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

*Committee*

The Deputy Chairman of Committees (Hon Michael Mischin) in the chair; the Minister for Environment (Hon Donna Faragher) in charge of the bill.

**Clause 1: Short title —**

**Hon SALLY TALBOT**: This afternoon we were given a new supplementary notice paper, and my spirits rose, thinking that during the winter recess the Minister for Environment and the government might have reflected upon some of the substance of the second reading debate and might have come back filled with determination to improve this bill. Unfortunately, that is not the case. Therefore, we are just about back to where we started when we began the debate on this bill on 17 June, some months ago now. I spoke at some length during the second reading debate, so I do not intend to repeat much of the substance of the points that I made on that occasion; however, there are a couple of points that I would like to raise during the committee stage. Firstly, it appears that the government might be working under a basic misapprehension about the circumstances in which this bill has been put together, because, to my absolute astonishment, I believe I heard the minister say this afternoon that there had been a broad consensus among the stakeholders about the substance of this bill.

**Hon Adele Farina** interjected.

**Hon SALLY TALBOT**: As Hon Adele Farina just said by way of interjection —

**Hon Donna Faragher**: I was actually referring to the Office of the Environmental Protection Authority in that context, if that helps the member.

**Hon SALLY TALBOT**: — that must have been an observation that was made very loosely. My impression of the stakeholders —

**Hon Donna Faragher**: You didn't pay attention then. I referred to the office of the EPA in that context. That is what I was referring to in my conversation with Hon Giz Watson.

**Hon SALLY TALBOT**: That was not the point to which I was referring, minister. The minister said at one point that, with all the advisory groups that had been established, she was under the impression that the substance of this bill had some degree of consensus. That is certainly not the case. Indeed, as I pointed out in my contribution to the second reading debate, the majority of comments that have been made and submissions that the government and the minister have received about this reform of the approvals process indicated that the appeals process should be retained, because the appeals process is the heart and soul of the process that has been established to allow engagement with the decision-making process. I do not know where that observation by the minister has come from, but it certainly has absolutely no substance in the opinion of people on this side of the house.

In another extraordinary comment by the minister this afternoon—I wonder what planet she is inhabiting if she truly believes some of the observations that she made this afternoon—she made some observations along the lines that the act has been in place since 1986 and nobody has ever complained about it before.

**Hon Donna Faragher**: Did you actually listen to my contribution? Clearly not.

**Hon SALLY TALBOT**: I did actually, but the minister will have a chance to look at *Hansard* in the morning and check some of the comments that she made this afternoon. If she wants to now disown them or correct them, she has an opportunity to do that.

**Hon Donna Faragher**: I will.

**Hon SALLY TALBOT**: We will look forward to that.

It is my recollection that the comment that was made only a few hours ago was that the act has been in place since 1986 and this is the first time that we have raised problems. I think that comment was made in relation to some observations made by Hon Adele Farina about this whole notion that the minister has come up with of reforming the administrative procedures that established the day-to-day operation of those sections of the Environmental Protection Act in which we are interested with regard to this bill. Hon Adele Farina pointed out during the second reading debate, as did several other speakers, including me, that administrative procedures do not come before this house for scrutiny; therefore, they can be changed, scrapped or modified in a way that has absolutely no reference to what the members of this house or, indeed, Parliament might be thinking. I have to point out to the minister the glaringly obvious fact that no government has walked into the Parliament and tried to fiddle with the act in the way that she is seeking to do now. We are now supposed to place all our confidence, faith and trust in these administrative procedures. The minister has come up with this mechanism. The issue that

is distressing to people on this side of the house and, indeed, the wider community of stakeholders outside Parliament is that the minister is abrogating her responsibility to provide a system that is properly open and accountable. If a previous minister had come into Parliament and tried to push through the types of amendments that this minister is talking about now, I am sure that in the days when the Liberal Party was in opposition, she would have been one of the first people to jump to her feet and say, "You are occluding the system. You are excluding the fairness, openness and transparency that is supposed to lie at the heart of our parliamentary process." Yet she seems happy to walk into this place now and say, "Don't worry about it. It's all going to be okay. You can trust the people who are in charge. I'm sure it's all going to be all right. Anyway, we've got these new administrative procedures in place." It is not good enough for us. The minister only increases our concerns and the concerns of all the stakeholders when the argument is couched in such nebulous, dismissive terms.

Lest the point has been genuinely missed in this debate, we disagree in the most profound sense with two fundamental points of what the minister is trying to do. The first is that in removing these points of appeal—what the minister calls duplicative processes, but what she has been utterly unable to substantiate as duplicative processes—she has in effect gone around the parliamentary process. She has put in place new procedures with which we agree; we think that those new procedures are very good. However, everybody in this state knows that the minister went in with those new administrative procedures after she had second read the bill in this place. She went back to her bureaucrats and said, "Hang on; we've got a problem here. We've got to do a bit more to paint the picture to persuade people that we're not making the system less transparent than it is now." That is when the minister came up with the new administrative procedures. She could have done that without the legislation, and that would have enabled her to show us that, by simplifying the system or by inviting comment earlier in the process, she had obviated the need for these particular appeal points. She has not done that. She has dressed this wolf up in sheep's clothing and has come into this place and tried to get away with what is, in effect, a trick—a sleight of hand.

The second part of our objection is that the minister has been unable to show us how this bill will speed up the system. We have asked the minister questions during question time and we have asked questions during the second reading stage of the bill. We have asked the minister how the system is going to be sped up and how the red tape is going to be cut and we have asked her to demonstrate how this will result in a more efficient approvals system, but she has been unable to do so. Indeed, in the paper that was tabled in this place today—that is, the response to the report of the committee chaired by Hon Adele Farina—the minister enumerated some of the appeals that have been heard over the past three or four years since records have been kept, and that has enabled that to be a meaningful subject to talk about. I looked at those figures this afternoon and all it has done is increase my alarm about the removal of these points of appeal. The minister has simply not been able to provide any substance to this empty rhetoric—this trick; this sleight of hand—that is dressed up in this language about cutting red tape. In fact, it is a completely unsubstantial move that is going to clog up the process and disempower people who have every right to have their voices heard. In effect, it will simply slow down the system.

I found Hon Max Trenorden's contribution to the second reading debate quite intriguing. This is why I said at the beginning of my remarks that the government might be labouring under a genuine misapprehension. If I heard Hon Max Trenorden correctly, he said that if appeal rights are not being used, they should be abolished. That is exactly our argument. We have said that if the new procedures result in the system being finely tuned and effectively managed through the complications of the approvals processes, the number of appeals will radically decrease, and presumably quite quickly. If people are going to be notified on the day on which a submission is lodged or a proposal is put to the Environmental Protection Authority, and if this does indeed give people more engagement with the system, then presumably, at the end of only a few months, we will be able to see that working. I wonder whether the government, as expressed by Hon Max Trenorden this afternoon, believes that these appeal rights are not being used. Clearly they are being used at the moment. They are not being used in an excessive or a vexatious way, but they are being used. If the government has got it right with the new procedures, the efficiencies should begin to wash through the system in only a matter of months. I hope that between now and the end of the committee stage, people who heard Hon Max Trenorden—and indeed the honourable member himself—will go back to the facts and will check what the government is saying, because it is my belief that the government has got this seriously wrong. I will leave my comments on clause 1 at that point and will listen with interest to what other honourable members have to say.

**Hon GIZ WATSON**: I move —

Page 2, line 3 — To delete "*Approvals*" and insert —

*Assessments*

I spoke about this issue during my contribution to the second reading debate. It seems to me that the title of this bill is fundamentally wrong. Environmental assessment is about exactly that—that is, assessing the impact of

proposals. In my view, and in the view of quite a few other people, giving this bill a title that includes the words "Approvals and Related Reforms" implies that every proposal will be approved; otherwise, it would be called "Assessments and Related Reforms". I earlier used the analogy of the criminal law and the fact that trials are not called convictions. By the same token, if we are to reflect the intent of the Environmental Protection Act, which is to assess impact, the title of this bill should be "Assessments and Related Reforms". I do not think this amendment would do any harm to the rest of the bill, if the minister is concerned about that, but I put it very strongly that it would reflect the primary purpose of environmental legislation in this state, which is assessment and not approvals. "Approvals" is the language of developers and the mining sector; they are interested in approvals. In my view, the bill is probably couched in these terms because it indicates the policy direction of this government. However, I think the minister can see the merit of using the term "assessment" as it would better reflect the proper intentions of the act. I suggest that this amendment could be supported. Whatever else happens to this bill, this amendment would not affect the rest of the bill. In the view of the Greens (WA), it would just appropriately indicate what environmental protection legislation in this state is supposed to do; that is, it is about assessment and not about an assumption of approval. Very occasionally, projects are not approved. They are either given a quick no or they are assessed and the Environmental Protection Authority or the minister decides that they will not be approved. With those arguments, I suggest that the committee might support this amendment to accurately reflect the intention of environmental protection laws in this state.

**Hon DONNA FARAGHER**: I take on board the comments made by Hon Giz Watson. However, the government will not support the amendment, and I will reflect on why. This bill is part of a package of four bills that have been introduced into this Parliament. Those other bills clearly extend beyond the environment; this is but one of those four bills. The four bills deal with approvals processes across the board. Essentially, this bill removes duplicative and unnecessary appeal points—that is, appeals to the minister—albeit there is a clear difference of opinion. The amendments do not propose a change to the way in which the EPA undertakes its environmental impact assessment process. If the bill did do that and was solely about that, there would perhaps be an argument that we were referring to the way in which the EPA undertakes its assessments. It is also the case that this bill is broader in that it deals with appeal points, which then comes back to my role in the decision-making time line, if I can put it that way. It also deals with matters under part V, including the alignment of appeal periods for clearing permits. That does not relate to assessments; it is an alignment of periods from 28 to 21 days. It also allows for the consent of or, if members want to use the term, approval by the chairman of the EPA for minor and preliminary works to be undertaken by decision-making authorities, which are currently constrained once it has been determined that a proposal is to be assessed. It is the government's view that the bill is far broader in concept than just assessment. On that basis, we will not support the amendment.

**Hon GIZ WATSON**: That is an interesting argument, although I am not convinced. I would have thought that assessment was a broader term than approval, because assessment provides the possibility of modification or rejection, whereas approval simply implies that we will bend to make it fit, which unfortunately is often the case. We know what "EPA" usually stands for, as evidenced by the statistics; that is, "every project approved"!

**Hon Adele Farina**: I have not heard that.

**Hon GIZ WATSON**: Hon Adele Farina has not heard that one? It is very common in the environment movement. "DEP" used to be: "don't expect protection"! Seriously, I honestly do not follow the logic of the minister's response. These reforms go to the heart of the assessment process, including the appeals side. Whether the process leads to an approval is another issue altogether. I will not expend an enormous amount of energy arguing the merits of why we think this is a better description, but I will say that I am afraid that I do not follow the logic of the minister's response. I realise that there is a package of bills. The other bills also refer to approvals. If it is any help, we will be moving amendments to those bills as well, because I think the problem is universal, rather than the converse argument put by the minister.

**Hon ADELE FARINA**: I would like to speak in favour of the proposed amendment. I do not really understand the minister's explanation as to why the government will not consider the amendment that is proposed by Hon Giz Watson to delete the word "Approvals" in the title and insert the word "Assessment". If the minister looks at section 4A of the Environmental Protection Act, which states the object and principles of the act, it is clear from those objects and principles, as they are stated in section 4A of the act, that this act is about assessment. Therefore, given that these amendments are dealing primarily with the assessment process, which includes decisions made by the minister and all the other things that the minister identified, it is reasonable and more appropriate for the bill before us to refer to assessments rather than proposals. The fact that there may be a suite of four bills with a similar first word is irrelevant when we consider that the object of the EP act is to protect the environment of the state, which it says very clearly in the objects of the act. Hon Giz Watson has put forward a very worthwhile amendment that more accurately reflects the bill that we have before us. I would urge the minister to give more consideration to the amendment before the chamber, and certainly to give a better

explanation if the government intends to continue with its current position of not supporting the proposed amendment.

**Hon DONNA FARAGHER**: I reiterate what I said before, and the fact that I appreciate that Hon Adele Farina has referred to part IV, but this act also amends aspects with respect to part V —

**Hon Adele Farina**: I referred to section 4A of the act; not part V.

**Hon DONNA FARAGHER**: — which is termed "Environmental Regulation" and which clearing permits, works approvals and licences fall under.

**Hon Adele Farina**: Yes, and section 4A relates to the whole act.

**Hon Norman Moore**: Stop interjecting the whole time!

**Hon Adele Farina**: The minister has misunderstood me.

**Hon DONNA FARAGHER**: She is not interested!

**Hon ADELE FARINA**: I thank the minister for her explanation but she appears to have misunderstood me. I referred to section 4A of the act; not part V of the EP act. Section 4A of the act sets out the objects and principles of the act, which actually relate to the whole of the act.

**Progress reported and leave granted to sit again, pursuant to temporary orders.**