

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

*Committee*

Resumed from 8 September. The Deputy Chairman of Committees (Hon Max Trenorden) in the chair; Hon Donna Faragher (Minister for Environment) in charge of the bill.

**New clause 18 —**

Progress was reported on the following new clause moved by Hon Giz Watson —

Page 10, after line 25 — To insert —

**18. Section 122 deleted**

Delete section 122.

**Hon GIZ WATSON:** When we adjourned debate last night we were dealing with the amendment standing in my name to insert new clause 18. I would like to postpone consideration of it because another amendment that another member would like to move has arisen overnight and should be dealt with prior to this new clause.

**Hon SALLY TALBOT:** I support the proposition to defer consideration of this clause. When we debated new clause 18 last night, I prefaced my remarks by saying that we were considering this amendment with extreme reluctance, the reason being that the deletion of section 122 of the Environmental Protection Act 1986 is not something that we would have contemplated under normal circumstances. There is no question that section 122, which allows for the creation of administrative procedures for the Environmental Protection Authority's activities, has served us well in the past. I have done some work with Hon Giz Watson to see whether there are some alternative ways of satisfying our concerns, and an amendment in my name will be circulated within seconds.

**Further consideration of the new clause postponed, on motion by Hon Giz Watson.**

[Continued on page 6240.]

**New clause 18 —**

**Hon SALLY TALBOT:** I move —

Page 10, after line 25 — To insert —

**18. Section 122 amended**

After section 122(2) insert:

- (3) Administrative procedures drawn up by the Authority will be subject to the same disallowance provisions as regulations made under section 123 of the *Environmental Protection Act 1986*.

The amendment seeks to amend section 122, and I cannot imagine that the government will have any difficulty with what we are proposing. I thank Hon Giz Watson for her consideration of this matter. As I have just said, section 122 has served us well in the past. It is a sensible, albeit unique, section. Given the way that the EPA operates and has been operating now for close to two decades, it is sensible to have a way in which administrative procedures—the actual nitty-gritty of the way the EPA conducts activities—can be given a degree of flexibility so that they can be open to change, amendment and innovation in a way that is expedited as efficiently as possible. There is no doubt that in the past the administrative procedures have served to that effect.

My amendment suggests a new subsection at the end of section 122 that makes the administrative procedures disallowable in exactly the same way that regulations are disallowable. That addresses by far the majority of the objections that we on this side of the chamber have about what the government is doing. As I have said from the outset of this debate, we on this side of the chamber—in the Labor Party at least—do not object to this revision of the administrative procedures that the government is putting in place. We do not object to the new website provisions—that is, new electronic ways of informing appellants and proponents about where they are up to. We think it is in accordance with the letter and the spirit of both the act and the way that the administrative procedures and the regulations have been treated over the past 20 years or so. Indeed, contemplation of electronic forms of communication is something that fits with the history of the development of these administrative procedures over the years. There is no reference that I can recall—other members might prove me wrong here—in the original regulations to websites or emails and that sort of electronic communication. There is no doubt that technology is changing very quickly, and there is an argument, which I think should at least be contemplated, that it is more efficient to make those changes without constantly coming back to the Parliament with changes to regulations that are disallowable. At the same time, we have to maintain parliamentary scrutiny,

and we have to keep some control. Members of this chamber have to be able to look their constituents in the eye and say that they have not abrogated their responsibilities to subject these kinds of measures to proper scrutiny.

By making the administrative procedures covered in section 122 disallowable, as the regulations that are prescribed under section 123 are, I think we cover both those possibilities. Therefore, the administrative procedures can still be updated, tweaked, polished and refined, but they will not fly under the radar of parliamentary scrutiny. Our concern will be obvious to all honourable members. If we take the temporal sequence of events as they have unfolded that bring us to this point today, we know that the Minister for Environment has expressed some degree of anxiety about the need to maintain the appearance of transparency, openness and accountability, and that is why the administrative procedures have been changed —

**Hon Donna Faragher:** There is no anxiety on my part. You are a brilliant mind-reader!

**Hon SALLY TALBOT:** I am glad that the minister is not suffering from anxiety. My argument from the beginning, as the minister well knows, is that if the administrative procedures could be put into place without the need to make the legislative changes that the minister has come here with, they would have precisely the effect that she says she is seeking without eliciting any of the problems that she will inevitably bring on her head by abolishing appeal points. The opposition's anxiety, which is very real and has led to considerable debate on this side of the chamber, is that the government is tending more and more to treat administrative procedures as if they were just window-dressing.

The minister can hear the way I have couched this point. The minister went back to her public servants and said, "Guys, we've got a problem; we've got to maintain the appearance of transparency." It is not just about the appearance; it is about the concrete, everyday reality of people being able to be part of processes that are proper, rigorous, open, accountable and transparent. Our fear is that once all this has died—members know what it is like—our life in politics is such that in three months we will wonder what we spent so much time in this chamber talking about. That is how quickly things move on, and, at that stage, the minister will say, "Hey, don't worry about this", and maybe new bureaucratic tsars will be ruling the roost and the administrative procedures will just disappear off the radar, never to be seen again, and we will be left with a far, far inferior system than the one this government inherited in 2008. I am assuming that members now have a copy of the amendment.

**The DEPUTY CHAIRMAN (Hon Max Trenorden):** The staff have been working on your amendment.

**Hon SALLY TALBOT:** My proposition is that a new subsection (3) be added to section 122, which will read —

- (3) Administrative procedures drawn up by the Authority will be subject to the same disallowance provisions as regulations made under section 123 of the *Environmental Protection Act 1986*.

I do, most sincerely, commend this amendment to the chamber.

**Hon DONNA FARAGHER:** The government will not be supporting this amendment. I refer to the comments made by Hon Sally Talbot when she first put forward this amendment. She said that the administrative procedures have served us well; she is quite correct, and there is no reason to suggest that they will not in the future. I will not refer to it at this point in time, but I see another amendment has been put forward, which I presume we will be dealing with, that implies that the Environmental Protection Authority's role in ensuring public comment and the like is not open, transparent and accountable. The member is implying that the EPA is not open, transparent and accountable, and the EPA might well have a view on that.

The administrative procedures have never been made regulations since the commencement of this act. They have served us well, and there is no reason to suggest they will not continue to serve us well. Whatever the legislation states, whatever the provisions included in the act that relate to environmental impact assessment, the EPA's administrative procedures do not affect those provisions and the legislation must be followed. The reality is that the act must be followed. Before we rose last night, I mentioned that the procedures outline the principles, I suppose, and administrative practices for environmental impact assessment. To remove the EPA's power to draw up administrative procedures would, I would argue, reduce the independence of the EPA. I am not sure whether Hon Sally Talbot would support such a move.

**Hon Adele Farina:** That is an outrageous statement to make.

**Hon Sally Talbot:** How does that work?

**Hon DONNA FARAGHER:** The EPA has the ability to effectively respond to improved knowledge and experience in environmental impact assessment—all those sorts of things. The reality is that these have served us well, and there is no suggestion that they will not in the future, and the government will not be supporting the amendment.

**Hon GIZ WATSON:** I support the amendment moved by Hon Sally Talbot, and I will put a bit of a different angle on what we are trying to do. This amendment will not prevent the Environmental Protection Authority

from using administrative procedures; it will simply mean that those procedures will have to be scrutinised by the Parliament. The reason we are taking this step—even though the EPA, to date, has used its administrative powers appropriately—is that there is significant concern, which I share, that the changes that have been made place a greater reliance on administrative procedures that can be changed without scrutiny. An example of one such procedure is the ability of community members and the conservation sector to be informed about proposals in a timely way by accessing the website; that procedure would have no protection and it could be changed at any time either by the EPA or at the direction of the minister of the day. That link for engaging the community in environmental assessment processes—not approvals, I reiterate—is heavily dependent on an administrative procedure that this act will allow the EPA to modify without any recourse to parliamentary scrutiny. The Greens (WA) happen to think that the role of the Environmental Protection Authority in what we are now contemplating, which is a modified act, should have that additional safety built in, even though, historically, it has been used appropriately. This government's seeking to amend the Environmental Protection Act in the way that it has has meant that we are now looking for other safeguards. It is a standard process that the Parliament should have a role in these sorts of issues, and it is necessary to now put this in place. This amendment, and the amendment I debated last night, seeks to achieve that outcome, and I do not even understand why the minister finds it problematic to increase accountability and transparency by having these administrative procedures subject to the same disallowance provisions as regulations. To suggest that any members are somehow casting aspersions on the EPA is just wrong, and I make it very clear that that is not what we are saying.

**Hon ADELE FARINA:** I was expecting the minister to respond to the comments of Hon Giz Watson, but I see that, today, she is continuing the practice of past days, whereby she feels that she can just rely on the numbers in the chamber to push this bill through without actually addressing these issues raised by members.

The minister made a statement that the amendment proposed by Hon Sally Talbot would impact on the independence of the EPA. I would like the minister to explain how she sees this amendment impacting on the independence of the EPA.

**Hon DONNA FARAGHER:** If the member actually reads the administrative procedures, she will see that they include internal procedures and principles that are not readily appropriate for regulations. It would reduce the effectiveness of the EPA, as I mentioned, to respond to such things as improved knowledge, experience and all those sorts of things that are obviously gathered over years of experience of environmental impact assessment. I take on board the concerns raised by Hon Giz Watson; the government does not share those concerns.

**Hon Sally Talbot:** How are you going to address them?

**Hon DONNA FARAGHER:** This bill deals with the removal of duplicative and unnecessary appeal points. We have debated this at great length. I appreciate there is a different point of view on this side of the chamber from that on the other side of the chamber. I recognise that, but it remains the government's position that we are dealing with duplicative and unnecessary appeal points. I just reiterate once again that Hon Sally Talbot herself has said that these administrative procedures have served us well. I would say that there is no reason to suggest that they will not serve us well in the future.

**Hon ADELE FARINA:** I think the minister fails to understand the regulation-making power process that exists in this state, in that the Environmental Protection Authority can make a regulation and it will have effect from the date it is made, and then there is a disallowance process carried out by the Parliament. Therefore, it is not going to hold up the process for any extraordinary period of time because the regulation has effect from the date of the regulation or any date that the regulation so identifies in the regulation. The minister fails to understand, from the statements that she has made, that this Parliament has a responsibility to the people of Western Australia to ensure that the regulations and laws that we make in this state are for the good order of the community. It is not unreasonable when we are tilting quite significantly the balance that currently exists in the Environmental Protection Act between enabling proponents to advance proposals for environmental assessment and the community having some input into the assessment process and being able to have their concerns heard. We are tilting the balance in that we are removing a number of those appeal rights. The only thing that the government is doing to placate community concern about the removal of those appeal rights is to offer an administrative procedure. We are removing appeal rights and rights to input into the process that have the backing of the legislation, and replacing them with an administrative comment opportunity that has absolutely no legislative backing from the act and that can be changed at any time by the EPA, with or without the consideration and consent of the minister, the government or the Parliament. I think that is completely and totally unsatisfactory. There is community concern. The minister should heed that community concern and listen to it, and try to provide some avenues to address that community concern. Governments that not do that end up on the opposition benches.

This is not an unreasonable request. We are not preventing the EPA, through this amendment, from making administrative procedures. We are simply saying that given that we are removing rights that the community has now, which have legislative direction and backing, in favour of an administrator opportunity to comment, we should be providing the community with some certainty that in two days, two weeks, two years or whenever after we pass this legislation, those administrative procedures will not be changed to remove the right to comment in that first seven-day period when a proposal is referred. Therefore, the accommodation that the government has made for community concerns by providing an opportunity for community comment up-front will also be lost without any scrutiny by this Parliament. That is unacceptable. The community does not accept this. I do not think it is unreasonable for the minister to consider and agree to the amendment that is before us. It does not impact on the independence of the EPA at all and it does not hold up the process of making those administrative amendments, because the regulations have effect from the date they are enacted or the date the regulations specify. The arguments that the minister has advanced for her opposition to this amendment have no substance whatsoever. As I said, what we are seeing yet again here is an arrogant government using its numbers in this chamber to force through amendments and changes to legislation and the rights of the people of Western Australia with absolutely no regard to the impact that is having on the rights of the people of Western Australia.

**Hon GIZ WATSON:** I was wondering whether the minister was going to respond.

**Hon DONNA FARAGHER:** I have actually responded. I appreciate that Hon Adele Farina has a view, but she has not advanced it any further than the information I have already responded to in response to the comments also made by Hon Giz Watson.

**Hon GIZ WATSON:** I was just wondering, out of courtesy, whether the minister wanted to answer that. I have one additional question on this, because it seems to me that what the minister is saying is to trust the government because this has worked in the past and, therefore, there is no reason to suspect that anything will be different. However, from where I sit there are a lot of balls in the air in the overall picture of how environmental assessment will look in Western Australia when we have dealt with this bill and other legislation that is in the pipeline. In light of that and in light of informing us about a decision on amendments to this bill, I will ask the minister, because yesterday she gave notice of the introduction of a bill to amend the Environmental Protection Act, if she will inform the chamber of what that bill is intended to do.

**Hon DONNA FARAGHER:** I am aware that there was a bit of concern when I gave notice yesterday, but I can assure the member that it relates to illegal dumping, which I hope we will have strongly supported by the Greens (WA).

**Hon Giz Watson:** Thank you.

**The DEPUTY CHAIRMAN (Hon Max Trenorden):** Members, there is a bit of enthusiasm here, but you do need to get the call.

**Hon GIZ WATSON:** Thank you, Mr Deputy Chair. I am very pleased to have my concerns reduced about what is in the pipeline with that amendment. I look forward to looking at it very closely. Indeed, if it is about illegal dumping and better managing that, we will be very pleased to support it. However, I make the point that the reason we are seeking this, by way of this amendment that Hon Sally Talbot has raised, which is in the same spirit as the amendment I moved last night, is that we are not dealing with the same situation and we are seeking to put in place a safety valve, as it were, which in our view is necessary. In effect, that is what these amendments seek to do. I can only say that we think that has got merit and it is important, given the other changes to the act that this bill will cause.

**Hon DONNA FARAGHER:** I will just add that any changes to administrative procedures have always been subject to public comment. Any changes have gone out in draft for comment. It is not as if change is made on a whim. The most recent changes have already been out for public comment. There is no suggestion that those sorts of things will change. In response to the notion that somehow or other I as minister direct the EPA and its board, I just refer to section 8 of the Environmental Protection Act, "Independence of Authority and Chairman", which reads —

Subject to this Act, neither —

(a) the Authority; nor

(b) the Chairman,

shall be subject to the direction of the Minister.

Therefore, some suggestion that the minister will be directing the chairman or the authority is just wrong. I refer members to section 8 of the act.

Hon Giz Watson; Hon Dr Sally Talbot; Deputy Chairman; Hon Donna Faragher; Hon Adele Farina

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**Hon SALLY TALBOT:** The minister is really going off the rails now. There are all these devices in arguments to obscure the issue, and the minister has obviously been studying some of those devices. The statement by the minister that were this amendment to be —

**Hon Donna Faragher:** You're the most condescending person. Seriously, you just go on and on. It's just unbelievable.

**Hon SALLY TALBOT:** I am really sorry that the minister feels that way. This seems to be a constant mantra from her. I am sorry if it upsets her.

**Hon Donna Faragher:** It doesn't upset me.

**Hon SALLY TALBOT:** Good; I am pleased. If she wants to make a time to have a chat about ways that I can make her feel more comfortable in this place, please ring my electorate office and make a time to come and have a chat to me.

**Hon Donna Faragher:** I just think it's unfortunate that you have to use a condescending tone when you speak to other members of Parliament. I just think that's most unfortunate.

**The DEPUTY CHAIRMAN (Hon Max Trenorden):** Members, this chatter is not progressing the debate. Hon Sally Talbot has the call.

**Hon SALLY TALBOT:** Before I turn to the point that I want to make about the government's response to the report of the Standing Committee on Uniform Legislation and Statutes Review, I want to say that any explicit statement from the government that an amendment of this kind will in some sense diminish the independence of the Environmental Protection Authority is, frankly, nonsense. The minister must know that. She is looking intensely uncomfortable about having made that statement. I invite her to perhaps adjourn this debate to a later stage of this day's sitting so that she can ask the EPA whether it thinks that making the administrative procedures disallowable would somehow compromise its independence.

**Hon Adele Farina:** That's an excellent idea.

**Hon SALLY TALBOT:** It is a good idea. I thank the member.

**Hon Adele Farina:** After all, the minister doesn't direct the EPA, so she should actually ask it the question.

**Hon SALLY TALBOT:** Absolutely. By her own argument, it makes sense to do that. I strongly suspect, however, that the minister will not take my advice. In that case, I look forward with enormous anticipation to a meeting of another standing committee, because I believe that the Standing Committee on Estimates and Financial Operations, chaired by Hon Giz Watson, will shortly be talking to the EPA. It will be something that we can follow up with considerable interest then. I put it to members that, frankly, that is a piece of arrant nonsense, and nobody knows that better than the minister from whose mouth it proceeded.

Let me just say how we got here. My initial point on the whole question of section 122 —

**Hon Simon O'Brien** interjected.

**Hon SALLY TALBOT:** I am sorry; I did not catch that, Hon Simon O'Brien.

**Hon Simon O'Brien:** I wasn't talking to you.

**Hon SALLY TALBOT:** My initial point about the consideration of section 122 and the administrative procedures was that the standing committee's recommendation 9 was that, in the interests of good and open government, the Minister for Environment provide members of this house with an explanation about why it was appropriate to prescribe matters such as the period for public comment, information being made available to the public and other aspects of environmental impact assessments by way of administrative procedure rather than by regulation. I put it to members that the minister has not responded. It was a simple request for an explanation. The so-called explanation we got on recommendation 9 read in this way —

... the administrative procedures are based on the powers in section 122 of the Environmental Protection Act, and are an expression of the principles of the environmental impact assessment process and the procedures to guide the administration of that assessment. The administrative procedures set out procedures that increase public involvement, availability of information and reporting over and above that required by the act.

...

... The transparency of the environmental impact assessment process ensures that any inconsistency with the administrative procedures would be apparent to both the proponents and the community ...

The minister also said that the EPA has not made its administrative procedures as regulations since the commencement of the EP act. We know that, minister. The most junior parliamentary intern could have written those four sentences.

**Hon Donna Faragher:** Again; you can't help yourself.

**Hon SALLY TALBOT:** It is just an observation, minister. Did it take the minister very long to write that? Did she sweat over those four sentences? Yes or no?

**Hon Donna Faragher:** Just keep talking.

**Hon SALLY TALBOT:** It was quite easy, was it? The minister will have her chance to respond to my comments.

The comments were so glib that they missed the very readily apparent substance of committee recommendation 9, which was to provide us with an explanation. Then we could have considered that explanation and perhaps moved on. Over and again in this debate we have put a proposition to the minister and the minister has just said that that is our opinion and she does not agree. That is not what an argument is about. An argument is about explaining one's position. In the total absence of an ability to explain her position, what conclusions are we supposed to come to? One conclusion is that she does not have a position and does not understand what might be the implications of the amendments that she has proposed, and therefore she has just adopted a strategy of saying, "That's your position and I don't agree with it." The minister's response to the amendment now under consideration is unbelievably facile. She has said that she agrees with me that the administrative procedures have served us well in the past—so far, so good. Then she said that she had no reason to think that that confidence might be eroded in the future. We have spent hours in this place explaining to the minister why the measures that she has proposed are eroding public confidence in the processes that have served us well. What is the problem? Perhaps she needs to get some more briefings on what people are saying about what she has proposed. It is frankly offensive to suggest that amendments of this kind will in any sense erode the independence of the EPA. I would never speak for other members, but I hear people on this side of the house saying that the reason this amendment is being supported by my colleagues in the Labor Party and in the Greens (WA) is that it will lead to better governance, it will lead to better practices on the part of the EPA, and it will lead to greater public confidence in the environmental assessment process in this state. That is why I have moved the amendment. If the minister cannot understand that, what hope is there for the environment over the next few years while she is driving the cart?

**Hon ADELE FARINA:** The minister said that the EPA consults on administrative procedures, which is advice that we welcome. I am curious to know whom does the EPA consult with and how are members of the public and, in fact, members in this place to know that the EPA is seeking comment on proposed administrative procedures.

**Hon DONNA FARAGHER:** They are both on the Office of the Environmental Protection Authority's website. In addition, the chairman of the EPA has a stakeholder working group, which consists of a number of groups that he regularly consults on a range of issues. I am happy to provide a list to the member. I do not have that information in front of me, but it consists of both conservation and industry groups. This would be one of the matters that the working group is specifically consulted on.

**Hon ADELE FARINA:** I will take the minister up on her offer to provide me with a list of the members of the working group.

It is all well and good that this information is provided on a website. When we ask how will we know about this stuff, we are frequently told that it is on the website. The reality is that the capacity to monitor every website in existence and keep on top of this information is beyond the realm of anyone, much less people with the workload that we have as members of Parliament. I find it surprising that the EPA does not also write to members of Parliament to advise them directly about these sorts of matters or send out a distribution email at least to members of Parliament to advise them that it is in the process of reviewing administrative procedures and to ask members of Parliament for comment, particularly given the level of feedback we receive from community members, which could feed into the process in a very useful way. Will the minister give an undertaking that, from now on, the Environmental Protection Authority will directly notify members of Parliament about any proposed new administrative procedures, any amendments to administrative procedures or the cancellation of any administrative procedures?

**Hon DONNA FARAGHER:** As the member would be aware, I cannot direct the EPA to do that so I cannot give that undertaking. The undertaking I can give to the member is that I will put her proposal to the chairman of the EPA and to the Office of the EPA. I am very happy to do that.

**Hon ADELE FARINA:** I thank the minister for her response. I remind the minister that while she does not have the capacity to direct the EPA, she does have the capacity to direct the Office of the EPA. These administrative procedures will relate largely to administrative procedures of the Office of the EPA in any event.

**Hon Donna Faragher:** I have given the undertaking.

**Hon ADELE FARINA:** I accept that; I have said that I am grateful for that. The other thing I would like to know is the sort of feedback the community will receive through this process of consultation about the issues that were raised and how they were weighted by the EPA in deciding to either reject changes to or amend the administrative procedures. If an amendment is made to the administrative procedures, how will the community be advised of that?

**Hon DONNA FARAGHER:** The EPA would obviously have to take into account any comments made during the public comment period, regardless of whether those comments were made through the stakeholder working group or by a member of the public in an individual submission. I am not a member of the EPA board so I cannot tell the member about the inner workings of a meeting of the EPA board when such matters are considered, but the EPA must obviously give regard to matters raised by the public, the Conservation Council of Western Australia or any other organisation that takes an interest in these matters.

**Hon ADELE FARINA:** That response is inadequate. I am not asking the minister to direct the EPA in its consideration of these matters. The community has a right to know how their comments are weighted and about the process the EPA goes through. The minister has told us throughout the consideration of this bill that the EPA is open, transparent and accountable, yet she just said that she does not know how the EPA goes about its deliberations. Under the appeals process, the community has the opportunity to understand the level of regard and consideration given to any issues it has raised and how those matters are weighted by the EPA in making its decision because the EPA is required, through the minister, to issue a report. Moving from an appeals process to an administrative process means that not only will there no longer be any legislative backing to ensure that that process is not eroded in the future, but also people will have absolutely no understanding of the process the EPA goes through in assessing any concerns or feedback it receives and no capacity to understand the weighting or consideration given to those issues because the EPA will not be required to issue a report or to explain its decisions. This is particularly important in regard to any comments raised in opposition to proposed administrative procedures. Again, the public's rights are being greatly diminished through the processes and amendments proposed in this piece of legislation. Frankly, I do not feel it is adequate for a minister to come into this place and say that she simply does not know how the EPA goes about making its decisions and yet expects us, as a Parliament, to support amendments that will diminish the rights of the community. What reassurance does the community have that the EPA will give due regard to the issues it raises and give due weight to their concerns?

**Hon SALLY TALBOT:** I have a quick question to follow up on a comment made by the minister about the opportunity of the public to comment on revised administrative procedures. How will that work if a facility or resource is being withdrawn?

**Hon Donna Faragher:** Sorry?

**Hon SALLY TALBOT:** I think the minister said earlier that the new administrative procedures will involve email notification when proposals are received. If a decision were made to cease that practice, how would that change be communicated to members of the public? How would public comment be sought?

**Hon DONNA FARAGHER:** There is no suggestion that that will happen, but if it were to happen, it would involve a removal from the administrative procedures and any such change would require a public comment period.

**Hon SALLY TALBOT:** Would all the administrative procedures be republished every time there is a change?

**Hon DONNA FARAGHER:** Yes. As I understand it, the EPA procedures have been changed only three or four times in the entire time they have been available. There is a suggestion that the changing of administrative procedures and all these sorts of things will remove the right for comment and the like. I have indicated that any proposed change will be open for public comment. The EPA must give due regard to these matters. Comments will be considered. The EPA has an extensive stakeholder working group, which I have already mentioned I am happy to provide details of. This process has been in place since the EPA was established. We are not proposing any change to that.

**Hon SALLY TALBOT:** I expect the minister to support the vote on this amendment, because she has just given us a conclusive demonstration that this amendment is eminently sensible because this sort of change does not

actually happen all that often. What on earth is the problem? What on earth could be the harm caused or the disadvantage in having this subject to the same disallowance provisions as the regulations?

**Hon ADELE FARINA:** If the minister will not respond to that, perhaps she will respond to my question. I would be grateful if the minister would inform the chamber how the Environmental Protection Authority goes about the process of distinguishing between what should go into regulation and what should go into an administrative procedure and, therefore, dealt with under section 122 of the act?

[Quorum formed.]

**Hon DONNA FARAGHER:** I refer the member to section 123(2), which states —

- (2) Without limiting the generality of subsection (1), regulations may be made under that subsection in respect of the matters set out in Schedule 2.

I then refer the member to schedule 2.

**Hon Adele Farina:** I cannot hear the minister, I'm sorry. Would she mind starting again?

**Hon DONNA FARAGHER:** In section 123, under the heading “Regulations”, subsection (2) refers to the fact that regulations may be made under that subsection in respect of the matters set out in schedule 2. Then we go to clause 34 of schedule 2, which states —

Prescribing administrative procedures for the purposes referred to in section 122(1)(a).

There is therefore a capacity —

**Hon Adele Farina:** I am sorry, what number was that?

**Hon DONNA FARAGHER:** It is clause 34 of schedule 2.

**Hon ADELE FARINA:** That is great. It refers us back to section 122, which is the administrative procedures-making power. That is odd. We have the regulation-making power telling us —

Without limiting the generality of subsection (1), regulations may be made under that subsection in respect of the matters set out in Schedule 2.

Then the minister referred us to clause 34 of schedule 2, which refers us back to the administrative procedures-making power. I am therefore no wiser on how the EPA determines what should be a regulation and what should be an administrative procedure. In fact, I am even more confused because the regulation-making power takes us back to making it an administrative procedure. Is the minister saying that the EPA does not use its regulation-making power; it just favours its administrative procedure-making power? I again ask the minister to explain to the chamber how the EPA determines what should be a regulation as opposed to an administrative procedure.

**Hon DONNA FARAGHER:** I just make the point that I have provided the information to the member to alert her to how a regulation may be made; it is not a requirement.

**Hon Adele Farina:** I know how they may be made. That was not my question.

**Hon DONNA FARAGHER:** I am actually trying to answer the member's question. As I have said on numerous occasions, the EPA uses these administrative procedures in such a way that they do not affect the provisions in the legislation that must be followed, but they are a statement of principles and the way that the EPA, in effect, conducts its business. I also refer the chamber to the government's response to recommendation 10, which states that the EPA does not support the making of its administrative procedures as regulations; therefore, the EPA does not support that. As I have said, they are an expression of both the principles and procedures that are followed by the EPA. There is, therefore, a capacity within the act, and I have outlined that, but it does not impact on the legislation and how it must be followed. It outlines the guidelines, the procedures and the principles that the EPA follows.

Mr Chairman, I think I have responded as much as I can on this matter.

**Hon ADELE FARINA:** I have at no time questioned whether the EPA has the authority to make administrative procedures; I acknowledge that the authority is provided in the act under section 122. I have not questioned the power of the EPA to make regulations; I acknowledge that that power exists in the act under section 123. My question is: given that the EPA is faced with these two mechanisms that it can use, how does it determine which one it opts for in any specific matter? Does the EPA have guidelines or administrative procedures for what should go into regulations and what should be incorporated into administrative procedures?



Hon Giz Watson; Hon Dr Sally Talbot; Deputy Chairman; Hon Donna Faragher; Hon Adele Farina

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**Hon DONNA FARAGHER:** If the EPA felt that it needed to prescribe something, it would use the regulations. The EPA does not believe that it needs to prescribe the administrative procedures, for the reasons that I have already outlined.

**Hon GIZ WATSON:** I have an additional question that has bearing on this amendment. I understand that the “Environmental Impact Assessment Administrative Procedures 2010” document, which the minister kindly provided to us, is the final draft of what we are looking at to complement —

**Hon Donna Faragher:** From what I can see, the document that the member is holding looks right to me.

**Hon GIZ WATSON:** In light of this debate about the additional check and balance that this side of the house seeks to put in place, it seems to me that that document does not go into the specific details of things such as ensuring that people are informed early enough via the website or by an email that tells them something new has gone up on the website. Does this document actually go into that level of detail? If so, I am interested to know where in the document it does, because it seems to me that it does not really guarantee a mechanism for informing the public of upcoming proposals on which they can comment. Perhaps the minister could indicate, if it does, where that is.

**Hon DONNA FARAGHER:** I refer Hon Giz Watson to section 8. It might not be —

**Hon Adele Farina:** Is it possible to get a copy of that document?

**Hon Giz Watson:** Is the title “Levels of Assessment”?

**Hon DONNA FARAGHER:** No; “Decision on Referred Proposal” would be the section.

**Hon Sally Talbot** interjected.

**Hon DONNA FARAGHER:** It is in the administrative procedures. Can I see which document the member has? Members may recall that I mentioned during debate that some minor changes were being made, so I want to see what version the member has.

**Hon GIZ WATSON:** I wonder whether the minister could give us copies of —

**Hon DONNA FARAGHER:** The version I have before me is a working draft of the next version, so I would prefer to utilise the other one because I understand there is some minor tweaking and I want to ensure that I give members the most appropriate version at this point in time. I am happy to also provide members with the final document, but this is a working draft.

**Hon Adele Farina:** But aren’t they both working drafts?

**Hon DONNA FARAGHER:** This one is the most recent. I understand that it is a working draft of the Office of the Environmental Protection Authority and it has not gone through the EPA board process. This document has, so that is the one that I want to refer to.

**Hon ADELE FARINA:** Is the minister asserting that the draft of version 9 that she has is a confidential document and she is not releasing it on the basis of confidentiality?

**Hon DONNA FARAGHER:** As I understand, this is a working draft of the officers. The copy that I have before me has written comments from officers on it, so my preference would be to use version 8 of the document. However, if members would like, I am happy to see whether I can get a clean copy for them. Obviously, I do not have a clean copy here because this is a working draft. I hope that members appreciate that this document is a working draft with actual written comments from officers on it. However, I am happy to get members a clean copy but I do not have it with me.

**Hon SALLY TALBOT:** It is beginning to appear as though we are looking at three different documents. This debate is about an amendment that would make the administrative procedures disallowable in the same way as regulations. All of a sudden we have hit this massive stumbling block and we cannot agree on which version of the administrative procedures we are supposed to be debating. The question Hon Giz Watson asked seemed to be eminently sensible. We want a perfectly straightforward answer about whether the administrative procedures drill down to that degree of detail. We just put our heads together and agreed that none of us on this side of the house can find out where that happens. We are trying to tease that out but it is now beginning to appear that we have three documents.

**Hon Donna Faragher:** No. I’m happy to respond to you because I think —

**Hon SALLY TALBOT:** The minister will have her chance to respond but let me make my point. We have a document that was in Hon Giz Watson’s possession, which I think we can call version 8 of the administrative procedures. We have a version of the administrative procedures that the minister quoted from, which we were

then told was version 9 with written comments or written changes because the minister then said that it was a draft document. Now the minister is offering to provide us with a clean copy of version 9. By all accounts, that seems to me to be three different documents. I ask the minister again to confirm whether one, two or three of those documents is a confidential document; and, if so, which one is it? Which document was the minister quoting from?

**Hon DONNA FARAGHER:** I think that Hon Sally Talbot needs to calm down a bit. The draft that Hon Giz Watson had was version 8. I understood that that was the latest draft. I have just been informed that there is a new draft—version 9. In debate on these matters previously, I have indicated that we have been through a public comment period and, in fact, some minor matters were still being finalised. I have already said that. All I am saying is that I have been informed that there is a version 9 and there are some markings and writing of an officer on that document. Instead of giving members a copy of the document that has markings from an officer, I will simply give members the same version of the document but it will be a clean copy. There is no difference other than my copy has internal writings of an officer. I just ask that we use a copy of version 9 of the document that is exactly the same, but is simply a clean copy. I am happy to provide that.

**Hon ADELE FARINA:** As I understand standing order 47, the minister is required to table the document unless she claims that the document is confidential. From the statements the minister has made to date, she has not indicated that there is anything confidential about the document; therefore, I ask the Chairman to instruct the minister to table the document.

**Hon DONNA FARAGHER:** The document has an officer's writing on it. I am happy to provide it. I was trying to be of assistance by giving the house a clean copy of version 9. There is a lot of carry on, frankly, over a document that I have just said has an officer's writing on it. I was simply making sure that the opposition had a clean copy. I table the document.

[See paper 2409.]

**Hon ADELE FARINA:** I ask that the minister report progress to give us an opportunity to review these documents, which are yet to be tabled, because it is impossible for us to continue the debate and the consideration of the report when we have just been handed the documents. If the minister is disinclined to do that, I am happy to filibuster while my colleagues get an opportunity to review the document. However, I would have thought that it would be far more efficient if we got on with other some other government business while we are given an opportunity to review the documents.

**Hon DONNA FARAGHER:** I will not be reporting progress. In the interim, I am happy to provide Hon Adele Farina with the names of the members of the stakeholder reference group, because she was interested to know who they are.

**Hon Adele Farina:** I would like it in writing so that I have it for future reference, but I am happy to hear them now.

**Hon DONNA FARAGHER:** Good. I am trying to be of assistance. The Australian Petroleum Production and Exploration Association—APPEA —

**Hon Adele Farina:** Who is representing APPEA?

**Hon DONNA FARAGHER:** I am referring to the stakeholder groups. The other stakeholders include the Association of Mining and Exploration Companies, the Chamber of Minerals and Energy of Western Australia Inc, the Chamber of Commerce and Industry of Western Australia, the Conservation Council of Western Australia Inc, the World Wildlife Fund Australia, the Environmental Consultants Association (WA), the university sector, the Urban Development Institute of Australia, the Western Australian Local Government Association, the Department of State Development, the Department of Environment and Conservation, the Department of Mines and Petroleum, the Department of Planning, the Western Australian Planning Commission and the Office of the Appeals Convenor.