

ENVIRONMENTAL PROTECTION AMENDMENT (VALIDATION) BILL 2014

Committee

Resumed from 21 October. The Deputy Chair of Committees (Hon Liz Behjat) in the chair; Hon Helen Morton (Minister for Mental Health) in charge of the bill.

Clause 4: Part X inserted —

Progress was reported on the following amendment moved by Hon Stephen Dawson —

Page 6, after line 11 — To insert —

- (c) the report and recommendations of the Environmental Protection Authority on the Roe Highway Stage 8 extension (Report 1489, September 2013).

Hon STEPHEN DAWSON: Just to recap, for the benefit of members who were not here when I moved this amendment, I will remind members of the point I was making. I said that, unlike the other 24 projects on the list provided to members when the bill was introduced, the Roe 8 project is a government project. This project is not yet underway, and no money has been allocated for it in the budget. In effect, we are being asked to validate decisions made by the minister on a range of projects. However, in the case of the Roe 8 project, because the decision is before the Appeals Convenor at the moment, there really is nothing to be validated. None of the considerations that applied to the other projects in the resources sector apply to Roe 8.

I also wish to make the point that there was a great deal of community angst about the Roe 8 project. I made the point further that it is not just people who live in the south metropolitan area who are concerned about this project but people right around the state. Some people have environmental concerns; other people are concerned about the cost of this road. I have heard some members talk about it being the road to nowhere. Last night I said that a price tag of about \$750 million is attached to this eight-kilometre stretch of road. At the time, Hon Ken Travers informed me that the cost was more likely to be around \$800 million. This eight-kilometre stretch of road will cost \$800 million. That, too, is a concern of many Western Australians.

I also think it is important to remind members that the EPA had previously looked at the issue of Roe 8 twice. This was before Chief Justice Martin made his decision on 19 August 2013. The EPA had twice before said that it had issues with the project. Then, curiously, two weeks after Chief Justice Martin made his decision in August last year, a report came out from the EPA which essentially sought to legitimise the current Roe 8 proposal.

There is a lot of community concern about this issue. It is the road to nowhere. We were told previously that these 25 projects are of major concern to the state if the court can overturn and jeopardise the projects. I have made the point previously and I will make it again that a huge amount of money is attached to these projects and a huge number of jobs will be lost should one of these projects fall over. As we have said, the opposition is in favour of this bill. We have major concerns about the Roe 8 project. We do not see why it is included in this bill. We certainly do not think the government has made the case properly for why it is included in this bill.

The Roe 8 proposal is in front of the Appeals Convenor at the moment. We have no idea when the Appeals Convenor may bring down her decision or give advice to the minister about the project. Given the level of uncertainty around the whole EPA decision-making process in relation to Roe 8, as pointed out by Chief Justice Martin, plainly and simply, we say that the government should say, “There is lots of concern about this project and lots of concern about the actions that the EPA has taken. Let us leave this project aside. Let us ensure that the community has faith in this project and end the decision-making around this project. Let us remove Roe 8 from this bill. Let the EPA look at this issue again. Let the EPA do a proper assessment again. Do not let the EPA be accused of invalidly making decisions. Let us take that out of the equation. Let us remove Roe 8 from the list of projects.” Essentially, with those few comments and the comments I made last night, I stand by the motion standing in my name.

Hon ROBIN CHAPPLE: Obviously, Roe Highway stage 8 may not come to fruition in the foreseeable future. We know that an awful lot of money is tied up with it. One of the issues that come to mind is that section 36(1)(b) of the principal act states that if a project has not come to fruition within seven years from the date that the policy was approved, it needs to be reviewed by the Environmental Protection Authority. This bill will validate a decision that is yet to be made. Will that validation in any way, shape or form affect section 36 of the act? That is the first question I want to turn to.

Hon HELEN MORTON: It was obvious that the opposition would bring on a debate of this nature. The bill is not about whether Roe 8 should or should not go ahead. I am not going to enter into that kind of debate on this bill. Whether Roe 8 should or should not go ahead is another matter entirely. I will not even give an opinion about that; I will not give the government’s view on it or anything else. I am just saying that it has nothing to do with this bill, so I will not enter into any debate or conversation about that.

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Hon Ken Travers: Only on those bits that are relevant to the legislation. You'll be amazed at what is relevant.

Hon HELEN MORTON: I am fully aware of the political differences between the government and the opposition on this issue. I know that the opposition's intent is to try to obstruct the process, if possible, through this bill. I am not saying that it will obstruct this particular legislation; I am saying that it will obstruct the issues around whether Roe 8 should or should not go ahead, if only it could use this piece of legislation to do that. That will not work, because it is not part of it, so the opposition will not be able to use this process —

Several members interjected.

The DEPUTY CHAIR: Order! The minister has the call.

Hon HELEN MORTON: I am just laying it out clearly for members that they will not be able to use this process to obstruct the progress of Roe 8. It is not applicable to this bill. Decisions have been made by the EPA on Roe Highway stage 8 to which proposed section 135, "Grounds of invalidity", applies, in the same way as it applies to the other projects. The EPA's report and recommendations on the Roe Highway stage 8 extension are with the Appeals Convenor. Consequently, I will not debate the merits, the science or the research around this project. However, the observations that can be made about the other decisions covered by this bill can also be made about Roe 8. There is no suggestion that any member of the EPA involved in any assessment was influenced by any conflict of interest. If a member were actually influenced, the bill would not protect the decision being challenged on that ground. If members opposite cannot accept or understand that is what the legislation states —

Hon Ken Travers: Why do we need the bill then?

Hon HELEN MORTON: Will the member just wait, please? Members need to fully understand that nothing in this legislation will prevent a decision being challenged if influence or bias actually was displayed by any member at any time in that decision-making process and this bill will not protect that project from a challenge. All this bill will do is protect a project from somebody who did not declare a conflict of interest when they should have, or the quorum was not made up, or any of the other matters that are covered in section 135. There is nothing to indicate that the EPA has done anything other than assess on their merits the environmental factors relating to all the decisions; nor have any of the decisions been determined to be invalid by a court, unlike the decisions relating to the Browse LNG precinct proposal, which are not covered in the bill anyway. As Roe 8 is in the same position as the other decisions this bill covers, it should be treated in the same way.

Hon SUE ELLERY: The minister is quite right that the bill is not about the merits or otherwise of Roe 8. The bill is not about creating some protection for Roe 8 on the basis that somehow the process that it had been through to date under the EPA was invalid because of anything other than a conflict of interest under sections 11 or 12, or that had not been properly declared under sections 11 or 12. That is not what this bill is about. Roe 8 is part of the debate because it is different from all of the other matters that we have been told need to be validated. It does not meet the same criteria. There has not been expenditure of private sector money and work is not underway. In fact, what is in place for Roe 8 is that this is the third time that the EPA has expressed an opinion about the merits or otherwise of Roe 8, and Roe 8 is going through the appeal process. To the extent that any money, government or otherwise, was around to be spent, it was pulled out of the budget two or three years ago. To the extent that the government might claim that it spent public money doing the consultation to get the EPA to the point it is at, it did not worry the government that it was spending that money for a third time; it had already been spent twice. It did not worry the government to spend money a third time because it did not like the result of the previous two determinations. The thing about Roe Highway stage 8 is that it is different from every other matter the government is asking us to validate. That is why we are talking about Roe 8. It is not the same.

Hon Helen Morton: It's the same.

Hon SUE ELLERY: Tell me where the private investment money has been spent; tell me where the work is underway; tell me where there is sovereign risk if we do not validate it. Those are the reasons the minister says it is very important that we pass a piece of legislation that is retrospective in its nature, and that is very unusual for us to do lightly. It does not meet the tests the minister says that mean we should take the extraordinary step of passing retrospective legislation because these things are so important. It does not meet any of the minister's tests. The responsibility on the minister for this amendment is to convince us how Roe 8 is in the same category and that is why we should be talking about Roe 8.

Hon HELEN MORTON: I have to convince the entire chamber, not any one individual or any one small group of people in the chamber. The issue is that this chamber will make the decision on this. Consequently, the decision on whether to insert Hon Stephen Dawson's amendment is a matter of my convincing the majority of members in the chamber. I understand that and I am sure the member does.

Hon Sue Ellery: Are you saying you have the numbers? Is that news to anyone?

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Hon HELEN MORTON: I am saying to the member that she should be very clear about what will happen.

Hon Sue Ellery: For goodness sake! What; I shouldn't raise an issue because you've got the numbers? That's so offensive.

The DEPUTY CHAIR: (Hon Simon O'Brien) Order, members!

Hon HELEN MORTON: When I talk to this amendment, I am talking to the whole chamber.

Hon Sue Ellery: Good for you; so was I.

Hon HELEN MORTON: In saying that, the issues reflected in this bill are the same issues for the validation aspects of all the other projects. It makes no difference whether it is the government, the private sector, private moneys invested or other sorts of things.

Hon Sue Ellery: That's what you told us in the second reading speech.

Hon HELEN MORTON: The issue is that the grounds for invalidity are precisely the same. The grounds for invalidity are no different whatsoever from the grounds that are being looked at in every one of those other projects. That is the issue.

Hon Ken Travers: You are asking for retrospective approval.

Hon HELEN MORTON: They are the issues. This is one of the projects undertaken in that time frame we are talking about. It is one of the projects that was picked up in the thorough and comprehensive processes that were undertaken. It is one of the projects for which the EPA saw there was not an insignificant risk around a potential challenge. Those are the things that are absolutely identical to every other one of the projects that are covered. Consequently, Roe 8 is being dealt with in precisely the same way.

Hon ROBIN CHAPPLE: It is not, and I will give the minister the one fundamental reason for that. In all the other cases, the Minister for Environment has signed off on the outcome. The EPA decisions and appeal provisions have gone to the minister on all the other proposals. This proposal has not gone to the minister, so the minister has not approved the proposal yet, because we are still going through an appeal process. I can understand that the minister has agreed to the EPA decisions for the other proposals, the recommendations and all the things associated with that process, so the minister has identified that he or she has signed off on them. In this case, the minister has not signed off on the project.

I would like the minister to answer my previous question about section 36 of the Environmental Protection Act.

Hon HELEN MORTON: Taking Hon Robin Chapple's latter point first, section 36 is about the review of approved policies; it is not about decisions made on assessments, and the Environmental Protection Amendment (Validation) Bill 2014 is about decisions made on assessments. The member's second point was that this is somehow different because the minister has not yet made a decision. This bill is about validating actions undertaken by the Environmental Protection Authority and not about validating a decision that is yet to be taken by a minister. It is about validating issues in a very narrow field of invalidity issues. Once again, if there is any bias or any other reason for somebody wanting to take action against the processes that are not included in this bill in respect of any decisions that have been made by the EPA in that process, they can take that action; there is nothing to stop that. All this legislation is doing is saying that on these quite narrow grounds, the decisions that have been taken by the EPA for that particular project are valid in the same way that the grounds are being applied to other projects.

Hon KEN TRAVERS: If the minister is saying that it is only on those narrow grounds, can she advise us whether the government has done any work on whether there was any risk that in the EPA's approval of Roe 8, one of those grounds was contravened; for example, someone did not declare an interest or there was a lack of a quorum? Has the government done any work to determine whether or not that might have occurred in the case of Roe 8?

Hon HELEN MORTON: I am fairly certain that Hon Ken Travers was here during the debate last night. I cannot be sure, but he would know that Roe 8 is on the list of 25.

Hon Ken Travers: Yes.

Hon HELEN MORTON: He would have heard us talk about the thoroughness of the process followed by the Office of the Environmental Protection Authority and the State Solicitor's Office, and the QCs and SCs who were brought in to review that process. He would have heard about all of that.

Hon Ken Travers: I was even here when one of the members tried to stop the debate through a point of order.

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Hon HELEN MORTON: Exactly, so he knows the process that has been gone through, he knows how thorough and comprehensive it has been and he knows that it is on the list of 25. Consequently, the potential conflict relates to an EPA board member, Chris Whitaker—appointed under a Labor government—who was at the time chairman of James Point Pty Ltd, which had proposed to develop a port that may have benefited from the construction of the highway extension. Whitaker declared a conflict but participated in the discussion and the decision relating to Roe 8 after the chairman determined that no conflict existed. This was in April 2010. Specifically, he participated in the discussion and decision to approve scoping of the public environmental review. He did not participate in the discussion or decision when the assessment report was approved or when issues were being considered on the assessment. The EPA provided its assessment report on Roe 8 to Minister Jacob in September 2013.

Hon KEN TRAVERS: In light of that, the simple fact is that if we do not pass this bill, there will be grounds for people to challenge the decision of the EPA —

Hon Helen Morton: On what basis?

Hon KEN TRAVERS: On the basis of the participation of Dr Whitaker in the decision-making; otherwise, why would we need the bill?

Hon HELEN MORTON: The situation is partly correct in terms of what the member is saying. If a challenge was made, it would not necessarily be successful. But because there is not an insignificant risk of that, it has been captured within this range of projects, having been assessed, as I say, through those processes that we have indicated. There is no suggestion, and never has been any suggestion, that any individual in those processes was actually biased or was actually conflicted. There is just the potential—just the potential. That is all it is. He was only involved in the scoping of the assessment of the environmental review. He was not involved, as I said earlier, in the deliberations and decisions around that.

Hon KEN TRAVERS: The minister says there is nothing different. The minister, in the comments she makes, downplays the need for this legislation by saying there may not be a requirement for this bill, and there may not be this and there may not be that. But the minister still wants the bill to be passed and the minister is still expecting this bill to be passed. The minister gave a speech in response to Hon Sue Ellery that can only be described as “the brutality of numbers will ultimately prevail in this house”. We are dealing with a bill that is about retrospectivity and about removing a potential and not insignificant risk that someone will appeal that decision. We are going to remove that right by passing this legislation. Therefore, it is important that the minister outlines to the chamber why this particular item should be in the bill. I accept that the Greens in the corner do not support this bill. They did not support the bill at the second reading stage. That is their right. The Greens have never understood that in order to create opportunity, we need to have growth. We actually share with the government the desire to develop and have growth and provide opportunity—probably that is the bit that members on that side of the chamber do not understand. But in passing a bill like this, which will remove somebody’s rights, we need to be absolutely clear that we have ticked every last box. A private sector organisation that has in good faith invested money in Western Australia has the right to not have its projects put at risk because of the incompetence of the government of the day in allowing these changes to occur.

I listened last night to how it all happened when the new minister came in, and how it was all done on her watch. I think the former minister even interjected and said that at the time she did not even have a chair. That is no excuse. Unfortunately, ministers have to accept responsibility from the day they are sworn in by the Governor.

The reality is that a bill like this is very different from the traditional pieces of legislation that are dealt with in this place. The government can get this bill through, and maybe on this bill the Nationals are back in the cart. I never can quite understand how the coalition works, because under the Westminster system, whether or not the government likes it, it is a coalition government. It is a dysfunctional coalition, but it is still a coalition. A bill like this should be getting broader support around the chamber than the support the minister is going to get with the simplicity of the numbers. The government can get that support around the chamber by simply removing this clause. Then there would be two options for the government to take. One is to continue to proceed with Roe 8, and that would be another debate. The minister is right, in that tonight is not the time to debate the complete lunacy of the government’s tollway. That debate is for another day. Tonight is not the time to debate whether the government’s intention with Roe 8 makes any long-term economic sense for Western Australia. Tonight is the time for debate on whether this chamber should be removing the potential right of people to take action in the Supreme Court of Western Australia on the involvement of Perth people with a potential conflict when decisions were made by the Environmental Protection Authority. The legislation would be far stronger if there was unity around the chamber. As I say, if the government were to take out Roe 8, it would have two options and the bill could proceed. If, as the minister put it to the chamber tonight, there is very little likelihood of anyone being able to get a successful result for a claim in the Supreme Court, pull the bill out and let the matter take its course. The

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other thing the government could do, of course, is resubmit the proposal to the EPA and have a decision made with the EPA having followed all the correct procedures. Those are the options available to the government.

Hon Helen Morton: Plus.

Hon KEN TRAVERS: Plus what?

Hon Helen Morton: It could be included in the bill. You forgot that one.

Hon KEN TRAVERS: No, because if the minister had listened to my argument, she would know that I referred to it being taken out of the bill. The minister cannot take it out of the bill and then include it in the bill. That defies even the best logic that her government can come up with when it is trying to justify its incompetence.

Hon Helen Morton: That is not even an option; you know that.

Hon KEN TRAVERS: What?

Hon Helen Morton: I say that is one of the options; you know it is, so keep going.

Hon KEN TRAVERS: Yes, but the point I was discussing with the minister was about taking it out of the bill. She cannot take it out of the bill and then put it back in the bill. That would make a nonsense even by this government's warped logic. It would be even more bizarre than the government's local government reform. Is the minister suggesting that we move to delete it tonight and then resubmit it later in a new clause and put it back in in a new way? What a silly statement, minister! The point I was making is —

Hon Nick Goiran: Why are you on that side of the chamber?

Hon KEN TRAVERS: I thought Hon Nick Goiran wanted people to stand up to speak in this chamber.

Several members interjected.

Hon KEN TRAVERS: That was funny, because I heard Hon Nick Goiran getting really upset about interjections from the honourable Leader of the Opposition.

The DEPUTY CHAIR (Hon Simon O'Brien): Order! There is one person standing to speak and he is recognised—Hon Ken Travers on the question that the words proposed to be inserted be inserted.

Hon KEN TRAVERS: Hon Nick Goiran should take a point of order and see whether he can lose 3–0!

This is a serious matter and I want to get back to it. If the minister had listened, she would know that I said if she takes it out of the bill, the government has two paths it can take.

Hon Helen Morton: Then you finished that conversation and said, “They are your only options”, and I said, “No, they are not.”

Hon KEN TRAVERS: If the minister takes it out of the bill.

Hon Sue Ellery: He is saying that if you take it out of the bill, you have two options.

Hon Helen Morton: But that's not in the bill.

Hon KEN TRAVERS: My God! It is like arguing with a two-year old! It really is.

Hon Helen Morton: You are the two-year-old!

Hon KEN TRAVERS: No. If the minister takes Roe 8 out of the bill, the government will have two options. If it is taken it out, the government will not have a third option of having it in the bill. The point I am making, if only the minister can get this through her head, is that if the government takes it out of the bill, it will still have the two options. If, as the minister put it to us tonight, there is virtually no real risk, and she was implying that it has been put in the bill but it is not really needed in there, then take it out and see what happens. The minister is probably right that nothing will happen and nothing will change—whether it is in or out will not change Roe 8 going ahead. A lot of other things will determine whether Roe 8 goes ahead; or, as I say, if it is taken out and the government is still concerned about that risk, the other option the government has is to go back through the process. Those two options are not options that should be imposed upon the private sector. Why should it be penalised because of the failings within government? This government currently has no funding for this project. Why can it not be removed and then the government can make its own determinations? If that happened, the Minister for Mental Health would see this bill fly through this chamber. If the minister had agreed to this, I suspect this bill would have been passed two weeks ago. Certainly from a Labor Party point of view, the minister probably would have got a speech from the representative shadow minister in this place saying that we support it in policy and detail, although the minister potentially would have still heard an argument from the Greens. However, they would have wimped out fairly quickly, as they normally do, and the bill would have gone

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through the house days ago. I urge the minister to reconsider her position on this matter. This project is clearly very different from all the other projects that the Minister for Mental Health is asking us to ratify tonight.

Hon SALLY TALBOT: Like other members on this side of the house, from both the Labor Party and the Greens, I think that the government is being extremely cute in trying to include Roe 8 on this list. I will not make the same points that previous speakers have made, but I will come at it from a slightly different direction in the hope that I can do my part in trying to persuade the Minister for Mental Health to reconsider, because I think it is an enormous mistake to have that project on the list.

I think it is probably fair to say that we are still not entirely clear about the precise moment the government conceded it had a problem but, in my view, something happened around February 2011 when all of a sudden those decisions made by the chair of the Environmental Protection Authority were found to be wrong about both the quorum and the recognition of conflicts of interest. I agree wholeheartedly with the point Hon Ken Travers made that the government was faced with three options. One was to push ahead with every single project that had been called into question. The second option was to re-evaluate every single project to make sure that the assessments were done according to the law. The third option was to come up with a list that involved exclusions. At the moment, we are looking at a list that is not complete because, by the government's own admission, James Price Point—the Browse project—is not on the list, but then somehow the government decided that Roe 8 should be there. That is completely nonsensical. I can see the reason that Browse was left out—because it has already been subject to its own court determination. The Minister for Mental Health is making a face that says, “Well of course”, but the fact is that retrospective legislation is retrospective legislation. We know that if the quorum rules and the conflict-of-interest rules had been followed, the James Price Point decision could have been the same. In that respect, the James Price Point project should be on the same list as all the other projects. Even if that is the case, Roe 8 is substantively different.

In pursuing this point, I want to ask the minister whether she is absolutely certain that the reason that Roe 8 is on the list is not that it is a problem about quorum, but that it is a problem about having a conflict of interest? Can I just check that that is indeed the case?

Hon Helen Morton: Sorry; I was being advised on another matter. Could the member please repeat the last two sentences?

Hon SALLY TALBOT: Is the problem that has caused Roe 8 to be on this list a problem relating to a conflict of interest and not to quorum?

Hon HELEN MORTON: Yes.

Hon SALLY TALBOT: Can the minister clarify what was disclosed to the chair when the chair made the original decision and how it was disclosed?

Hon HELEN MORTON: I read this out before, but I am happy to go over it again. Dr Chris Whitaker, who was an Environmental Protection Authority board member, indicated that he may have a potential conflict. He was chairman of James Point Pty Ltd at the time, which was proposing to develop a port that may have benefited from the construction of the highway extension. The chairman determined at the time that that was not a conflict. Consequently, that decision was picked up in the thorough process that we have talked about.

Hon SALLY TALBOT: At the risk of sounding slightly pedantic, I really need to clarify this. As I understand it, fundamentally, an EPA board member can declare an interest in two ways. The first one is that when they become a member of the EPA, they complete some kind of register or declaration of interest in which all their interests are listed. The other way is that before an agenda item is debated, they can, at that point in the meeting, or perhaps even at the beginning of the meeting when that agenda item is listed for discussion, draw attention to a specific conflict of interest with that agenda item.

Hon HELEN MORTON: An EPA member is not required to list their potential conflicts when they join the EPA. The requirement is that a declaration be made when a particular matter is about to be considered. As I indicated, Whitaker declared a conflict but participated in the discussion and the decision relating to Roe 8 after the chairman determined that no conflict existed, and that was in April 2010.

Hon SALLY TALBOT: I think the minister might have clarified something for me. I had understood that on becoming a member of the EPA, or maybe at some point during the selection process, there is a complete declaration of interests; is that not the case?

Hon HELEN MORTON: No, that is not the case.

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Hon SALLY TALBOT: I accept what the minister says, of course, but I understood that Ms Carr did not participate in any discussions about Browse or James Price Point, because at some very preliminary stage—I thought it was on joining the board—she had indicated that it would not be appropriate for her to participate in those matters.

Hon Helen Morton: Precisely what is it that you are asking? Are you asking a question or making a statement?

Hon SALLY TALBOT: I am querying an assumption that I am about to make on the basis that the minister said that there is no register of interest on becoming a board member of the EPA and that the only way to declare an interest is immediately before an agenda item. My understanding is that that was not the case with Ms Carr.

Hon HELEN MORTON: I am advised that Hon Sally Talbot's assumption is incorrect; that it is a matter of them seeing what is on the agenda, determining a conflict of interest, and that is how Ms Carr also declared her conflict of interest.

Hon SALLY TALBOT: Would the minister talk us through what happens? I have seen the minutes of some meetings where conflicts of interest are disclosed. Does the chair not know until that agenda item arises that a member is going to report a real or perceived conflict of interest?

Hon HELEN MORTON: It follows what I understand to be normal processes that I see all the time, whether in local government or on other boards. The normal procedure for a meeting starts with the meeting opening time and a declaration of conflicts of interest taken at that time with knowledge of what is on the agenda at that particular meeting, and it is no different with the EPA.

Hon SALLY TALBOT: Would the minister take us through what happened at the meeting in which Dr Whitaker declared a conflict of interest? I would like to know on what basis the chair makes a decision about that conflict of interest. I have said this dozens of times in these kinds of debates, which the government seems to give rise to very frequently. I still maintain that nobody on the government benches really has their head around the actual challenge here, and that is not to avoid conflicts of interest but to manage conflicts of interest. I have never heard a government member speak cogently about the management of conflicts of interest. The important thing here is the way that the conflict of interest is managed. I want to know about a comparison between what happened on whatever day that was that the conflict of interest that ended up making the "Roe Highway Extension: Main Roads Western Australia" report 1489 problematic and what would happen now if the same proposal were to come before the EPA. Would some different decision be made? Is there some difference in the process that has been put in place as a result of the circumstances that have given rise to this bill?

Hon HELEN MORTON: In my speech in reply to the second reading debate I made some comments about this. I will see whether I can find them. Following the Browse decision, the minister asked the EPA to review its code of conduct and to ensure that its governance of that is in line with legislation. That was undertaken, and the authority also had advice from the Public Sector Commissioner. In the process of that agenda that I mentioned before, if a person were to be seen to have a potential conflict of interest, they would be ruled out of both the discussion and the decision-making in that process.

Hon SALLY TALBOT: I think the minister said that she was just filling in a space there while the adviser was looking for something she wanted to read out.

Hon Helen Morton: It was something that I read out before, but if you want me to find it, I will read it out again.

Hon SALLY TALBOT: I think it is important.

Hon HELEN MORTON: These are the items that I covered in my response. One makes the point that no projects have been held up as a consequence of the governance issues and that the Office of the Environmental Protection Authority is sufficiently resourced to support the EPA function. In my speech, I said —

Following the Browse decision, the Minister for Environment wrote to the chairman of the EPA to ask him to review the EPA's governance arrangements. This has occurred and the government is now satisfied that the EPA's governance arrangements fully comply with the legislation and public sector standards.

...

The board's governance procedures, including its code of conduct, have been thoroughly reviewed and updated, and fully comply with legislation and public sector standards. The board itself comprises professionals with a range of skill sets including strong legal experience. I have full confidence in their

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capacity to maintain good governance and provide the state government with informed, well-considered advice.

Hon SALLY TALBOT: When the minister talks about the revision of the code of conduct, I think she really means that the code of conduct has reverted to what it was before the EPA changed it to accommodate a certain interpretation of the act. Is that correct?

Hon HELEN MORTON: It has reverted to where it was, where it should have been, and how it should have been interpreted, and the skill set of the people on the board is such that the whole issue that has come up as a result of Browse has meant that they are far more acutely aware of their responsibilities in that regard.

Hon SALLY TALBOT: I think I am right in saying—I am sure the minister would know or one of her advisers would be able to tell her—that the code of conduct as it exists today is exactly the same as the code of conduct that existed when Dr Whitaker declared his interest and was allowed to play a deliberative role in the decision.

Hon HELEN MORTON: The current code of conduct sets out these things much more clearly—things like what a pecuniary interest is and, in particular, if one has a superannuation fund or family shares, what a non-pecuniary interest is or an apprehension of bias. It provides a definition of those sorts of things and spells out that under those sorts of conditions, one cannot participate in the discussion or make decisions. Those things were not set out clearly in the previous code of conduct that was available in 2010.

Hon SALLY TALBOT: Like the minister, I have a keen sense of where the numbers lie in this place. I am sure that what I am about to request of the minister will not be the determining factor in whether this bill is passed by this place. I suggest that it would greatly aid and give us an understanding of the government's decision-making processes and provide some clarity that I think is currently missing from this whole debate if the minister could produce for us at some stage before the end of this debate the three versions of the code of conduct that I think must now be in existence. If she can find any more, we will have those as well. The three that I am thinking of are: the code of conduct that was in place when the Roe 8 deliberative discussion was held at an EPA board meeting that resulted in report 1489; the code of conduct as it was amended, and my recollection is that it was amended on the recommendation of the director general of the Department of the Premier and Cabinet, Mr Conran; and the new code of conduct that exists today. It would be very helpful to have those three documents so that the record will show how they changed and evolved over that time. If the minister can find any more versions, we would be very happy to have those with an explanation of the dates on which they apply. Certainly those three would aid our understanding of these measures quite substantially.

While I am on my feet, I ask the minister whether the government has ever considered requiring EPA board members to have a list of their pecuniary interests on a register somewhere. The reason I ask that is that the minister has taken me slightly by surprise, and that is disconcerting in itself, because I have a fair knowledge of this portfolio area, having been the shadow minister for a good number of years. I was certainly under the impression that there was some kind of up-front register of the pecuniary interests of board members that could be consulted by people. Obviously, the government has fallen flat on its face with this procedure, because it simply has not been possible for a chair to make a split-second decision about whether somebody has a conflict of interest that rules them out of a certain discussion. If, as the minister has said, it is raised only before an agenda item is discussed, for a start, how on earth can the chair keep an eye on the quorum requirements at each meeting? For all the chair knows, the board might get to an agenda item and find that nobody is available to discuss it. How is the chair supposed to assess the information that he—I use the pronoun “he” because it is a bloke—may have only just been given that a conflict of interest might exist? How on earth is the chair supposed to make a decision? I am certainly talking about the process that went on at that meeting, and I do not think the minister has given me the date of that meeting yet. How would it go on now? How are we going to fix this, if any or all of the members can just stand up in the middle of a meeting and say, “Sorry; I am out of the next part of the discussion”?

Hon Helen Morton: You know it's not in the middle; that's already been covered. Don't be frivolous.

Hon SALLY TALBOT: I am not being frivolous, minister. I do not know whether that was supposed to be an interjection. I have asked whether the declaration of interests is kept on a central register. In that way, if, for instance, Roe 8 is on the agenda and a board member has a pecuniary interest in James Point, the chair will be well aware of that before he gets to the meeting. But the minister has just told the chamber that that admission or disclosure of a conflict of interest is raised only at the meeting at which the agenda item is listed for discussion.

Hon HELEN MORTON: My comment about not being frivolous was about the member's comment that somebody will stand up in the middle of the meeting and say, “Excuse me; I might have a conflict of interest in this item.” That is really quite demeaning.

Hon Sally Talbot: Tell us how it works, then.

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Hon HELEN MORTON: I have already told the member and she does not want to hear it, but I will say it again. There is an agenda. Members of the Environmental Protection Authority get the agenda before the meeting.

Hon Sally Talbot: How long before the meeting?

Hon HELEN MORTON: I do not know how long before the meeting, but they get it before the meeting. They know what the items are. They know that the second item of business is the declaration of conflicts of interest. They have the opportunity to let the chairman know before that.

Hon Sally Talbot: Do they have to let the chairman know before that stage of the meeting?

Hon HELEN MORTON: Before they get to the meeting? Not necessarily, but they do have to let the chairman know at that meeting whether they have a conflict of interest. They have an agenda; they know what they are dealing with. There are five members of the board; three are a quorum.

Hon Sally Talbot: Yes, but the scenario that I have just outlined to you —

Hon HELEN MORTON: Mr Deputy Chair, can I please finish my comments?

The DEPUTY CHAIR (Hon Simon O'Brien): The minister does not want to entertain the interjection.

Hon HELEN MORTON: I am saying that at the beginning of the meeting, when people know full well what is on the agenda, they can declare a conflict of interest or they can declare that conflict of interest when they get the agenda papers before that. These are not unprofessional people. The importance of this has been brought home absolutely clearly to these people, and work has been undertaken around strengthening both the membership and the code of conduct in that process. I made the comment about being frivolous because the member was trying to make it sound as though some game of tiddlywinks was going on. That is not the case and the member knows it.

Hon Sally Talbot: It was not anything I said, minister.

Hon HELEN MORTON: It certainly sounded like it, the way the member was talking. The other point I want to clarify is an issue that neither I nor my advisers are clear about. The member asked about something that related to Peter Conran, some code of conduct that he had somehow changed or been involved in changing. The member needs to be clear about that, because I do not know what she is talking about and nor do my advisers.

Hon SALLY TALBOT: I will clarify that last point first. I have been provided with documentation on this bill or it is on the public record—I am not referring to any documents that are not in the public realm—that at some stage, and I am sorry I cannot remember when it was without my detailed papers, the chair of the Environmental Protection Authority sought advice from Mr Conran, or maybe the Public Sector Commissioner, about the processes the EPA was following. The advice from either Mr Conran or Mr Wauchope was that the EPA needed to revise its code of conduct. I am interested in three codes of conduct—one that existed prior to that advice being sought, the amended version of the code of conduct that was in operation for some period of time, and the new code of conduct that is in operation now. Does that help?

Hon Helen Morton: Yes, it does.

Hon SALLY TALBOT: Going back to the point I am trying to get clarification on, the minister has said that the agenda is circulated before the meeting.

The DEPUTY CHAIR: Order! We need to get back to the bill and the question before the house, which is an amendment moved by Hon Stephen Dawson. It is necessary to address what is in the bill. I have allowed a fair bit of latitude to discuss peripheral matters that may, however remotely, have some bearing on the operations of the EPA. I draw the member's attention back to the debate—that is, that the words proposed to be inserted be inserted.

Hon SALLY TALBOT: Thank you for that timely reminder, Mr Deputy Chair. I am indeed indicating the precise reasons that I am speaking in support of the amendment moved by Hon Stephen Dawson that would have the effect of removing Roe 8 from this retrospective legislation so that Roe 8 can be properly assessed at some point in the future. I have asked the minister two things, which I am not sure I have an answer to yet. Firstly, has the government given any consideration to moving to a system under which pecuniary interests are held on a register somewhere so that the pecuniary interests of EPA members are documented and are not considered in relation to individual agenda items at specific meetings? Directly in relation to this amendment, I would like to know when Dr Whitaker declared his conflict of interest. Did he declare it at the beginning of the meeting or in the days leading up to the meeting?

Hon HELEN MORTON: This has been covered. It was declared at the meeting. I have covered it all. In answer to the second part, we have to get back to the independence of the authority and its chairman, which is set out in legislation. It is not something that the government can direct, so let us be very clear about that as well. I agree

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with Mr Deputy Chair's ruling that the conversation that has taken place so far is hardly relevant to this amendment. I do not intend to keep covering issues around the agenda items of the EPA, the mechanisms by which it deals with those items and at what stage in a meeting it dealt with those sorts of things. We need to focus on the amendment put forward by Hon Stephen Dawson.

The DEPUTY CHAIR (Hon Simon O'Brien): Hon Stephen Dawson has moved —

Page 6, after line 11—To insert —

- (c) the report and recommendations of the Environmental Protection Authority on the Roe Highway Stage 8 extension (Report 1489, September 2013).

The question is that those words proposed to be inserted, be inserted.

Although a range of matters that we might consider peripheral to that have been entertained in the spirit of allowing a thorough examination, the fact is that that is the issue before us and debate must be relevant to that.

Hon SUE ELLERY: During the exchange, I went back to the minister's second reading speech because I thought I might have imagined the reasons that the government gave for asking us to deal with retrospective legislation. It turns out that I had not imagined it at all. There are two issues; there is what the bill does and when it applies from. The second reading speech tells us that the act makes valid certain matters that may otherwise be deemed to be invalid by nature of three reasons: failure to comply with sections 11 and or 12 of the Environmental Protection Act; the existence of a reasonable apprehension of bias by authority members; or the response to a perceived conflict of interest being to rely on a delegation when no delegation was in fact available. That is what the bill does, and it does it retrospectively. The minister said in her second reading speech that we are being asked to consider that extraordinary step because of "significant capital expenditure by the private sector". That is not the case for Roe 8. There has been no significant capital expenditure on Roe 8 by the private sector and none by what I think is a bit of a cute term "the proponent", because the proponent is the government. The government has no money to spend on it. It had some money for it in the budget but then took it out. In fact, Roe 8 is still going through the appeals process. The issue of Roe 8 does not meet the test that the government tells us in the second reading speech is why we need to do this retrospectively.

I wonder whether that is because Roe 8 is not the only project that is made valid by this act. We know there are a bunch of other projects not in the list that we do not necessarily know about. Are there other projects for which the government is the proponent in the broader list that we have not seen? Are there others on the list beyond the 25 that have been listed for which the government is the proponent? Browse is dealt with separately because it was the subject of a court case. The other one on the list that is clearly not a resource project is the University of Western Australia project but the state government is not the proponent. Are there any others on the list that make Roe 8 not the exception that it seems to me it is?

Hon HELEN MORTON: We have covered the fact that there are more than 1 000 decisions. Some 65 or something or other projects were being looked at. That is contained in the list of 25 for which there is considered to be a not insignificant risk, and there are the other 40 that are not considered to have any risk of any significance that we would be even bothered about.

In respect of that process, I do not know whether or not any of the 40 projects are government projects, but it is on the public record. I tell the member again that this has been thoroughly researched and comprehensively assessed by the Office of the Environmental Protection Authority and the State Solicitor's Office, and it has been reviewed. As to whether there are any other government projects in that list of 40, the member can have a look at the list and determine whether she considers them to be government projects. She referred to the Underwood Avenue project, which is the University of Western Australia. Do we call that government or non-government? I do not know, but those projects are there for her to see and to make up her own mind about if she wants to consider whether those projects are government, non-government, university or private sector projects. It is there for her to see.

Hon SUE ELLERY: I thank the minister very much for inviting me to go and look at the list. I am asking her: does she have advice available to her as to whether the government is the proponent for any of those 40-odd projects?

Hon HELEN MORTON: I hope that the member got the paper that was tabled yesterday.

Hon Sue Ellery: I didn't get a personal copy.

Hon HELEN MORTON: Okay. I am going to refer to it, so she might need to get a copy. There is a review of the conditions for the Perth desalination plant by the Water Corporation, so my question to the member is whether or not she regards the Water Corporation to be a government body.

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Hon Sue Ellery: The Water Corporation is, yes. It's a government trading enterprise. Perhaps I could assist you by telling you that.

Hon HELEN MORTON: Well, there is one. There is another one that relates to the Fremantle outer harbour project, one relating to the Kwinana quay project and another one around the Water Corporation and desalination. These are the projects that are considered not to have a risk attached to them. There are other projects in the list of 40 that relate to government trading enterprises et cetera, but of the 25 projects that have some not insignificant risk attached to them, the one the member is referring to is the government agency within that.

Progress reported and leave granted to sit again, on motion by Hon Helen Morton (Minister for Mental Health).