PLANNING APPEALS AMENDMENT BILL 2001

Committee

Resumed from 26 June. The Deputy Chairman of Committees (Hon Jon Ford) in the Chair; Hon Graham Giffard (Parliamentary Secretary) in charge of the Bill.

Clause 11: Part V replaced -

Progress was reported after the clause had been partly considered.

Hon GRAHAM GIFFARD: I move -

Page 19, after line 29 - To insert -

(d) is to encourage the parties to an appeal to reach agreement on some or all of the issues arising in the appeal;

This is amendment number 20/11 on the supplementary notice paper.

Hon Derrick Tomlinson: What about amendments 13/11, 14/11,15/11, 16/11, 17/11, 18/11 and 19/11?

Hon GRAHAM GIFFARD: They have been dealt with. All the amendments to clause 11 have been printed on the supplementary notice paper. The new issue of the supplementary notice paper contains the amendments from clause 11 onwards, and all the amendments on the front page have been voted on. Amendments 13/11 and 15/11 were defeated. The last amendment the Committee voted on was 19/11.

Hon Murray Criddle: What are we up to?

Hon GRAHAM GIFFARD: We are at amendment 20/11, which is shown on the second page of the supplementary notice paper, and page 19 of the Bill.

Point of Order

Hon DERRICK TOMLINSON: I seek clarification. Unless my memory is failing, and it certainly is - old age is a dreadful thing - my recollection is that when the debate was adjourned on the second-last day of the autumn session we were debating amendment 5/11, which was Hon Murray Criddle's motion to insert words after line 22 on page 19. We had a long debate about the length of time that the tribunal would have to deal with matters. My notes say that it was first seven days and seven days, and then seven, 14 and seven days with an indeterminate time for hearings, at which stage the debate was adjourned because the parliamentary secretary was unable to satisfy the Committee's concerns. I admit to galloping old age, Alzheimer's disease and dementia, but I do not recall committing 5/11 to a vote. I am sure Hon Murray Criddle will correct me if I am wrong. Mr Deputy Chairman (Hon Jon Ford), will you please give us a ruling as to where we were when the debate was adjourned? The motion we debated last week was that we would resume consideration of the Bill at the point of adjournment in the autumn session.

The DEPUTY CHAIRMAN (Hon Jon Ford): According to *Hansard*, at the conclusion of the last debate on this Bill Hon Derrick Tomlinson said "The Opposition agrees wholeheartedly with this amendment." He was referring to amendment 19/11, which deleted words on lines 27 and 28 of page 19. That amendment was put and passed. I have been advised that amendment 33/11, which is to insert words after line 22 on page 19 and which was moved by Hon Jim Scott, was postponed. I understand that it will be dealt with after this amendment.

Hon DERRICK TOMLINSON: Supplementary notice paper No 23, issue No 4, of Tuesday, 25 June 2002 shows that the proposed amendments to clause 11 are 13/11, 14/11, 15/11, 16/11, 18/11, 7/11 and 5/11. Shortly the Clerk will explain the numerical sequence; however, that is the numerical sequence that we debated. When we adjourned we were discussing amendment 5/11, which in the supplementary notice paper of Tuesday, 25 June was followed by amendments 8/11, 19/11, 20/11 and 21/11. I suggest the error might have occurred in the transfer of the supplementary notice papers.

Hon GRAHAM GIFFARD: I offer an explanation in relation to amendment 8/11. I understand that 8/11 is very similar to amendment 33/11 on the new supplementary notice paper. I understand that Hon Jim Scott has modified the words in the first line of his original amendment. Therefore, amendment 8/11 no longer exists; it reappears as 33/11. However, that is almost identical to amendment 8/11, which was deferred the last time this matter was before us. Members cannot find 8/11 because it has been modified and now appears as 33/11.

Deputy Chairman's Ruling

The DEPUTY CHAIRMAN: The advice I have received concurs with that of the parliamentary secretary, in that the numbering of the amendments on the original supplementary notice paper has changed and is different from the numbering on the new supplementary notice paper. Amendment 8/11 is now 33/11 and will be dealt after we have dealt with all the other amendments in this section. According to supplementary notice paper No 23, issue No 1, the last amendment the Committee dealt with was 19/11. We are now dealing with amendment 20/11 on page 2.

Committee Resumed

Hon GRAHAM GIFFARD: This amendment was sought by the Standing Committee on Public Administration and Finance. It amends proposed section 51 in clause 11 of the Bill to include the simple statement that the tribunal "is to encourage the parties to an appeal to reach agreement on some or all of the issues arising in the appeal". The procedure of the tribunal is set out in proposed section 51; however, the Committee argued that this statement is not made elsewhere in the Bill.

The Government accepts the advice and recommendations of the committee and acknowledges that nowhere else in the Bill is this explicit statement. The suggestion from the committee is, therefore, acceptable to the Government. I move -

> Page 19, after line 29 - To insert -
>
> (d) is to encourage the parties to an appeal to reach agreement on some or all of the issues arising in the appeal;

Hon DERRICK TOMLINSON: I think I agree with this amendment but I want to make sure that my understanding of its meaning is the same as the parliamentary secretary's. Proposed new section 51(1) sets up an informal way of proceeding, as opposed to a legalistic, judicial form of proceeding. Proposed subsection (1)(a) reads -

> In the performance of its functions the Tribunal however constituted -
>
> (a) is bound by the rules of natural justice;
>
> (b) is not bound by the rules of evidence . . .

On the Chairman's ruling, I accept that we have eliminated the words "except to the extent that it adopts those rules". Again, the amendment is not bound by the rules of evidence and, therefore, not bound by a judicial process. Proposed subsection (1)(c) reads -

> may inform itself of any matter as it thinks fit;

We then go to the new suggestion in proposed subsection (1)(d), which reads -

> is to encourage the parties to an appeal to reach agreement on some or all of the issues arising in the appeal;

The purpose of the appeal is to come to a decision. A decision can be arrived at by a judge on the basis of all the information available to him or her; or by inference it may be that agreement is reached by a consensual rather than a directed decision. Am I correct in the interpretation of the intention of this amendment; that is, a decision on the matters being debated be arrived at by consensus rather than by direction?

Hon GRAHAM GIFFARD: Yes.

Hon Derrick Tomlinson: What is right?

Hon GRAHAM GIFFARD: The member is correct.

Hon Murray Criddle interjected.

Hon GRAHAM GIFFARD: I thought the member said that the amendment will encourage parties to reach a consensual outcome rather than an outcome by direction, if it is possible to reach a consensual outcome. That is to be preferred, yes, and what I thought the member asked me.

Hon Derrick Tomlinson: It is, therefore, agreement reached by consensus, not by direction. The intention is to make this less threatening and, to use the jargon of computers, to make it as user-friendly as possible, not bound by a judicial and legalistic procedure. It is by consensus of the parties rather than by direction of the tribunal.

Hon GRAHAM GIFFARD: I repeat: the answer is yes, clearly to the extent that that is practical, given the circumstances of each case.

Hon Derrick Tomlinson: Perhaps we had better stick with yes.

Hon GRAHAM GIFFARD: It is yes.

Amendment put and passed.

Hon GRAHAM GIFFARD: I move -

Page 20, lines 20 to 24 - To delete the lines and insert instead -

(3) Subject to subsection (4), a hearing of an appeal before the Tribunal is to be in public.

(4) If the Tribunal is satisfied that it is desirable to do so by reason of the confidential nature of any evidence or matter or for any other reason, it may, of its own motion or on the application of a party, make an order that the hearing be conducted wholly or partly in private.

(5) In the circumstances set out in subsection (6) the Tribunal may order -

(a) that any evidence given before it; or

(b) that the contents of any documents produced to it, must not be published except in the manner and to the persons (if any) specified by the Tribunal.

(6) The Tribunal may make an order under subsection (5) if the Tribunal considers it is necessary to do so -

(a) to avoid prejudicing the administration of justice;

(b) to avoid the publication of confidential information; or

(c) for any other reason in the interests of justice or safety.

The effect of this amendment is to delete the provisions of the Bill at proposed section 51(3), which deals with the issue of appeals being held in public. The question of deleting that proposed subsection and substituting something else arises in the committee's report. At page 17 of the report, the recommendation is to amend that provision and substitute another amendment, which is not the amendment moved in my name. The Government prefers the amendment as it is worded before members now, as against the wording of the draft amendment in the committee's report. Although we agree with the point made by the committee, we believe this amendment is more suitable. We prefer this version because the draft amendment in the committee's report at paragraph (3b) has an odd emphasis on concealing a person's identity, which we do not believe needs to be flagged in planning appeals. The amendment now moved will essentially give the tribunal the discretion to decide whether it is appropriate to hear matters in public. That is the Government's preferred way of dealing with the question of whether an appeal should be held in public.

Hon PETER FOSS: Will the parliamentary secretary explain the practical effect of the change? Obviously, the committee had a particular matter in mind. Is the matter that the committee had in mind excluded by the alteration made by the parliamentary secretary? What is the basis upon which the tribunal must decide whether to impose secrecy?

Hon GRAHAM GIFFARD: The Government was concerned with two main issues when it dealt with the draft amendment. Firstly, recommendation (3a) of the draft amendment required regulations to prescribe the grounds on which the tribunal would hear matters in public, whereas the Government's amendment does not require regulations to prescribe those grounds. The emphasis in our amendment is on the tribunal to have the discretion on whether matters are heard in public. Secondly, the other distinction that I draw to the member's attention is contained in recommendation (3b), which refers to the protection of the identity of persons who participate in the proceedings. Those two issues caused the Government to consider substituting its own wording, which is contained in proposed subsection (4) of the amendment.

Hon PETER FOSS: I do not know whether the member answered my question. I read the reasons the Public Administration and Finance Committee gave. The report of the committee states -

> Section 51(3) is questionable. The actual policy - hearings are to be held in public - is made subject to so many exceptions as to cause the Committee to wonder about including the policy at all. The Committee would prefer subsection (3) be deleted and a new subsection substituted.

The report recommends substituting subsection (3) with regulations, which I suppose are useful because it gives some delegated legislative authority to what are the bases of the grounds that can be ordered. It then states that the grounds refer to (3a), so the regulations are governed by the vires of (3b), and must relate to the nature or content of the matters to be considered or in order to protect the indemnity or the safety of a person participating in the proceedings. The Government's amendment intends to insert proposed subsection (4), which states -

> If the Tribunal is satisfied that it is desirable to do so by reason of the confidential nature of any evidence or matter or for any other reason, it may, of its own motion or on the application of a party, make an order that the hearing be conducted wholly or partly in private.

The first part of the Government's proposed amendment appears to be the same as the committee's recommendation. I assume that by "the nature or content of the matters", the committee meant confidential. It does not say quite the same thing, but I suppose there might be some reason for that. The evidence might not be confidential, it might be "or for any other reason", which is stated in proposed subsection (4) of the Government's amendment, which states -

> . . . or for any other reason, it may, of its own motion or on the application of a party, make an order . . .

Proposed subsection (5) of the Government's amendment states -

> In the circumstances set out in subsection (6) the Tribunal may order -
>
> (a) that any evidence given before it; or
>
> (b) that the contents of any documents produced to it, . . .
>
> (6) The Tribunal may make an order under subsection (5) if the Tribunal considers it is necessary to do so -
>
> (a) to avoid prejudicing the administration of justice;
>
> (b) to avoid the publication of confidential information; or
>
> (c) for any other reason in the interests of justice or safety.

The Government's proposed amendments seem to be exactly the same as the committee's recommendations but with more subsections and words. I do not think the reason that the member gave for the Government to amend the committee's recommendations because it did not like the idea of referring to safety is the true reason at all, because that is contained in proposed subsection (6) of the Government's amendment. Proposed subsections (3) to (6) appear to be exactly the same as the committee's recommendations, but the committee's recommendations were set out in only two subparagraphs. It seems that all the Government has done is shuffle a few words around and use more words than the committee.

Hon GRAHAM GIFFARD: I am not suggesting that the Government's proposed amendments are miles apart from the committee's recommendations. However, there are considerable distinctions between the two.

Hon Peter Foss: I cannot see any, although there may be some. Perhaps you could enlighten me as to what they are.

Hon GRAHAM GIFFARD: I did. The key distinction is that the committee's draft recommendation requires regulations to prescribe, whereas the Government's proposed amendments do not. I am advised that this type of discretion is used for the Equal Opportunity Tribunal, the Industrial Relations Commission, the Licensing Court and the Land Valuation Tribunal.

Hon Peter Foss: Essentially, the only thing you are taking out is the regulations, otherwise it is the same as the committee's recommendations.

Hon GRAHAM GIFFARD: We prefer the wording of our proposed amendments and think they are easier to read. The member might think that the committee's recommendations are easier to read, but that will not get us anywhere. The only real issue of contention is where the committee recommends "as opposed to the discretion of the Tribunal".

Hon JIM SCOTT: I refer to proposed subsection (6) of the Government's amendments, which sets out the circumstances for proposed subsection (5), which states -

The DEPUTY CHAIRMAN (Hon Jon Ford): Order, members! There is too much conversation going on, which is making it difficult for members to hear and for the Hansard reporter to record the proceedings.

Hon JIM SCOTT: Proposed subsection (6) of the Government's amendments sets out the circumstances under which the tribunal may make an order under proposed subsection (5), which states in part -

> (c) for any other reason in the interests of justice or safety.

We are talking about holding a hearing in private and not publishing the documents or the evidence put before the tribunal. Given that we are operating under the laws of natural justice, does this mean that the other side of the argument in this case is to deny another party to hear and see that information as well? I would have thought that that conflicted with the laws of natural justice. Does this mean that anybody who was not a party to the

dispute could not hear or see the evidence? Might one of the parties to a dispute be denied access to see or hear that information?

Hon GRAHAM GIFFARD: Proposed subsections (5) and (6) of the Government's amendments refer to what the tribunal may order not to be published except in the manner and to the persons, if any, specified by the tribunal. People who are party to the hearing will hear and see the information given in evidence. Those proposed subsections deal with the ability of the tribunal to order that any evidence given before it or the contents of any documents produced to it must not be published, except in the manner and to the persons specified by the tribunal. If a person is a party to the proceedings, that is unaffected by that. This amendment is about where and how the tribunal shall order that certain things shall not be published, except in the manner and to the persons specified etc. Therefore, it is about publication, not the actual hearing of evidence.

Hon JIM SCOTT: I understand that. Do proposed subsections (5) and (6) of the amendment prevent either of the parties who are part of the dispute from revealing or publishing that information, because, from my point of view, they do not seem to do so?

Hon GRAHAM GIFFARD: Under proposed subsections (5) and (6), the tribunal would be allowed to order that any evidence given before it must not be published, except in the manner specified by the tribunal. Therefore, yes, the tribunal would be able to order that something not be published.

Hon JIM SCOTT: The committee recommendations contain a subsection that states -

> Nothing in subsection (3)-(3b) prevents the Tribunal from disclosing or publishing proceedings or any evidence or document provided during those proceedings if it is necessary in order to comply with a requirement of this Act.

Under the proposed wording, does that still apply?

Hon GRAHAM GIFFARD: The tribunal would not be able, in effect, to order itself not to do something that it is otherwise required to do under the Act, so the answer is yes.

Amendment put and passed.

Hon GRAHAM GIFFARD: I move -

> Page 20, line 29 to page 21, line 3 - To delete the lines and insert instead -
>
> **52. Enforcement of order**
>
> (1) An order of the Tribunal, other than an order requiring the payment of costs, has the same effect and may be enforced and executed as if it were an order of a Judge of the District Court and as if the functions exercisable by a Judge or the Registrar of the District Court for the purposes of enforcing the order were exercisable by the President or the Registrar, respectively, of the Tribunal.
>
> (2) The practice and procedure of the District Court and, in so far as they apply to the District Court, the Rules of Court of the Supreme Court apply with the necessary modifications in relation to the enforcement of orders of the Tribunal.
>
> (3) Where neither the Rules of Court of the District Court nor the Rules of Court of the Supreme Court, as applied by this section, provide for a form or procedure suitable for a purpose connected with the enforcement of an order of the Tribunal, or where a question arises as to the form or procedure to be used for any such purpose, the President may give such direction in relation to the matter as the President thinks fit.
>
> **53. Failure to comply with summons or requirement of Tribunal**
>
> (1) A person served with a summons to give evidence before the Tribunal must not, without reasonable excuse, fail to attend as required by the summons.
>
> Penalty: $5 000.
>
> (2) A person required by the Tribunal to produce any documents, plans or other papers in the custody or control of the person must not, without reasonable excuse, fail to comply with the requirement.
>
> Penalty: $25 000.

(3) A person appearing before the Tribunal must not, without reasonable excuse -

(a) when required either to take an oath or make an affirmation - refuse or fail to comply with the requirement; or

(b) refuse or fail to answer a question that he or she is required to answer by the member presiding.

Penalty: $10 000.

54. False or misleading evidence

A person must not give evidence to the Tribunal that the person knows is false or misleading.

Penalty: $25 000.

55. Offences against Tribunal

A person must not -

(a) interrupt the proceedings of the Tribunal;

(b) insult the Tribunal or a member of the Tribunal; or

(c) create a disturbance, or take part in creating or continuing a disturbance, in or near a place where the Tribunal is sitting.

Penalty: $10 000.

56. Contempt

(1) The Tribunal may report a matter that would be a contempt of the Tribunal if the Tribunal were a court of record to the Supreme Court.

(2) If the Tribunal reports a matter to the Supreme Court under subsection (1), the Court may deal with the matter as if it were a contempt of the Court.

(3) A person is not liable to be punished for contempt under this section if the person establishes that there was a reasonable excuse for the act or omission concerned.

(4) An act or omission may be punished as a contempt of the Tribunal even though it could be punished as an offence.

(5) An act or omission may be punished as an offence even though it could be punished as a contempt of the Tribunal.

(6) If an act or omission constitutes both an offence and a contempt of the Tribunal, the offender is not liable to be punished twice.

57. Protection of members, practitioners, witnesses and others

(1) A member has, in the performance of his or her functions as a member, the same protection and immunity as a Judge of the Supreme Court has in the performance of his or her duties as a judge.

(2) A person representing a party before the Tribunal has the same protection and immunity as a legal practitioner has in representing a party in proceedings in the Supreme Court.

(3) A party to a proceeding has the same protection and immunity as a party to proceedings in the Supreme Court.

(4) A person appearing as a witness before the Tribunal has the same protection as a witness in proceedings in the Supreme Court.

58. Evidentiary provision

In all courts and before all persons and bodies authorised to receive evidence -

(a) a document purporting to be a copy of a decision or order of the Tribunal and purporting to be certified by the Registrar to be such a copy is admissible as a true copy of a decision or order of the Tribunal; and

(b) judicial notice is to be taken of the signature of the Registrar on a certificate mentioned in paragraph (a).

This amendment also arose out of the committee report. Members will find the beginning of the recommendation at page 10 of the report. The amendment deletes the references in the Bill as it stands to what are referred to as rights, privileges, obligations and penalties. Proposed section 51(6) of the Bill refers to the tribunal having the powers of the Supreme Court insofar as may be necessary for hearing and determining an appeal. Following the discussion on pages 10 and 11 of the report, the committee ultimately recommended the new section that appears on page 12 of the report. That essentially provides for all matters of contempt to be referred to the Supreme Court. The committee was concerned about the undefined reference of powers taken from the Supreme Court, and essentially it preferred to refer those matters to the Supreme Court.

The Government's view of that amendment as it stands is that all matters of contempt would be referred to the Supreme Court. The Government considers that not all matters would necessarily need to be referred to the Supreme Court. When it is possible or practical for them to be dealt with otherwise as offences, the tribunal should be able to deal with matters that are regarded as offences; but the tribunal would refer serious matters of contempt to the Supreme Court. In the proposed amendment, that is contained in proposed section 56, "Contempt". In the Government's view, the tribunal needs to be able to deal with enforcement of its orders, to enforce a summons, to apply penalties for false or misleading evidence, to apply penalties for offences of disturbing the tribunal, to report matters of contempt to the Supreme Court, to provide protection against self-incrimination and to take notice of evidentiary provisions. All those things referred to, which would allow the tribunal to deal with those matters as offences, are not matters of such a magnitude that one would expect them to be referred to the Supreme Court. The tribunal should be able to deal with those more minor matters. Nevertheless, the amendment essentially states that all contempt matters of a more serious nature are to be referred to the Supreme Court.

I believe that the intention of the committee was to ensure that the tribunal would not exercise open-ended powers in relation to contempt. The amendment is in a better form because it allows the tribunal to deal with less serious matters, so that the Supreme Court does not have to deal with every conceivable contempt of the tribunal. I cannot speak for the committee, but, from my point of view, what the committee was seeking to achieve, which was to put a fence around the powers exercisable by the tribunal, is satisfied by this amendment. I do not believe the amendment is radically at variance with the committee's intention; essentially, it makes it more workable. Therefore, it is certainly compatible with the discussion contained in the committee report. Therefore, I recommend the amendment to members.

Hon DERRICK TOMLINSON: This amendment and the proposed subsections that it purports to amend expose the serious internal contradiction of this Bill. The contradiction is that the Bill and the spirit of the Bill seeks to establish a tribunal which will operate as informally as is possible within the limits of its own rules, but then the Bill seeks to impose the powers and status equivalent to those of the Supreme or District Courts and penalties equal to those which may be handed down by those courts. I will illustrate what I mean.

I was at pains to get the parliamentary secretary to explain what was meant by the amendment to proposed section 51(1)(d). The words that are proposed to be inserted are -

> is to encourage the parties to an appeal to reach agreement on some or all of the issues arising in the appeal;

I asked the parliamentary secretary if this meant, as I thought it meant, that the tribunal should try to proceed to reach a consensus agreement as opposed to making a directional decision. The parliamentary secretary's answer was an unequivocal "yes". That is consistent with the spirit of the Bill, because proposed section 51(1) states -

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

(b) is not bound by the rules of evidence except to the extent that it adopts those rules;

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

Again, there is that informal and open - to use the phrase again - user-friendly way of proceeding. To continue -

(d) is to deal with each appeal with as little formality and technicality -

as the tribunal considers proper according to the matter before it. Again, the spirit of the Bill is reinforced. It continues -

(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.

The tribunal has great discretionary power to try to accommodate all of the matters that come before it, without being bound by legalistic procedures and rules.

Hon Graham Giffard: Not inappropriately bound.

Hon DERRICK TOMLINSON: That is right; it must be appropriate to the circumstances. Up to that point the whole spirit of the Bill is to establish a tribunal that may operate as informally as possible; that is, as least prescribed by technical and legalistic procedures as is appropriate to each matter before it. I strongly commend that. That is the way most of the appeals tribunals in public jurisdictions proceed. Then we get to the words which are proposed to be deleted in proposed subsection (5) -

> The parties, legal practitioners, witnesses and all other persons attending the Tribunal have the same rights and privileges and are subject to the same obligations and penalties as in the trial of an action at law in the Supreme Court.

Here comes the judge! We have an informal procedure, a tribunal set up under an Act which has a spirit of informality of procedure, which must try to come to some consensual agreements between the parties, but then proposed subsection (5) seeks to impose the obligations, rights, privileges and penalties of an action at law in the Supreme Court. The next proposed subsection reads -

> (6) The Tribunal has, until it has made its determination, all the powers of the Supreme Court insofar as may be necessary for hearing and determining an appeal.

Who comprises this tribunal? The tribunal may be a tribunal of one. When dealing with category 1 appeals, it will be a tribunal of one. This person must be expert in one or other of a number of disciplines. We find he may be expert in all manner of disciplines relevant to land use, but not necessarily relevant to the law. The person comprising the tribunal of one, who might be an expert in ecology, geography or cartography, suddenly has all the powers of the Supreme Court.

Hon Peter Foss: Not just one judge of the court.

Hon DERRICK TOMLINSON: He will have all the powers of the Supreme Court. There is the internal contradiction: those two proposed subsections undo the whole spirit of the Bill. That has been accepted, because the Government now intends to replace those proposed subsections with the following new subsections -

> **52. Enforcement of order**
>
> (1) An order of the Tribunal, other than an order requiring the payment of costs, has the same effect and may be enforced and executed as if it were an order of a Judge of the District Court and as if the functions exercisable by a Judge or the Registrar of the District Court for the purposes of enforcing the order were exercisable by the President or the Registrar, respectively, of the Tribunal.

Suddenly the emperor is differently clothed; the emperor - this expert in some matter of land use - puts on the robes and wig of the judge and sits in judgment. It continues -

> (2) The practice and procedure of the District Court -

Suddenly the practice and procedure of the District Court will apply to this tribunal, which must reach some consensual agreement through procedures that are as informal as is possible within the rules and appropriate to the matter before it. To continue -

> and, in so far as they apply to the District Court, the Rules of Court of the Supreme Court apply with the necessary modifications in relation to the enforcement of orders of the Tribunal.

So the expert in ecology now assumes the wig and gown of the judge and is clothed with the powers of the judge, with the rules available to the judge, as if he were a judge of the Supreme or District Courts. It continues -

> (3) Where neither the Rules of Court of the District Court nor the Rules of Court of the Supreme Court, as applied by this section, provide for a form or procedure suitable for a purpose connected with the enforcement of an order of the Tribunal, or where a question arises as to the form or procedure to be used for any such purpose, the President may give such direction in relation to the matter as the President thinks fit.

The president will now be elevated to the status of the High Court, because he will direct where rules of the Supreme Court, which direct the tribunal, will not apply. Can the Chairman see the contradictions that bother me about these provisions?

We then reach the provision which relates to the failure to comply with a summons. Proposed section 51(6) states -

> The Tribunal has, until it has made its determination, all the powers of the Supreme Court insofar as may be necessary for hearing and determining an appeal.

One of the concerns about this proposed subsection is that it establishes the tribunal as a court of record. It could punish its own transgressions. I now refer to the amendment and proposed new section 53 -

> **Failure to comply with a summons or requirement of Tribunal**
>
> (1) A person served with a summons to give evidence before the Tribunal must not -

The tribunal may say, "Come and talk to us about this, son; let us reach agreement on it. We will not be legalistic; we will be as informal as possible, but if you do not come we will fine you $5 000." It continues -

> (2) A person required by the Tribunal to produce any documents, plans or other papers in the custody or control of the person must not, without reasonable excuse, fail to comply with the requirement.
>
> Penalty: $25 000

The matter is not referred to a court. The tribunal does not even assume the robes of the court under this proposed subsection. It does not dress itself up as a Supreme Court or a District Court but it has the powers to impose penalties amounting to $25 000. Proposed new sections 54, 55 and 56 then deal with false or misleading evidence, offences against the tribunal and contempt respectively. The issue of contempt is fascinating. Until now, the tribunal has been clothed in all of the robes - the powers and the authority - of the Supreme Court or the District Court according to whichever is appropriate in the particular circumstances, and now we are dealing with contempt. Proposed section 56(1) states -

> The Tribunal may report a matter that would be a contempt of the Tribunal if the Tribunal were a court of record to the Supreme Court.

It is saying that it is not really a court but for the purposes, it acts as though it is a court.

The following proposed subsections go on to state -

> (2) If the Tribunal reports a matter to the Supreme Court under subsection (1), the Court may deal with the matter as if it were a contempt of the Court.
>
> (3) A person is not liable to be punished for contempt under this section if the person establishes that there was a reasonable excuse for the act or omission concerned.
>
> (4) An act or omission may be punished as a contempt of the Tribunal even though it could be punished as an offence.
>
> (5) An act or omission may be punished as an offence even though it could be punished as a contempt of the Tribunal.
>
> (6) If an act or omission constitutes both an offence and a contempt of the Tribunal, the offender is not liable to be punished twice.

However, the point is this: if an offence is given to the tribunal, which could be a tribunal of one, it is dealt with as if it were an offence to the Supreme Court. The decision is taken away from the tribunal and given to the Supreme Court but the Supreme Court then determines as if it were an offence to the Supreme Court. I would like the parliamentary secretary to ameliorate my concerns about those contradictions because the spirit of the Bill says that it shall be formal, not legalistic in structure, less authoritative and as consensual as is possible under the circumstances of the matter before it. However, in spite of the amendment, because all it does is spell out in detail what is contained in the words to be deleted, the provision then imposes authorities on the tribunal as if it were a Supreme Court or a District Court. It clothes the tribunal in all of the powers of the Supreme Court. I suggest to the parliamentary secretary that the two are incompatible and it is a tragic flaw in the Bill.

Hon GRAHAM GIFFARD: Proposed subsections (5) and (6) of the Bill have been deleted; therefore the intention of this amendment is to insert provisions that allow the tribunal to deal procedurally with the matter before it. In relation to the issues that were raised, it is necessary that the orders of the tribunal be enforceable.

Hon Peter Foss: What sort of the orders would you want to enforce?

Hon GRAHAM GIFFARD: Those that are set out in the amendment inserting proposed sections 52, 53, 54 -

Hon Peter Foss: What orders need that sort of enforcement?

Hon GRAHAM GIFFARD: Proposed section 53(1) deals with a person served with a summons to give evidence.

Hon Peter Foss: Are witness summons the only orders being referred to?

Hon GRAHAM GIFFARD: That is an example of a power that would need to be enforceable.

Hon Peter Foss: Are we dealing only with witness summons or are there other orders that would be enforceable? I would have thought that most of those orders were self-enforcing.

Hon GRAHAM GIFFARD: Not if proposed subsections (5) and (6) of the current Bill are removed. If they are, I am advised that the tribunal does not have powers to deal with witness summons -

Hon Peter Foss: It states that they are forced or executed. A witness summons is not executed. What sort of orders would be enforced and executed under proposed section 52(1)?

Hon GRAHAM GIFFARD: An example would be the amendment that we were dealing with a minute ago in which the tribunal may order evidence not to be published. The tribunal would not otherwise -

Hon Peter Foss: The tribunal does not execute those orders. Execution sounds like it is some sort of civil judgment. We seem to be setting up a court rather than a tribunal.

Hon GRAHAM GIFFARD: I will come back to that matter in a minute. The tribunal deals with a number of appeals that will not be simple matters. Some appeals will deal with proposals that may be worth significant amounts of money. The purpose of the amendment is to give the tribunal the ability to deal with a range of cases that may be before it.

Hon Derrick Tomlinson referred to the penalties, which, as I understand it, provide for the maximum. Therefore, it would not be simply a matter of someone being fined $5 000 each and every time.

The member also referred to section 53. The offences would be dealt with in a Court of Petty Sessions. The tribunal would not be imposing a penalty, for example, for failure to comply with a summons; that matter would be dealt with in the Court of Petty Sessions. The tribunal is not being given the power to do it. The legislation provides the power to give effect to the orders of the tribunal.

Hon Peter Foss: In that case, the example you just provided was wrong.

Hon GRAHAM GIFFARD: I am not sure about the point the member is trying to make.

Hon PETER FOSS: Most of these orders will be enforced by some form of order. This is a most unsatisfactory explanation of why the Government has included an immense number of provisions to substitute for about four or five lines in the legislation, and in total disregard of the recommendation of the Legislation Committee. The committee quite rightly picked up what looked like an innocuous subclause covering procedures stuck at the end of a clause. One would not expect to find this type of nasty in such a provision. However, the legislation provides -

> (5) The parties, legal practitioners, witnesses and all other persons attending the Tribunal have the same rights and privileges and are subject to the same obligations and penalties as in the trial of an action at law in the Supreme Court.
>
> (6) The Tribunal has, until it has made its determination, all the powers of the Supreme Court insofar as may be necessary for hearing and determining an appeal.

As Hon Derrick Tomlinson said, the tribunal, which might have one member who knows about town planning, is the Supreme Court with power to commit forever for contempt. Subclause (6) arguably could limit that by providing that the tribunal could commit only until it had determined the appeal. Not surprisingly, the Legislation Committee said that was a bit over the top, and I agree. It has made an alternative suggestion. However, that suggestion has been significantly elaborated by the Government.

As Hon Derrick Tomlinson also said, this tribunal is meant to replace the current tribunal and the minister in hearing an appeal. Until we got the current slothful minister, the ministerial appeal was the preferred method of appeal.

Hon Derrick Tomlinson: She certainly does not have the powers of a Supreme Court judge.

Hon PETER FOSS: No. The ministerial appeal was quick and cheap. Once this slothful minister came in, everybody gave up. She said, “Don’t send appeals to me; I don’t want anything to do with them.”

Hon Derrick Tomlinson: She was too busy hanging from trees by her toes.

Hon PETER FOSS: That is correct. Therefore, not surprisingly, the process lost some of its appeal. People were attracted to the ministerial appeal because it was quick and cheap. Why did they stay away from the old tribunal? I had the first appeal lodged with that tribunal. Admittedly, it was not the first appeal heard, because the legislation at the time included a provision similar to these provisions - the minister had the power to call in the appeal. He or she simply had to declare that it was not in the public interest that the appeal be allowed. At that stage, the minister would determine the appeal. We lodged an appeal against the Metropolitan Regional Planning Authority. It was obviously on a hiding to nothing, so it got the minister to declare that it was not in the public interest for it to be allowed. Our appeal was snatched from us and sent to the minister, who had already declared that he did not believe it should be allowed. That did not sound like natural justice to me, but that did not seem to be a problem.

People avoided the system because it was too expensive and legalistic. It started off okay, but suddenly no-one could move for lawyers. I do not like being critical of my own profession, but lawyers do find it hard to change their methods. There were lawyers sitting on the tribunal and appearing before it and there were specialists in that area of law. It was just like appearing before the Supreme Court, but without the robes.

Hon Jim Scott: What were the enforcement powers?

Hon PETER FOSS: I do not think we need them. I am puzzled by this question of enforcement. What will be enforced? Most of these things are self-enforcing. Parties go to the tribunal or the minister to get something. If it is not handed down, the party is stuffed. There is no need to enforce anything, because there is nothing to enforce. A party might want to subdivide or change -

Hon Dee Margetts: But if you do not appeal, you might delay someone else.

Hon PETER FOSS: I am talking about enforcement of orders, not witnesses and so on. This amendment is all about enforcing the orders; it is turning it into a mini court. I am puzzled; I do not know why the tribunal needs to be a court. If it issues orders that are to be enforced in the District Court, we should not be sending matters to a tribunal. It is not appropriate for them to be dealt with by a tribunal. However, if the tribunal is taking over an administrative function and either granting or not granting a right, I do not have a problem with the matter going to a tribunal. If there is to be a judge, jury, enforcer and executioner, what are we doing?

I have searched the legislation for the provision which will make this tribunal a court of law and which will enable it to determine rights inter parte and to enforce them.

Hon Jim Scott: Did the old tribunal have the ability to fine people?

Hon PETER FOSS: I do not think it did, but I cannot swear to that. It certainly did not have any power to enforce or execute its orders. The orders were not enforceable or executable; they were the granting or not granting of a right. What sort of body will this be? The amendment provides -

> An order of the Tribunal, -

Not a witness summons -

> other than an order requiring the payment of costs, has the same effect and may be enforced and executed as if it were an order of a Judge of the District Court . . .

That sounds like a slightly different body from what we started with. Is it or is it not an administrative tribunal? If it is, what is that about? Surely, one would enforce the issue by saying that a party could or could not subdivide or that the zoning could be changed. From where does the enforcement and execution come? If it is something to be enforced or executed, I want it dealt with in a court. I do not believe it does anything like that. Once we start talking in those terms, the process Hon Derrick Tomlinson referred to and the inevitable creep to legalism will happen.

That is also my criticism of the super tribunal. It is a nonsense idea. I do not mind the idea of consolidating tribunals and putting things together, but we are turning it into a legalistic process that no-one will be able afford, face or do on their own. We have little tribunals that people appear before regularly on their own. They are like appealing to the minister, because parties do not need a lawyer to lodge a ministerial appeal. Here we have a highly legalistic situation and we are clothing it, even before we start, with all the majesty and panoply of a court.

The practice and procedures then apply to the enforcement. Why is it being enforced? The amendment states that where neither the rules of the District or Supreme Courts apply, the president of the tribunal can give directions. Do those directions relate to enforcement? They are not even rules. At least the rules of the District and Supreme Courts must be promulgated and can be disallowed by Parliament. How will the Parliament

disallow a direction made as the president sees fit? I do not know what we are talking about here. What is being enforced? I have gone through the legislation to try to find what is being enforced, but I cannot find it. All I know is that if something is to be enforced, the Parliament will be at the mercy of the president when he thinks that the procedures do not apply. I cannot give members an example because, for the life of me, I do not know what proposed section 52, contained in this amendment, is about. It appears to be about some situation that is not covered by the Town Planning and Development Act. However, this amendment has been included.

I do not have a problem with proposed section 53, which creates a series of offences if something is not done. That is fine. Why not include an order for secrecy as well? That could be an offence. If someone does not do the right thing, he could be fined. He would go before the court and be tried and fined. It is simple. Proposed section 53 is quite good. That is also the case with proposed sections 54 and 55 - they create offences. A penalty is fixed and everything is fine. Then we get to the provision on contempt in proposed section 56. This proposed section is a bit of a worry. I am surprised that the Greens (WA) do not object to this part of the amendment, because Hon Giz Watson climbs up the wall whenever she comes across open-ended penalties. I suppose that we can trust the discretion of the Supreme Court not to go over the top. I was not too keen because I do not trust the Supreme Court not to go under the bottom. The reality is that it is a tribunal and not a court. It might be more suitable to provide an offence. Why make it a contempt? Why not make it an offence? At least an offence is simple. We all understand it and know the penalty. Theoretically, a person could be sent away for life. That is not going to happen, but it is not certain.

We have built a majestic cathedral of a process that is doomed to be worse than the one we already have and on which people have already voted with their feet and have deserted - they have gone to the minister. We have no idea who the people to be involved in this new system will be. I do not know how many times Hon Derrick Tomlinson has told us how bizarre that can become in terms of the different types of appeals and who might be sitting as president.

Hon Derrick Tomlinson: If the majesty who presides is known.

Hon PETER FOSS: Yes, they are stuck. A satrap is being set up here. We can see the empire being built. Did the administrative officer who currently holds the position of tribunal head have any input into this amendment? It has the ring of an academic. Did our satrap have anything to do with the drafting of these magnificent replacement provisions, which seem to totally ignore the concerns of the committee and set up something that is so ponderous and unlikely that I am not sure why it has been included, other than to clothe the satrap with imperial majesty?

Hon Jim Scott: This is a worry. I had the same thought.

Hon PETER FOSS: Oh God! I will sit down and read it again. I must have it wrong!

Hon Derrick Tomlinson: Go and have a cold shower.

Hon PETER FOSS: If the Liberal Party and the Greens continue to agree today, people will begin to wonder about us. I have some serious concerns about this amendment. I do not know how this came out of the recommendation of the committee. It does not appear to deal with the same issue.

Hon DERRICK TOMLINSON: I too was hoping that the parliamentary secretary would respond, but he is obviously reluctant to do so. The parliamentary secretary commenced his attempt to answer the questions that have been raised by saying that the tribunal needs the power to enforce its decisions. Other administrative tribunals make decisions and those decisions have the force of law. However, those tribunals are not clothed in the powers, procedures and protections of the Supreme Court. I will illustrate with an example. From time to time I have accompanied constituents to administrative appeals tribunals, including an elderly couple from Beechboro. The wife was on an invalid pension, but for six years the husband had been denied an invalid pension. They appealed to the administrative appeals tribunal twice and were rejected twice. On the third occasion, they wrote to every member of Parliament in Western Australia. I called on the elderly couple and asked them to explain what the letter was all about. I made some inquiries and eventually told them what they needed to do. They were a confused old couple. I told them that it was not an intimidating process and that I would go with them to the tribunal. Little old me went with the little old couple to the tribunal to present the case. The decision made was that the appellant was to be granted his pension, with effect from a specified date. The department then complied with that decision because it was a decision of the tribunal. That decision was not clothed in any Supreme Court or legalistic rules of enforcement. That decision was made following an open, non-threatening, non-legalistic, consensual discussion where the procedures followed were those specified in the matters to which I have previously referred. The members of the tribunal sought information according to what was best for the people before them - a little, old couple from Beechboro. They were humble people. The decision the tribunal reached was enforceable because it was a decision of the tribunal. That is the way tribunals proceed.

Environmental appeals proceed in the same way and can have as profound an impact on land use as any appeal before the appeals tribunal under the town planning scheme. In some instances, it can have a much more profound impact, but the procedures are informal. The decisions are binding because they are decisions of the tribunal. The minister might make a further decision, but otherwise the decision of the tribunal is binding and is not clothed with any rules and proceedings of the Supreme Court. Those are not needed to enforce the decision of a tribunal. The decision of a tribunal is enforceable because the law that establishes the tribunal is the law that gives the tribunal its authority. The law that gives the tribunal authority is the authority that enforces the decision.

It is as simple as that. All the Government needs to do to enforce the decisions of this tribunal is to say that the tribunal has the power to make decisions. The tribunal is authorised by its own Act of Parliament. The law gives it authority. I suggest that the parliamentary secretary is trying to grapple with this problem because the Government has married two procedures: one is an administrative appeal to the minister, and the other is the tribunal, which, as Hon Peter Foss has explained, has become increasingly legalistic. In marrying these two procedures in the Bill, two categories of appeal are created according to the number of subdivisions or the value of the development application. Those things that might be regarded as small matters are subdivisions with three or fewer lots or developments worth less than $250 000. They are the category 1 appeals; the mums-and-dads appeals that can be dealt with in an informal manner. Appeals over a major development often involve profound questions of law. These are now usually dealt with by the tribunal and are argued and decided on questions of law. Therefore, they must follow procedures that reflect the legalistic judgments that are made. The Government has taken those two dimensions and married them in a Bill that says that the tribunal will be as informal as possible according to the circumstances of the matter. However, the Government is now clothing all the procedures of the tribunal with the matters in this amendment. The Government has tried to marry two incompatible procedures, and in doing so has rendered the Bill unworkable because of the contradictions it must necessarily contain. The Government does not need to clothe the tribunal with the powers contained in these amendments for the decisions of the tribunal to be acted upon as though they were legal decisions. They are legal decisions by virtue of the law that creates the tribunal.

Hon GRAHAM GIFFARD: I understand the point Hon Derrick Tomlinson is making. The matters set out in this amendment, such as the enforcement of orders etc, give the tribunal the capacity to deal with matters before it, including those raised by the upper-end appeals; that is, those relating to significant high-value matters in which parties are represented in more formal procedures. The powers set out in the amendment give the tribunal the ability to deal with those matters while they are before it. That does not mean that every time an appeal comes before the tribunal it will have to deal with it as though it were a full-blown court hearing. The powers given to the tribunal will be applied at the discretion of the tribunal - when it deems it appropriate and necessary to do so. Although the tribunal will approach category 1 and category 2 appeals differently, I do not agree that they cannot be included in the one Bill. I do not see that giving the tribunal these important powers to deal with procedural issues and to issue orders as it deems appropriate and necessary will mean that it must use them in every appeal it has before it. Invariably, the tribunal will not find the need to invoke all these provisions in appeals dealt with by a single ordinary member.

I refer to the point of this amendment and contrast it with what the Standing Committee on Public Administration and Finance said about the general question of contempt. The proposed amendment in the committee report was to refer all matters to the Supreme Court. We are concerned that things that do not need to go to the Supreme Court might end up at the Supreme Court.

Hon Peter Foss: Is proposed section 56 needed if proposed sections 53 to 55 are included? What is in proposed section 56 that is not already picked up by proposed sections 53 to 55?

Hon GRAHAM GIFFARD: I am advised that proposed section 56 is in part a response to the committee report, which focused on contempt and the ability to refer contempt matters to the Supreme Court. The tribunal may well deal with the enforcement of its orders and summonses and procedural matters. The inclusion of proposed section 56 will retain the ability of the tribunal to refer to the Supreme Court appeals in which serious matters such as contempt of the tribunal occur. The best expression I can use for the inclusion of proposed section 56 is that it will deal with "the most serious matters".

Hon Peter Foss: There is already a specific offence for that. I cannot see why it needs to be a double offence.

Hon GRAHAM GIFFARD: It is not a double offence. It is an either-or situation.

Hon Peter Foss: Does proposed section 56 cover anything that is not included in the other proposed sections? Does it do other than provide a more serious version of the same thing?

Hon GRAHAM GIFFARD: No. I am advised that it relates only to the seriousness of the offence.

Hon Peter Foss: It is silly to have an extra whack at it just because it is more serious.

Hon GRAHAM GIFFARD: The tribunal might deal with an appeal for which the provisions in proposed sections 53 to 55 are inadequate. The tribunal would then refer the matter to the Supreme Court because it might deem it a more serious matter. The amendment, in part, responds to the committee's desire to give the Supreme Court the ability to deal with contempt matters. The Government's response to that was that not all of those matters would be classified as contempt and surely the tribunal could deal with them, which is why we have included those provisions. Ultimately, a serious and significant question of contempt might well be referred to the Supreme Court.

Hon Peter Foss: That is a bizarre concept.

Hon MURRAY CRIDDLE: This amendment is overkill. Proposed section 60 states -

> (1) Each party to an appeal is to bear their own costs of the appeal except to the extent that provision is otherwise made under subsection (2) or (3).
>
> (2) Where in the opinion of the Tribunal a party to an appeal has behaved unreasonably, vexatiously or frivolously in relation to the appeal, the Tribunal may order that party pay such costs as the Tribunal thinks fit to any other party who has not so behaved.
>
> (3) The Tribunal may award such costs as it thinks fit against an appellant who withdraws an appeal, and in favour of any other party to the appeal.
>
> (4) If any costs ordered by the Tribunal to be paid by a party are not paid, the party so entitled may recover the costs from the party against whom the order was made in a court of competent jurisdiction.

It appears to me that proposed section 60 covers those issues. I understand the Standing Committee on Public Administration and Finance wanted the contempt issue as set out in its report to be dealt with. It is overkill to put those issues in place by giving extraordinary powers to a judge.

Hon PETER FOSS: It is the most extraordinary admission I have heard from a parliamentary secretary. He has said virtually that proposed sections 53 to 55 set out the offences and the penalties for each of those offences. If people commit that offence, they will be charged and prosecuted under all the normal procedures of a court. However, if it is a serious offence, they will get none of that, but will be already found guilty and bundled off in a summary process to the Supreme Court where there is an unlimited penalty, including jail for life. All this amendment does is take one set of exact provisions for contempt with a fixed penalty, of which people might be able to argue they are not guilty, and provide another set of provisions with an unlimited penalty, a poor procedure and people found guilty before going to the Supreme Court with the only excuse being that they have a reasonable excuse. It is not a matter of having a case proved against them beyond reasonable doubt; they must prove that they have a reasonable excuse. What a great system!

Will the parliamentary secretary indicate whether there is an extra provision in proposed section 56? If he intends to continue with that amendment, he should say in proposed section 56(6) that an act or omission that constitutes an offence under proposed sections 53, 54 and 55 is not liable for punishment under that proposed section. Why should people have an extra follow-up section when they have been really bad, missed out on a fair procedure, are deemed guilty and must justify why they did it to the Supreme Court where they face a higher penalty? I reckon that stinks. I do not support proposed section 56(6), unless the parliamentary secretary can tell me there is a provision in proposed section 56 that is not in proposed sections 53 to 55.

I still do not know what proposed section 52 is for. The only issue I think it might be used for, but is specifically excluded, is costs. I cannot think of an order of the tribunal, other than one requiring the payment of costs, that must be enforced and executed. There might be one and I have missed it. However, I do not believe that the tribunal in its jurisdiction has that power. I believe it is inappropriate to give it that power. Tribunals should not decide matters that result in orders to be executed by a sheriff. They should decide matters that are essentially administrative in character because they are substitutes for ministers, not substitutes for courts. I agree that an order for costs must be enforceable without having to sue somebody to get them, but that provision has been excluded. That is the only order that could be justified under proposed section 52.

What is proposed section 52 all about? I continually ask because I do not know what it is all about. The parliamentary secretary has taken a simple suggestion made by the committee and, instead of trying to narrow the difference between him and the committee, has expanded it. It now has all these little extra bits, the purpose of which we do not know. Who thought proposed section 52 was necessary? Should we not know why? One must be suspicious. I suspect the hand of Les Stein. He obviously knows why he wants it but we have no idea. I am worried that Les Stein thinks he needs this power. What does he need it for? If the parliamentary secretary

can tell me, then we can judge whether he should have it. I am puzzled because I do not know why he wants it and the parliamentary secretary is unable to tell me.

Hon Jim Scott posed a very good point to me. It is a concern that I am quoting Hon Jim Scott.

Hon Derrick Tomlinson: Thank goodness you have privilege!

Hon PETER FOSS: Yes; however, I believe Hon Jim Scott is right. I do not want the parliamentary secretary not to answer the questions I have already asked and the next question is a minor point; that is, I presume the reference in proposed section 55(b) to insulting the tribunal or a member of the tribunal means in the face of the tribunal, not by someone writing a letter to it after a hearing.

Hon Nick Griffiths: Or under parliamentary privilege.

Hon PETER FOSS: Yes, or a letter to the paper.

Hon Jim Scott: Or in a media release.

Hon PETER FOSS: Yes, or on television. I take it that the proposed amendment relating to "insulting the tribunal or a member of the tribunal" means in the face of the tribunal but not by writing a nasty letter saying, "Get nicked, I didn't like your decision." I am sure that is what the amendment means, but as reassurance I ask the parliamentary secretary to put that on the record. I am sure any sensible magistrate would come to that conclusion. However, I am also sure any sensible magistrate would not mind being assisted by the parliamentary secretary's confirming to the members in the Chamber - of whom there are many today - that it means only insults relevant to the performance of the tribunal's functions, not any form of insult to the tribunal.

Hon Nick Griffiths: You want an insurance policy for yourself.

Hon PETER FOSS: No, I do not want anything to do with this amendment.

Hon Derrick Tomlinson: You want an indemnity.

Hon PETER FOSS: I want an indemnity so that when I criticise it again I will not be prosecuted.

I will go over those questions again. First, why should there be a summary and draconian procedure for more serious contempt offences? In other words, why should there be two offences; that is, a minor offence that attracts a fine and a hearing in a proper court and a serious offence that has no limitation on the penalty for which people have been already convicted of contempt and must justify themselves to the Supreme Court? Secondly, what is proposed section 52 all about and why are costs excluded, which is the only order that I can think of that should be included in that amendment?

Has the Government given the tribunal some powers to make orders that would be enforceable and, if so, what are they? We might like to take those out too, in case it snuck past without anybody noticing. It would be very helpful for the parliamentary secretary to provide that advice.

Point of Order

Hon DERRICK TOMLINSON: Could I suggest that the Deputy Chairman leave the Chair until the ringing of the bells until this matter is sorted out?

The DEPUTY CHAIRMAN (Hon Adele Farina): The parliamentary secretary has indicated he will be just a minute; therefore, we can wait.

Debate Resumed

Hon PETER FOSS: I am glad that Hon Derrick Tomlinson raised that point of order. It would not be evident in *Hansard* that the problem in this debate is not what members have been saying; it is the pauses in between the question and the answers, which means that the debate is twice as long as it should be. It is worthwhile recording in *Hansard* that the pauses are extremely long and possibly take longer to answer than they take to ask.

Hon GRAHAM GIFFARD: Hon Peter Foss asked me to provide an example of what orders would have to be enforced under proposed section 52 of the amendment. An example could relate to the amendment that we passed a little while ago concerning proposed subsection 51(5) of the amendment, which states -

> In the circumstances set out in subsection (6) the Tribunal may order -

I am advised that those provisions arise under proposed section 52 of the amendment. The tribunal may also make any incidental or ancillary orders. Again, those orders that the tribunal deems fit would also come under the provisions of proposed section 52 of the amendment. The question Hon Peter Foss raised regarding proposed subsection 55(b) of the amendment, which appeared to him to be self-evident, is this case. Hon Peter Foss also asked why we should have more "summary and draconian provisions" for serious offences. I make the

point that this matter arose as a result of the committee's report. The committee recommended that proposed subsections 51(5) and (6) of the Bill be removed. It wanted to have matters of contempt referred to the Supreme Court. Our view is that the Supreme Court should not deal with all matters of - arguably - contempt and that only more serious matters would be referred under proposed section 56 of the amendment. It would be a matter for the Supreme Court to decide whether that was an issue of contempt and it would also have to deal with it. The costs are excluded from proposed section 52 of the amendment because they are included in proposed section 60(4) of the Bill; therefore, they are not repeated.

Hon DERRICK TOMLINSON: Proposed section 50 of the Bill states -

> (1) On an appeal the Tribunal may by order -
>
> (a) affirm the determination or direction appealed against;
>
> (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.

It may do that by the authority vested in it by the law, which this Bill will become if it passes into law. It does not require what the parliamentary secretary is claiming it requires; that is, to be vested with the rules and powers of the Supreme Court because the rules and powers are authorised. The power to make an order and for that order to be enforced are by virtue of the Bill before us, or by virtue of the law that this Bill is intended to become.

On the question of contempt, the parliamentary secretary says that the matter will be referred to the Supreme Court, and the Supreme Court will decide whether there is a contempt and will deal with it as if it were a contempt. I am interpreting the parliamentary secretary as saying that the matter will be tried by the Supreme Court. However, that is not what the amendment says. In the amendment, proposed section 56(2) states -

> If the Tribunal reports a matter to the Supreme Court under subsection (1), the Court may deal with the matter as if it were a contempt of the Court.

It does not say that the court will hear the matter as if it were a complaint before the court; it says that it shall deal with the matter as if it were a contempt of the court. Proposed subsection (4) states -

> An act or omission may be punished as a contempt of the Tribunal even though it could be punished as an offence.

The whole thrust of this is not to refer a matter as though it were a complaint to be tried before the Supreme Court, but a matter to be dealt with as a contempt of the tribunal as though that tribunal were the Supreme Court.

I suggest that the explanations we have had are totally unsatisfactory. The Government needs to go back to the fundamental proposition contained in the Bill; that is, that there are two categories of appeal. Category 1 appeals will be dealt with as though they were administrative appeals, and category 2 matters will be dealt with as if they were appeals on matters of law. Two categories of appeal have already been established. The Government has tried to deal with those two categories of appeal with the same set of regulations, which impose contradictions in the Bill itself. I suggest that the parliamentary secretary take the Bill back to the draftspersons and make a decision. Does the Government want this to be an administrative appeal and to deal with all matters as though they were administrative appeals, or does it want two categories of appeal - those that are now before the minister and those that are now before the tribunal, and those that are informal administrative appeals and those that are legalistic appeals on matters of town planning law - and to deal with them quite separately under separate rules and jurisdictions? The parliamentary secretary should take the Bill back, have it redrafted, and then bring it back to this place in a manner that he can understand, so that he can answer our questions in a logical and acceptable manner.

Hon GRAHAM GIFFARD: I am advised that the logical and acceptable answer to the issue raised by Hon Derrick Tomlinson is in a reading of proposed section 56(1) and (2) of the amendment. Under proposed subsections (1) and (2), the procedure is that the tribunal would report a matter to the Supreme Court, and the Supreme Court would then deal with whether it was a question of contempt.

Hon Derrick Tomlinson: Have a look at proposed section 56(1) again carefully.

Hon GRAHAM GIFFARD: The tribunal has the ability to not decide that it is a contempt, but to report a matter that would be a contempt. The tribunal has the power to do that.

Hon Derrick Tomlinson: Yes, and then go to proposed section 56(2).

Hon GRAHAM GIFFARD: The tribunal will refer the matter to the Supreme Court, and the Supreme Court will accept it if it is a contempt.

Hon Derrick Tomlinson: Yes.

Hon GRAHAM GIFFARD: If it is not a contempt, the Supreme Court will not accept it.

Hon Derrick Tomlinson: If it is not a contempt, it is not reported.

Hon GRAHAM GIFFARD: That is the point. If the tribunal is of the view that it is a contempt, it reports it to the Supreme Court, and if the Supreme Court takes the view that it is not a contempt, it will not accept it.

Hon Derrick Tomlinson: No, that is not what it says.

Hon Tom Stephens: That is exactly what it says.

Hon GRAHAM GIFFARD: That is what it says, and I am advised that is how the procedure works.

The DEPUTY CHAIRMAN (Hon Adele Farina): Members, it being 9.55 pm, I am required to report progress.

Hon Norman Moore: Why don't you take a valium?

Hon Tom Stephens: You're pathetic, Norman. You've always been pathetic.

Hon Derrick Tomlinson: If your team could answer questions, we wouldn't be in this position now. You are an absolutely hopeless Government, and you know it!

The PRESIDENT: Order!

Hon Tom Stephens: You carried on like this when we had the finest ministers in the Chamber. You were a twirp then and you're a twirp now.

Hon Norman Moore: Is there any prospect that you can do something about this behaviour, Mr President?

The PRESIDENT: When members have quite finished - I am referring to the Minister for Housing and Hon Derrick Tomlinson, who can be heard well and truly outside the Chamber - I will hear from the Deputy Chairman.

Debate interrupted, pursuant to standing orders.