PLANNING APPEALS AMENDMENT BILL 2001

Consideration in Detail

Clause 1: Short title -

Mrs EDWARDES: I want to ask the minister a few questions about the draft rules of the tribunal, of which I received a copy this morning. I thank the minister for that copy. I have not had the opportunity to go through it in any depth. Will the minister advise as to which members of the House she has given a copy and whether she will make copies available to all members, given that it is important information that is relevant to the consideration in detail of the legislation? Has the minister forwarded copies to all relevant stakeholders for their consultation?

Ms MacTIERNAN: We attempted to get a copy of the draft rules to the member for Kingsley last night but she had been paired. We are in the process of sending copies of the draft rules to all stakeholders. They will go out today. There is no difficulty in providing copies of the draft rules to any member who may want a copy. I table the draft rules and draft practice directions.

[See papers Nos 465 and 466.]

Ms MacTIERNAN: I appreciate the efforts made by members to suggest amendments. The amendments being circulated are those that have arisen from the second reading debate or are as a response to amendments proposed by other members. We have attempted to address a number of concerns that were raised during the second reading debate.

Mrs EDWARDES: I have received a handwritten amendment to this Bill that does not have the minister's name on it. I suspect it is from the minister. Can the other amendments be made available?

Ms MacTIERNAN: The attendants are dealing with that. They were given the disk that contained the amendments so they could add them to the other amendments. I will clarify the matter with the attendants.

The ACTING SPEAKER (Mr Andrews): Give me a moment as I need to be very clear about these amendments. Has the member for Kingsley received a copy of the amendments?

Mrs EDWARDES: I have received a copy of the amendments to clauses 8 and 11 and a new clause. I do not know the status of the handwritten amendment. The minister needs clarification. I believe it applies to page 26, line 29.

Ms MacTiernan: It applies to clause 11 on page 27.

The ACTING SPEAKER: It is not on the sheet, member for Kingsley. It was circulated 10 minutes ago. It is an additional amendment.

Ms MacTIERNAN: It was handed to the attendants. We should put this to one side for now. I need a copy of the amendments that have just been circulated.

Clause put and passed.

Clause 2: Commencement -

Mrs EDWARDES: This clause states -

(1) This Act comes into operation on a day to be fixed by proclamation.

(2) Different days may be fixed under subsection (1) for different provisions.

Can the minister elaborate as to why the proclamation needs to be staggered, which sections will be affected, and for what reasons?

Ms MacTIERNAN: Our intention is to bring all the provisions in at the same time. Proposed new section 10, which covers the enforcement provisions, may require a period for the education of local governments to ensure that they are familiar with the new rules. The provision is in the Bill to give us some flexibility if, in relation to proposed new section 10, local governments ask for a longer period before the amendments become law.

Mrs EDWARDES: As I indicated during the second reading debate, the Bill is primarily concerned with planning appeals. There are some provisions, including proposed new section 10, that do not deal with appeals, but take the opportunity to deal with enforcement matters affecting local governments and responsible authorities.

Clause put and passed.

Clause 3 put and passed.

Clause 4: Section 2 amended -

Mrs EDWARDES: This is a definitional clause, and incorporates many of the new definitions formerly included under part 5, which dealt with appeals, in the Town Planning and Development Act 1928. It is better drafting policy to bring all the definitions together at the front of the Act. One matter to which I would like to refer the minister deals with the definition of "party". The relevant part of the clause reads -

> **"party**", in relation to an appeal, means —
>
> (a) the appellant;
>
> (b) the person who made the decision or direction appealed against; and
>
> (c) any person joined as a party to the appeal by the Tribunal;

Stakeholders are concerned about the implications of new section 57, which allows the tribunal to hear submissions from third parties. Can the minister clarify whom the tribunal may join as a party under proposed paragraph (c)? Is it the third party under section 57?

Ms MacTIERNAN: This amendment tries to provide for situations in which a third party may have an interest, and might wish to participate at a level greater than that of simply making an oral submission. No substantive change is being made to the existing legislation. What is the concern of the member for Kingsley?

Mrs Edwardes: Is this section intended to include third parties in appeals? It is different from what is currently contained in the Act. Page 77 of the Act states -

> **"party"** means a party to an appeal;

The definition in clause 4 definitely expands the existing definition.

Ms MacTIERNAN: As a matter of practice, the tribunal does currently join people as parties. I am advised that that is not an unusual occurrence. From time to time persons will seek to be made parties to appeals. The normal principles that apply in courts to determine whether those parties have a sufficient interest to become a party to an action are applied here. It is no different from the current practice.

Mrs Edwardes: Is the minister suggesting that third parties will be joined? Proposed section 57 provides that if they have a sufficient interest, they will become a party under the appeal provisions.

Ms MacTIERNAN: I certainly do not think that that would be the case. This provision would be used infrequently. I am advised that the tribunal currently has the capacity to join parties to appeals, and does so from time to time. It is not a usual practice, but it provides a flexibility that should be preserved.

Mrs EDWARDES: I have a drafting question about the definition of "party". It is most unusual to use the term "person" instead of "responsible authority" or "body". Usually in such cases, reference is not made to an individual unless specific reference to an individual is required. The Town Planning and Development Act generally relates to government organisations or other responsible authorities or bodies, rather than an individual. It seems out of sync with the rest of the drafting of the Act and/or the Bill.

Ms MacTIERNAN: Under the Interpretation Act 1984, as the member for Kingsley will be aware, "person" is defined as including a body of persons, incorporated or unincorporated. No complication arises from the use of the word "person". It is a term well understood by the law, and expressly dealt with in the Interpretation Act.

Mrs Edwardes: It just seems out of sync with the rest of the terminology in the Town Planning and Development Act, and in the Bill under consideration. I wondered why the draftsperson did that.

Ms MacTIERNAN: Basically, because there is the prospect of other persons being joined in actions. I am advised that the decision being appealed against is not always made by a responsible authority. The wording is to ensure that, if the appeal refers to a decision of an entity that is not a responsible authority, the provisions still apply. If the definition were restricted to responsible authorities, there would be a problem if the decision appealed against were not made by a responsible authority.

Clause put and passed.

Clause 5: Section 7B amended -

Mrs EDWARDES: Section 7B deals with interim developments - final developments are dealt with later. Section 7B(6) is to be amended to remove ministerial appeals. Paragraph (a) is deleted and substituted by a new paragraph (a) which is similar, but does not involve the minister. Paragraph (b), which provides that the decision of the minister given under paragraph (a) is final, is deleted, thus removing the minister from the process.

Paragraph (d) is amended by deleting the reference to the minister. Section 7B(7) also is amended to delete reference to the minister. The following new subparagraph is inserted into section 7B(7)(a) of the Act -

(iii) fails to comply with a notice given to the person under subsection (8)(a),

Section 7B(8)(a) of the Act reads, in part -

The local government administering an interim development order may by notice in writing served on the owner or owners . . .

This amendment introduces the first group of changes to the Act which have the effect of removing the minister from the appeal process, and substituting the tribunal. Does the minister wish to elaborate on the clause, and what has been achieved out of the amendment?

Mr COWAN: To allow the minister an opportunity to provide a more comprehensive response, I would like to signal to her that, while I accept and recognise that this clause is the starting point for the removal of the minister from the appeal process, the National Party wishes to make it clear that a greater capacity is needed for ministerial review of determinations made by the tribunal. To put it in the words of the minister, or the way in which she has promoted it in this Parliament, the minister will not have the opportunity to go outside the provisions put in place by the amendment to part V to allow ministerial intervention. I am sure that in an area as broad and important as planning legislation, there is the capacity for a greater degree of ministerial review than has been built into this Bill. If the minister has looked at the amendments proposed by the National Party, which will be dealt with at a later stage, she will know that one purpose of the amendments is to ensure that there are occasions on which a capacity for ministerial review can be extended beyond those determined by this Bill. This would include matters of significance to the area the subject of planning or regional interest. The provisions of the Bill are too narrow. There will be occasions on which a more subjective element must be introduced to the capacity for the minister to review decisions made by the tribunal. The National Party does not, in any way, wish to move away from the path that the minister is taking, in which she wants to ensure that the tribunal determines both simple and complicated appeals. However, the National Party still believes that there must be a greater allowance for ministerial review than is contained in the two areas outlined by the minister. I do not have any objection to the minister's removing the ministerial appeal process as the first line or option taken by the public. That will now go back to a tribunal process. That is fine and the National Party accepts that. However, in the final analysis, it is appropriate that a greater capacity for ministerial review be provided. That has not been provided in this legislation. Although National Party members agree with this clause, I serve notice on the minister that we will seek to broaden the scope for ministerial review.

Ms MacTIERNAN: I will first address the comments made by the member for Merredin, who perhaps will be a future senator. I appreciate the amendments that have been put forward. Unfortunately, it is the Government's view that the National Party's proposal to provide a final recourse to the minister would undermine the whole policy of the legislation. I will not be able to support those amendments that seek to give me that power. It was a generous offer by the National Party.

The member for Kingsley asked why it was necessary, under clause 5, to insert a new subparagraph in section 7B(7)(a) to include -

fails to comply with a notice given to the person under subsection (8)(a),

It appears that there was an oversight in the original legislation and no penalties accrued from a failure to comply. A penalty has been included, because an obligation without a penalty attached is, in effect, meaningless. This provision corrects a drafting error in the original legislation.

Clause put and passed.

Clause 6: Section 8A amended -

Mrs EDWARDES: Clause 6 amends section 8A of the Town Planning and Development Act 1928 and concerns the appeal against the exercise of discretionary power under a scheme. Again, it removes the potential for an appeal to the minister against an authority's decision in accordance with part V, which is the appeal section of the Act. That is replaced with the words -

against the responsible authority's . . .

Section 8A(3) is repealed. That section had allowed an appeal with or without conditions, and the decision of the minister was final. This clause essentially deals with the removal of the minister from the appeal process.

Another drafting question concerns sections being deleted in some amendments and repealed in others. Is the term "deleted" used when a paragraph or subparagraph is added and is the term "repealed" used when the whole section is removed and not replaced? I think the term "delete" is used only when something is replaced.

Ms MacTIERNAN: The term "delete" is used when something is replaced or is part of a section that will be deleted. The member for Kingsley will be familiar with the way in which Acts are indexed by sections. When a section no longer contains any detail, it is important to indicate that it has been repealed. The term "delete" is used when either part of a section is replaced or when material replaces the original text.

Clause put and passed.

Clause 7: Section 8B amended -

Mrs EDWARDES: Clause 7 amends section 8B and removes the minister from the appeal process. This clause essentially means that anyone who makes an appeal under section 48(1) of the Environmental Protection Act 1986 no longer has a right of appeal to the Minister for Planning and Infrastructure. It will be dealt with under part V, which will be discussed later. The appeal process will be changed to remove the minister.

Ms MacTIERNAN: That is correct.

Clause put and passed.

Clause 8: Section 10 replaced by sections 10, 10AA and 10AB -

Mrs EDWARDES: The Acting Speaker has good hearing, as did the previous Speaker, because I cannot hear the Government voting.

The ACTING SPEAKER (Mr Edwards): I can assure the member for Kingsley that there was an aye on my right.

Ms Guise: There was.

Mrs EDWARDES: Clause 8 deals with section 10 being replaced by sections 10, 10AA and 10AB. Section 10 of the current Act deals with the responsible authority removing certain buildings. A system has been in place, although there are some variations between the new section being inserted and the one being removed. What is the difference between proposed new section 10 and existing section 10? A number of people have raised concerns about it.

Mr COWAN: I will be interested to hear the minister's comments, because I think there is another dimension. The majority of provisions in the clause appear to be already contained in the Act. How does the Government envisage this amendment being put into effect? Does it contain any degree of retrospectivity? Most of us are aware and accept that, regrettable as it might be, a great amount of work has been done in contravention of planning laws. Would someone who has been dealing with a contentious issue for some time now be encouraged to apply to the responsible minister for retrospective application of this law, or will the new provision apply only to events that take place after the legislation has been proclaimed?

I ask the minister to comment on two things: the question by the member for Kingsley about the differences between the provisions and how they are interpreted by the minister; and whether that interpretation includes some application of retrospectivity for developments that may have been constructed in contravention of the terms of the law.

Mr OMODEI: I have declared an interest in this matter, but I would like to make a few comments in the public interest. I will refrain from voting on the legislation. Clause 8 proposes a new section 10. It is similar to the existing legislation in that both contain powers to pull down buildings etc, and require people to comply with a town planning scheme. Certain actions can be taken if somebody is in contravention of the town planning scheme. The differences become apparent when one reads clause 9, which amends section 18. Clause 9 states -

> A person may make representations to the Minister if the person is aggrieved by the failure of a responsible authority . . .
>
> the Minister may order the local government to do all things necessary to enforce the observance of the scheme or provision or to execute the works.

I take up the point of the member for Merredin that a host of developments have taken place around Western Australia, particularly in country areas. Those developments have involved things such as farm buildings, extensions to annexes and so on. I can think of at least a dozen examples off the top of my head in which a vexatious person might want to make it difficult for the local government. Those people could make representations to the minister, who would then be morally, if not legally, bound to direct the local government to bring the scheme into compliance. It could cause great pain and division in local communities, and it could be a great burden for local governments, especially those in country areas, which, as many would know, do not have the resources to be able to pursue these things to the letter of the law. When the minister explains the

differences between proposed section 10 and existing section 10, could she also make reference to my concerns? I understand how this legislation would work if some kind of amnesty were to apply to events that take place before the introduction of legislation. However, huge problems would arise if it were to apply retrospectively. I am sure the minister would be concerned about the legislation's impact on not only local governments but also individuals in the community.

Ms MacTIERNAN: I respond first to the member for Kingsley. Under the current legislation, when there is a dispute about whether, in the direction of or carrying out of building work, a provision of a town planning scheme has been contravened, parties have a right to go to the minister for arbitration. In line with the general principles of this legislation - that this is not the sort of business with which ministers should properly deal - we have replaced that arbitration system with a formal right. A person who has been hit with an enforcement order may appeal that order to the tribunal. If a party believes that it is not in breach of a town planning scheme, as claimed by the local authority, it has the right to take the matter to the tribunal rather than seek arbitration from the minister. The enforcement notice and appeal provisions are also extended, and do not include other contraventions of town planning schemes such as unauthorised use and developments that do not apply to the terms of the town planning approval.

I am having some difficulty coming to terms with what the member for Merredin asked. Nothing in this legislation creates new offences. It has always been an obligation for parties to comply with the town planning scheme.

Mr Cowan: Will this clause apply retrospectively?

Ms MacTIERNAN: If, in the future, someone has a blue with a local authority about whether he is in breach, this clause would require him to go to the tribunal rather than the minister.

Mr Cowan: That is right. Is it likely that the Western Australian Planning Commission or the local authority will now be able to pursue a range of matters that they had decided they would not pursue? My question is not so much about the law as it is about the interpretation of the law and its application.

Ms MacTIERNAN: Existing section 10 is somewhat confused about what a responsible authority can do. A range of powers is available to the local authorities, but they are confused. We are seeking to put those powers in a more certain and logical form. The changes will mean local authorities will find it easier to take action against breaches. I could say that the clause will not apply retrospectively, but a breach is a breach is a breach. If a breach is still on foot when this legislation comes into force, a local authority will be able to use these provisions to address that breach.

It is not strictly retrospective approval. If one got oneself out of breach between now and then, between now and the time the legislation was invoked, obviously there would be no capacity for the responsible authority to take action under this provision.

Mrs EDWARDES: Perhaps I can assist the minister. The Town Planning and Development Act contains certain provisions that allow the removal, pulling down or altering of any building or other work in the area included in the scheme, which is very similar to the new subsection (3)(a), but this has not been included in the new section, which is what the member for Merredin and the member for Warren-Blackwood are referring to. It states -

> . . . which has been commenced or continued after the approval of the scheme.

So if something has been built and additions have been made to buildings over many years, the scheme comes in after that date. One of the examples the member for Warren-Blackwood gave me was that many moons ago the elderly parents of a family -

Ms MacTiernan: Are you speaking about a new town planning scheme?

Mrs EDWARDES: Yes. We are talking about buildings, additions or otherwise, that may contravene the town planning scheme. Approval may not have been obtained. In this example, the parents of the family may have lived in a caravan next to the house, then put the caravan under a roof and then built on an annexe and the like. Under section 18, the minister might receive a request concerning contravention, but nothing in this legislation refers to the situation after the approval of the scheme. The mere fact that they may not have received approval in the first instance may or may not be an issue; the issue is that they now contravene the current town planning scheme. The minister has not reintroduced the words that are currently in the Act. I wonder why those words were not reintroduced.

Ms MacTiernan: Where are the words you are talking about?

Mrs EDWARDES: In section 10(1)(a).

Ms MacTiernan: In the existing legislation?

Mrs EDWARDES: It is not; that is what I am saying. Those words have not been put into the new legislation.

Ms MacTiernan: The words you are talking about are the words in section 10(1)(a) of the current legislation?

Mrs EDWARDES: Yes - "which has been commenced or continued after the approval of the scheme". What is missed out to ensure that there is no retrospectivity is "after the approval of the scheme". Those words have been removed; they have been left out of the new subsection, which causes the member for Warren-Blackwood and the member for Merredin to suspect that an element of retrospectivity could be introduced. We all know that there are people out in the community who may not necessarily get along well with neighbours. All of a sudden they will have an opportunity, by virtue of proposed section 18, to write to the minister and ask for the local government to act. We may then have an element of retrospectivity, which, as the member for Warren-Blackwood has indicated, will reflect not only on the family and individuals but, as these two gentlemen would know, on the two communities. If we are talking about very small communities, the impact could be great. I wonder why the minister has removed those words and I question the ability to make this section retrospective.

Ms MacTIERNAN: I appreciate the member's comments. The people who drafted this provision tell me that they did not believe it was necessary to improve the phrase "which has been commenced or continued after the approval of the scheme", because as a consequence of the way this legislation has been drafted, that would not apply. The new provision states that it "commenced, continued or carried out" otherwise than in accordance with that scheme. If that scheme was not in force at the time those buildings were commenced, continued or carried out, they would not be in breach. That was the logic. We were talking about building works that would be commenced, continued or carried out in accordance with the scheme. The view of the people drafting the legislation was that that would clearly mean the scheme that was in force at the time, not the scheme that later came into being. However, if the members believe that this is ambiguous or that it might lead to some confusion, perhaps the member for Merredin might move an amendment - or the member for Warren-Blackwood, who is not participating in the debate.

Mr Cowan interjected.

Ms MacTIERNAN: I am happy to move an amendment if the member wants. I thought the member might like to have his name enshrined in an attachment to this amendment.

Mr COWAN: The purpose of asking the question was to get a clear ministerial view, because as everybody knows, there are always two facets to every piece of legislation: one is the expressed law itself and the other is what might be implied. The interpretation often falls somewhere in between. I wanted the minister to explain that there was no intent to allow retrospectivity in these new provisions. I understand her explanation that there has been an assumption, given the wording of new section 10(1)(b), which indicates that it is meant to apply to the planning law as it has been varied or amended. I feel reasonably comfortable with that, but the minister knows as well as I do that most of the legislation that comes into this place is amending legislation. It is amending legislation because the interpretation of the law has finally been determined by a court and, as a consequence, the Government has discovered that what it thought was expressed in its law in the first instance is not what has been implied and certainly is not what is the conventional practice.

Members may have some fairly bitter memories. The best example I can give is the Criminal Code abortion debate. We had an expressed law and also a convention that was practised, and the law had to be changed because, through the courts, someone decided to apply the written law.

I wanted the minister to tell me that she did not expect that there would be any application of retrospectivity and to give her reasons, because at some time or another someone may have to read this debate to see the minister's clear intent. I appreciate that the minister has given that clear intent, and that is fine by me. I do not need an amendment, and I would not want to move one on the run. I will certainly go back and talk to some of the staff who have assisted me in the preparation of these amendments to see whether it is their view that it should be changed. I will have my colleague in another place put forward some proposals should that be their view. However, I do not feel it is necessary to introduce such an amendment.

Ms MacTIERNAN: I appreciate the comments made by the member for Merredin. It is useful for these matters to be teased out during parliamentary debate because they can be used to aid interpretation in the courts. I will run through this again to make absolutely clear what we are doing. We are talking about a development that is undertaken; it is not about a development in existence. This is about works that are being commenced, continued or carried out.

Mr Cowan: If it has been carried out it is completed.

Ms MacTIERNAN: It is work that has been commenced, continued or carried out otherwise than in accordance with the scheme. Our interpretation is that it would be a reference to the scheme that applied at the time the

work was commenced, continued or carried out. I guess the member is concerned that work that was commenced or carried out at a previous time would then be overtaken by a subsequent town planning scheme and, therefore, could be deemed to be not in compliance. My understanding of the way in which town planning schemes work is that any existing use has non-conforming use rights.

Mr COWAN: If I may, I will give an example that I was confronted with in a previous life. The minister has raised the issue of non-conforming use. On a number of occasions, particularly with commercial or industrial developments, because of changes to planning laws, an approval may be given for something to continue, notwithstanding the fact that it involves a non-conforming use. The best example I can give is the wool-scouring operation in the O'Connor and Fremantle region. For many years at least five wool scourers were operating in areas in which that type of industry was not covered by the zoning, but they all had non-conforming use provisions. As I interpret this legislation, it is possible that someone who wanted to object to a facility that was operating in an area of non-conforming use, could ask for this process to be put in place. If the minister can assure me that people cannot vary approval for operations with non-conforming use provisions, I will be happy. In the instance to which I am referring, because of the process of government - I am not being critical of that - it took about five years to develop a new wool-scouring precinct in a correctly zoned area and then to move those scourers to those new premises. I would not like to think that a person could overturn the general planning processes of government, which take some time, by objecting strongly to an operation outside the planning law that was granted a non-conforming use right, and having it denied that right because the person said it was in contravention of the planning law.

Ms MacTIERNAN: It is highly unlikely in that situation there would be a breach of the town planning scheme in any event. Having a non-conforming use right is not a breach of the scheme. It may be outside the standard zoning provisions, but I think all schemes provide for non-conforming use rights to all pre-existing uses notwithstanding that the new zoning regime might not be compatible with that use. In the example that the member used, it would not be a breach of a town planning scheme in any event.

Mr Cowan: They are in breach of the scheme and they have a non-conforming use right.

Ms MacTIERNAN: No, a town planning scheme allows for the continued existence of certain non-conforming uses. It may not be in keeping with current zoning, but it is not in breach of the scheme because it has a non-conforming use right that is expressly provided for in every town planning scheme.

Mr Cowan: If you can tell me that this does not override those non-conforming use rights, I will feel a little more comfortable.

Ms MacTIERNAN: It does not override them. We are talking about development that has commenced, continued or been carried out. The development must be undertaken during a period when it is in breach. Fundamentally a non-conforming use right is not made more vulnerable by this provision.

Mrs EDWARDES: We have all seen different interpretations of the words of this provision. I can accept the interpretation that the minister has laid on the words "or carried out". Those are new words that were not in the Act. Under the Act the wording was "commenced or continued after the approval of the scheme". This provision contains not only the words "commenced, continued" but also "or carried out". It no longer contains the words "after the approval of the scheme" but instead reads "carried out otherwise than in accordance with that scheme". That places a huge burden on the word "that". The provision needs to be looked at to ensure that the work being commenced, continued or carried out is commenced, continued or carried out after the approval of the scheme so that there is no question of retrospectivity being brought into play and someone interpreting the law in that way.

Ms MacTIERNAN: We will look at that wording and seek some further advice on it. If there is a problem, which is not our intention, we will move an amendment in the other place.

Mrs EDWARDES: This is a long clause, so I have broken up my questions rather than attempt to deal with all parts of it at once. I first ask what is new, and we have dealt with one element of that. Proposed new section 10(2) contains the words "to stop, and not recommence, the development". The minister referred to giving local government new powers. Proposed new section 10(2) states -

> . . . the responsible authority may give a written direction to the owner or any other person undertaking that development to stop, and not recommence, the development.

Another new aspect is contained in proposed new section 10(3)(b), which reads -

> to restore the land as nearly as practicable to its condition immediately before the development started, to the satisfaction of the responsible authority.

That is an appropriate provision. A concern that has always been raised is that when work has been undertaken and people have walked away, local authorities have often been forced to take responsibility for restoration.

The wording "to stop, and not recommence, the development", contains nothing - we will pick this up again under proposed new section 10AA - that would allow a developer to ask for a stay of the order or direction. Sometimes the contravention of a condition of a town planning scheme may be minor; for example, it may relate to the size of a window. I can draw on many such instances that have occurred in the northern suburbs. A multi-million dollar development may be involved. The contravention might be of a minor nature, but if it is clearly a contravention of the town planning scheme, it enables somebody to stop the development continuing. The developer can appeal, but the liquidated damages that may be caused by that development being stopped may be outside the public benefit that we are seeking to protect.

The New South Wales and Victorian legislation is different; it provides the ability to go to the tribunal and appeal the decision, but also to obtain an interim order. Proposed section 10(6) does not provide that ability; it reads -

> A direction under subsection (3) or (5) is to specify a time, being not less than 60 days after the service of the direction, within which the direction is to be complied with.

That new section provides the ability to go to the court and seek a stay of that direction within a set timeframe. In proposed section 10AA, the relevant direction continues to have effect. I can understand circumstances in which that is appropriate but it is the what-ifs - and there are many of them - that can be drawn upon from examples and experiences in the northern suburbs that might see this new section used to stop a development. It may be a multi-million dollar development, and it may not be in the interests of the public to have it stopped, but the direction could place the development, the builders and the owners at huge risk of bankruptcy. The liquidated damages could be enormous, notwithstanding that this new section also includes a penalty provision. The real issue will be that an appeal may not be able to be heard within the specified timeframe, which will not be in the public interest.

Ms MacTIERNAN: It is important to understand that we are not talking about orders that can be taken out by anyone other than the local authority or the Western Australian Planning Commission. The language that is being used by the member for Kingsley suggests that somehow feuding neighbours may be able to initiate the stay proceedings.

Mrs Edwardes: They can go to the local authority.

Ms MacTIERNAN: The local authority is an elected body and is not going to act in a cavalier fashion. If it does, there is always the potential of a damages claim against it. However, I understand the concerns that have been expressed. We have proposed a series of amendments to clause 8 to make it clear that an authority, be it a local authority or the Planning Commission, has the power to impose a stop-work order on part of a development rather than the whole of a development. In the unlikely scenario that a local authority seeks to block an entire construction because of an argument over the size of a window, this amendment will enable a stop-work order to be focussed on part of a development. Although we appreciate that there is some substance to the concerns raised by the member for Kingsley, we believe that they can be dealt with by way of those amendments that will give the local authorities and the Planning Commission the flexibility to focus on the part of the development that they believe is in contravention and should be stayed.

I note that the member for Kingsley is seeking to remove the stay provision. We would object most strongly to that because we cannot contemplate a situation in which one would seriously consider that the operation of an order could be removed by simply appealing. It would completely undermine the whole operation of a stay order.

Mrs EDWARDES: The minister refers to a stay order but there is none. I cannot see in the minister's amendments provision for a stay of the direction.

Ms MacTiernan: We are talking about a stop order.

Mrs EDWARDES: I am talking about a stay of the direction until such time as the appeal is heard. If there is no ability to apply for a stay for the tribunal to make the determination, why is the stay then closed off through saying that the relevant direction continues to have effect? The matter may be heard by the tribunal. If there is some substance to the concern - as we know, that provision is available to the courts and the Supreme Court regularly uses it - often a sum of money is paid into court with conditions attached and the like. If there is any concern over a minor part of a development - I note the amendment provides for any part of the development that is undertaken in contravention of a town planning scheme - and if the whole development is stopped instead

of only part of the development, it may give rise to a claim for damages. That would give rise to a civil action at a later time - perhaps long after the company has gone bankrupt. The claimant must then pay legal fees in order to proceed with the action. Why require an action to be carried out at a later time, involving extra legal costs and court time, without the ability to provide, under proposed section 10AA, an interim stay of the order until such time as the appeal is heard? We do not know how long it will take for the appeal to be heard. Even if it is a month, if it involves a $30 million or $40 million development, it could have enormous liquidated damages consequences. In defending a damages claim, the local authority will say, "We operated under the power of the Town Planning and Development Act and the relevant direction continues to have effect. Sorry; we complied." Therefore, people's ability to claim for damages will be limited and restricted. The best way to deal with potential concerns - there is a real "what-if" here - once an appeal has been lodged with the tribunal, is to allow for an interim order to have the direction stayed until such time as the appeal is heard. The tribunal then would make the decision and it could consider the conditions and who must pay money into court to ensure compliance with the town planning scheme. Why has that not been provided for in the Bill when the eastern states legislation, which the minister has considered, includes such a provision?

Ms MacTIERNAN: There is merit in the argument put by the member for Kingsley, and if the member wishes, I will now move an amendment to deal with that issue. We did not think that what was proposed by the member's amendments, which was simply to delete the provision, was an acceptable approach because the whole nature of a stop-work order is to ensure that breaches cannot continue until the matter is resolved. The idea that one could lodge an appeal and automatically suspend a stop-work order would make a nonsense of the very notion of a stop-work order. One would simply appeal, whatever the merits of the case, and, in that way, obviate the effect of a stop-work order.

The question has been raised as to whether we want the other amendments. I think they are still worthwhile. They were introduced, in part, to address this issue. It is important and useful to make clear whether the local authorities or the Western Australian Planning Commission have powers to deal with the entire development or only part of it. I move -

Page 6, line 18 - To insert after "development" the passage ", or any part of a development,".

Amendment put and passed.

Ms MacTIERNAN: I move -

Page 6, line 22 - To insert after "development" -

or that part of the development that is undertaken in contravention of the scheme

Mrs EDWARDES: I ask the minister to clarify the amendments because I have not had a chance to read them and put them in context. Does that amendment mean that an order to stop or not recommence limits a local government authority to issuing the order purely for the part that is in contravention?

Ms MacTIERNAN: That is correct. If, for example, the slab were in contravention, it would be hard to proceed with other works. Therefore, the amendment limits it to that part that was in contravention.

Amendment put and passed.

Mrs EDWARDES: On the basis of the forthcoming amendment to be moved by the minister that allows for a stay of the order to be dealt with by the tribunal, I no longer propose to move my amendment to page 8, lines seven to nine.

The DEPUTY SPEAKER: The next amendment is the new amendment that has been distributed by the minister.

Ms MacTIERNAN: I move -

Page 8, after line 9 - To insert the following -

(3) On an application under this section the Tribunal may -

(a) stay the operation of a direction under section 10(2) to which the appeal relates until the appeal has been determined;

(b) order that a direction under section 10(3) to which the appeal relates is to continue to have effect until the appeal has been determined; or

(c) refuse the application.

The amendment addresses the concern raised by the member for Kingsley. It enables an applicant who feels aggrieved by a stop-work order to go to the tribunal and seek to have that stop-work order stayed. That is the type of circumstance that the member for Kingsley anticipated could happen.

Amendment put and passed.

Ms MacTIERNAN: I now return to the amended Notice Paper. I move -

> Page 8, line 16 - To insert after "development" the passage "or part of a development,".
>
> Page 8, line 24 - To insert after "development" the words "or part of a development".

Amendments put and passed.

Mrs EDWARDES: While we are on page eight, I will raise with the minister a matter that has been raised with me and has led to some confusion in many quarters including the Western Australian Municipal Association, developers, planners and the like. I have received clarification from the minister personally, and that satisfies me; however, it is important to clarify the issue of penalties and for that to be put on the record.

The proposed penalty would be a daily penalty of $5 000 or a total penalty of $50 000. We have passed that amendment already, but I will take the opportunity to refer to it now. The industry is concerned about whether the $50 000 penalty is a maximum or minimum penalty. I would appreciate it if the minister would clarify that for the purposes of putting that on the record. Concerns also exist about the daily penalty and when that would be likely to apply. What are the parameters within which daily penalties apply? Do the total penalty of $50 000 and the daily penalty go hand-in-hand? Can a total penalty and a daily penalty be applied? If that is the case, the $50 000 penalty is seen to be adequate. If they do not go hand-in-hand - although I suspect they do - the penalties may not be sufficient to encourage compliance with the directions given and perhaps they should be expanded.

Ms MacTIERNAN: I am sure the member for Kingsley, being a former Attorney General, is familiar with the relevant provisions of the Sentencing Act. Section 9(2) states -

> If the statutory penalty for an offence is a fine of a particular amount or a particular term of imprisonment, then that penalty is the maximum penalty that may be imposed for that offence and, unless the statutory penalty -
>
> (a) is a mandatory penalty; or
>
> (b) includes a minimum penalty,
>
> a lesser penalty of the same kind may be imposed.

The exceptions do not apply in this instance. A daily penalty may be imposed for each day or part of a day during which the offence continues in addition to any other penalty that may be imposed. Accordingly, the $50 000 penalty stated in section 10 would be a maximum penalty. I am advised that the daily penalties would continue to accrue as a way of discouraging tactical appeals. The existence of bona fide appeal proceedings would be a matter that the court would take into account when it fixes penalties. If one had an appeal that was unsuccessful but the appeal was seen to be a bona fide appeal that raised serious questions, the court has discretion, as the daily penalty is also a maximum penalty, and it has the capacity to take that into account. There is also likely to be a capacity to apply for a stay order.

Mrs EDWARDES: Proposed section 10(7) states that someone who commits an offence will face a $50 000 fine and a daily penalty. How are the penalties levied? Is it a matter that a local government must take to court to enforce? As far as the tribunal is concerned, there is no need for an order but there is still a requirement to comply and the possibility of a penalty.

Ms MacTiernan: Describe a circumstance.

Mrs EDWARDES: If there is a stop work order as a result of a contravention, the local government would take the matter to the Magistrate's Court where an appeal could be lodged. The minister said that if an appeal was unsuccessful but seemed to be bona fide, a developer could use that as a defence in court and say that the work was bona fide in the first instance. The matter must be decided by a court and not the tribunal.

Ms MacTiernan: Absolutely.

Mrs EDWARDES: Who applies the penalty offence under the appeal against section 10 directions? Is it the tribunal or the court, as it is with proposed section 10AB?

Ms MacTIERNAN: It is an offence and, as such, it is a matter that needs to go before a court. The tribunal has no power to make findings of an offence or breach of the law. The tribunal has no power to impose penalties.

Mrs Edwardes: Why is the proposed section under 10AB when appeals against section 10 directions are under proposed section 10AA? Is it the case that to enforce a direction of the tribunal a local government authority must take it back to the Magistrate's Court because the tribunal has no powers of enforcement?

Ms MacTIERNAN: That is right. It is not appropriate to do so. A tribunal is constituted very differently from a court and a tribunal would not be comprised entirely of members who are legally trained. The responsible authority would have to take the matter back to a court. We want to tie in the provision with that of failing to comply with an order of the tribunal. We are trying to make the legislation more accessible and readable so that the penalties sit under the substantive position.

Clause, as amended, put and passed.

Clause 9: Section 18 amended -

Mrs EDWARDES: This clause adopts part of the current section 18 of the Act. Section 18 deals with the obligation to prepare or adopt a scheme. Subsection (1) leaves the minister with the requirement of being satisfied on any representation that a local government -

> (a) has failed to take the requisite steps for having a satisfactory town planning scheme prepared . . .
>
> (b) has failed to adopt any scheme proposed by owners of any land, . . .
>
> (c) has refused to consent to any modifications . . .
>
> . . . where the representation is that a local government has failed to adopt a scheme, the Minister, in lieu of making such an order as aforesaid, may approve of the proposed scheme, subject to such modifications and conditions, if any, as the Minister may deem fit; . . .

The minister will still be involved in section 18(1). I ask the minister to give an example of circumstances when that applies. Proposed section 18(2) states -

> A person may make representations to the Minister if the person is aggrieved by the failure of a responsible authority to - . . .

"Aggrieved" is new terminology and is not currently in existing section 18.

It continues -

> (a) enforce effectively the observance of a town planning scheme . . .
>
> (b) execute any works, which under the scheme or this Act, the local government is required to execute.

In that instance, it is not the responsible authority. The wording is "local government". Why does it relate only to local government and no other responsible authority? Section 18(1) has an extra subsection that deals with a local government failing to adopt a scheme. Are there other instances? The section allows the minister to order a local government to do all things necessary to enforce the observance of the scheme or provision to execute the works. The scheme allows a third party a right of appeal. I want clarification of the term "aggrieved" because the practical effect of it is that an unrelated aggrieved third party might be able to make representation. As I said in the second reading debate, anybody can write to a minister at any time, in any way, on any matter. The issue is that the section will allow the minister to follow up on the representation. The proposed new section allows that, if the minister considers it appropriate to do so, the representation may be referred to the tribunal for its report and recommendations. The report and recommendations will be treated as if the referral were an appeal. The minister will make an appeal based on a representation from an aggrieved person, whose status is unknown. The proposed section allows for third party appeals unlike section 57, which we will deal with later, when an appeal has already commenced and a third party candidate makes submissions. This proposed section allows, and puts in place, a third party's right to appeal, even though it is through the minister.

Clarification is needed on who will be caught in the net as an "aggrieved person" under proposed new section 18(2). Proposed section 18(2a) reads -

> If the Minister considers it appropriate to do so, the Minister may refer the representations to the Tribunal for its report and recommendations.

Under the legislation, the representations will be treated as though that request were an appeal. Proposed section 18(2c) states -

> If, after holding an inquiry or receiving a report and recommendations from the Tribunal, the Minister is satisfied that the local government has failed . . .

It comes back to the minister to order a local government to do all things necessary to enforce the observance of the scheme or provisions to execute the work. Can the minister clarify whether the new sections provide for third party rights of appeal?

Ms MacTIERNAN: It is important to understand that we are talking about alleged failures to observe a town planning scheme, and how such schemes come into being. Town planning schemes ultimately are given statutory force, and are approved by the minister. Powers presently exist under the Town Planning and Development Act 1928, which are rightfully retained by the minister, to ensure that the scheme approved by the minister is properly executed. People in the community are often concerned that provisions of town planning schemes are not applied. Rather than providing itself with new powers, the Government is tightening up the procedures. Section 18(2) of the Town Planning and Development Act 1928 reads -

> If the Minister is satisfied on any representation, after holding an inquiry, that a local government has failed to enforce effectively the observance of a scheme, which has been confirmed, or any provisions thereof, or to execute any works, which, under the scheme or this Act the local government is required to execute, the Minister may order the local government to do all things necessary for enforcing the observance of the scheme, or any provision thereof effectively, or for executing any works which, under the scheme or this Act, the local government is required to execute and shall cause a copy of the order to be served upon the local government.

The Government is trying to constrict that provision. Under the existing provision, a person who has no interest whatsoever can write a letter or contact the minister and make a complaint against a local authority that fails to apply its scheme. The Government believes as the general principle that, given the nature of the entrenchment of a town planning scheme into the system as the primary policy tool, it is appropriate that some capacity exist for members of the community to ensure that the scheme is enforced. The Government has sought to make that more restrictive, by requiring that the minister become involved only when the person making such a complaint is in fact aggrieved. The member for Kingsley, as a former Attorney General and a lawyer, will be well aware that interpretations of these words build up over time. The Government intends that "aggrieved" will refer to a person affected by the failure of a local authority to implement the scheme. A bystander with no interest in the failure of a local authority cannot make a complaint. If a person sees one of his personal enemies receiving treatment from local authorities that he believes to be preferential and not in keeping with the town planning scheme, he will not qualify as an aggrieved person in front of the tribunal.

The member for Kingsley expressed concern at the use of the term "responsible authority" rather than "local government". This has been done for the purpose of consistency. "Responsible authority" includes local government, but the Government recognises that other agencies may be involved.

Section 2 of the Act, in part, reads -

> **"responsible authority"** means the local government responsible for the enforcement of the observance of a scheme, or for the execution of any works which under a scheme, or this Act, are to be executed by a local government;

This wording has been used for the purpose of consistency.

Mrs Edwardes: Both terms are used.

Ms MacTIERNAN: What does the member for Kingsley mean?

Mrs Edwardes: Proposed new section 18(2) reads -

> A person may make representations to the Minister if the person is aggrieved by the failure of a responsible authority to -
>
> (a) enforce effectively the observance of a town planning scheme in force under this Act, or any of the provisions of the scheme; or
>
> (b) execute any works, which under the scheme or this Act, the local government is required to execute.

In this proposed section, a "responsible authority" is used in some instances and "local government" in others.

Ms MacTIERNAN: The member for Kingsley is right. This is a drafting error, and the Government would be happy to correct it. I do not think anything in the Bill turns on the definition used here.

Mrs Edwardes: It should be "responsible authority".

Ms MacTIERNAN: I also think it should be. An amendment can be prepared to correct that situation. The Government undertakes to correct that error.

Mrs EDWARDES: I thank the minister for agreeing to correct what appears to be a drafting error. The term used should be "responsible authority". Section 18 of the Act also refers to local governments in certain circumstances, and may very well be trying to reflect, as in section 18(1), that a specific provision has been made for local government. It needs to be looked at in the light of day, and if it is a drafting error, it can be changed. If it is not a drafting error, an explanation will be required as to why the term "responsible authority" is used in some instances, and "local government" is used in others.

Most people working in the town planning system are concerned about delays in having appeals dealt with, or in getting a development under way. The issue from which we were diverted pertains to why a representation would be made to the tribunal for its report and recommendations, and treated as though it were an appeal, although it would come back to the minister for final consideration. What is the reasoning behind such a matter being dealt with as though it were an appeal, and what benefits would this create? Effectively, a third party can challenge any decision by an authority on any applicant's proposal. I note the minister's comment that she has narrowed the definition to apply only to persons who have been affected, rather than any person, but now the status of such a person before the tribunal will be as a third party on an appeal. Now such a person's representations to the minister will be treated as an appeal. A third party can make representations to a local authority on the applicant's proposal -

Ms MacTiernan: It is not about an applicant's proposal, but an allegation that a local authority is not applying its scheme. It has nothing to do with any development application, development, subdivision or the rights of an individual. It concerns a complaint against a local government.

Mrs EDWARDES: I ask the minister to hear me out. I am providing an example. There have been occasions on which a development proposal has been approved by a local government only for a third party to complain that the approval contravenes the town planning scheme. I know of an example in which a constituent undertook a huge amount of work and research, although he was not directly affected by the proposal. There was an opportunity for those submissions to the minister to be treated as an appeal. That appeal was not heard by the local government. This amendment allows a second bite at the cherry by returning to the tribunal, at which the representations are treated as an appeal. That essentially delays the whole proposal.

Ms MacTIERNAN: I assure the member for Kingsley that nothing in the Bill provides a power to stay a development application if a complaint is laid against a local authority about that application. They will continue on two separate tracks and will not cross. I recognise the point made by the member for Kingsley that a community activist may use that provision as a weapon to fight a development application, but there is nothing in the law to give such a complaint any status to interfere, in a legal sense, with the progression of a development application. The other point the member raised concerned the referral of the matter to the tribunal, at which it would be treated like an appeal.

Mrs Edwardes: What is the benefit of treating it as an appeal?

Ms MacTIERNAN: That gives the tribunal the capacity to deal with it and outlines how that should be done.

Mrs Edwardes: So, it is public. It is made in writing.

Ms MacTIERNAN: Yes, all those sorts of things. It does not require the development of a whole new set of rules and practice directions. That occurs rarely. At the moment when a matter such as this comes to the minister, although there is no legal requirement, those matters are dealt with as a ministerial appeal and go to the Town Planning Appeal Committee. No-one would seriously expect the minister or ministerial staff to undertake the investigation. There must be some body that can look at the matter and make a decision. The first important point is that to some extent, this Bill replicates provisions within the current system. However, there will no longer be a Town Planning Appeal Committee. Secondly, the Government has contracted the rights of people to do it. Thirdly, if on first view of the application the minister does not believe that it has any prima facie merit, he can refuse to take it any further. As I understand it, it is an enabling provision for the minister. If there does seem to be a prima facie case, the minister can refer it to the tribunal. Fourthly, and perhaps the most important point given the comments by the member for Kingsley, this procedure cannot, in a legal sense, have any impact on the proceedings of a development application.

Mrs Edwardes: While you are on your feet, can you advise whether the report and recommendations from the tribunal to the minister will be a public document?

Ms MacTIERNAN: No, that is not anticipated. It does not deal with the rights of an individual, but with an assessment by the minister of a complaint.

Mrs Edwardes: Will it be made available to the respective parties? Will that information be shared with the third party and the local government?

Ms MacTIERNAN: The Government had not thought about making such a provision. There is nothing in the existing legislation -

Mrs Edwardes: Given the basis upon which this legislation has been drafted, in terms of sharing information and making the system transparent -

Ms MacTIERNAN: I am concerned that some allegations may border on matters of criminality or corruption. Given the nature of the complaints that are made, I do not believe that it would be appropriate to release that information in all cases.

Mrs EDWARDES: I have not personally dealt with ministerial appeals or matters under section 18 of the Act; therefore, I do not know about the allegations to which the minister referred. The minister said that they might contain an element of criminality. The minister has options and could deal with that appropriately by deleting certain aspects or otherwise. The whole basis of this Bill has been to ensure that the process is transparent and that information is shared. That has been accepted by members on this side of the House. I do not understand why it would not be made publicly available if it did not contain such an allegation. By keeping it secret, those sorts of allegations continue on and on. I do not understand that.

I raise another issue regarding section 18(3) of the current Act. I am not sure how the existing section 18(3) links with proposed new section 18(2), and why it still contains a referral of a dispute to a judge at the Supreme Court, rather than to the tribunal. Could the minister explain that?

Ms MacTIERNAN: I will address the first point before I ask the member to repeat her second point. I was busy dealing with her first point when she raised it. This is analogous to the situation under the Local Government Act 1995. The sorts of things we are talking about are merely allegations. They may turn out to be scurrilous allegations. For that reason, the Government believes that it is inappropriate to provide a requirement for reports on those allegations to be made public. The same provision applies in the Local Government Act to a local government inquiry. The minister has the discretion to table such a report, but given the nature of and broad terms in which a complaint can be made, it would not be appropriate to entrench a necessity for that report to be made public in this legislation.

Mrs EDWARDES: The second point I made concerned existing section 18(3), which refers to the referral of a dispute to a judge at the Supreme Court. Given the proposed changes to section 18(2), in what circumstances does the minister contemplate leaving section 18(3) as it is.

Ms MacTiernan: You said there is a change.

Mrs EDWARDES: There is no change.

Ms MacTiernan: What's the problem?

Mrs EDWARDES: Section 18(2) is to be amended to remove the tribunal from the appeal process. Why is the minister retaining the provision to appeal to the Supreme Court, but removing the provision relating to the tribunal? What is the link between section 18(2) and 18(3)?

Ms MacTIERNAN: As I explained earlier, the Town Planning Appeal Tribunal has been brought in as a mechanism to prepare a report for the minister in the same way the Town Planning Appeal Committee would prepare a report. That committee will no longer exist; therefore, the tribunal will prepare reports. They will be reports prepared for the minister, and the resulting recommendations will not be recommendations of the tribunal, but findings of the minister.

Mrs Edwardes: Therefore, a party could go to the Supreme Court to appeal your direction.

Ms MacTIERNAN: That is right; as happens at the moment. They will be orders of the minister rather than orders of the tribunal. In this instance, the tribunal is merely a mechanism for examining the matter, because it would be inappropriate and unfeasible for the minister to conduct the investigation.

Mrs Edwardes: It is probably also not appropriate for parties to appeal to the tribunal against the minister's order or direction.

Clause put and passed.

Clause 10: Section 26 amended -

Mrs EDWARDES: This clause deals with an appeal under part V of the Town Planning and Development Act against the refusal of the Western Australian Planning Commission to approve a plan. This clause essentially removes the minister from the process and allows the tribunal to deal with such an appeal.

Ms MacTIERNAN: That is a correct interpretation of the clause.

Clause put and passed.

Clause 11: Part V replaced -

Mrs EDWARDES: Clause 11 deals with the establishment of the appeal provisions, and it is a large clause that covers many pages. I seek some guidance from the Deputy Speaker on the appropriate way to deal with it. The clause contains numerous proposed sections that will need to be clarified individually. We could deal with the whole section ad nauseam, but there might be an easier way of dealing with it.

The DEPUTY SPEAKER: I will be guided by members. They may choose to debate the clause in sections.

On motion by Ms MacTiernan, resolved -

> That each proposed section in clause 11 be dealt with as a separate question.

The DEPUTY SPEAKER: The question is that part V be repealed.

Question put and passed.

Proposed section 36 -

Mrs EDWARDES: Proposed section 36 is the key element of the Bill. We have dealt with some of the clauses that remove the minister from hearing planning appeals. Those are consequential to the establishment of new part V of the Town Planning and Development Act, which deals with future appeals. Proposed section 36 establishes the Town Planning Appeal Tribunal, which will take over from the existing body that, in addition to the minister, hears appeals. The tribunal will also have a seal, which is not required of the existing body. This is the crux of the Bill.

Proposed section put and passed.

Proposed section 37 -

Mrs EDWARDES: Proposed section 37 deals with the members of the tribunal. The Governor is to appoint a president, deputy president, senior members and ordinary members. The reason for senior and ordinary members will become apparent as we progress through the clause. The membership of the tribunal is to comprise persons whom "the Minister considers necessary to expeditiously deal with appeals". I love that phrase. It is unique. Maybe we should incorporate it into all legislation dealing with appointments to bodies that need to make decisions expeditiously, because that does not always happen. I know some of the bodies that were referred to in the past came under the old Department of Fair Trading. Proposed subsection (3) states that a member may be appointed on a full or part-time basis, and that also includes the president, the deputy president, senior members and ordinary members. I have indicated throughout the second reading debate that it may be essential that the president be a full-time member, for the reason that the management of the tribunal in the first instance will need to be hands on, which will ensure ongoing management.

[Leave granted for speech to be continued.]

Debate thus adjourned.

[Continued on page 2352.]