

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

*Third Reading*

**HON DONNA FARAGHER (East Metropolitan — Minister for Environment)** [5.54 pm]: I move —

That the bill be now read a third time.

**HON SALLY TALBOT (South West)** [5.54 pm]: I point out to members opposite that it was never a foregone conclusion that we on this side of the chamber in the Labor Party would oppose the third reading of this bill. The reason that it was never a foregone conclusion is that we are not opposed to the policy of the bill. We are also not opposed to the principles of the bill as set out in the second reading speech and the explanatory memorandum. We need go no further than the first paragraph of the explanatory memorandum, headed “Overview of the Bill”, to see those objectives spelt out. It states that the Approvals and Related Reforms (No. 1) (Environment) Bill 2009 amends the Environmental Protection Act 1986 “to remove duplicative or unnecessary appeal rights”. It then goes on to refer to a few other things. The core of the matter is summed up in the words “to remove duplicative or unnecessary appeal rights”. Nobody in the Labor Party on this side of the house is opposed to those objectives. Why would we be? Of course procedures should be regularly scrutinised to see whether they are fulfilling the original intent for which they were designed, to see whether best practice has been followed, and to see whether the everyday, practical applications of laws and regulations are providing the best possible outcomes. To set out to see whether there are appeal rights that are duplicative or unnecessary is of course something that a good government would do on a regular basis. Therefore, we did not oppose at the outset, and have never opposed during the course of this debate, the process of making sure that we get the best possible system.

But the question that remains is whether the appeal rights that are being removed and changed in this bill are indeed duplicative and unnecessary. I put it to members that it is up to the minister on this bill, as it is up to ministers on every bill that comes before this house, to demonstrate—by the time we get to the third reading of this bill and so that everybody in the chamber will be convinced—that the policy as laid out in the second reading speech and the new procedure that this bill will put in place will serve the purposes that are explicitly intended. That is the case particularly during the course of consideration in detail of the bill at the committee stage. It may be the case in this chamber, and has been on many occasions in the past, that we get to a point during the committee stage when the government realises that things may be improved above and beyond the provisions it has laid out in the bill. Members will remember very well a recent occasion dealing with a bill concerning development assessments when that was indeed the case. In the case of that bill, the opposition approached the bill with a spirit of cooperation, and we indicated from the beginning that we agreed with the basic objectives of the bill. However, during the course of consideration in detail at the committee stage, the government was prepared to concede several points on which the bill could be made better than it was when it first got to this place.

As I have said, our initial statement that we would oppose this bill at the second reading stage did not commit us irrevocably to opposing it at the third reading stage. Had the minister been able to demonstrate, particularly during the committee stage, that the principles and objectives set out in the second reading debate were indeed going to be met, and that our objections at the earlier stages of the bill were based on misunderstandings or gaps in our knowledge about what was going on, the minister should have been able to persuade us to support the third reading. However, that has not been the case. I therefore put it to members that this bill should not be read for a third time.

*Sitting suspended from 6.00 to 7.30 pm*

**Hon SALLY TALBOT:** I was making the point before dinner that although it was never a foregone conclusion that Labor would oppose the third reading of this bill, it was nonetheless incumbent on the minister to explain why the objectives and principles set out in the second reading speech and the explanatory memorandum are served by the substance of the bill. The reason we have now decided that the bill should not be read a third time is simply that the case has not been made. But, even worse, during the second reading debate, and particularly during the committee stage of this bill, the Minister for Environment has revealed herself to be a person with such a slender grasp of the arguments that have been advanced that our initial resolve to oppose the bill has only strengthened during the days during which we had this debate.

It is our contention that the bill should not be read a third time because we have been unable to get answers to the questions we have asked about how certain elements of this bill will result in a better process; specifically, how the removal of the appeal points on the level of assessment and particularly on the status of a project as a derived project will make the approvals and the appeals process better. It must be said in making this case for the bill not being read a third time that the minister and the government was not short of evidence suggesting that, in fact, the measures contained in this bill would make the approvals process less transparent and would actually result

in a less efficient system. We need go no further than the report of the Standing Committee on Uniform Legislation and Statutes Review. Hundreds and hundreds of pages of evidence was taken by that committee; it is all publicly available. The report of the committee has been sitting in this place now for many, many weeks. The committee heard from a number of witnesses, all of whom have produced evidence that should have introduced a high degree of disquiet in members of the government.

There has been no shortage of evidence that the bill will result in a less efficient appeals process and process for examining and providing public comment on proposals. There has been no shortage of argument in this chamber. The debate has gone for many, many days and issues of real substance have been raised by my colleagues in the Labor Party and members of the Greens. There has also been no shortage of evidence provided from the Environmental Stakeholder Advisory Group—the minister's own reference group, which includes not only people with reputations as environmental activists but also people with reputations as being industry advocates, like the Chamber of Minerals and Energy and the Australian Petroleum Production and Exploration Association. That body itself has pleaded with the minister to reconsider.

**Hon Donna Faragher:** I think you might be wrong there; I think they have actually spoken to you.

**Hon SALLY TALBOT:** A number of them have spoken to me, indeed.

**Hon Donna Faragher:** To encourage you to deal with the bill.

**Hon SALLY TALBOT:** Not at all. I think the minister has been seriously misinformed. I am more than happy to share with the minister some of the concerns that have been put to me, but I simply cannot believe that she has not heard them. I do not kid myself that these people come to me because they think they will get a more sympathetic hearing or because I will be able to deal with their concerns more efficiently. For goodness sake; she is the minister, not me. They come to me to let me know what their concerns are so that I can do whatever I can, but I cannot believe that the minister can sit in this place and look me in the eye and tell me that she is simply unaware of the concerns —

**Hon Donna Faragher:** I didn't say that. I just said that I understood that they had come to see you about progressing the bill.

**Hon SALLY TALBOT:** I think that is a conversation we might have behind the chair, minister. If that is what they have told the minister, I can assure her that either she has misunderstood them or they are being less than straightforward with her.

There was one dissenting voice in the stakeholder advisory group. The minister knows that as well as I do. The dissenting voice put its views on record. There was only one dissenting voice, and it was not the Chamber of Minerals and Energy of Western Australia or the Australian Petroleum Production and Exploration Association Ltd. That is something that the minister is going to have to deal with over a period, because that group clearly feels that it has been sidelined in this whole process.

One of the reasons that the debate was quite lengthy is that the bill was subject to various amendments during the committee stage. On my part at least, I can assure the government that there were no tricks intended in any of the amendments that I moved. I waited to hear the arguments for not accepting those amendments, but those arguments simply were not forthcoming. I do not know whether the government thought it was a trick to try to make the administrative procedures more transparent. Certainly, if the government had agreed to consider the amendments that I put forward on that matter, we might have been considering a different response to the third reading debate. I moved two different amendments, and I expressed thanks at the time to Hon Giz Watson for holding back on her final amendment, which we ended up supporting with some reluctance so that we could test the government on this issue. If the government had shown any willingness at all to engage on the concerns that we raised, we might have been looking at a different outcome during the third reading debate. But, no, once again we just got the talk-to-the-hand response, because the minister was not listening to what we were saying.

I will summarise the extent of the opposition's reluctance to vote for the third reading of this bill by asking what the circumstances might have been that would have led us to support the third reading. I have already referred to the first circumstance, and that was the opportunity that we gave the government to give additional scrutiny to the administrative procedures. As I said, if the government had shown any willingness to engage with us on that issue, we could have made real headway. One of our concerns is that because the administrative procedures will be subject to no parliamentary scrutiny whatsoever—the minister herself conceded that point—any administrative procedures that are proposed to be changed with the stated objective of maintaining transparency, openness and community involvement in the process can be changed on a whim. They can be changed if there is a change of minister or a change of authority at the Office of the Environmental Protection Authority or the Environmental Protection Authority, and that is simply not good enough. We might have supported the third reading if we had some concrete evidence that the removal of the appeal points will not mean that appeals and objections are pushed later in the process, because that is a very real concern to us. Again I make reference to the

minister's stakeholders advisory group. It is a concern that has been well articulated by the members of that group. It is a concern that has been well aired in public comments made by many, many sectors of the community. If the minister had been able to produce some concrete evidence that there would not be an increase in appeals at the stage at which it is much less easy for a proponent to tweak a project or to make the adjustments that would accommodate the concerns being raised, then we would have reconsidered our decision to vote against the third reading, but that did not happen.

We might have supported the third reading if the minister had been able to produce some concrete evidence that transparency and accountability in the process of appealing proposals and assessing proposals were not being reduced. If the minister had been able to convince us that procedural fairness was being respected, we might have been able to make some headway towards supporting the bill on this side of the house. Indeed, the third reading might have been supported by us if the minister had shown any evidence that the removal of the appeal rights would result in significant saving of resources; that is, saving time and money on the part of officers of the department involved in processing appeals. More especially we would have been receptive to consideration of that evidence if the resources could be shown to be put towards a worthwhile end. Goodness knows there are enough worthwhile ends to which they could have been put in the whole question of environmental assessments and project approvals.

We might have been persuaded to support the third reading if we could see some evidence that projects involving issues other than land clearing would not be subject to a less rigorous investigation as result of these changes. That was an issue that we debated at some length during the committee stage. The fact that the minister was not able to follow her own responses to the evidence that was heard by the committee I think is one of the most troubling aspects of this debate for people on this side of the house.

We would perhaps have been persuaded to give the third reading more sympathetic consideration if we had seen some evidence that the minister had listened to the concerns that had been raised by the stakeholders advisory group and that had been raised by the committee. I am sure, to members of the committee, who of course, I must say, included Hon Nigel Hallett and Hon Liz Behjat as well as my colleagues on this side of the house, it was a great disappointment that their hundreds of pages of report elicited only a couple of pages of response from the government. If we had seen some evidence that the minister had listened to those concerns with sufficient engagement to have consented to their assumptions being tested in a review, indeed we might have reconsidered our position on the third reading.

Finally, I point out that our view on the third reading might have been different if we had received some assurance that projects would not avoid public scrutiny and would not be subject to disappearing appeals processes and consultation involving community input when they were claiming to be a derived project many years after a strategic assessment had been completed. It has been highlighted in commentary on this issue that there are likely to be some projects assessed under the provisions of the strategic assessment that are very significant projects for the state's development—that is, the development of industry in this state and the development of large and significant planning proposals. We heard by the minister's own admission that derived projects may come along years after the original assessment has been done. The fact that we have not received an assurance that projects will not avoid public scrutiny is another reason that we are forced into the position of having to vote against the third reading of the bill. The fact is that we received no assurance relating to any of the circumstances that might have led to us supporting the third reading.

We saw in this place an absolute debacle over the scrutiny of the administrative procedures. The minister read from a different version of the administrative procedures than those that had been provided to members on this side of the house. It transpired that the minister did not even have a complete set of the administrative procedures. If nothing else had aroused our discomfort about this bill and added to our resolve to subject it to the most rigorous analysis in committee, that in itself was a real indictment of the way that the Minister for Environment is deporting herself and the government in general is deporting itself.

I said that we might have been persuaded to look more sympathetically at the third reading if we had seen some concrete evidence that appeals would not be pushed to a later stage in the process. I refer members to a discussion we had about the use of the section 43 provisions in the Environmental Protection Act. We produced evidence in the chamber that needed to be addressed by the minister to persuade us to support the third reading of the bill. We produced evidence from experts who said that there were likely to be more appeals under section 43 as a result of the removal of these appeal points. When we got to that point in the debate, I was astonished to hear the minister say that that was just someone's opinion. That is not how we conduct debate in this place. We are supposed to be persuading each other that the stance we are taking is right. We are supposed to persuade each other not just by the assertion of raw numbers in this place, but by the strength of our arguments. The minister showed us that she was simply not prepared to engage on that point even though the people who made that judgement have far more experience and expertise in that field than I.

On the question of the reduction of transparency and accountability and the assurance that procedural fairness would be respected, again, we saw the minister fall back on the tired old empty defence that everyone is entitled to their opinion, and that it was not hers. We were not interested in her opinion; we were interested in her arguments to support the measure that she is trying to put in place. We looked for evidence that the changes would result in a more efficient system and that there would be a significant saving of resources. In that regard, I remind honourable members that if we are being asked to take the third reading seriously, we should now be in a position to consider concrete evidence about the time-saving implications of the removal of these appeal rights. Far from being able to show us how time will be saved, the minister had to admit, at least in respect of one of the appeal rights—the appeal status of a derived project—that there had never been an appeal. The argument that was canvassed in the explanatory memorandum and in the second reading speech about increasing efficiency simply falls away because the minister is unable to show us that there will be any significant saving.

In relation to the removal of the other significant appeal right—the appeal against the level of assessment—again the minister was able only to agree with the committee report that there are only a handful of appeals every year and that most of those appeals are dealt with very efficiently and many of them have historically been brought by the proponent. I understand perfectly the argument that because of the reduction of appeal levels to two, it is unlikely that proponents will appeal, because almost always they will appeal only to increase the degree of scrutiny. Nevertheless, we did not see any evidence that suggested a massive logjam would be unblocked by these moves.

When it came to providing some evidence of projects involving stakeholders who want to claim that there are issues other than land clearing involved, the minister, again, was only able to say that the view that they would now be subject to less rigorous assessment was simply someone's opinion. She dismissed out of hand the fact that those opinions were expert opinions from people with a lot of experience of how the system worked, and there was not one voice amongst those opinions that said that the projects in that category would not be subject to a less rigorous investigation once these changes had taken place.

Of course, we then came to the Labor Party's amendment—moved with the support of the Greens (WA)—to put a review process in place, and we saw another debacle. Hon Liz Behjat, who is a member of the uniform legislation committee, suggested that the review should be done by the uniform legislation committee, which I would have been happy to take on board. Then Hon Simon O'Brien put forward a lengthy argument that was full of errors and mistakes, and was simply misleading as to the whole nature of the debate. He must be embarrassed when he looks back at *Hansard* and sees —

**Hon Simon O'Brien:** You are an absolute joke! I think the members actually received my comments in the spirit that they were intended, and they were not erroneous.

**Hon SALLY TALBOT:** Hon Simon O'Brien had a very funny idea about the spirit of the debate at that stage.

**Hon Norman Moore:** You've got a funny idea of what a third reading speech is supposed to be about.

**Hon SALLY TALBOT:** Hon Simon O'Brien managed to prolong the debate by something like 30 minutes by making comments that were simply wrong about committees that could self-refer and that sort of thing. Anyway, I am not going to engage in that debate again because, quite frankly, it was a wicked waste of time.

**Hon Norman Moore:** This is the third reading debate!

**Hon Simon O'Brien:** You've got to get over it, you know; you've got to get over the fact that as you, as state president, lost an election. That's what you've got to get over; stop being so bitter and twisted!

**Hon SALLY TALBOT:** I will lend Hon Simon O'Brien my copy of the Ray report.

**Hon Simon O'Brien:** Stop being so bitter and twisted.

**The DEPUTY PRESIDENT (Hon Helen Morton):** Order! Can we please focus on the third reading debate? I am sure that Hon Sally Talbot is aware that the third reading debate is meant to be concise and of short duration.

**Hon Simon O'Brien:** Sad little person that she is!

**Hon SALLY TALBOT:** I am; and I am sure that your reminder has been heeded by those who are interjecting, presumably to prolong the debate!

Several members interjected.

**Hon SALLY TALBOT:** Again, if the government and the minister had been serious about wanting us to support the third reading of the Approvals and Related Reforms (No. 1) (Environment) Bill 2009, the least they could have done was to engage seriously in the arguments we put up, to the extent that they were prepared to have their assumptions tested by including a review clause in the bill.

**Hon Michael Mischin** interjected:

**Hon SALLY TALBOT:** It was not a trick.

**Hon Simon O'Brien:** But we never expected you to support this. You can't help yourselves; you're so miserable and negative.

**Hon SALLY TALBOT:** I do not know where Hon Simon O'Brien gets that from.

Several members interjected.

**Hon SALLY TALBOT:** I am sorry, but Hon Simon O'Brien said the government never expected the Labor Party to support this bill.

**Hon Simon O'Brien:** No!

**Hon Michael Mischin:** That's right; I never expected it.

**Hon SALLY TALBOT:** That is very interesting; we might just have to test that assumption as we move through a few other bills. Can I just get on with this?

**The DEPUTY PRESIDENT:** I would prefer it, and I think it would be very, very wise to stay with the third reading debate on this bill and see if we can bring it to a conclusion in the near future.

**Hon SALLY TALBOT:** To summarise my points: we were looking for some assurances, and we were looking for some concrete evidence that the measures that were purported to be put into effect by this bill would indeed be put into effect, but we got nothing. We got no assurances or evidence to test the assumptions that were being made.

**Hon Michael Mischin** interjected.

**Hon SALLY TALBOT:** I will finish by explaining exactly why we are going to oppose the third reading. In short, we oppose the third reading because although the minister's second reading speech said that the legislation would remove uncertainties and delays, we find that in fact the bill will have the effect of increasing uncertainties and delays. Although the second reading speech and all the minister's statements talked about more efficiencies, our conclusion is that the bill will in fact lead to fewer efficiencies. The bill uses language such as "strengthen" and "streamline" about what it will do for the system; in fact, our belief is that the result will be a system that is weakened and prolonged. Although the minister uses empty rhetoric about accountability and transparency, it is our conclusion that the bill will in fact reduce accountability and transparency. That is why we will not support the third reading of the bill.

In conclusion, I thank my colleagues on this side of the house who contributed to the debate and joined me in the attempt to get the government to persuade us to support the third reading. I thank the members of the Greens who worked very cooperatively with us, which is great, on getting our points up. I also thank the advisers who provided me with some good briefings. The debacle of a committee stage, to which I referred with particular reference to a couple of points that we raised, is not supposed to reflect on the quality of the advisers or the advice that they gave. It is simply that the government is set on an agenda that is not open to reasoned argument. I end by acknowledging that indeed some great work is done by the Environmental Protection Authority and its officers. Nothing that we have said in this debate can be taken by the minister to reflect to any extent on the way that some of our best public servants in this state are operating. All my comments in leading to the conclusion that we cannot support the third reading of the Approvals and Related Reforms (No. 1) (Environment) Bill, all my criticism, is aimed at the minister and at a government agenda that is fundamentally corrupting the process of environmental assessment.

**HON GIZ WATSON (North Metropolitan)** [7.57 pm]: I just want to say a few words on the third reading of the Approvals and Related Reforms (No. 1) (Environment) Bill 2009 to indicate that the Greens (WA) will not support the third reading.

We have had a lengthy debate on this bill and a lot of matters have been tested and teased out. One of the fundamental problems that we had was the failure by the Committee of the Whole to take on board any of the amendments raised from the Standing Committee on Uniform Legislation and Statutes Review's very comprehensive report on this bill. I commend the committee again for its work and I note that it was a unanimous committee report. I think it is a shame when standing committees take the time to do the work on behalf of the community and the Parliament to take on board additional evidence and witness information and make recommendations to the house that are not taken up. I think that is one of the important roles of our standing committees; members on those committees are from all sides of politics and reflect the composition of this house. As I said, I think that this committee report was particularly thorough and raised some very important points, but unfortunately the house has chosen not to accommodate any of those recommendations.

The fundamental issue for us is that this bill will remove legislative checks and balances in offering points of appeal for the environmental assessment process and replace them with procedural requirements that are not

subject to the same level of scrutiny. That is one of the fundamental matters reinforced in the committee's report and reinforced in community participation in this debate.

These changes are also premature in that we know that the Environmental Protection Authority has undertaken its own review of its procedures in response to comments about efficiency and the need to review its processes. The EPA has embarked on a process of administrative change, which has not even been tested yet to see whether it will actually achieve what this legislation purports to try to achieve—that is, efficiencies in the system. Like other members, we are not opposed to any part of the governance system being reviewed and assessed to see whether improvements and changes can be made to achieve all the outcomes and all the objectives of that particular department or agency. Our concern is that we can tell from the title of this bill—we have had this debate about the title—that this bill is about approvals. This bill is not about environmental assessment, which is actually the charge of the Environmental Protection Act in this state. We see this bill as it is now before us, unamended, as a bill that seeks to streamline and speed up the environmental approvals process for proponents who are putting their proposals before the system for assessment. We are, therefore, unable to support this bill. I have followed the debate in this place very closely. I particularly want to acknowledge the contribution of Hon Adele Farina and her detailed understanding of the operation of the bill that is before us.

**Hon Ljiljanna Ravlich:** Forensic.

**Hon GIZ WATSON:** Forensic is perhaps the word I should use.

Although I know by the nature of the numbers in this place that this bill will go through this house tonight, I reaffirm to members opposite—members of the National Party and members of the Liberal Party—that attempts to pitch the environmental assessment process in this state more clearly in the direction of proponents and exploiters of the environment may be successful tonight, but it will not reduce the commitment of those of us who are committed to environmental protection. I am sure that the consequence of this bill will be that we will see matters disputed, whether that be in a court or in other ways, to achieve environmental protection in this state. This bill has certainly upped the ante. I believe it displays a lack of spirit on the part of the government in listening to all the stakeholders on this very important matter of environmental protection in this state. I put the National Party and the Liberal Party on notice that if we cannot have good, strong environmental protection legislation, and if we are going to see that eroded, there are other ways in which we will seek to protect the important environmental values that are unique to Western Australia.

Question put and a division taken, the Deputy President (Hon Helen Morton) casting her vote with the ayes, with the following result —

Ayes (19)

Hon Liz Behjat  
Hon Jim Chown  
Hon Peter Collier  
Hon Wendy Duncan  
Hon Phil Edman

Hon Brian Ellis  
Hon Donna Faragher  
Hon Philip Gardiner  
Hon Nick Goiran  
Hon Nigel Hallett

Hon Alyssa Hayden  
Hon Col Holt  
Hon Robyn McSweeney  
Hon Michael Mischin  
Hon Norman Moore

Hon Helen Morton  
Hon Simon O'Brien  
Hon Max Trenorden  
Hon Ken Baston (*Teller*)

Noes (14)

Hon Matt Benson-Lidholm  
Hon Helen Bullock  
Hon Robin Chapple  
Hon Sue Ellery

Hon Adele Farina  
Hon Jon Ford  
Hon Lynn MacLaren  
Hon Ljiljanna Ravlich

Hon Linda Savage  
Hon Sally Talbot  
Hon Ken Travers  
Hon Giz Watson

Hon Alison Xamon  
Hon Ed Dermer (*Teller*)

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Pair

Hon Mia Davies

Hon Kate Doust

Question thus passed.

Bill read a third time and transmitted to the Assembly.