that there is an amendment before the house with regard to this—the Environmental Protection Authority has never made, nor does it support, I might add, its administrative procedures as regulations. That has been the case since the commencement of the Environmental Protection Act. Given all that, the government does not support recommendations 11 to 17 and 19, which cover many of the issues that I have raised.

With respect to recommendation 18, the government thanks the committee for advising of this error. I will be moving amendments—they are on the supplementary notice paper—that achieve the changes identified by the committee.

With respect to recommendations 20 and 21, it is intended—I think some clarity was requested by the committee about this—that the EPA's consent to what is minor and preliminary will continue to be an administrative process. It is based on the significance of the environmental impact of the works and whether the works are deemed necessary and incidental to the proposal being assessed. The amendments proposed do not extend the ambit of what the EPA considers to be minor or preliminary.

I now turn to some of the other comments—these are perhaps more general comments made by a number of speakers relating to the bill and how it has come before this house. With regard to the comments relating to the Environmental Stakeholder Advisory Group on appeals and the review of environmental impact assessments, Hon Sally Talbot suggested that the changes proposed are not reflected in those reports. Can I say that ESAG, if I can call it that, put forward some very strong and good recommendations on how the process could be improved. The government is considering those proposals specifically regarding appeal rights and the use of the State Administrative Tribunal. I am considering that at the moment. The recommendations of the EIA review, which was the EPA review, are being implemented progressively, and have been for some time. It continues to have a stakeholder reference group, to which Hon Sally Talbot referred, I think. That reference group still continues, and it receives regular reports on the implementation of that report. In both cases, the reports of these groups are considerably broader in scope than the bill before the house, which, as I have said, has its origins in the work that was undertaken through the directors general working group, which included the chairman of the EPA.

I think Hon Sally Talbot, in particular, questioned measures in the bill and how it will improve time lines. The appeals process is an incredibly resource-intensive process. The Office of the Appeals Convenor does an incredible job. I think we would all agree that the work that Anthony Sutton and his team at the Office of the Appeals Convenor do is outstanding, and the quality of the reports and the advice that he provides to me in the course of, at times, some very complex appeals is excellent. However, it is not in the interests of timely decision making nor is it an effective use of resources when we have duplicative appeal points in the system; by that I mean when there are other opportunities for third parties or proponents to appeal at different stages of the process. The average time for determining the types of appeals that we are proposing to remove is about, or in some cases more than, 100 days. When we consider that further opportunities for appeal that arise at later stages or at different stages of the process also potentially take more than 100 days, clearly we need to examine whether there is a better way of dealing with these matters. As I have said, it is resource intensive, but it is often an adversarial process. That is why some of the matters that we are dealing with through the EPA, with greater concentration at the beginning of the process and at the end before the EPA provides a report to me, are designed to reduce that process.

I will correct the assertion of, I think, Hon Adele Farina that the administrative procedures of the EPA can be changed at the whim of bureaucrats—I think that was the term used—without the minister's knowledge or, indeed, the scrutiny of Parliament. That is not an accurate reflection of how the administrative procedures operate or are put in place. These procedures are provided for and gazetted under the provisions of the Environmental Protection Act. Proposed changes to the current administrative procedures have been in draft form, and they have been the source of significant consultation by the EPA with its environmental stakeholder group and, indeed, anyone else who has a significant interest. It is important that —

Hon Adele Farina interjected.

The DEPUTY PRESIDENT (Hon Helen Morton): Order! Hon Adele Farina, the minister is not taking your interjections, so would you please allow the minister to continue her speech and raise those matters at an appropriate time during the third reading.

Hon DONNA FARAGHER: Thank you, Madam Deputy President. I will just say, and I have said it before, that if the member wants to put these through as regulations, that has never been the case before, and all of a sudden it is an issue. The act has been in place since 1986, and all of a sudden Hon Adele Farina wants to change it, with no real reason for why that is the case. The fact is that the EPA has undertaken, and will continue to undertake, important community consultation, whether that is through its environmental stakeholder reference group or other processes, depending on what issue it might be dealing with. I think the member gave an example that administrative procedures have changed in the past, such that officers have discontinued the practice of consulting on conditions prior to the release of a report and recommendations of the Environmental Protection Authority. As I have said, there may have been a practice of consultation occurring in the past, but it was never included within the EPA's administrative procedures. I, obviously, was not the minister at the time, but perhaps that practice, at that point in time, ended; however, there is a clear commitment by the EPA to have that early consultation, and I mentioned that in the house before we rose for the winter break.

I want to make a couple of points on the removal of an appeal point on the decision of the EPA not to assess a proposal when a recommendation is made that the proposal be dealt with under the native vegetation clearing provisions of the act. There have been a number of occasions since the introduction of the clearing provisions when appeals have been lodged both on a decision of the EPA not to assess and on the clearing permit decision, and they are both on the same grounds. That is clearly not an effective use of resources. It might be said that that does not happen, but I see the appeals when they come to me and often they are the same. It is a duplicative appeal point. I also make the point that, under the act, in his decisions on whether to grant a clearing permit under part V, the chief executive officer—the director general of the department—must take into account any significant environmental impacts that are not related to clearing, consistent with the overall objects of the act. The broader environmental impacts of a proposal can be, and indeed are, considered as part of the clearing permit application. The appeal processes can still flow from that. If we were removing the appeal points on both the decision not to assess because it could be dealt with under part V and the granting of the permit, a case could be made that we are removing two appeal points, and that there is no opportunity for third parties to appeal to the minister; however, we are not proposing that. The duplication of the appeal points has long been recognised. I will come back to my opening remarks, and say that it was recognised by the then Minister for the Environment—one of many, I must say, in the Labor government—Mr McGowan, who said, on 30 November 2006 in a statement to Parliament —

> I will be initiating amendments to the Environmental Protection Act 1986 and to the Environmental Protection (Clearing of Native Vegetation) Regulations 2004, which will improve efficiencies while

> respecting the overall integrity of the clearing controls. The amendments will remove duplication of appeals, make the appeal period consistent with other appeals under the Environmental Protection Act 1986, and provide a continued exemption for exploration activities outside environmentally sensitive areas, with the clear expectation that the mining and petroleum approvals will include strict environmental requirements such as rehabilitation.

The then Minister for the Environment, the member for Rockingham, took the view that these were duplicative appeal points, and he sought to address that. He did so in a slightly different way, and perhaps actually even wanted to go further than this government, and I have a copy of a discussion paper —

Hon Sally Talbot: He was twice the minister you are!

Hon Norman Moore: What a pathetic comment to make, considering what has just been pointed out to you!

Hon DONNA FARAGHER: She does not like hearing it when it is pointed out that perhaps the then Labor government was actually prepared to do something, albeit it did not.

According to my notes, this discussion paper states that although it is appropriate that a third party has a right of appeal to the minister against the conditions set on a clearing permit, it is unnecessary for a person to be able to appeal the decision of both the EPA on assessing a clearing proposal and the CEO on the grant of a clearing permit on the grant of the clearing. It is therefore proposed to amend the EP act so that a third party can appeal only the conditions imposed on a clearing permit.

Hon Sally Talbot was the parliamentary secretary representing the Minister for the Environment in the previous government, so she should have known that the then government actually wanted to remove the appeal on the granting of the clearing permit. Indeed, it was going to allow an appeal only on the specifications contained within the permit. Clearly, it was going to remove an opportunity for a third party appellant to appeal whether a clearing permit should have been granted. Under the previous government that appeal right would have gone. We are not proposing that change.

Hon Adele Farina: You're making a huge leap in your logic.

Hon DONNA FARAGHER: I am not making a huge leap, I am reading a document and *Hansard*, which states that the then Minister for the Environment was going to do much the same thing, if not go that bit further. I am not quite sure of the logic of the current opposition to now not support that.

Hon Norman Moore: They have been captured by the left!

Hon DONNA FARAGHER: I would like to know what happened in caucus when this was debated and whether the member for Rockingham had a view, or whether he was silent on it. I hope this legislation will pass this house, and that when it does go to the other house, the member for Rockingham will support what the government is seeking to achieve.

Hon Norman Moore: Otherwise he'd be a significant hypocrite!

Hon DONNA FARAGHER: That might well be the case. I will certainly be letting the Minister for Water know, because he represents me in that place, and I am sure he will remind the member for Rockingham, just in case he has forgotten.

Hon Sally Talbot: I think he's a bit busy!

Hon DONNA FARAGHER: On the issue of the proposal to remove an appeal point for the derived proposal, the concern has been raised that we would object to that on the basis that we really have not had any strategic proposals. Members might ask themselves why that is the case and why it has been used so infrequently. Strategic proposals have a very important place, which is a view that I and the EPA share. In dealing with complex planning for industrial estates or other strategic planning matters, I believe—as does the chairman of the EPA—that strategic proposals can, and should, be used. That would ensure that developments occur in an organised rather than an ad hoc way, and I think people agree that that should result in a significant benefit to the environment because matters are dealt with in a consistent way.

Hon Adele Farina: What is your idea of a strategic proposal?

Hon DONNA FARAGHER: An appeal point will continue to exist in relation to the strategic proposal and the report and recommendations that flow from that assessment. Although an appeal point will no longer be attached to the declaration that a proposal is a derived proposal, the EPA chairman is, nevertheless, bound by strict requirements under the act. As part of those requirements, the derived proposal must have been contemplated by the strategic proposal and be subject to the same conditions. I would suggest that there is no way that the chairman of the EPA would give the go-ahead to a derived proposal if he thought—or indeed the authority

thought in any way—that it was not in keeping with the strategic proposal on which it had made an assessment and placed conditions upon. I think that it is a bit of an ambit claim that the chairman of the EPA would do such a thing; he just would not.

Hon Adele Farina: How can you be so sure?

Hon Sally Talbot: That is ridiculous!

Hon DONNA FARAGHER: Members do not have confidence in the independent chairman of the Environmental Protection Authority; is that what members are saying?

I think I have covered most of the matters that have been raised by members in the second reading debate. We believe that the amendments being put forward in this bill are sensible, and they are important improvements to the system. I commend the bill to the house.

Question put and a division taken with the following result —

Ayes (18)

Hon Liz Behjat	Hon Phil Edman	Hon Col Holt	Hon Simon O'Brien
Hon Jim Chown	Hon Brian Ellis	Hon Robyn McSweeney	Hon Max Trenorden
Hon Peter Collier	Hon Donna Faragher	Hon Michael Mischin	Hon Ken Baston *(Teller)*
Hon Mia Davies	Hon Philip Gardiner	Hon Norman Moore	
Hon Wendy Duncan	Hon Alyssa Hayden	Hon Helen Morton	

Noes (12)

Hon Matt Benson-Lidholm	Hon Adele Farina	Hon Linda Savage	Hon Giz Watson
Hon Robin Chapple	Hon Lynn MacLaren	Hon Sally Talbot	Hon Alison Xamon
Hon Sue Ellery	Hon Ljiljanna Ravlich	Hon Ken Travers	Hon Ed Dermer *(Teller)*

Pairs

Hon Nick Goiran	Hon Jon Ford
Hon Nigel Hallett	Hon Kate Doust

Question thus passed.

Bill read a second time.

Sitting suspended from 6.05 to 7.30 pm

As to Committee Stage

On motion by **Hon Donna Faragher (Minister for Environment)**, resolved —

That the committee stage be taken at a later stage of this day's sitting.