

**PLANNING APPEALS AMENDMENT BILL 2001**

*Second Reading*

Resumed from an earlier stage of the sitting.

The PRESIDENT: I remind members that the use of Whips' phones is merely for the purpose of transacting the business of the Whip, not for more general purposes, either by the Whip or anybody else.

**HON DERRICK TOMLINSON** (East Metropolitan) [4.40 pm]: Before question time, I was attempting to make a point that I hoped the House would take seriously. However, given the state of the House, we should pause, Mr President, and, with your permission, I will ask everybody to stand, give themselves a good shake, jump up and down on the spot and shake their heads vigorously three times. I suggest that they then sit down, sit up straight and pay attention.

Several members interjected.

The PRESIDENT: Order! I believe the member is trying to attract the attention of the House.

Hon DERRICK TOMLINSON: You misinterpret me, Mr President. I was attempting not to be rude, because I was taught never to speak while somebody else is speaking. Even though I am on my feet, I do not want to be rude.

I was attempting to make the serious point, which I had hoped the House would take seriously, that whenever we legislate to take authority for discretionary decision making from the minister, we diminish the standing of that office. Not only do we diminish the standing of the office, but also we transfer from the elected representatives authority conferred upon this Parliament by popular representation, and give that authority to public servants or, to use the vernacular, bureaucrats. We shift authority from a democratic process to a bureaucratic process. We should take that very seriously, because when members are elected to this House, each of us has the privilege of the authority of a majority of electors, or a sufficient quota of the electors in the case of the Legislative Council, to make decisions on their behalf. We are authorised by election to be decision makers.

One of the decisions that we make, either by election in the case of the Australian Labor Party or by appointment in the case of the Liberal and National Parties, is to transfer part of that authority to the ministers. We accept and acknowledge that authority. That carries with it a considerable responsibility of trust. Ministers of the Crown are entrusted with that decision-making authority. We are now saying that we cannot trust the ministers to make decisions in town planning appeals. For some reason we assume that because they are ministers, they cannot be trusted with that with which they have been entrusted, and we then deny them the trust. Although both parties have argued for the transfer of ministerial power, authority or discretionary decision-making authority in the appeals process to a planning appeals tribunal, by making that decision, we are diminishing somewhat the status of ministers.

Hon E.R.J. Dermer: You can blame Mr Lewis and his successors for the abuse of the power that they held.

Several members interjected.

The PRESIDENT: Order! I feel the speaker is being distracted by interjections.

Hon DERRICK TOMLINSON: I appreciate that interjection, because it is the very point which underlies this legislation. It cannot be denied that from time to time decisions have been made that have drawn critical comment from a broad cross-section of the community. That applies to ministers of the two major political persuasions.

Hon E.R.J. Dermer: Just yours.

Hon DERRICK TOMLINSON: I see Hon Ed Dermer shaking his head, but I suggest to him that he do a little work, and he will find that as far back as the ministerial appeals system being introduced, some ministers' decisions have drawn criticism. Not all those criticisms and not all those decisions relate to ministers of the coalition political persuasion.

The critical opposition to some of the decisions, as a proportion of the total number of appeals heard, is minuscule. That does not diminish the gravity of some of the allegations about those decisions. However, a far, far greater number of decisions are accepted without dissent or comment. There is far greater confidence in the ministerial decision than we are giving credit to by amending the powers of the Town Planning Appeal Tribunal and transferring the ministerial appeals to it.

I started out by, perhaps facetiously, saying that it would be churlish of me to say that the Opposition was opposing this Bill because the principle of the Bill was to abolish appeals to the minister and transfer them to a

revised Town Planning Appeal Tribunal, which was in fact a plank of the 1996 electoral platform of the coalition parties. It was quite so. As a first stage of implementing that platform, a review of the town planning appeals system was commissioned, undertaken and reported upon by Mr R.J. Chapman. That report was presented on 15 August 1997. Mr Chapman was given terms of reference to review the background material of previous consideration given to the appeals system in 1996 and the 1984 report of the Committee of Inquiry into Planning in Western Australia, to critically examine the appeals system in Western Australia in terms of impartiality, fairness, speed, cheapness, simplicity and ability to determine appeals having regard to sound planning principles, and to develop options for improving and, if necessary, restructuring the appeals system. In 1996-97, Mr Chapman was given broad terms of reference to respond to and to give policy guidance to the coalition's platform to overhaul the town planning appeals system.

Hon J.A. Scott: Did he not suggest getting rid of the minister as well?

Hon DERRICK TOMLINSON: It was not simply a matter of whether the minister should be gotten rid of in the town planning appeals process; Mr Chapman was asked to consider options. Among the options was retaining the current dual system. He was not told - even though it was a plank of the coalition's 1996 platform - to transfer the town planning appeals authority from the minister to some form of appeals tribunal. He was asked to consider the options of, first, retaining the current dual system; secondly, merging the administration of the appeal bodies and streamlining the processes; and, thirdly, revamping the appeal tribunal. The questions were: do we keep what we have got and streamline it; do we look at the best of the two avenues of the dual system - the appeals tribunal and the appeal to the minister - and produce a model that is a functional system that takes advantage of the best features of the dual system; or do we revamp the tribunal?

Apart from the broad review, there were three options and the coalition asked Mr Chapman what he thought of the three options. The first option was highly regarded. When considering the number of appeals that were heard in the two processes, only 10 per cent of appeals went to the Town Planning Appeal Tribunal, the rest went to ministerial appeal. The 10 per cent that went to the Town Planning Appeal Tribunal tended to be matters that required some elucidation of controversial or complex matters of law or town planning, the interpretation of local government by-laws or the interface of local government by-laws with the Metropolitan Region Town Planning Scheme Act requirements; in other words, they required some judicial response. The other 90 per cent referred to the Minister for Planning on appeal tended to be matters that did not require a great deal of complex deliberation. They were most often about conflict between a local government town planning scheme and the metropolitan region scheme, some conflict between the aspirations of the land owners and what they might do with their land under a town planning scheme and metropolitan region town planning scheme, or some compassionate ground that the minister was asked to consider in his decision. In all those, in my dealings with planning ministers over three terms of government, the overriding consideration was sound planning principles. If the minister was asked to overturn a decision based upon an understanding of a local government scheme or town planning laws, the consideration given in the first instance was to sound planning principles and process. I can recall several times making representations to ministers on behalf of constituents and being asked by the minister to give sound reasons for the minister to overturn a local government town planning scheme, because local government town planning schemes are based upon sound town planning principles. When I asked the minister to overturn sound town planning principles, I had to give a good reason for doing that. Most often, the ministers whom I dealt with were reluctant to go against a decision of a local government authority. The ministerial appeal, in spite of cynicism that the ALP policy referred to - a cynicism that I do not challenge or deny - was a popular and well-regarded system. Its disadvantage, identified by Mr Chapman, was summed up as a cynicism about the minister's discretionary authority. Concern exists that the minister may not be impartial; in other words, he or she will find in favour of one or other of the persons or bodies in the appeal on other than sound planning principles.

Hon Kim Chance: Or there may be a perception of such.

Hon DERRICK TOMLINSON: The Leader of the House has made a pertinent point; it is a question of perception. Why is there that perception? I made the point at the beginning of the debate that there is a certain theatre associated with politics and with this place. We have built up a certain expectation that we will oppose one another to score political points on the assumption that it will improve our standing in the electorate and therefore improve our chances of retaining or gaining power in the other place. Where is the cynicism based? One of the important reasons for that cynicism, but not the only reason, is in the conduct of members of Parliament. We are quick to find or exploit a perception of partiality when there is none. We are quick to exploit it for perceived or assumed political advantage. We are denigrating ourselves as well as the roles that we play as legislators by doing that. When one asks why politicians have a standing somewhere between, if not below, prostitutes and used car salesmen, one is inevitably told that part of the reason is our conduct. The other is that we have a critical Press, which is more than willing to exploit perceived improprieties on the part of members of Parliament and which we in turn feed on and feed.

It is important that we consider the question of perception of partiality that the Leader of the House has raised. It certainly came through in Mr Chapman's report on his review of the ministerial system. There is a perception that some of the decisions made by a minister in a town planning appeal system will not be impartial.

Debate adjourned, pursuant to standing orders.