

PLANNING APPEALS AMENDMENT BILL 2001

Committee

Resumed from an earlier stage of the sitting. The Deputy Chairman of Committees (Hon Kate Doust) in the Chair; Hon Graham Giffard (Parliamentary Secretary) in charge of the Bill.

Clause 11: Part V replaced -

Consideration of the amendment moved by Hon Murray Criddle resumed.

Hon GRAHAM GIFFARD: I do not propose to go over yesterday's ground too much, because we dealt with this amendment in some detail. The Government does not support the amendment. The Government has some sympathy for what the mover of the amendment is trying to achieve, but it does not think that the amendment is appropriate or that it should be placed in the legislation. One reason the Government opposes the amendment is that there is no sanction against the tribunal for the tribunal's failure to meet the time requirements. We believe that matters such as time requirements are better placed in practice directions. I yesterday indicated to members the time frames the Government was considering.

Another reason the Government does not support the amendment is that some relatively complex appeals could be heard by a single senior member. The distinction between complex and simple appeals would be better based on those that fall within proposed new section 43 than on those that fall outside that section. Often the parties, for whatever reason, are the ones who delay proceedings. The great difficulty is in knowing whether the delays are caused for the sake of delay or are legitimate, so it is difficult for tribunals to force the pace of proceedings in those circumstances. Imposing these sorts of time frames might create further difficulties.

Hon Derrick Tomlinson: Would you like to give us the paper you are reading from?

Hon GRAHAM GIFFARD: No. It is important that the Government resist this amendment. We do not believe that the amendment would assist the passage of the Bill, but would compromise the Bill. The amendment is opposed.

Hon MURRAY CRIDDLE: The parliamentary secretary mentioned that there would be no penalty on the tribunal. I am not worried about the penalty on the tribunal, but on those people who do not get some action within 90 or 180 days. That is the issue. If an appeal were held up, an activity, an opportunity to develop or whatever the proposition might be would also be held up. That is the issue of concern to me, and I am sure it is of concern to developers. It is as simple as that. If, as the parliamentary secretary has said, there is no difficulty, what is the problem? We are trying to get people to make decisions within a reasonable time frame, which would allow development to go ahead. If things are held up, it may impact on the finances of some developments. It is a simple business outcome.

Hon J.A. SCOTT: One of my concerns, and I do not think Hon Murray Criddle has provided an explanation for it, is what would happen if no determination were made at the end of 90 or 180 days. It could leave the situation in legal limbo; the parties would not know whether the appeal had been accepted or rejected by the tribunal. What further action could be taken at that point? Some development of this amendment would be required so that some sort of outcome is provided. It seems to me that this amendment would leave the appeal in legal limbo. The only way out would be for the tribunal to make a determination whether it was ready to do so or not. The likelihood would be that, from a safety point of view, it would knock back the appeal. The tribunal would have to make a determination before it was ready to do so. What would happen if it had not made a decision at that point? This amendment seems to be fraught with danger.

Hon MURRAY CRIDDLE: I guess that the parliamentary secretary should answer this question because he knows more about the Bill than anybody else. My understanding is that there is an opportunity later in the Bill for the minister to be a final determinant. Perhaps the parliamentary secretary could clear up that matter. I am concerned because an enormous amount of decisions are not currently being made. This Bill is a nonsense. The minister should make the decision. I said that during the second reading debate. That is one way to overcome the point made by Hon Jim Scott.

Hon DERRICK TOMLINSON: Madam Deputy Chairperson - I refuse to call Madam Chairperson a Chair because she is not a chair; she is a human being.

I was waiting for the parliamentary secretary to answer. He has obviously chosen not to.

Hon Graham Giffard: I will if you like.

Hon DERRICK TOMLINSON: No, the parliamentary secretary should catch me while I am in a good mood. In the spirit of conciliation that occurred at the end of question time when a personal explanation and apology was given, I want to apologise to the parliamentary secretary. I refer members to page 16 of the daily *Hansard*. At

the conclusion of the session on this Bill yesterday, the parliamentary secretary indicated that, for class 1 appeals, the registrar should endeavour to set down a hearing within seven days; that the decision on the appeal should, if possible, be given orally at the end of the hearing; and that the tribunal should seek to deliver a written decision within seven days. Likewise, on the class 2 appeal, the tribunal should endeavour to set down a hearing within 28 days and give a decision within 28 days; that is, a total of 56 days. I apologise for misconstruing what the parliamentary secretary said. I indicated that the parliamentary secretary had referred only to the period after the hearing had been set down. In fact, he referred to a period of 14 days - seven days before and seven days after - or of 56 days for class 2 appeals - 28 days before and 28 days after. Therefore, I apologise for my indiscretion. However, there is some ambiguity with whether the registrar should endeavour to set down the hearing of a class 1 appeal within seven days. I ask the parliamentary secretary to make that clear. Does that mean that the registrar will, within seven days, set down the matter for a hearing, or will the matter be set down to be heard within seven days? In the case of class 2 appeals, will it be set down within 28 days or will it be heard within 28 days? It is a simple matter of clarification. Perhaps the parliamentary secretary can use the dinner break to work out the answer.

Sitting suspended from 6.00 to 7.30 pm

Hon GRAHAM GIFFARD: I want to briefly address two issues. I want first to address the issue of the time frames not being complied with raised by Hon Jim Scott and referred to by Hon Murray Criddle. We share the concerns raised by Hon Jim Scott. That is one of the main reasons we object to the amendment. It is one of the issues raised by the minister and detailed in the committee's report when she responded to the committee. She raised the objection that there did not appear to be any mechanism in the proposal in the event that the time frames were not complied with.

Hon Murray Criddle: So we could put in a mechanism?

Hon GRAHAM GIFFARD: We are opposed to the amendment for that and other reasons. The amendment would put into the Bill a provision that would compromise the Bill because there is no ability in the tribunal to deal with -

Hon Derrick Tomlinson: You would not have the sanction?

Hon GRAHAM GIFFARD: We do not think it is appropriate, and we have said that from the beginning.

Hon Derrick Tomlinson: It would make it work.

Hon GRAHAM GIFFARD: We said that it was not appropriate in any event, and we remain opposed to it.

In regard to the issue that Hon Derrick Tomlinson raised, starting with the lodgment date of the appeal, it is 14 days for the lodgment of the grounds for contesting the appeal, and then the registrar is required to endeavour to have the hearing -

Hon Derrick Tomlinson: I think you had better pause, because we have gone from seven to 14 days. You have doubled the period.

Hon GRAHAM GIFFARD: I will pause when I am ready. Fourteen days is given to lodge grounds for appeal. A further seven days is given for the hearing. Once it has been heard, the tribunal is required to endeavour to determine the matter either orally at the conclusion of the hearing or within seven days of the conclusion of the hearing.

Hon Derrick Tomlinson: A class 1 appeal?

Hon GRAHAM GIFFARD: Yes. That was the member's question.

Hon DERRICK TOMLINSON: I thank the parliamentary secretary because we now have 21 days before an appeal will be heard. That is the optimum time frame. I am not allowed to quote the uncorrected *Hansard* but I can use it as an aide-mémoire. I will definitely not quote it. This House has the precedent of Hon Alannah MacTiernan, who used an uncorrected *Hansard* as an aide-mémoire. I will use it as such -

With regard to the time benchmarks for class 1 appeals, the registrar shall endeavour to set down a class 1 appeal for hearing within seven days; where possible, the determination of a class 1 appeal should be made orally at the conclusion of the hearing, and, in any event, the tribunal should seek to deliver and publish a determination within seven days of the conclusion of the hearing; . . .

We have seven days before the hearing, an indeterminate period for the hearing, and seven days after the hearing. Fourteen days is explicit, with an indeterminate period between. That was yesterday. Today, we have 14 days for whatever, then we have seven days followed by an indeterminate period of hearing. That is because hearings are uncertain things and no-one can specify how long a hearing will be. At the end of the hearing of a class 1 appeal - let us talk about this; let us try to reach conciliation; let us have an informal discussion. Let us hear evidence that takes account of natural justice, but which does not necessarily follow the rules of evidence.

Evidence can be taken according to whatever is considered appropriate at the time. As such, we will just wander through the tulips. When one has come to the end of wandering through the tulips, one says, "Well, let's have an oral decision." If there is no oral decision, one has seven days thereafter. We have gone from 14 days to 28 days. Yesterday it was 14 days, but it is 28 days today, with the same indeterminate period in between. Twenty-eight days plus 28 days equals 56 days. If zero converts to 14, one doubles the 7; one doubles 28, which makes 56. That makes it 112 days with an indeterminate hearing. Because a class 1 hearing is an informal hearing in which the rules of justice are not followed, conciliatory ground will be found and parties will agree on some aspects of the appeal. An amicable agreement will be reached at the end. It then goes to the class 2 appeals, which involve - I am sorry to say this, Hon Peter Foss - lawyers.

Hon Peter Foss interjected.

Hon DERRICK TOMLINSON: Tut, tut. Where will the 56 days be now, because the lawyers will ask for a disclosure of evidence?

Hon Peter Foss: A good two years for that.

Hon DERRICK TOMLINSON: I am dreadfully sorry, but this must go through within a reasonable time. There will be a disclosure of evidence. Of course, there will be inevitable delays because it is a legalistic procedure. It does not follow the procedure of a class 1 appeal, in which the parties get together and love one another. This is a class 2 appeal, in which the parties pay big money to their lawyers.

Hon Sue Ellery interjected.

Hon DERRICK TOMLINSON: Not at all; I will not shush. I want the world to know about this. It is important for people to know that they will pay big money. The State is the defendant. That is not big money; that is untold wealth! The capacity of the State to defend is limited only by the capacity of the State. Where now is the 90 or 180 days? Yesterday, we had 14 days. Today, we have 28 days with the indeterminate period. Yesterday, we had 56 days. The parliamentary secretary did not dare to expound upon the 56 days. I have taken the liberty to do so on his behalf. I am dreadfully sorry, but I cannot accept the answers that the parliamentary secretary has given. I suggest that he take 15 minutes now to get advice, just as he wasted 15 minutes at the beginning of the session. Of course, he can blame the Opposition for that, because the Opposition is to blame for all the Bills that have not gone through this House. The Opposition is the reason for the delay, so the parliamentary secretary can blame us for the 15-minute delay at the beginning of the session and for the 15 minutes he is about to take now. The parliamentary secretary should talk to his consultants. When he has his facts right, he should come back into this House and answer the question. The motion is that class 1 appeals be dealt with within 90 days and that class 2 appeals be dealt with within 180 days. That is three months versus six months. If the parliamentary secretary can deal with an appeal within six months, all I can say is, "God bless you my son". The parliamentary secretary should ask his advisers how to meet those deadlines, because so far all he has been able to say is that the Government thinks they are a bit too liberal. My God they are liberal, compared with the history of not only this Government, but also the previous Government and the Government before that. To get an answer back on a class 1 appeal in 180 days in this State would be a miracle. The parliamentary secretary should ask his advisers how the Government is going to perform miracles, and should then tell us.

Hon Ljiljanna Ravlich: Didn't you get a chance to talk in the United Kingdom?

Hon DERRICK TOMLINSON: By gum I did!

Hon MURRAY CRIDDLE: We have not been given an explanation on how this will occur within the 90 days. That is the issue that the parliamentary secretary must explain. If he cannot explain that, we really do have a dilemma. How will it happen?

Hon GRAHAM GIFFARD: I have provided members with the draft practice directions that I am looking at. I do not need to repeat them. I went through them slowly and in fact repeated them more than once at one stage. Those are the time frames we are considering.

Hon DERRICK TOMLINSON: Perhaps the parliamentary secretary had better repeat them a third time because the first time it was seven days. I refer to the aide-mémoire which states that the registrar shall endeavour to set down class 1 appeals for hearing within seven days. Then the tribunal shall seek to deliver and publish a determination within seven days. That is seven days at the beginning and seven days at the end. Yesterday, the parliamentary secretary consistently said that the life of an appeal cannot be controlled. Today he started with 14 days and then added seven days. I am sorry, but my arithmetic says that 14 plus seven equals 21; that is, before we get to the appeal - and seven days added to that is 28. That is double the number we were given yesterday. If yesterday's answer was 14 and today's answer is 28, what will tomorrow's answer be? The parliamentary secretary has given us one answer. He repeated it but then doubled it. If he comes back tomorrow, will he make it 56?

Hon GRAHAM GIFFARD: I was reading from a sheet of paper yesterday and I have that sheet of paper in front of me now. I will read to the member word for word the time benchmarks for class 1 appeals, as advised to me. The registrar shall endeavour to set down a class 1 appeal for hearing within seven days after the lodgment of the grounds for contesting the appeal.

Hon Derrick Tomlinson: We are now back to 14.

Hon GRAHAM GIFFARD: No, we are not; I will explain that in a moment.

Whenever possible the determination of a class 1 appeal should be made orally at the conclusion of the hearing. In any event, every determination should be delivered and published within seven days at the conclusion of the hearing. That does not include - I have said this repeatedly today and it is the point made by Hon Derrick Tomlinson - the time between the lodgment of the appeal -

Hon Derrick Tomlinson: Seven days.

Hon GRAHAM GIFFARD: No, this is the 14-day period that I started with. It is not confusing if the member wants to listen.

Hon Derrick Tomlinson: Go ahead, I am loving this.

Hon GRAHAM GIFFARD: The time frame between the lodgment of the appeal and the lodgment of the grounds for contesting the appeal is the 14-day period. Does the member understand that?

Hon Derrick Tomlinson: No.

Hon GRAHAM GIFFARD: The appeal is originally lodged by the appellant.

Hon Derrick Tomlinson: Yes, that is called the lodgment of the appeal.

Hon GRAHAM GIFFARD: Yes, so the member does understand it.

Hon Derrick Tomlinson: Yes.

Hon GRAHAM GIFFARD: The respondent to that appeal must lodge the grounds for contesting the appeal within 14 days. That is, therefore, the first 14 days. I then referred to the two matters that I read from the draft practice directions; that is, within seven days of the lodgment of the grounds for contesting the appeal, the registrar shall endeavour to set down a class 1 appeal for hearing. That takes it to 21 days. Then, whenever possible, determinations of that class 1 appeal will be held at the conclusion of the hearing orally; or, if not, within seven days. That is the 28 days that the member is up to, with the caveat that added to that is the indeterminate time for hearing the appeal; that is the point made by Hon Derrick Tomlinson. The advice I gave to the honourable member yesterday really, reading from the practice directions, was about the time frame from the lodgment of the grounds for contesting the appeal, to the hearing, and then to the determination within seven days, if it is not to be delivered orally at the time. Have I made that clear to the member? There was a period of 14 days, which is the gap between the actual lodgment of the appeal and the lodgment of the grounds for contesting the appeal.

Hon DERRICK TOMLINSON: We now have the lodgment of the appeal, a discovery of evidence, then the lodgment of the grounds for appeal. After the lodgment of grounds for appeal, the period is seven days. There is our total of 21 days. I thank the parliamentary secretary for that. The best thing the Committee can do is now put this amendment to the vote, and allow the wisdom of the Committee to decide, because the parliamentary secretary has not the faintest idea.

Amendment put and a division taken with the following result -

Ayes (16)

| | | | |
|--------------------|------------------|---------------------|---------------------------------------|
| Hon Alan Cadby | Hon John Fischer | Hon Barry House | Hon Barbara Scott |
| Hon George Cash | Hon Peter Foss | Hon Robyn McSweeney | Hon Bill Stretch |
| Hon Murray Criddle | Hon Ray Halligan | Hon Norman Moore | Hon Derrick Tomlinson |
| Hon Paddy Embry | Hon Frank Hough | Hon Simon O'Brien | Hon Bruce Donaldson (<i>Teller</i>) |

Noes (17)

| | | | |
|-------------------|--------------------|-----------------------|-------------------------------------|
| Hon Kim Chance | Hon Jon Ford | Hon Ljiljanna Ravlich | Hon Giz Watson |
| Hon Robin Chapple | Hon Graham Giffard | Hon J.A. Scott | Hon E.R.J. Dermer (<i>Teller</i>) |
| Hon Kate Doust | Hon N.D. Griffiths | Hon Christine Sharp | |
| Hon Sue Ellery | Hon Dee Margetts | Hon Tom Stephens | |
| Hon Adele Farina | Hon Louise Pratt | Hon Ken Travers | |

Amendment thus negatived.

Hon MURRAY CRIDDLE: I move -

That the Deputy Chairman report progress to the House with a view to referring the Bill to the Standing Committee on Public Administration and Finance for further consideration.

A whole raft of amendments came forward yesterday. This is an appropriate time to refocus on this Bill. From the debate we have just had, it is obvious that there is a degree of uncertainty about the Bill. The amendments the Government has tabled clearly indicate that it has some doubt about the way in which the Bill is progressing. Therefore, I have moved that motion.

The DEPUTY CHAIRMAN (Hon Barry House): Hon Murray Criddle has moved that I report progress to the House with a view to referring the Bill to the Standing Committee on Public Administration and Finance for further consideration. I advise that this should be done in two steps. To achieve the outcome he desires, Hon Murray Criddle should move that I report progress and, if that motion is adopted by the Committee, another motion will need to be moved in the House to refer the Bill to the Standing Committee on Public Administration and Finance. The question is that I report progress.

Hon DERRICK TOMLINSON: I support the motion that the Deputy Chairman report progress. I am not quite sure what the procedure is for referral to the standing committee, but I understand that the House, rather than the Committee, will make that decision.

The DEPUTY CHAIRMAN: It is a procedural motion and is therefore not open to debate. The question is that I report progress.

Question put and a division taken with the following result -

Ayes (16)

| | | | |
|--------------------|------------------|---------------------|---------------------------------------|
| Hon Alan Cadby | Hon John Fischer | Hon Barry House | Hon Barbara Scott |
| Hon George Cash | Hon Peter Foss | Hon Robyn McSweeney | Hon Bill Stretch |
| Hon Murray Criddle | Hon Ray Halligan | Hon Norman Moore | Hon Derrick Tomlinson |
| Hon Paddy Embry | Hon Frank Hough | Hon Simon O'Brien | Hon Bruce Donaldson (<i>Teller</i>) |

Noes (17)

| | | | |
|-------------------|--------------------|-----------------------|-------------------------------------|
| Hon Kim Chance | Hon Jon Ford | Hon Ljiljanna Ravlich | Hon Giz Watson |
| Hon Robin Chapple | Hon Graham Giffard | Hon J.A. Scott | Hon E.R.J. Dermer (<i>Teller</i>) |
| Hon Kate Doust | Hon N.D. Griffiths | Hon Christine Sharp | |
| Hon Sue Ellery | Hon Dee Margetts | Hon Tom Stephens | |
| Hon Adele Farina | Hon Louise Pratt | Hon Ken Travers | |

Question thus negatived.

Hon J.A. SCOTT: I move -

Page 19, after line 22 - To insert -

- (4) An order purporting to be made under this section is a nullity unless it is made on grounds -
 - (a) that were submitted or relied on by a party;
 - (b) adopted by the Tribunal by reference to evidence, documents or other information disclosed to each party;
 - (c) described in both paragraphs (a) and (b).

Clause 50(1)(b) states that a tribunal by order may -

- (b) vary the determination or direction appealed against;
 - (c) set aside the determination or direction appealed against; or
 - (d) set aside the determination or direction appealed against and make another determination or direction in substitution for it.
- (2) The Tribunal may also make any incidental or ancillary orders.
 - (3) The power of the Tribunal to make an order includes power to make the order subject to such conditions as the Tribunal thinks fit.

Subclause (3) worries me the most.

Some amendments made by Hon Derrick Tomlinson were in line with the committee's recommendations. Previously, he moved amendments to clause 11 to delete lines that would have given substantial powers to the president.

I will briefly recap on what happened. Until that power was removed by this House by an amendment moved by Hon Derrick Tomlinson, that regulation further empowered the President of the Town Planning Appeal Tribunal. This is similar. In that case we talked about the need for some guidance or limitation to the scope of the powers of the tribunal, and in that case the powers of the president. In this case, the tribunal has very wide powers to make decisions that are not in any way linked to the evidence that has been given before the tribunal. Under proposed section 50, the tribunal can vary the determination or direction appealed against and set aside the determination appealed against. However, the amendment I have moved says that orders must be made on the grounds that they are submitted or relied on by a party or adopted by the tribunal by reference to evidence, documents or other information disclosed to each party. In other words, they must be tied to the evidence before the tribunal as well as the directions being put by the appeal. As the regulation stands, the tribunal can move completely outside of the matters that are before it. In some ways that may be an advantage and in some cases solutions might lie outside what is directly before the tribunal. It enables the tribunal to move right away from the matters before it in the appeal. It is very important for both the appellant and those defending the decision that has been made to respond so that they have some knowledge of where the debate will go. We could be looking for trouble if the tribunal were to have such openness and power to travel wherever it wanted to go without any boundaries, as in proposed section 50. If members always looked on the bright side of life, I suppose they would say that the tribunal may be able to find creative solutions; on the other hand, we are heading down the path of Supreme Court appeals and appeals to other courts. It would be wise to put some limitation upon the tribunal so that it deals with the matter in front of it and does not stray too far away from that area.

Hon GRAHAM GIFFARD: We do not support the amendment. As I understand it, an appeal would be available on the question of law under proposed section 62. If the tribunal were to make a decision other than in the circumstances described in paragraphs (a) and (b) of this amendment, it would be likely to be found in breach of the requirements of procedural fairness or natural justice, because such a decision would be a breach or an error of law and it could be corrected on appeal. In our view the amendment does not add anything and it is not necessary.

Hon DERRICK TOMLINSON: Now we have an entertaining proposition. We are dealing with the Planning Appeals Amendment Bill; that is, if a person wants to proceed with some change of purpose or with some development application, and at the first stage of that process the person's intentions are denied and the local government or the State Planning Commission says they may not subdivide or may not proceed with that development, then and only then do the provisions of this Bill come into operation, because the applicant may then lodge an appeal. That appeal will go to the tribunal. The president of the tribunal will then make a decision about whether this is not called in the Bill but is called elsewhere a class 1 appeal, or a class 2 appeal. The Bill describes what is a class 1 appeal, with all the others being class 2 appeals, with the president having reasonable discretion to decide whether it will be an appeal before a tribunal of one or a tribunal of three. The tribunal of one might be a person well qualified in environmental science, planning laws or whatever, or he or she might be a lawyer. If it goes to a tribunal, then depending on the nature of the appeal, the tribunal may be a composite of any three experts, one of whom might be a lawyer. However, the president is qualified to be a judge, with five to eight years' practice as a legal practitioner at the Bar in Western Australia. That person, qualified to make decisions on questions of law, will make decisions on questions of law, and questions of law only. A decision is then made. Only then does proposed section 62 apply, because proposed section 62 is an appeal to the Supreme Court on a question of law.

An appeal to the Supreme Court would occur only after the president, who is qualified to be a judge, had made a decision on a question of law. We are talking about an appeal to be decided on the basis of commonsense. I refer to proposed section 51, which deals with the procedure of the tribunal. To answer Hon Jim Scott, a tribunal is one; from Latin, *tribunum*, the head of the tribe. A tribunal, translated from Latin, head of a tribe, is the head of a legion; it does not necessarily mean tri as in three. However, in this Bill a tribunal of one is called a class 1 appeal; that is, an arena for conciliation. Legalities are not necessary because no-one is playing for sheep stations, although someone might be trying to subdivide a sheep station, which the person would have a snowball's chance in hell of doing. It could be a farm in Wellard!

Clause 51 provides that in the performance of its functions the tribunal, however constituted -

- (a) is bound by the rules of natural justice;

That is commonsense. Further, it provides that the tribunal -

- (b) is not bound by the rules of evidence.

There is a motion to remove the extent to which we adopt these rules, and we will deal with that later.

If something is not bound by the rules of evidence, the standards of the courts do not apply. The clause further provides that the tribunal -

- (c) may inform itself of any matter as it thinks fit;

What is reasonable? What is reasonable is appropriate to the circumstances of the case at the time. Each is different. To continue, the tribunal -

- (d) is to deal with each appeal with as little formality . . . as the regulations and the rules . . . permit;

In other words, it is an informal process. In class 1 appeals the aim is for people to put their heads together and reach a reasonable decision without involving technicalities. We do not want lawyers or experts involved. We want reasonable people to sit down with a reasonable attitude and come to a reasonable conclusion. It is called commonsense. The clause also provides that the tribunal -

- (e) subject to this Act, the regulations and the rules, may deal with appeals, and receive submissions and representations in relation to any appeal before it, as it thinks fit.

What does that mean? It means that which is appropriate to the people and the circumstances at the time. Each is different. There is no judicial process in this class. It will involve a couple of sensible people getting together and making a reasonable decision. However, according to this Bill, the same principles will apply to class 2 appeals, which will involve lawyers. I have not met a lawyer who does not require or argue by rules of evidence, who does not ask for information according to the circumstances - innocent until proved bankrupt - and who would deal with the appeal with the least amount of formality and technicality. Lawyers do not understand informality. As far as technicality is concerned, what is the law about? It is about the interpretation of technicality. Lawyers work on the basis that the more technical the interpretation, the better is the law. These are class 2 appeals.

The Bill states that the tribunal may receive submissions and representations on any appeal as it thinks fit. We will have the discovery of evidence and the proof of evidence, as a lawyer would demand. I am suggesting that the class 2 appeals will never be satisfied on those principles of procedure. The parliamentary secretary objected to the proposal of Hon Jim Scott on the grounds that proposed section 62 will apply. However, proposed section 62 is a question of law. It is a question of technicality. It is a question of procedure. It is a question of discovery of evidence. It is a question of proof of evidence. I suggest that, once again, the parliamentary secretary has demonstrated that he has not the faintest idea of what this Bill is about. I make a concession to the parliamentary secretary, because I happen to regard him as an intelligent, honourable man. This intelligent, honourable man is dealing with a nonsense, and the nonsense is the Bill. The Bill says that we will revolutionise the appeal process. Two processes of appeal will be set up - one that works on conciliation and one that works on legalistic procedures. Those two quite distinctive procedures will function according to the same principles. The law will not be changed a great deal in bringing about this revolution; a minimalist approach will be taken, which means that the law will be accepted as it exists and those things that we want to introduce now will be brought into the law. We will have a horrible amalgam of that which has operated badly for 100 years, or perhaps only 20 years, and imposed on that will be something that even the parliamentary secretary does not understand. If the parliamentary secretary does not understand, what hope is there for the mums and dads of the Swan Valley who simply want to subdivide their 20-acre plot of grapes? The chance of a snowball in hell.

A motion that you, Mr Chairman, report progress was moved. It was defeated. In debate on the very next amendment, the parliamentary secretary picked up his notes and read them, and they bore no resemblance to the issue raised by Hon Jim Scott, and certainly no resemblance to the principles that Hon Jim Scott was arguing. If I have a question of Hon Jim Scott it is this: how does he reconcile the very legalistic requirements of the appeal decision with the very informal, non-legalistic requirements particularly of a class 1 appeal? I have great sympathy with what he is arguing. If I have any objection to what he is arguing, it is that it is contrary to the spirit of the Bill. Why do I have sympathy with what the member is arguing? As with the member, many constituents have come to me with their rejection of their application for a planning decision. What are they based upon? Without fail, every time three reasons are given. First, it is inconsistent with the town planning scheme of the local government authority; secondly, it will establish a precedent; and, thirdly, some attempt to address the matter that is the substance of the appeal. I have had constituents say to me, "Please, Mr Tomlinson, guide me on which way to go." All the parliamentary secretary has got is that standard reply. I would be happier if I had what Hon Jim Scott intends; namely, an appeal decision based on the substantial evidence presented in support of the appeal. Here is my question. Here is the answer. What is the time? The time is half past two. Not: what is the time? The time is half past the next century. That is what we get today. I would rather have an answer to the appeal decision that answers the grounds of the appeal. However, we can have that

only if we follow the formal legalistic procedure for a class 2 appeal, which follows rules of evidence and has all the formalities of the law. Then section 62 might apply. However, section 62 is well and truly down the track from where Hon Jim Scott wants to be.

Please, Mr Parliamentary Secretary, answer the questions and get on top of the Bill. So far, all the parliamentary secretary has done is waste our time. I suggest to the parliamentary secretary that he does not waste the time of this House, because there is a lot of important legislation for this House to get through, and that he sends this Bill back to a committee and lets the committee deal with it and come up with a Bill. If the parliamentary secretary cannot trust the committee to come up with a Bill - and I do not believe it is the responsibility of a committee to write the Government's legislation - then the other alternative is that I suggest to the Leader of the House, wherever he is, that he withdraws this Bill and takes it back to the minister and asks the minister to translate her intentions into comprehensible law.

Hon GRAHAM GIFFARD: I am sorry if Hon Derrick Tomlinson thinks we are wasting his time. The position of the Government is that we do not support the amendment. The reason that we do not support the amendment is that on the question of appeals a breach of the requirements of procedural fairness would be an error of law and would be able to be corrected on appeal.

Hon J.A. SCOTT: After I had moved the amendment, I sat down because I thought I had run out of time. I should not have done that, because I might still have had three minutes. What I did not add is that this amendment will also enable further amendments later in this Bill. Clause 50 states that on an appeal, the tribunal may by order vary the determination or direction appealed against, or set aside the determination or direction appealed against. Without this amendment, that would make it very difficult for a third-party applicant. Therefore, this amendment is also linked into the further amendments that I propose to move. I do not think, from a quick look, that the usual occurrences in which third-party applicants will be involved will be the large three-member tribunal type appeals that will concern the community. The community will be concerned about the single-member tribunal only in very rare circumstances, primarily in cases involving the much larger type of development. I am trying to quickly look ahead. Without speaking to legal counsel on this matter, I cannot see a problem, but if this were applied only to the three-member tribunal, and the amendment were made, it would probably deal with some of the Hon Derrick Tomlinson's concerns that the single-member tribunal situation could remain the more commonsense approach rather than the legalistic approach. The large-scale developments, which are of concern to most third party groups, would fit within the three-tribunal situation.

I would therefore be quite happy to make an amendment on the run if it is possible to make my amendment fit the three-member tribunal situation but not the single-member tribunal situation. I have not yet written an amendment, and I am wondering whether it might be appropriate to seek leave to complete the debate on this clause at some later stage. I could then sit down and attempt to draft an amendment that would please Hon Derrick Tomlinson. Before I moved such an amendment, I would listen to the member's comments.

Hon DERRICK TOMLINSON: There is a great deal of virtue in what Hon Jim Scott has said. Therefore, I suggest that we defer consideration of this clause until a later stage of the debate to enable Hon Jim Scott to prepare the amendment. I do not like amendments being prepared on the run; I would like to give him time to consult about it. I would therefore suggest that we delay consideration of this amendment until a later stage of the sitting.

Hon GRAHAM GIFFARD: I would not oppose it. Hon Jim Scott's amendment contains the words "made under this section is a nullity unless". If he is looking to amend it, we would be looking at wording that reads "made under this section will be an error in law unless it is made". That is just changing it around rather than declaring it a nullity. It would be an error in law unless it were made. That is the sort of thing we will look at to make it less offensive to the Bill.

The DEPUTY CHAIRMAN (Hon Barry House): The Committee needs to clarify some matters. Hon Derrick Tomlinson needs to write out his motion because it must state the point to which the Committee is deferring the amendment. I anticipated that the parliamentary secretary might have a motion that would negate the need for this. Perhaps, it is not the case.

Hon Graham Giffard: Not at this point.

Further consideration of the amendment postponed until after the end of consideration of clause 11, on motion by Hon Derrick Tomlinson.

Hon GRAHAM GIFFARD: I move -

Page 19, lines 27 and 28 - To delete "except to the extent that it adopts those rules".

The intention of the amendment is to allow the tribunal not to be bound by the rules of evidence. I draw the attention of members to the committee report that recommended the amendment. The recommendation is found at page 23 of the report. When the committee raised the matter with the minister during its deliberations, the minister indicated she was agreeable to deleting the words to clarify the intention of proposed section 51(1)(b). The deletion is not detrimental to the effect of paragraph (b). The amendment is in response to the committee's recommendation.

Hon DERRICK TOMLINSON: The Opposition agrees wholeheartedly with this amendment. It is entirely consistent with the spirit of the Bill and the report of the committee. Therefore, the Opposition will vote in support of it.

Amendment put and passed.

Progress reported and leave granted to sit again, on motion by Hon Graham Giffard (Parliamentary Secretary).