

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

Committee

Resumed from 11 August. The Chairman of Committees (Hon Matt Benson-Lidholm) in the chair; Hon Donna Faragher (Minister for Environment) in charge of the bill.

Clause 1: Short title —

Progress was reported after the clause had been partly considered.

Hon SALLY TALBOT: We resume Committee of the Whole on this bill after a considerable period of interruption; therefore, it is worth briefly showing my understanding of where we are at. We have been debating clause 1 now for some time. Unfortunately, the excellent amendment moved by Hon Giz Watson to change the title of the bill by deleting “Approvals” and inserting “Assessments” was defeated. We never debate such a bill without a context. As we work through matters with this government, their contexts are constantly changing and shifting. In the couple of weeks since this bill was last considered, a number of things have happened to increase the Opposition’s alarm about what the government is trying to do with this bill. I bear in mind that the committee is still considering clause 1, and I intend to tie my comments, which I do not intend to spend much time on, to the context of the clauses of the bill.

Three quite extraordinary events have occurred in the past couple of weeks. I want to briefly remind members of those events, because when we look at a bill that has been brought into this place with the express intention on the part of the government to improve the process of assessing projects that may have some impact on the environment, it is absolutely imperative to get a feeling for how the government is moving in its approach to these things. Is there a substantive difference from other administrations in the way this government handles the whole question of appeals, approvals and assessments? Is it wreaking any significant change? The answer in the light of several events of the past couple of weeks is clearly yes.

I will refer to a couple of things. All of these issues have been canvassed in the daily newspaper either today or over the weekend. The first issue is the extraordinary proposal to start an underground coalmine in Margaret River. What is the government doing here? When I initially saw the proposal, my frank reaction was to think that we had a rigorous process to go through for such a project; that is, a project of that kind would have to scale a number of hurdles in order to get approval. On my first brush past the proposal, it looked to me as though it would have somewhere between no chance and Buckley’s of getting off the ground. I have had conversations about this issue with my colleagues on this side of the house, both from my party and the Greens (WA), and it is a widely held view that the project would not get off the ground. All of a sudden, because the government is under a bit of pressure from people in its own ranks, we see the government coming up with wild proposals. It is obviously applying more thought bubbles, and nothing has been particularly well thought through in relation to how to quickly swing measures into effect to protect Margaret River and its surrounds. This indicates to me that there is no planning or integrity in the government’s approach to proposals of this kind. All of a sudden we have, not recourse to process, but simply wild thought bubbles. When the government is pressed on exactly what it might mean by passing legislation to put special protection into effect, it has no answer, apart from, “Oh, girl—don’t ask us today. We’ll have to do a bit more work on that.” That is the first thing that makes a bill like this especially concerning for members on this side of the chamber.

The second thing I read in the last few days was that the clearing permit that the Department of Environment and Conservation has announced for the James Price Point gas hub complex is already in place. Hon Adele Farina raised in an earlier part of this debate the question about what kind of assessment the Environmental Protection Authority would recommend—would it be public or private? Hon Adele Farina pressed the Minister for Environment at some length on how decisions of that kind would be made. I clearly remember that Hon Adele Farina raised the issue of the Margaret River coalmine, an issue that she has been passionately advocating on behalf of the concerned members of the electorate that I share with the member. What was the minister’s response? I refreshed my mind of her response just before I came into the chamber to resume this debate. She responded that the government could hardly be unaware of some of the public concern about the Margaret River proposal. What is the minister saying to us? She indicates that the people at the EPA read the newspapers! Thank God they do! If that is the only way that the minister, her colleagues in the cabinet and her departmental officers have of deciding the level at which a proposal is going to be assessed, heaven help us! Thank goodness that the people in Margaret River, ably assisted by advocates such as Hon Adele Farina, have been able to get the issue on the front pages of all the newspapers.

We then come to the issue of James Price Point and find that the minister’s department has actually granted a clearing licence. The government has obviously not been reading the papers closely enough, because, surely, concern about the issue of the gas hub at James Price Point is of the same category as that being expressed about the potential coalmine in Margaret River. In fact, it would not be unreasonable for me to suggest that the way the

government is dealing with the proposal for a single liquefied natural gas hub in the Kimberley, if anything, has elicited even more outspoken opposition than is the case with the Margaret River coalmine.

Of course, the third thing is this extraordinary news that broke last night about the way the government responds to attempts—albeit, I must say, ham-fisted attempts—on the part of a major donor to the conservative parties —

Hon Donna Faragher: I would be very careful with what you say.

Hon SALLY TALBOT: The minister will get her chance to respond.

Hon Donna Faragher: I will.

Hon SALLY TALBOT: It seems an extraordinary way for the government to respond to what seems to me to be a fairly ham-fisted approach seeking special treatment. That is an issue that, clearly, we will pursue as we go down the track.

Hon Adele Farina: With great interest.

Hon SALLY TALBOT: With very great interest, as Hon Adele Farina said. All I want to do is remind honourable members on both sides of the house that we do not debate legislation of this kind in a vacuum. We always debate it in the concrete context of the issues being raised by the community in expressing its concern and the way those issues are being dealt with by the government. In relation to those three issues, surely the alarm bells are ringing about a measure that has as its stated objective the cutting of some of the red tape attached to approvals and assessments by removing points of appeal, removing public participation in the appeals process and removing the opportunity for third-party comment on proposals of enormous environmental significance. The minister clearly is keen to respond to some of my comments so I am happy to sit down and let her have her say.

Clause put and passed.

Clause 2: Commencement —

Hon ADELE FARINA: I note that this clause states —

This Act comes into operation as follows —

- (a) Part 1 other than section 3 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

We understand from what the government has said so far that the provisions to delete certain appeals will be replaced by an administrative process, which hinges in part on the community being able to notify the EPA that it has an interest in a matter by logging onto a website and providing that information. At the time the standing committee heard evidence on this bill, that computer system was not operational and it was expected to be some time before it would be operational. Can the minister give the house an update on the stage of the implementation of that computer program that will enable members of the community to flag their interest in proposals? Can the minister give an undertaking that no provisions of the act will be proclaimed prior to those facilities being available, so that members of the public can register their interest in any proposal that is being considered by the EPA and, in particular, can comment on the proposed level of assessment?

Hon DONNA FARAGHER: The member is right. Different dates will apply to different provisions to allow suitable time for new systems to be put in place. The latest advice I have is that implementation of the computer system is one to two months away. I am not a computer guru. I can say that the provisions related to the issues the member has raised will not be proclaimed until those systems are ready. However, given that some elements of this bill do not relate to that, they could be proclaimed earlier. The matters that are dependent upon the computer system will not be done until it is ready.

Hon ADELE FARINA: From what the minister said, I understand she might delete the appeal rights but not implement the administrative procedures until the computer system is up and running. My concern is that the appeal rights be not deleted until the administrative approvals are up and running, which would mean that the computer system will be up and running and there has been time to test it and people are able to log on and register their interest.

Hon DONNA FARAGHER: It is not the intention to remove the appeal rights until the computer system is ready for those elements that are relevant within this bill, given that other provisions in the bill do not require a computer system to deal with them.

Hon SALLY TALBOT: When the government first introduced this bill, it was my understanding that those administrative procedures were virtually ready and would be gazetted. I may be out by a couple of months here. I

think the first briefing I had on this bill was in January and the second was a couple of months later. At that time we were told that the admin procedures were virtually ready. Can the minister be absolutely clear about the hold up? Is it just the electronic hold up on the website or are the admin procedures still being drafted?

Hon DONNA FARAGHER: The issue of the systems, if I can call them that, is a separate issue. The administrative procedures are in draft and have been released for public comment. I understand they are ready to go but for a couple of minor technical wording issues.

Hon SALLY TALBOT: Thank you, minister. The minister said that the parts of the bill to which the new electronic notification will relate will not be put into effect until the electronic system is working. Can the minister be specific about which parts of the bill she is talking about?

Hon DONNA FARAGHER: It is the clearing-related provisions under part V, and the removal of the constraints of the decision-making authorities where minor works can be undertaken provided it is approved by the EPA. I think that is closer to the end of the bill. That part is not related.

Hon SALLY TALBOT: Does that not include the clauses that remove the appeal rights on level of assessment?

Hon DONNA FARAGHER: They will be delayed until the system is in place.

Hon SALLY TALBOT: Thank you, minister. I am choosing to talk about this matter in relation to clause 2; I guess it could be raised during another clause, but it seems to fit here. Once the new electronic system is operational, how proactive will the Department of Environment and Conservation, the Office of the Environmental Protection Authority and the minister's office be about ensuring that groups and individuals are on the notification list? This is quite a specific question. I need to know whether people will have to opt in to be part of the database. However the database is compiled, will information about who is on the database be publicly available?

Hon DONNA FARAGHER: There will be a number of mechanisms. Registration will be possible in so much that if people decide to go onto the Environmental Protection Authority website, they will be able to register and will receive automatic updates. In addition to that, when a proposal is put forward to the EPA, it will be advertised on the website, which will also provide an opportunity for people to put their names down. In addition to that, there are clearly key groups that the EPA knows will have an interest in assessment matters, and they will automatically be placed on the website. That would involve the EPA liaising with the relevant groups to advise them they have been automatically put on. That will involve proactive activity on the part of the EPA, but there will also be an opportunity for anyone to register at any time. That is how it is intended that the system will work.

Hon SALLY TALBOT: When the minister says that regular updates will be received, does she mean that groups could be included on a list that will automatically inform them? If I put myself on the list, will I then be automatically informed about every project that comes in for assessment by the EPA, or can I narrow the field? For example, if I lived in Broome and I was concerned about James Price Point, could I specify anything affecting the Kimberley or the mining of a certain substance? Can they narrow the fields?

Hon DONNA FARAGHER: I will have to take some of that question on notice, but I am happy to provide that information to the member. Essentially, what I understand will be provided is an automatic update when a new proposal is put forward. I do not have the level of detail on whether it can then be defined so that not every single proposal referred to the EPA is forwarded on. If we can start from the starting point, they would receive all new proposals. I would have to take some further advice on whether that can be refined further, if groups are interested in matters relating only to the Kimberley or the South West, but I am happy to provide that information to the member at a later date.

Hon ADELE FARINA: As I understand it, information on details of proposals will be provided on the new computer system so that members of communities will have seven days within which to provide comment to the EPA on what the level of assessment should be. Could the minister please advise what material is normally provided by a proponent at that point, and whether there needs to be any liaison between the EPA and potential proponents on changes to the format in which that information is provided in order to facilitate the provision of that information on the website?

Hon DONNA FARAGHER: As I understand it, it would be the referral documentation that is normal for any project proposal. Again, I do not have information on key specifics in that level of detail in front of me. I am happy to provide that information to the member separately, but it is the normal referral documentation that would be provided to the EPA.

Clause put and passed.

Clause 3 put and passed.

Clause 4: Section 45A amended —

Hon ADELE FARINA: I will speak to oppose clause 4, as the committee has recommended. Clause 4 deals with derived proposals and is related to the proposal to delete section 100(1)(f), appeal right under the act, which is dealt with under clause 5 of the bill. Currently, under the Environmental Protection Act, a section 39B declaration—a declaration that a proposal is a derived proposal—is made by the EPA pursuant to the finalisation of the appeal process under section 100(1)(f). The amendment at section 45A is subsequent to the proposed deletion of the appeal right at section 100(1)(f), yet we are required to deal with this subsequent aspect before we deal with the question about whether section 100(1)(f) should actually be deleted. That is one of the frustrating things about the way in which we deal with legislation in this place; one would think that we would deal with the substantive issue of whether the appeal right should be deleted before dealing with consequential amendments that are required as a result of that. The Standing Committee on Uniform Legislation and Statutes Review had a detailed look at the proposal to delete section 100(1)(f), which is the right to appeal on a declaration made under section 39B. No evidence has been presented to the committee to justify the need to delete the appeal right on a declaration that a proposal is a derived proposal. The government has argued that these amendments proposed in the bill are necessary to reduce delays in the approval process. The evidence received by the committee is that there have been very few proposals assessed as strategic proposals, and that therefore the right of appeal on a declaration of whether a proposal is a derived proposal is not actually causing any delays in the approval process and, in fact, the appeal right has never been used to date. It raises some serious questions about why we are deleting an appeal right on the basis that we are trying to deal with delays in the approval process, when in fact this appeal right has never been used. It has never been used for the reason that there have been very few proposals dealt with and assessed at a strategic assessment level. It raises some serious questions about why the government is proposing to delete this appeal right.

Surely a responsible government would retain the right to appeal, particularly given that the government has indicated that it is going to encourage proponents to undertake strategic assessment and to use that strategic assessment process more readily or frequently than it is currently being used. In those circumstances, in which we have had no testing of this appeal right, and the government is moving to encourage a greater level of projects being assessed as strategic proposals, a responsible government would retain this appeal right until such time as it could be tested. The Parliament would then know whether it is necessary. It is clearly not causing any detrimental impact on the approval process to date, because it has not been used to date. There is no delay being caused by the existence of this appeal right. The government has put on the public record that it is going to encourage proponents to use strategic assessment provisions, which will then give rise to the issue of whether the EPA needs to determine a proposal to be a derived proposal, which then brings into play the appeal right on the decision about whether a proposal is a derived proposal. I would have thought that it would have been more sensible for the government to pursue the process of encouraging more strategic assessments and, over time, to review whether there was a need to delete this appeal right on the basis of the evidence that was collected over time. That type of evidence is not currently available to either the committee or the Parliament.

Another issue of concern is that because so few strategic projects have been assessed as strategic proposals, there is a great level of uncertainty in the community about what constitutes a strategic proposal. During the hearings, the committee talked to officers of the various environmental departments, including the Office of the Environmental Protection Authority, the Office of the Appeals Convenor and the Department of Environment and Conservation, as well as representatives of conservation groups. The committee found that there was a great deal of difference among the people who appeared before the committee as to what constitutes a strategic proposal. That raises serious questions about what constitutes a derived proposal. In view of the ambiguity that exists, because these provisions have not been tested and a body of evidence on these factors has not been built up, it seems to me that it would be responsible for Parliament to retain this appeal provision until the government is able to demonstrate that it is causing a detrimental impact on the approval process by delaying the approval process.

Another reason that the committee and I strongly feel that we should retain this appeal provision is that it is the only check and balance on whether the EPA is getting it right when it determines that a project should be assessed as a strategic assessment and that a proposal is a derived proposal as a result of that strategic assessment. To date, the decisions that will be made by the EPA have not been tested because the EPA has not had to make those decisions yet. The EPA needs some guidance, which it has got through the operation of the Environmental Protection Act, regarding the other decisions it makes. This area is in uncharted waters because it has not been utilised well by proponents and therefore the EPA has not had an opportunity to test it or build up a body of precedents as to how it will apply these provisions in the future.

In the absence of the government's ability to satisfy the Parliament and the community that there is a justification for the deletion of this appeal right, it is my strong view that the Parliament should not approve the deletion of this appeal right. It is not having a detrimental effect on the approval process as it currently stands

and it serves as an important check and balance if we are to move to a position whereby more projects will be assessed as strategic proposals, which will give rise to the question of whether a proposal is a derived proposal. I put it to the minister that the obligation is on her to explain to Parliament why it is necessary to delete this appeal provision and to therefore amend section 45 of the act, which is what we are currently considering under clause 4. I have to talk about the appeal provision now because the amendment to section 45 follows on from the deletion of that appeal provision.

Hon DONNA FARAGHER: I will address a couple of elements of Hon Adele Farina's comments. The government believes that this clause should stand as printed. I reiterate that we are not removing the right of appeal regarding the assessment of the strategic proposal. I will go through it. We are not removing that right. Yes, we are proposing to remove the right of appeal for a derived proposal. However, in saying that, the strategic proposal allows the Environmental Protection Authority to look at a larger area before a development begins. An issue that has been raised with me is the fact that strategic proposals are not used terribly much. There is no incentive to do so because people have to go through two processes. With respect to a derived proposal, there are very clear requirements within the act about whether or not the authority may refuse to declare a referred proposal to be a derived proposal. That is provided for under section 39B(4)(a). I will read that subsection into the record because I think it is important. Subsection 39B(4) states —

- (4) Despite subsection (3), the Authority may refuse to declare the referred proposal to be a derived proposal if it considers that —
 - (a) environmental issues raised by the proposal were not adequately assessed when the strategic proposal was assessed;
 - (b) there is significant new or additional information that justifies the reassessment of the issues raised by the proposal; or
 - (c) there has been a significant change in the relevant environmental factors since the strategic proposal was assessed.

It is incorrect to say that because the appeal point with respect to the derived proposal will be removed that that is the end of the process.

Hon Adele Farina: I did not say that.

Hon DONNA FARAGHER: It is not the end of the process. There are clear requirements upon the authority to make determinations on whether or not it should be declared a derived proposal. We are not proposing to remove that. It is also consistent with the assessment of planning schemes—this is already the case—when the EPA determines whether a proposal was assessed as part of the assessment. The EPA will make an assessment on an assessed scheme that is put to it. Once that has been determined, proposals that fall within that scheme will not be subject to appeal. That is in place now. The legislation is very much consistent about how matters are dealt with when dealing with planning schemes. That is already in the act. It is important to advise the house of that. They are the key matters. As I have said, there remains an appeal point with regard to a strategic proposal. Throughout the act are requirements that the EPA must consider when it either refuses or declares a particular derived proposal.

Hon ADELE FARINA: The minister has not really addressed my question, which was: what are the reasons for the government's decision to delete this right of appeal? To date, it has not been utilised and therefore has not delayed the approval process at all. The whole motivation behind the bill is to facilitate a faster approvals process. If this appeal right has not been used at all and therefore is not delaying the approval process, why is the government moving to delete it?

Hon DONNA FARAGHER: Perhaps I will give a shorter response. It removes duplication, it creates consistency with other parts of the act and it will provide a greater incentive for proponents to utilise the strategic proposal. I would have thought that people would agree with that. Rather than look at issues on a case-by-case basis, it is far more important to allow the EPA to look at a larger area. That is quite important. I know that the chairman of the EPA is very supportive of the greater use of strategic proposals. There is an incentive to do that. There is also an element of duplication, as I have said, and it creates consistency with other elements of the EP act.

Hon ADELE FARINA: With all due respect, I believe that the community is justified in being very concerned about the deletion of this appeal right, given the few illustrations that we have of the EPA's assessment of strategic proposals. The Smiths Beach process that the EPA went through is hardly one that we want to hold under a light because there are some very serious questions about the EPA's assessment of the Smiths Beach proposal and the process it used to assess that proposal. The EPA denied the community a right of appeal on the level of assessment when, under the legislation, the community is entitled to appeal on the level of assessment. Leaving that aside, there are real concerns about the deletion of this appeal right. Distinguishing it from the other

appeal rights that the government is looking to delete under the act, there has been a testing of the processes over a period. In this case, the Environmental Protection Authority has not had to make determinations on what is and is not a derived proposal; therefore, there is no body of precedents or evidence for it to rely on. Once we remove this appeal right, we will remove the only check and balance that the community has to ensure that the EPA makes these decisions correctly and has regard for those provisions of the act that the minister referred to. I ask the minister: once we delete this appeal provision, what processes are there under the Environmental Protection Act to provide a check and balance on the decisions made by the EPA about whether a proposal is a derived proposal?

Hon DONNA FARAGHER: Perhaps I will just clarify one aspect of the issues surrounding Smiths Beach, and that might assist the member in where she is heading with this matter. Granted that I was not the minister at the very beginning of the process, albeit I was at the end of the process, the advice I have is that no appeals were lodged on the recorded level of assessment. No information has been provided to me that third party appellants or anyone else were denied an opportunity —

Hon Adele Farina: They were.

Hon DONNA FARAGHER: I would appreciate the member providing me with that information if she has it, because the advice I have is that no appeals were lodged on the level of assessment. Yes, appeals were lodged on the report and recommendations of the EPA at the end of the process, which I dealt with, and we are not proposing any changes to that. The advice I have is that no appeals were lodged at the beginning of the process. I hope that helps because I think the member is referring to a particular circumstance that does not meet with the information that is being provided to me.

Hon ADELE FARINA: I am just using Smiths Beach as a way of illustrating the concerns with the deletion of the appeal right.

Hon Sally Talbot interjected.

Hon ADELE FARINA: That is right. It is not the only one, but it is one of the most recent ones.

The issue we have is that there has not been any testing of decisions made by the EPA about whether a proposal is a derived proposal because the EPA has never been placed in a situation of having to make that assessment. I acknowledge that there are provisions in the EP act to guide the EPA in making that decision. However, once we remove this appeal right, there will be no capacity for the community to question or test, or to provide that check and balance on, whether the EPA is making those decisions correctly. If we remove the appeal right, what capacity is there under the legislation to test whether the EPA has correctly determined that a proposal is a derived proposal?

Hon DONNA FARAGHER: I reiterate that the government believes that the act provides the appropriate mechanisms to deal with this issue. I have every confidence that the EPA will deal with these matters quite appropriately under section 39B(4) of the act. There are clear requirements that the EPA must give consideration to in deciding whether to agree that a proposal is a derived proposal. As I have said, these include environmental issues raised that were not adequately assessed previously, new or additional information or a significant change to the relevant environmental factors. Obviously, these are key issues that the EPA will consider very carefully before determining whether a proposal should be declared a derived proposal. Furthermore, as I indicated earlier in relation to assessed schemes, that mechanism is not there now. It provides consistency. The member is talking about strategic proposals. I think it is important that when we talk about this, we also recognise that this mechanism is not available under scheme amendments, which are also matters dealt with through the EPA.

Hon ADELE FARINA: I might just ask the question again because I am still not getting an answer. If a proponent or a member of the community disagrees with the decision of the EPA that a proposal is a derived proposal, what capacity is there under the act to have that decision reviewed if we delete the appeal provision?

Hon DONNA FARAGHER: Ultimately, it will be a matter of judicial review. That is what it will come down to if a proponent believes that it should be declared a derived proposal and it is not declared a derived proposal by the EPA. Again, it would need to be referred to the EPA, similar to any other project, with a request that it be determined a derived proposal. There would still be the seven-day process whereby the community would be able to provide comment to the EPA, which is what we are saying will happen. That will still happen. We will still go through the process. If a proposal is approved as a derived proposal, it will still have to meet the conditions that have been set under the strategic proposal.

Hon Adele Farina: Not all of them necessarily.

Hon DONNA FARAGHER: If there was a request to make some slight modifications to make it particular to the proposal, there would have to be a request for an amendment under section 45C of the act. That is provided for and occurs quite routinely when people seek an amendment to the conditions. That process will still happen.

Again, there will also be the seven-day consultation period beforehand when a proposal is referred to be declared a derived proposal.

Hon ADELE FARINA: It seems an awful lot for members of the community to get their heads around and provide a submission on in seven days. Would section 43 of the act be available in relation to a proposal being declared a derived proposal? If a member of the community or the proponent objected to a declaration that a proposal is a derived proposal, would section 43 be available?

Hon DONNA FARAGHER: It would be determined on a case-by-case basis. Hon Adele Farina commented that the derived proposal would be a lot for the community to deal with. When a proposal is referred for a strategic proposal, a derived proposal must be contemplated at that time. It would not be something that was new as such. It would be contemplated during the assessment of a strategic proposal. As I have said, the community will have an opportunity to provide comment in that seven-day period. What we are proposing is consistent with other scheme amendments and how they are dealt with by the EPA. As I have said, they would still have to meet those requirements that I have set out in section 39B(4).

Hon ADELE FARINA: I just wish to clarify something. The minister is indicating that a derived proposal would need to be identified at the time of an assessment of a strategic proposal. Did I understand the minister correctly?

Hon DONNA FARAGHER: I refer to section 37B(2), which states —

A proposal is a *strategic proposal* if and to the extent to which it identifies —

- (a) a future proposal that will be a significant proposal; or
- (b) future proposals likely, if implemented in combination with each other, to have a significant effect on the environment.

Also, section 39B(3) states —

If a request under subsection (1) is made, the Authority is to declare the referred proposal to be a derived proposal if it considers that —

- (a) the referred proposal was identified in a strategic proposal that has been assessed under this Part ...

Hon ADELE FARINA: The draft administrative procedures state that a strategic assessment by the EPA will involve a scoping phase, public review of a document prepared by the proponent and the proponent's responses to issues raised prior to the EPA submitting its report to the minister. The draft administrative procedures do not state that a strategic proposal will be subject to the public level of assessment that applies to other proposals. Will the minister inform the house whether a strategic assessment will be subject to public levels of assessment that apply to other proposals?

Hon DONNA FARAGHER: It will be normal practice that the level of assessment will be a public one.

Hon ADELE FARINA: If a proposal is determined not to be a derived proposal, what is the process from that point on of determining the level of assessment and the ability for the community to provide comment under the administrative arrangements on what that level of assessment should be?

Hon DONNA FARAGHER: It will just go through the normal process. The EPA will determine a level of assessment as if it were a new proposal and it will go through the normal process undertaken in any proposal that is referred to it.

Hon ADELE FARINA: I suppose my question relates to the point that the community has to comment on whether it should be a derived proposal. I am trying to understand at what point it gets advertised on the website as a proposal that has been referred to the EPA. I assume it is the time it gets referred and the proponents have indicated that they want it considered as a derived proposal. At that point and within that seven-day period that the community has to comment, it needs to comment on whether it fits the derived proposal criteria in the EP act and, if it does not, what level of assessment it is suggesting should be set. Members of the community are required to comment on both those aspects during that seven-day period. Is that the onus that we are placing on the community?

Hon DONNA FARAGHER: If a person would like to make a comment to the EPA, we would not constrain them in the content of what they would like to raise with the EPA. Again, the member is right; the seven days would start at the referral of a request that it be considered a derived proposal.

Hon ADELE FARINA: Will there be notification on the website to make it clear to the community that it needs to make comment if it is interested in doing so on both aspects—that is, whether the project should be a derived proposal and also on the level of assessment because it will not be provided with another opportunity to address

the issue of level of assessment at a later date subsequent to a decision being made as to whether it is a derived proposal?

Hon DONNA FARAGHER: Not prohibiting a community member from raising any issue that he or she would like, it would be the intention of the EPA to provide the advice that the proposal be declared a derived proposal. That would be advertised and provided to the community members who seek to have input. That would be made clear but it does not stop a community member from raising whatever issue he or she may wish to raise with the EPA.

Hon ADELE FARINA: Is the minister prepared to give an undertaking that the notification would also alert members of the community that this is their one and only opportunity to comment on level of assessment in the event that the project is determined not to be a derived proposal? My concern is that members of the community may not appreciate that that is their one and only opportunity to address both issues. I would hate to see members of the community limited from being able to comment on level of assessment simply because they are unaware that this is the one and only opportunity they have to do so.

Hon DONNA FARAGHER: It would seem reasonable to me that we provide as much information as possible to the community when we are dealing with these matters. I am happy to take on board the comments that have been made by the member.

Hon ADELE FARINA: Can the minister advise the house whether mining leases are environmentally assessed before they are issued and, if so, whether a mining lease could be assessed as a strategic proposal?

Hon DONNA FARAGHER: I understand that there are obviously particular requirements under the Mining Act. Unfortunately, I am not the Minister for Mines and Petroleum so I do not have the Mining Act in front of me and I would need to seek specific advice on the question that the member has asked. I am sorry; I just do not have that level of detail. I am happy to seek some further advice for the member, but I do not have that information with me now and I do not have advice to assist the member.

Hon ADELE FARINA: I am not clear how the Mining Act will assist the minister with the question that I have asked because I am really asking a question about the environmental assessment and I would have thought that that would be contained within the Environmental Protection Act, or within any memorandums of understanding between the EPA and the Department of Mines and Petroleum or the Department of State Development because I cannot really tell where one's responsibilities start and end between those two departments anymore. The question that I asked was for clarification as to whether any environmental assessment is undertaken prior to the issuing of a mining lease; and, if so, what sort of environmental assessments are being undertaken and whether there is capacity for a mining lease to be assessed as a strategic proposal. I would have thought that that would fall fairly clearly within the ambit of the EP Act.

Hon DONNA FARAGHER: As I understand, section 6 of the Mining Act relates to the powers with respect to the assessment of mining leases. The member has been quite particular in using the term "mining leases" and how that relates to the Environmental Protection Act. Therefore, a provision within section 6 of the Mining Act deals with this very matter. As I understand, those provisions deal with when a mining lease would be referred to the Environmental Protection Authority for assessment, but I do not have that information in front of me. We are getting close to question time so perhaps I might be able to get some information specifically about the Mining Act between now and when we come back to this debate, if that helps.

Hon ADELE FARINA: That is fine, minister.

Hon ROBIN CHAPPLE: Just on that matter, obviously there is a memorandum of understanding with the mines department that was established previously that sets in place a number of things that the Mining Act, or a mining act through a notice of intent, must do. An assessment level is carried out by the Department of Mines and Petroleum that makes a deliberative decision as to whether a matter should be referred to the Environmental Protection Authority. If the minister is looking for that information, it would be useful if she could produce a copy of that memorandum of understanding so that we can see how that would work with this amended version of the Environmental Protection Act.

Hon DONNA FARAGHER: I will look into that. I think the issue is that Hon Robin Chapple is referring to mining proposals and Hon Adele Farina is referring to mining leases. There is a difference, which is why I want to be clear about the question put by Hon Adele Farina and now the question put by Hon Robin Chapple. I am happy to see what information I can provide between now and when we return to this debate.

Hon SALLY TALBOT: I take up a point that was raised in earlier debate on clause 4, recognising that in effect we are debating clause 4 and 5 because we are talking about the deletion of section 100(1)(f). If I have

understood the minister correctly, the minister said in response to the earlier question about the section 43 power that resorting to the section 43 power would be on a case-by-case basis. Is that correct?

Hon DONNA FARAGHER: Yes.

Hon SALLY TALBOT: That was what I understood the minister to have said. I draw the minister's attention to the very lengthy report by the Standing Committee on Uniform Legislation and Statutes Review. I am sure that there is a copy on the table before her. Paragraph 7.102 on page 240 of the report is about the section 43 power and comes under the subheading —

Section 43 power may not be available in respect of proposal declared a derived proposal

I was particularly interested in this section of the committee's report because on one hand it looks as if the information provided to the committee was inconclusive, but on the other hand I think that the information provided to the committee actually bears out what the minister is saying. However, that leads me to want to ask for more information about exactly what informs the decision if the decision is to be made on a case-by-case basis. I draw the minister's attention specifically to paragraph 7.102 and 7.103. Paragraph 7.102 states —

Once a proposal has been declared a derived proposal, section 39B(6) of the EP Act provides that the EPA is not to assess the proposal except for the purposes of conducting an inquiry under section 46(4). That section limits the EPA's inquiry to one of whether the implementation conditions relating to the proposal should be changed. Section 46(1) of the EP Act confers power on the Minister to request the EPA to inquire into any implementation condition that the Minister considers should be changed.

I think that that fits in with what the minister was saying earlier about the precise considerations that the EPA has to take into account. However, what is worrying is that paragraph 7.103 states —

In these circumstances, it is questionable whether section 43 of the EP Act empowers the Minister to direct the EPA to assess a derived proposal more fully or more publicly. The OEPA's evidence was:

The CHAIRMAN: *However, will not the power of the minister under section 43 still apply?*

Mr Colin Murray speaking on behalf of the Office of the Environmental Protection Authority stated —

Once the minister has issued the statement that the strategic proposal can be implemented, section 43 may or may not be limited. I must say, that is a point that I have not looked at. I would be quite happy to take that one on notice.

And then, of course, the committee points out that it did not get a response to that, which is the aspect of this section that led me to want to pursue it in more detail.

The minister has confirmed, or has elaborated to the extent that she has been prepared to say, that recourse under section 43 will still be available on a case-by-case basis and so I ask: minister, what parameters will inform the decision about whether an appeal can be lodged with the minister under section 43?

Committee interrupted, pursuant to temporary orders.

[Continued on page 5942.]