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

Committee

Resumed from an earlier stage of the sitting. The Deputy Chairman of Committees (Hon Helen Morton) in the chair; Hon Donna Faragher (Minister for Environment) in charge of the bill.

Clause 4: Section 45A amended —

Committee was interrupted after the clause had been partly considered.

Hon SALLY TALBOT: I was on my feet when debate was interrupted for question time. However, I believe that the minister was going to provide some further information in the light of previous questions from Hon Adele Farina and Hon Robin Chapple. I am happy to suspend my remarks until that information has been provided.

Hon DONNA FARAGHER: I will respond to Hon Adele Farina. A proponent may refer a mining lease as a strategic proposal if it meets the requirements and/or definition of a strategic proposal, which I think is what the member was asking.

Hon ADELE FARINA: I have a follow-up question. If a proponent can refer the granting of a mining lease as a strategic proposal as a project for assessment by the Environmental Protection Authority, would it then follow that the mining project could be considered to be a derived proposal under the Environmental Protection Act?

Hon Donna Faragher: The mining project itself?

Hon ADELE FARINA: Yes, the mining project—the actual mine.

Hon DONNA FARAGHER: Yes. I know that Hon Adele Farina is listening intently. If the referred proposal—that is, the mining proposal—was identified within the strategic proposal, it could be assessed under that part, and then it would go through the normal process that we have already outlined under section 39B(3) of the act. Again, if it is identified at the time of the strategic proposal, it could be considered to be a derived proposal, but it would still have to go through that normal process.

Hon ADELE FARINA: That raises some very serious concerns, because we could have a situation in which significant mining proposals are no longer assessed at the project stage if they are considered to be a derived proposal because they were assessed as a strategic proposal at a mining lease stage. One would have to question whether the level of detail would be known at that time. I was hoping that the minister's response would have been, "No, there is no capacity to assess a mining lease as a strategic proposal", and that would have given me and my constituents in Margaret River a lot of comfort. I am sure it would have given constituents right across the state a lot of comfort as well. The fact that the EPA is prepared to contemplate a mining lease being assessed as a strategic proposal raises all sorts of flags, which goes back to my concern that there is a lack of clarity about what should and should not be classified as a strategic proposal and, therefore, what might give rise to a non-assessment of a project because it is determined to be a derived proposal. Until we have greater clarity around these issues, it would be irresponsible of this Parliament to delete the appeal provision, which provides the only check and balance to ensure that these decisions are made correctly and in accordance with the Parliament's intention at the time it initially passed the EP act.

Hon DONNA FARAGHER: As I see it, it may be referred to as a strategic proposal if it meets the requirements and/or definition of a strategic proposal. I refer to section 37B(2) of the Environmental Protection Act as to how a proposal is determined to be a strategic proposal —

> (2) A proposal is a ***strategic proposal*** if and to the extent to which it identifies —
>
> (a) a future proposal that will be a significant proposal; or
>
> (b) future proposals likely, if implemented in combination with each other, to have a significant effect on the environment.

Therefore, if there was a proposal for a mining project, it would have to have been contemplated quite clearly. It could not have been some ambiguous proposal to do a mine somewhere at some point in time. That would not meet the requirements as set out in section 37B(2). There are clear requirements about what would determine a strategic proposal.

Hon ADELE FARINA: I accept what the minister is saying and I am not going to take it any further, other than to say that I think that if the Environment Protection Agency is at all prepared to consider mining leases as strategic proposals, we run into the problem that I have identified. I do not think that the minister's indication that they would be limited in any way, shape or form by the definition in section 37B(2) is correct.

I will explore another issue that I have with this bill: what is the life of an approval that has been granted for a proposal that has been assessed as a strategic proposal?

Hon DONNA FARAGHER: It is set out in the ministerial conditions and the life of a proposal would be determined on a case-by-case basis; that is normal process.

Hon ADELE FARINA: This is one of the other concerns that members of the community have with the Environmental Protection Act. In the Planning and Development Act 2005, approvals have a life that is set out by legislation. Development approvals have a life of two years; some are set at five, but most approvals have a definite life. Decisions made are going to apply for that period of time. My concern is that when projects are assessed on a case-by-case basis, if a project is assessed, for example, as a strategic proposal and is granted approval, the condition is that the approval is valid for 10 years. Environmental knowledge, awareness, concerns and conditions as we know them in the world can change a lot in 10 years. It concerns me that a derived proposal could be lodged from a strategic proposal with a life grant just short of 10 years. The proposal classified as a derived proposal could avoid further assessment because the strategic proposal was assessed and approved. The minister needs to provide the community with greater certainty and comfort about the likely life given to an approval of a strategic proposal.

Hon DONNA FARAGHER: If I can assist the member again and refer her to section 39B(4). If a proposal had a life of 10 years, and if we use the member's example that someone was to come in at nine years and six months with a proposal for a derived proposal, there is still a requirement for the authority, under this section, to either refuse or declare it to be a derived proposal. The authority would need to take into account issues that the member has raised, whether there is significant, new or additional information that might not have been present nine and a half years before, when the strategic proposal was dealt with. It does not matter whether it is five, six, seven or nine and a half years along the track. When a proposal is referred with a request that it be determined a derived proposal, the EPA will have to have regard to these matters: environmental issues that were not adequately assessed; significant new or additional information; or a significant change in the relevant environmental factors since the strategic proposal was assessed. That is exactly what the member wants to have comfort on; it is in the act now.

Hon ADELE FARINA: The issue then is that currently under the act, if the community disagrees with the assessment made by the EPA when applying those provisions, there is a capacity for the community to appeal that decision and to have it reviewed by another body, that being the Office of the Appeals Convenor. Deleting the appeal provision leaves no capacity in the act for any review of the EPA's decision. That is where the community concern with this process lies. The capacity to provide checks and balances on decisions, to ensure that the correct decisions are being made and are not whittled away over time by subsequent poor decisions, is lost by the deletion of the right of appeal. I do not think that Parliament has yet had a satisfactory response from the minister about the concern over what other provisions exist under the Environmental Protection Act, once we delete this provision, to provide that check and balance on EPA decisions.

My next question to the minister is: what is the life on an approval of a project that is declared to be a derived proposal?

Hon DONNA FARAGHER: Again, it would be under the ministerial conditions.

Hon ADELE FARINA: To clarify, could the minister approve a project as a derived proposal and set conditions on that derived proposal that were not conditions of the strategic proposal assessment? Would that condition be for the life of the approval and could that life be as long as 10 or 20 years?

Hon DONNA FARAGHER: Conditions are the same for the strategic proposal to which conditions were already applied. As I said before we broke for question time, that does not preclude a variation to the conditions, an example being when there is either a request or a requirement to vary the conditions according to the particular project that is obviously the derived project. The variation is set on the ministerial conditions that are set as part of the strategic proposal.

Hon ADELE FARINA: At the time that the strategic proposal conditions are set, would the minister then contemplate the life of any approval on a derived proposal as part of that strategic assessment? It is not clear to me at what point in time that decision is made and the basis of which might be made.

Hon DONNA FARAGHER: Yes, because it is contemplated through the assessment of the strategic proposal.

Hon ADELE FARINA: The minister may be able to answer this question now but I would appreciate the specifics, so she might need to clarify it. I would be interested to know what life has been identified for any derived proposals under the Smiths Beach strategic proposal assessment.

Hon DONNA FARAGHER: I do not have a copy of the ministerial conditions for the strategic proposal, in which the time limit is set out. I am happy to get that for the member. As I understand—I stand to be corrected—a derived proposal for Smiths Beach has not been put forward. The strategic proposal has been dealt with but a request for a derived proposal has not been referred. I will come back to the chamber if that is incorrect but that is my understanding at this point.

Hon ADELE FARINA: The minister said that the life of a derived proposal approval would be contemplated at the point of the decision on the strategic assessment. Whether a derived proposal has been advanced to Smiths Beach is irrelevant if the life of the derived proposal is set as part of the conditions of the strategic assessment. I asked the question to try to illustrate the point that I do not think it is happening in that way. The community and proponents need some clarification about when that will be done and the basis on which that will be done, given that the EP act does not set a legislative standard approval life on the approvals that are granted under the EP act, unlike the Planning and Development Act and even the Mining Act.

Hon DONNA FARAGHER: Again, I am happy to get a copy of the ministerial statement on Smiths Beach to advise the member of the duration. With respect to the life of a project, there is already the capacity for a request to be made to a variation to the conditions, which may relate to that period of time. For example, if a proponent has not substantially commenced the project within that specified time, it could write to me as minister seeking a variation to the conditions in order to receive an extra couple of years or whatever it might be. In those instances, I would seek advice from the EPA to determine whether that was appropriate. That is the case now and we are not proposing to change that.

Hon ADELE FARINA: I appreciate that this might be outside the ambit of the clause that we are considering. Is there any capacity for public comment in that process whereby a proponent seeks an extension of time on the life of an approval?

Hon DONNA FARAGHER: It would have to be within the condition set out in the ministerial statement. If it was at the minister's discretion and that is identified through the statement, no, there would not be. If it was framed in another way where there was a requirement that it go out for public comment again, that would be identified. I can inform the member that 10 years is the strategic proposal with respect to Smiths Beach. The ministerial statement has just been put in front of me.

Hon ADELE FARINA: I was asking about the life of the derived proposal if it were to be granted.

Hon DONNA FARAGHER: Again, it is the same because the conditions for the strategic proposal are the same conditions that would be put on a derived proposal. I will read it to the member —

> **2 Time Limit of Authorisation**
>
> 2-1 The authorisation to implement future proposals provided for in this statement shall lapse and be void within ten years after the date of this statement if the future proposals to which this statement relates are not substantially commenced.

Hon SALLY TALBOT: I want to go back to the point I was raising before the debate was interrupted. I was drawing the minister's attention to paragraphs 7.102 to 7.104 of report 48 of the Standing Committee on Uniform Legislation and Statutes Review and the specific point about the referrals under section 43 of the EP act, the appeals directly to the minister and the comments on page 241 of that report attributed to Mr Colin Murray, the director of assessment and compliance services of the Office of the Environmental Protection Authority. Mr Murray said —

> *Once the minister has issued the statement that the strategic proposal can be implemented, section 43 may or may not be limited.*

I refer to the minister's earlier comments that the legitimacy of section 43 appeals or the circumstances in which an appeal might be lodged will be judged on a case-by-case basis. When would the section 43 appeal be limited?

Hon DONNA FARAGHER: I will go through the stages. If a proposal is referred with a request that it be a derived proposal, at this stage it is a normal section 38 proposal. There are two options. The EPA can declare it a derived proposal. In that instance, if the EPA decides not to assess, section 43 is unlikely to apply. However, if the EPA inquires into the conditions under section 46(4), section 43 does apply; and if the EPA does not inquire as to the conditions, I can still ask for an inquiry under section 46. With respect to the conditions, section 46 would still apply. If the EPA declared that it is not a derived proposal, the normal section 38 provisions in terms of referral and the like would then apply and section 43 would apply in those circumstances as well.

Hon SALLY TALBOT: If I understood the minister correctly, which I fully concede I may not have done, is she drawing a distinction between decisions made under section 39B(3), which is basically the ruling that a

proposal is a derived proposal, and decisions made under section 39B(4), which is where the authority refuses the classification of the project?

Hon DONNA FARAGHER: I have a copy of the act.

Hon Sally Talbot: So have I.

Hon DONNA FARAGHER: Okay. We will refer to section 39B for the circumstances about the derived proposal. Section 39B(3) declares a proposal to be a derived proposal. If the Environmental Protection Authority was then to inquire into the conditions under section 46(4), in which instance section 43 would apply, or it does not inquire as to the conditions, I can still ask for an inquiry under section 46. Section 39B(6) states —

> If the Authority declares the referred proposal to be a derived proposal, it is not to assess the proposal except for the purposes of conducting an inquiry under section 46(4).

Therefore, those aspects relate to that.

The EPA can declare that a proposal is not a derived proposal, which is determined through section 39B(4) when a proposal has not met the specified requirements. Once the EPA has determined through section 39B(4) that the proposal is not a derived proposal, we follow the normal process under section 38.

Hon SALLY TALBOT: I will try again. Does that mean that the fewer inquiries undertaken by the Environmental Protection Authority the fewer opportunities there are to refer a proposal for ministerial reconsideration?

Hon DONNA FARAGHER: No, because if the Environmental Protection Authority is to inquire into the conditions under section 46(4), section 43 still applies.

Hon Sally Talbot: But if it does not go to section 46, does it not apply?

Hon DONNA FARAGHER: However, if the EPA decides that it will not inquire into the conditions, I as minister can still ask for that inquiry under section 46. Therefore, even if the EPA says no, I can still make that request.

Hon SALLY TALBOT: Can the minister give me an example whereby that power of the minister might be invoked? How would the minister know that it was appropriate to invoke or to invite—the minister needs to tell me which word I should use—submissions under section 43?

Hon DONNA FARAGHER: I can give the member an example. If I received a number of letters from a number of concerned members of the community about a particular project, I may well then form the view that the EPA should look at this matter; therefore, that is an example whereby that power would be utilised. I reiterate that these are not new sections; they are obviously powers that are already there. However, that would be an example.

Hon SALLY TALBOT: I thank the minister; I think that it is clear to me now. I think that we are very close up against the fundamental problem here. I absolutely accept what the minister is saying that many of the measures that are being referred to by me, Hon Adele Farina and members of the Greens are not new; however, we are trying to make sense of the minister's claim that there is no significant diminution in the public's capacity to respond to a proposal that it might consider to be problematic. To me that seems to be very close to the heart of the problem. For that reason I am not sure that it is a problem that we will be able to thrash out on the floor of the chamber because ultimately the government will have dug in to a position that it needs to defend. After all, that is what governments do; nevertheless, it is important for us. I simply make this point because this debate is perhaps taking a little longer than one would expect at the beginning. I want to be absolutely clear that the reason it is taking longer is that it is very, very important for us to get on the record how the government sees the process working under these new provisions. Our fear is that the government's rhetoric about there being no substantive diminution of opportunities for members of the community and third parties to have input into the process is, in fact, not the case. The reason we are pursuing these issues about section 43, the life of a strategic assessment, when that countdown begins and what it means is that it is very important to have this on the record so that members of the community and groups with a particular interest in the environment can be very clear about the points at which they may still have that input.

Tying those general comments into the minister's specific response to my last question, it seems to me that once again, just in the same way that the minister responded to questions a few weeks ago from Hon Adele Farina about the Margaret River mining proposal when the minister said that clearly this is a matter of some substantial importance to the community, the minister is shifting the responsibility to the community to make noise about the issue.

Hon DONNA FARAGHER: I answered a question from Hon Adele Farina about this matter during question time. Obviously, no proposal has come before the Environmental Protection Authority at this point and that is understood. However, the EPA fully expects that it would assess that project and it will assess a proposal of that type and I fully support that move. I clearly stated as Minister for Environment that in no way would such a proposal not be assessed if it gets to that point, if I can put it that way. I have already made that very clear in this house. I think the member is drawing the issue in terms of community interest and the like; that is obviously an element of any proposal. However, the specific matter about the proposal for a coalmine in the South West is something that I have answered in question time quite clearly stating that the EPA does not have something before it at the moment. I cannot speak for the EPA, but there is a full expectation that the EPA would assess the proposal, and I expect that the EPA would assess it as well.

Hon SALLY TALBOT: In making my earlier comments I was referring to page 5325 of the *Hansard* of 11 August when the minister, during the course of debate on this bill, said —

> I do not intend to comment at length about the coal mine proposal in Margaret River but it is fair to say, as I responded in an answer to the member's question today in Parliament, —

That was 11 August —

> that the EPA fully expects that matter to be referred.

This is the key, minister —

> There is obviously a high level of community interest in that proposal. Therefore, it could not be said that that proposal has a low level of community interest. That is clear now just from reading the newspapers.

I take the minister back to a point that I made during the second reading debate about the minister's new administrative procedures that will set up the website notification. I pointed out to the minister that she could probably safely assume that people like me and Hon Giz Watson would ensure that we were —

Hon Simon O'Brien: There is no-one like you.

Hon SALLY TALBOT: I am sorry; I did not catch that.

Hon Adele Farina: Don't worry about it; it's not worth it.

Hon Ljiljanna Ravlich: You'll never be as good as her, that's for sure!

Hon SALLY TALBOT: I will wait —

Hon Ljiljanna Ravlich interjected.

Hon SALLY TALBOT: Yes; I will wait while Hon Simon O'Brien takes his emotional reaction outside. The minister can be reasonably sure that people like me and other members in this chamber who have both a personal and political interest and professional responsibility for environmental areas will get their names on that list to be notified when things of interest are happening. How can the minister make the assumption about the people who, historically, have been the very people who put in some of the most cogent appeals? Those people are ordinary community members. The minister or her staff will be reading the newspaper and doing the media monitoring about whether something should be regarded as—I quote her again—"something that has a high level of community interest or a low level of community interest". I ask her again: what is wrong with the existing system, which leaves in place for people, regardless of their level of skill or involvement on a day-to-day basis with these issues, an opportunity to lodge an appeal and have it considered? What is the problem with that?

Hon DONNA FARAGHER: We are dealing with matters surrounding a derived proposal. I am not quite sure which appeal point the member is referring to. We are dealing with clause 4.

Hon Sally Talbot: It is the deletion of section 100F.

Hon DONNA FARAGHER: It is the usual Hon Sally Talbot in referring to *Hansard* as though I had been flippant about this matter.

Hon Sally Talbot: I did not think you were being flippant at all; I thought you were being very honest.

Hon DONNA FARAGHER: I was being very clear that we—by we I mean I as minister and the Environmental Protection Authority—fully expect a matter will be referred and assessed. Section 38 "Referrals", states —

> If it appears to the Minister that there is public concern about …"

The act contemplates matters surrounding public concern. The member just had a global discussion. I am not trying to be difficult here. We are talking about a derived proposal. We have dealt with a strategic proposal,

which allows for an appeal. As I said, in terms of the report and recommendations of the EPA, the appeal point remains.

Hon SALLY TALBOT: I thought I made it very clear. I used the *Hansard* quote to show in fact that the minister had been consistent on this. Clearly, part of the reckoning of her office and of the Office of the EPA from now on will be a perceived level of public agitation about a certain issue. I thought I made it perfectly clear that I am concerned at this moment in the debate about the limitation of section 43. I am talking about the removal of the appeal point on whether a project is a derived project. I might have misunderstood the minister but I think she told me that she would be able to invoke section 43. I do not think she answered my question about whether she would be able to invite appeals under section 43 if her office should receive a certain number of letters about an issue.

Hon Donna Faragher: That was an example.

Hon SALLY TALBOT: The minister referred earlier to the fact that section 43 could be invoked on a case-by-case basis. For the sake of people who will follow every word in this debate very carefully, I am asking what appeal rights will be removed and what rights will be left in place. What provisions will determine whether section 43 is revoked? How many letters will the minister's office have to receive?

Hon Donna Faragher: Oh, look!

Hon SALLY TALBOT: The minister can make faces. I know this is very inconvenient. We can get over all this if she withdraws clause 5 and leaves the appeal right under section 100F of the EP act in place. If I am not going to get a response from the minister on that, I will move on to another point.

Hon Donna Faragher: You have received a number of answers.

Hon SALLY TALBOT: At the very beginning of this debate on clause 4, Hon Adele Farina asked the minister why the appeal point was being removed. I am not sure we got an answer to that. I will ask the question another way: is the purpose of removing the appeal point to encourage the use of the strategic assessments?

Hon Donna Faragher: I answered that and I said, yes, that is one of the elements.

Hon SALLY TALBOT: I think the minister and I both agree that strategic assessments are a good thing and should be encouraged. Will the minister help me understand whether the removal of this appeal point will result in more strategic assessments being undertaken?

Hon DONNA FARAGHER: I have answered this on a number of occasions, but I am happy to answer it one more time. As I have indicated, the strategic proposals allow the EPA to look at a larger area before development begins. Yes, the member and I are in agreement that that is important. Indeed, the chairman of the EPA has indicated it would be good if there were more strategic proposals to look on a more broader level rather than on a case-by-case basis.

Hon Sally Talbot: We are all in furious agreement on this.

Hon DONNA FARAGHER: There we go; I think I have answered the question.

Hon SALLY TALBOT: The minister has not answered my question. My question is: what makes the minister think that the removal of this appeal point will make the opportunity to have a strategic assessment done more attractive to proponents than it is now?

Hon DONNA FARAGHER: I have answered this question. One reason is the duplication of appeal points. Another is for the sake of consistency with other parts of the act, including scheme amendments, to which I have already referred ad nauseam, and providing greater incentive for people to use strategic proposals, on which Hon Sally Talbot and I—which does not happen often—both agree.

Hon ROBIN CHAPPLE: In relation to the point I raised before question time, how will proposed section 45A(2) and the elements of section 39B that it deletes affect the memorandum of understanding that was established, I believe, in 1992 and the way that other departments deal with strategic issues on behalf of the EPA before they come back to the department? Will other agencies be able to make decisions that then cannot be appealed under this new process or even referred to the minister by that memorandum of understanding, which allowed the Department of Mines and Petroleum in receipt of a notice of intent to advise the EPA of its view of whether a matter should be assessed and under what criteria it should be assessed? I am concerned not so much that the minister or the department can deal with any of the matters we are relating to under section 100(1)(f), (1)(b) or (1)(c); I am trying to establish the relationship of the amendments we are dealing with here to the MOU that I believe was signed in 1992, which is when I believe it was dealt with. I think there have been some amendments to that subsequently. Part of the reason is that, quite clearly, when Noel Ashcroft dealt with this

matter in the industry working group as part of recommendation 3, which is what we are dealing with now, he made the point that, indeed, these amendments would, hopefully, enable 99 per cent of these projects to be used and managed by the Department of Mines and Petroleum and would, indeed, by these indirect means, take away from the EPA some of its ability to assess a matter or call it in to be assessed or have it referred by appeal.

Sitting suspended from 6.00 to 7.30 pm

Hon ROBIN CHAPPLE: Over the dinner break, has the minister's department been able to get the latest memorandum of understanding between the Department of Environment and Conservation and the Department of Mines and Petroleum to identify whether it can in any way change the impact of what we refer to as a derived proposal? Can "derived proposals", at section 39B of the Environmental Protection Act, be identified as proposals dealt with under that memorandum of understanding? It is a long time since I have dealt with that memorandum of understanding; I had some hand in developing it many years ago. As far as I recollect, the memorandum of understanding enabled the former Department of Minerals and Energy, now the Department of Mines and Petroleum, to itself establish whether a project was a significant project. It then made a determination which it sent to what was then the Department of Environmental Protection – Environmental Protection Authority providing advice that it did not think the matter needed assessing, or it was indeed a strategic proposal or a derived proposal. Do those powers in any way impact on clause 4 of "Part 2 — Appeals" in relation to 39B; that is, derived proposals? I articulated this slightly before, but when I read recommendation 3 of the industry working group's documents that is indeed what Noel Ashcroft indicated was the purpose of minimising the number of projects that were assessed by the EPA because the Department of Mines and Petroleum should, by using this process, be able to deal with 99 per cent of those projects.

Hon DONNA FARAGHER: In response to Hon Robin Chapple, his references to Mr Noel Ashcroft and his views are not relevant to what we are dealing with in terms of clause 4. With respect to the MOU, it is provided by way of guidance. It is not affected by what is proposed here. It does not affect the legal requirements that are set out within the act. I refer Hon Robin Chapple to section 38(5) under "Referrals" which states —

> Subject to subsection (5j), as soon as a decision-making authority has notice of a proposal that appears to it to be —
>
> (a) a significant proposal; or
>
> (b) a proposal of a prescribed class, the decision-making authority is to refer the proposal to the Authority.

The endorsement in the memorandum of understanding clearly states that the Environmental Protection Authority does not abrogate its responsibilities in regard to environmental assessment. The authority can, under the Environmental Protection Act 1986, call in for assessment any proposal that is likely to have a significant effect on the environment.

Hon ROBIN CHAPPLE: I have not seen that document for a while, so I am working on my memory when we were developing it. My understanding is that after a notice of intent is submitted to the department, the department itself does a mini-environmental assessment—formerly the Department of Minerals and Energy, now the Department of Mines and Petroleum—and makes a determination at some level as to what it believes is a significant assessment or not. After the department has received the NOI, it provides advice to the department as to whether it thinks this one is significant or not. I am concerned that that might be used as a process to not identify whether it is strategic, significant or, indeed, a derived process. Although the department can still call matters in if it sees fit—I accept that—if the department does not receive suitable advice from the Department of Mines and Petroleum, it is doing what was identified and deferring the responsibility to another agency.

Hon DONNA FARAGHER: I say once again for the member's benefit that the memorandum of understanding was updated and signed in 2009. The intent of the memorandum remains in so much as it is a guidance document. I will refer to the other aspect of the endorsement. The memorandum of understanding reads —

> The purpose of this Memorandum of Understanding is to establish an efficient and transparent administrative process for the Department of Mines and Petroleum to refer environmentally significant mineral, petroleum and geothermal proposals to the Environmental Protection Authority, pursuant to Part IV of the Western Australian *Environmental Protection Act 1986*.

This remains a guidance statement. We do not propose to change the sections in the act to which I have referred. It will not affect any legal requirements or the like.

Hon ROBIN CHAPPLE: Can the minister table the memorandum of understanding? If so, that would be much appreciated.

Hon DONNA FARAGHER: I am happy to table it. I seek leave to table the memorandum of understanding.

[Leave granted.] [See paper 2395.]

Hon ADELE FARINA: In seeking to compare the approvals process of strategic approvals with that of strategic plans or town planning schemes and to argue that the amendment proposed in clause 4 will enable those two processes to be consistent, the minister is comparing apples with pears. Strategic plans and town planning schemes undergo extensive expert analysis and drafting by local authority planners and local authority councils and are not instruments advanced by proponents, as is the case with strategic proposals. By the time the Environmental Protection Authority receives a strategic plan or a town planning scheme, it has already undergone extensive community consultation through the local government and the Planning and Development Act requirements. This is not the case with strategic proposals that are advanced by proponents. There is a significant point of difference. Having said that, for reasons debated earlier this evening, the standing committee recommends that the clause be opposed.

Clause put and passed.

Clause 5: Section 100 amended —

Hon SALLY TALBOT: As was pointed out earlier in the debate, we now come to the substantive argument to which clause 4 relates. I ask the minister to clarify for honourable members what I believe she said earlier. She seems to think that deleting paragraph (f) of section 100(1) of the Environmental Protection Act will encourage the use of strategic assessments. What I understand the argument to be, in trying to unpack the assumptions on which that assertion is based, is that the act already contains the precise elements, parts and components to be assessed. Because the act already lists those items, there seems to be an assumption on the government's part that provided that each of those boxes are ticked, we can remove the point of appeal. I put it to the minister that if that is a correct summary of her argument, we are on a slippery slope to the effective abolition of all appeal points. It is not hard to specify in an act what has to be taken into consideration. The minister has relied on the parts of the act that spell out quite clearly what the Environmental Protection Authority has to take into account. I will use as an example the section that the minister referred to several times; that is, section 39B(4), which reads —

> Despite subsection (3), the Authority may refuse to declare the referred proposal to be a derived proposal if it considers that —
>
> (a) environmental issues raised by the proposal were not adequately assessed when the strategic proposal was assessed;
>
> (b) there is significant new or additional information that justifies the reassessment of the issues raised by the proposal; or
>
> (c) there has been a significant change in the relevant environmental factors since the strategic proposal was assessed.

If there was only paragraph (a), I could accept the minister's argument that the existing appeal points relating to strategic assessments are adequate for all points of view to be canvassed. That is the paragraph that reads —

> environmental issues raised by the proposal were not adequately assessed when the strategic proposal was assessed;

I could just about buy that argument. However, I cannot see how the assumption can be made by the Environmental Protection Authority with a level of certainty. The minister seems to have no difficulty accepting holus-bolus that people can be that certain of the mechanisms they put in place to consider things such as the considerations raised in paragraphs (b) and (c). Section 39B(4)(b) of the Environmental Protection Act refers to "significant new or additional information that justifies the reassessment of the issues raised by the proposal". Where is that information going to come from if potential opponents are ruled out? We have heard the minister say that the community, stakeholders or environment groups can write to her and that they can run issues in a local newspaper. All credit to the minister that she says she is taking notice of those kinds of things, but I ask her: where does she get significant new or additional information that would justify the reassessment of the issues connected with the proposal if she has effectively eliminated what surely must historically have been one of the main sources of that information?

We then move into the component parts of paragraph (c), which refers to the fact that "there has been a significant change in the relevant environmental factors since the strategic proposal was assessed". We have heard during the course of this debate that strategic assessments can have a lifetime of decades. How can the Environmental Protection Authority be certain that there is no significant change in the relevant environmental

factors? Are the very people who are most likely to know that not the people who have everyday engagement with the environment in a particular area, which may be thousands of kilometres away from where the EPA is situated? I just cannot understand, and perhaps the minister can help me here, from where she gets the degree of certainty that enables her to stand up and say that it will be okay. Earlier today the minister provided me with a fairly lengthy response in question time about a certain appeal process, when it turned out that the EPA had made a decision based on information that turned out to be wrong. This does not mean that the people at the EPA are incompetent and it does not mean that they are not doing their job, but part of their job is to collect evidence, to weigh up that evidence and then to rule on the basis of that consideration of the evidence. What the government is doing in one fell swoop is to remove a significant source of evidence.

I say again that I can understand all the arguments that the minister has put forward thus far about the rigour of assessment processes at other places in the procedure. I can understand what the minister means when she says that not all the appeal points are being removed and therefore that the appeal points will presumably have to bear a little more weight, and we can all be optimistic that might work in the long run, but why remove entirely such a significant source of information and knowledge about a particular proposal? What really worries me is that it would not be difficult to make an exhaustive list of conditions and considerations or even the kinds of considerations that decision-makers would have to take into account when arriving at a conclusion, but to then say that that in itself ensures that all those arguments are given proper weight seems to me to be either naive in the extreme or a cover for an alternative agenda that is effectively going to progressively erode all appeal points and replace those appeal points with lists of things that have to be taken into consideration. I think perhaps the most worrying part of this whole debate to this point is that the minister, when asked by me, Hon Adele Farina, Hon Giz Watson and other members of the Greens (WA) to address the most substantive questions, is not able to frame a response in anything like an adequate way.

Hon DONNA FARAGHER: I have gone through this on a number of occasions. However, I just reiterate for the member that a derived proposal has to be identified and assessed as part of the assessment of a strategic proposal. I have referred to those parts of the act that stipulate that. It needs to be identified at that point. An assessment is to be done on a strategic proposal, having regard to the fact that a future proposal, which is the term used within the act, has been identified. I have advised the chamber of that. By necessity and requirement within the act, there are clear requirements of what the authority must have regard to, such as surrounding issues and significant and new information. The authority must have regard to that in the assessment. That is stipulated in the act. There is no change to that and we are not proposing any change to that. It must be identified as part of the assessment of the strategic proposal. There is a requirement in the act for the authority by necessity to consider these matters when the request that it be a derived proposal is referred to it. There will be an opportunity for the community to have a comment in those seven days. So there are a number of mechanisms in place by which a derived proposal will have had to be considered right at the beginning of the process, when it is referred as a derived proposal and if the community wishes to make a comment at that time during that seven-day process.

Hon SALLY TALBOT: As the minister knows, my preferred approach to these things is to talk of concrete examples rather than abstractions. I am sure that the minister understands my basic point, which is that the minister keeps talking about new issues and significant changes to the environment, but, for example, could the proponent of a referred proposal be a completely different company or enterprise from the project that was identified in the strategic assessment?

Hon DONNA FARAGHER: Yes, it could be a different company. Obviously, the future proposal has to be contemplated, identified and assessed as part of the strategic proposal, but the company may change.

Hon SALLY TALBOT: In a case in which there could be a change of, in effect, ownership of the proposal, what if the new proponent is a company with a very poor corporate record? Let us say that it has been responsible for some sort of environmental degradation or it has a poor safety record. I just put it to the minister, for example, that if BP came and wanted to start undersea drilling somewhere off the coast of Western Australia, we might well say that we should just look at the corporate history, and that might have a bearing on our decision. We know in fact that that is very much a part of corporate decision making. One looks at the corporate history of the proponent. I can see that the minister is not actually engaging with what I am saying.

Hon DONNA FARAGHER: I am engaging with the member. I am always engaging with the member. In matters surrounding good corporate citizens or good environmental records, or not, the role of the EPA is to make an assessment on environmental factors of a proposal. That is the environmental impact assessment process, and that is what is undertaken. Yes, a company may put forward an application, and I am talking in more general terms. If a proponent puts forward an application, there are requirements for referral, assessment and those sorts of things, but the EPA is obviously charged with making recommendations on the environmental factors for a particular proposal that is put before it.

Hon SALLY TALBOT: Under the existing act, with this appeal right still in place, let us take an example where the strategic assessment had a life of 10 years. If a company comes along after nine years and says that it is claiming this is a derived project, under the existing act—leaving aside the minister's amendments—with the appeal process still in place, where is the opportunity for a third party to make the point that this particular company has a bad environmental record?

Hon DONNA FARAGHER: I have indicated it is during that seven-day period that the community will have an opportunity to put forward its view to the EPA. I have said this countless times. There will be a seven-day period.

Hon SALLY TALBOT: The minister is talking about the period after the bill is enacted. I am talking about now.

Hon DONNA FARAGHER: A strategic proposal would have gone through its process—report and recommendations—and a derived proposal would have been identified as part of that assessment. In terms of a referral that a project be a derived proposal, there will be an ability for people to put their view to the EPA in that seven-day period.

Hon SALLY TALBOT: I think the minister is confirming my worst fear. The minister has conceded that the project that could be identified in the strategic proposal is not limited to the particular company that actually operates the project when it is up and running, and the minister is removing an appeal right. Minister, I will provide my own answer: under the act as it stands at the moment there is a right of appeal on the designation of a project as a derived proposal, and at that point I or any other community member or stakeholder could stand up and say to the EPA that it needs to take into consideration the fact that the proponent of this derived assessment is a bad corporate citizen or has a bad environmental record. That is the appeal point that the minister is removing. That was a question.

Hon DONNA FARAGHER: In matters surrounding a derived proposal, the matters that need to be referred to are those outlined in section 39B of the act. I will make a general point: when we come to matters relating more generally to the report and recommendations of the EPA, if Hon Sally Talbot wanted to raise a concern about whether this particular proponent was a good corporate citizen or not, the appeal point relates only to the report and recommendations of the EPA. Hon Sally Talbot can deal only with those matters that have been identified through the report of the EPA or, indeed, the conditions that are referred to in its report to me. In an appeal to me as minister, Hon Sally Talbot would have to relate all of that back to sections within the report or to the recommended conditions to me.

Hon SALLY TALBOT: With respect, minister, one does not have to be a genius to work out how a situation could easily arise in which the original EPA report might specify, for instance, having lined pits for waste material, and if a company had already transgressed on another continent or in another part of Australia and had been shown to be not complying with those kind of specific recommendations—tell me if I am wrong—in the example of lined waste pits that would not be something that was in the EPA's original report. I cannot see that that would be the case. I am not a technical expert, but just off the top of my head I can think of dozens and dozens of things that might be included in an EPA assessment that would then be relevant to the argument I am putting forward.

Hon DONNA FARAGHER: When a ministerial statement is made conditions are attached to that statement. It is a requirement upon those proponents to adhere to the conditions that I as minister or any future minister or past minister have placed on a particular project. If someone does not comply, then there are ramifications as a result that are outlined within the act. They are fair requirements. The Office of the EPA is required to monitor the conditions that are set by me, and the proponents are required to comply with the conditions that are set. If they do not, penalties can apply.

Hon SALLY TALBOT: Once again, the minister is talking about penalties that can be applied after the event. I am talking specifically about information that might be available under the existing act, but that after the minister's amendments are made will be removed. That would be information that would prevent the incident arising. One does not have to go very far around this state to see that proponents break the rules or that the rules are not properly enforced. I just cannot see where the minister gets this confidence from that that it is all going to be hunky-dory. The minister has lost me in terms of the cogency of her argument.

Hon Donna Faragher: I have answered the question.

Hon ROBIN CHAPPLE: We are dealing with the amendments particularly around 100(1)(a) to delete "assessed;" and insert "assessed, other than a decision that includes a recommendation that the proposal be dealt with under Part V Division 2; or". Are we saying that there were originally two appeal points against a recorded

decision of the EPA not to assess a proposal when the proposal also requires a clearing permit under part V of the EP act? This amendment removes the unnecessary appeal points and acknowledges that clearing permits processes are indeed robust and transparent and have their own appeal process. We do note that later on in the bill, that is changed from 28 days to 21 days. Is the minister saying that this addresses what the 2006 review by the Office of Development Approvals Coordination actually identified about the duplicative appeal rights? Is that in essence what the minister is saying?

The CHAIRMAN: We cannot continue to have delays like this. Is the minister going to respond?

Hon DONNA FARAGHER: Yes, Mr Chairman. Just to clarify one aspect of Hon Robin Chapple's question, yes, in part it does. Essentially, the government believes that there are very robust requirements under part V to which the Director General of the Department of Environment and Conservation must have regard when dealing with clearing permits. Having said that, without having the ODAC report in front of me, as I understand it, that report actually put forward even stronger amendments, if I can put it that way.

Hon Robin Chapple: That was the one in 2006?

Hon DONNA FARAGHER: Yes. As I mentioned in my summing up some time ago, the previous government was intending to remove the appeal rights for the decision of the EPA to not assess a project because it can be dealt with under the clearing permit, as well as for the grant of the clearing permit. In fact, it was proposing that the only appeal point be on the conditions of the permit. We are not saying that. But that had certainly been put forward by the former Minister for Environment. I am not sure whether that helps the member in terms of some of the information that he has put.

Hon ROBIN CHAPPLE: I turn now to the amendment to delete paragraph (b) of section 100(1) of the Environmental Protection Act; namely, to remove the appeal rights against the recorded level of assessment of a proposal. Is it correct that section 100(1)(b) applies only when the EPA has decided to assess a proposal?

Hon Donna Faragher: Yes.

Hon ROBIN CHAPPLE: Is the minister considering that there is little value in allowing appeals on the level of assessment, noting that the likely outcome of the EIA review is to reduce the number of levels of assessment to two, and also that third parties can make submissions to the EIA document, and basically have appeal rights against the report and recommendations of the EPA?

Hon DONNA FARAGHER: If I can assist the member, there will remain an appeal on the report and recommendations of the EPA. In addition, I think I heard the member mention the change in the number of levels of assessment from five to two. That is correct. That was identified through the review that was undertaken by the chairman of the EPA on the environmental impact assessment process, which was released last year. It will move from five to two, and the two will be public and not public in terms of assessment.

Hon ROBIN CHAPPLE: It is noted that, interestingly enough, the ODAC 2006 report that we mentioned earlier was clearly trying to address some of these issues. It appears that in the EIA review in 2008, no concerns were expressed about this, and it was indeed the mining industry that was expressing concerns about that EIA review.

Hon DONNA FARAGHER: The EIA review did not deal specifically with legislative amendments, if that is what the member is referring to.

Hon ROBIN CHAPPLE: I move on now to the amendment to delete paragraph (c) of section 100(1). My understanding is that they considered that there is no compelling case for the right of appeal on the scope and content of a scheme assessment, and there is no such provision in respect of the proposal and there is no decision of the EPA. Any issues raised by the EPA as to scope and content could be more rightly addressed by discussion with the stakeholders or the departments rather than having a discussion with the broader community. That is my understanding of the intent of that amendment. Again, this was identified in the ODAC review in 2006 dealing with duplicative appeal rights. Am I correct in my understanding of that?

Hon DONNA FARAGHER: The member is essentially correct. I think he might well be referring to the government response to the committee report, in which this is outlined. So, yes, in terms of the issue that the member is raising, there have been few appeals on the scheme and content of an environmental review of a scheme. As I understand it, there have been eight appeals in 10 years. There is a belief that agreement on the instructions is best reached through discussion and consultation with the responsible authority, which is what the member was alluding to.

Hon ROBIN CHAPPLE: So when we are dealing with the deletion of paragraphs (a), (b) and (c) of section 100(1), and also when we are dealing with the deletion of paragraph (f), these are positions that have been put forward by the EPA as to how to facilitate or speed up the process. Am I correct in my understanding of that?

Hon DONNA FARAGHER: As I have indicated, the bill identifies those appeal points that we believe are duplicative and unnecessary. Advice has been provided to me in the development of this bill through both the chairman of the EPA and the director general of the Department of Environment and Conservation, both of whom sit on the director general's group with respect to approvals.

Hon ADELE FARINA: I would like to pick up on an issue that the minister raised earlier; that is, that a derived proposal needs to be identified as part of the strategic proposal. What level of detail does a derived proposal need to have to be identified when a strategic proposal is referred?

Hon DONNA FARAGHER: It is essentially the extent to which one could identify environmental factors, which is the case for any other proposal as well.

Hon ADELE FARINA: I want to talk more generally to clause 5. This is the clause that deals with the guts of what is proposed in this bill; that is, these mechanisms are duplicative, repetitive or unnecessary and are causing delays in the approvals process. Members who have read the substantial report prepared by the Standing Committee on Uniform Legislation and Statutes Review would know that there is absolutely no evidence to support any assertion that the approvals process is being delayed as a result of these appeal mechanisms or that any appeal mechanism is duplicative in any way, shape or form. Furthermore, the committee also raises very serious concerns that the administrative procedures that are proposed to replace some of the appeal rights will occur at a very early stage of the process when very little information is known. This legislation will deny the community, which has an interest in these proposals, the opportunity to lodge appeals on various decisions that are made by the Environmental Protection Authority along the approvals process. Instead, members of the community will get an administrative process in which it is required, within the first seven days of referral of a proposal to the EPA that will be advised on its website, to lodge comments they may have on the proposal. This is despite evidence before the committee from a number of witnesses that frequently the EPA needed to go back to a proponent on a number of occasions before it was able to make a decision about the level and scope of an assessment because the initial documents provided by the proponents frequently did not have enough detail for the EPA to undertake those assessments. This clause is saying that it is okay for the EPA to take 28 days to undertake the assessment and to go back and get additional information from the proponents to make the assessment. Yet the clause is asking community members, who do not have the resources of the EPA and are frequently doing this on a part-time basis between juggling family and work commitments, to undertake the same sort of assessment and to provide comments within seven days at a time when very little information would be known about the proposals, frequently because the proponent would not have provided enough information by that stage. I think that is unreasonable, I think most people in the community think it is unreasonable, and I think the evidence before the committee is that it is unreasonable and inadequate in terms of replacing the various appeal rights that exist currently under the legislation.

Also, the appeal rights provide an opportunity to review a decision that has been made. The ability to provide comment within seven days is not equal to or in any shape the same as an ability to review a decision that has been made. It provides the opportunity for members of the public to make some preliminary and initial comments, which may or may not be considered by the EPA. We all know that through a consultation process we obtain a lot of information. We are then able to pick and choose the information we take on board and the information we discard. There will be no process by which the community will be able to assess whether the EPA has had due regard to the relevant factors that were raised and whether it has discarded factors that were relevant in its consultation and decision-making processes. The beauty of the appeal process is that it requires the EPA to provide a statement justifying the reasons why it has made the decision it made, and then provides the community with the opportunity to review that decision and comment on whether the decision has been adequately made.

The other important aspect of the appeal process is that it provides a check and balance to ensure that the EPA maintains its standards in making those decisions, because the EPA knows that it will be held to account in a very public way if it is making poor decisions. Remove that appeal right and the ability to provide that check and balance on the EPA is lost. Over time the quality of the decisions that are made will be whittled away; we have seen that time and again whenever appeal rights have been removed. That is the biggest threat we have with the proposals in this legislation. Any analysis will show that an opportunity to make a comment before a decision is made is not equal to an opportunity for an appeal right or the review of a decision once it has been made. Members need to be very clear and under no disillusion about what we are doing here. This is a significant diminution of the right of members of the public to participate in a real way in the EPA approvals process; an approvals process that has been highly regarded around the world because of its community participation and

because of the appeal rights that it provides to review decisions that are made at every step of the process. The amendments to the legislation proposed in this bill will remove those protections that are currently in place. I think we would be making a very serious mistake to do this and that it will be to the detriment of the environment in the long term and to community participation.

Another aspect that I believe we need to take close consideration of and have regard to is the false assertion that has been made that by making these amendments to the legislation we will speed up the approvals process. It has been raised time and again that this is likely to result in a recourse to judicial review of decisions that have been made, as the opportunity to undertake those reviews through the legislation will be lost because the appeal rights are being removed; therefore, members of the community will resort to a judicial review of those decisions. Anyone who has gone through any process in a court knows that a judicial review is not something that happens very quickly. Therefore, in an effort to save what could be two weeks to maybe three months through the processes that we have currently in place, we could be delaying approvals on projects for years while they sit in the courts awaiting a judicial decision on an application for review of some aspect of a decision that has been made. I do not think proponents are going to thank us for doing that. In fact, in a number of the submissions that have been received, proponents and industries shared the concern that by removing these appeal rights they would be at greater risk of having to go before the courts to deal with appeals because they were not happy with EPA decisions. I do not think that the government has given enough regard to this factor. In fact, I know that the likely ramifications of these amendments have been raised even by the EPA. I ask the minister to perhaps comment on the concern that there is likely to be an increase in the number of applications to the courts for a judicial review as a result of the removal of appeal rights, and how that will advance the government's objective of reducing the approvals process through the EP act.

Hon DONNA FARAGHER: That was quite a broad discussion.

Hon Norman Moore: It was like a second reading speech!

Hon DONNA FARAGHER: That is what I thought it was actually!

There is nothing to suggest the likelihood of a very large increase in judicial reviews. Obviously, a judicial review would be very much dependent on an error of the EPA in applying the law. But in terms of issues more generally with respect to time lines and the fact that Hon Adele Farina believes that it will not change anything, in a general sense I say that members should recognise that the appeals process—whether members agree with me or not, it is a fact—is incredibly resource intensive. When we look at the average time taken to resolve, for example, a "not assessed" determination, whereby the Environmental Protection Authority has determined that a project not be assessed, we are looking at around 125 days to resolve an appeal. In that situation, if the EPA has determined that it should not be assessed but it can be dealt with under a part V—through a clearing permit, for example—there is then another comprehensive appeal point at the clearing permit stage, and that time can be further added on because, inevitably, it will be appealed at that point, and that happens.

Hon Adele Farina: They are two different appeals.

Hon DONNA FARAGHER: For the same proposal!

Hon Adele Farina: But they are two different appeals.

Hon DONNA FARAGHER: But the same issues will be raised.

Hon Adele Farina: Not necessarily.

Hon DONNA FARAGHER: A comprehensive assessment needs to be undertaken by the Department of Environment and Conservation with respect to part V and clearing permits, and that is subject to appeal. It is a duplicative appeal point, and it is incredibly resource intensive to have a situation of an appeal on a not assessed determination, which then goes through the clearing permit process. I can assure the member that it does not take one or two weeks, as the member suggested.

Hon ROBIN CHAPPLE: I found what the minister just said really interesting, because if we are dealing with section 100(1)(f), I understand the issues around it.

Hon Adele Farina: I was referring to the whole of clause 5.

Hon ROBIN CHAPPLE: I will just home in on the environmental impact assessment review of 2008, which discussed the whole issue around appeals. It was identified quite clearly that the risk of removing this appeal right—we are dealing with section 100(1)(f)—may be that objectors would need, and most probably would seek, to use judicial review, which would have deleterious effects on the whole approvals process, and would result in huge implications for costs and delays. The EIA 2008 report identified that to be a problem. Having made that point, can the minister or her advisers assure us that the removal of section 100(1)(f), which would negate the value of strategic assessments, will not open up a brand-new can of worms?

Hon Donna Faragher: Sorry; I did not quite hear that last bit.

Hon ROBIN CHAPPLE: Would it open up a brand-new can of worms?

The DEPUTY CHAIRMAN (Hon Max Trenorden): Members, we have a procedure that must be adhered to.

Hon Donna Faragher: Sorry; I could not hear.

The DEPUTY CHAIRMAN: I am not arguing with you about that, it is just that we need to adhere to procedure. If you are asking a question, Hon Robin Chapple, you must be on your feet; if you are answering, minister, you must stand. Has the minister now heard the question?

Hon DONNA FARAGHER: No, I am sorry; I still have not.

The DEPUTY CHAIRMAN: Hon Robin Chapple, you need to repeat your question.

Hon ROBIN CHAPPLE: My last words were, "Would this not open up a brand-new can of worms?"

Hon Adele Farina: You need to go a bit further back than that.

Hon ROBIN CHAPPLE: I will say it again. The EIA review of 2008 discussed the more effective use of strategic assessment, and that the risk of removing this appeal right was that objectors would need, or possibly seek, to use judicial review of the EPA's decision, which would have implications in terms of delays in projects and the costs. Having taken that point on board in relation to section 100(1)(f), does the minister still consider that it is of value to remove that which was a simple appeal right, and then, as the EIA review of 2008 identified, open up a brand-new can of worms?

Hon DONNA FARAGHER: I will be quick. I do still see the value of removing the appeal point with respect to derived proposals, as I have outlined throughout this entire debate.

Hon ROBIN CHAPPLE: If I went to my constituents who have concerns about this issue and said, "From here on in seek judicial review instead of going through an EPA process", where will that leave the projects covered by this?

Hon DONNA FARAGHER: The member can advise his constituents what he wishes, but I would hope that he would also advise his constituents that we still have an appeal point with respect to strategic proposals. With respect to derived proposals—I do not intend to go through it all over again—they must not only be contemplated, but part of the assessment of a strategic proposal. We are not removing the appeal point with respect to strategic proposals, and we are not removing the appeal point on the report and recommendations of the Environmental Protection Authority.

Hon ROBIN CHAPPLE: Would the minister be surprised to know that the industry working group also went on to identify that this could be a potential failure of the very matters we have been addressing, which were drafted originally in annexure attachment 1: improving time frames, project management and tracking applications? Word for word, everything in this bill comes from that document.

Hon DONNA FARAGHER: It does not.

Hon Robin Chapple: Would the minister like to see the document?

The DEPUTY CHAIRMAN: Does the minister have a point of order?

Hon DONNA FARAGHER: There was a suggestion by Hon Robin Chapple that this entire bill is framed on the industry working group. I assure the member—I am sure I have done this on more than one occasion—that this bill was prepared by the government with advice from the chairman of the EPA and the director general of the Department of Environment and Conservation, who sit, as I have said before, on the director general's task force on this matter. Matters surrounding the industry working group, quite frankly, are not relevant to this clause.

Hon Robin Chapple: That was drafted in 2008.

The DEPUTY CHAIRMAN: Hon Adele Farina has the call.

Hon Norman Moore: Come on—this is ridiculous!

Hon ADELE FARINA: No, it is not—we are entitled to review the bill.

Hon Norman Moore interjected.

Hon ADELE FARINA: I will take longer if the Leader of the House keeps this up—I can go for weeks. I have a 260-page report; I can go for weeks.

The DEPUTY CHAIRMAN: Hon Adele Farina, I have given you the call.

Hon ADELE FARINA: I move recommendation 11 standing in the committee's name at 2/5 —

> Page 3, lines 13 to 18 — To delete the lines.

In effect, clause 5(1) deletes the right of appeal on a decision that a proposal be dealt with under part V, division 2, under the clearance or permit provisions. The committee heard evidence from the conservation groups that there is a qualitative difference in the two assessment processes, with the EPA process being more thorough and rigorous. I draw members' attention to page 93, paragraph 4.205 of the committee report, where Dr Wajon, who was a witness before the committee, expresses a view that the part V clearing permit system is not as transparent as the part IV process. Dr Wajon stated —

> *Applications for clearing permits are typically only advertised for 1 - 2 weeks, which provides very little time for the public to comment. Information provided with clearing permit applications are typically inadequate, and difficult to access. Even the information supposedly available via the internet on the Department of Environment and Conservation's website is not accessible as the software required is not universally available (or there appear to be other problems) - as I can attest from numerous attempts to comment on clearing permit applications. Significant proposals that involve clearing (indeed any clearing proposal) need to go through a much more transparent process with adequate time for public review.*

The Conservation Council of Western Australia expressed the view that —

> *... the level of rigour associated with the assessment clearing applications under part 5 is nowhere near the level of rigour that would be applied by the EPA. Given that is the case, it is much more difficult for members of the community and third parties to apply the same sort of analysis in respect to that decision making ...*

I quote Dr Dunlop's evidence —

> *... the information that we get, using the part 5 process, is often simply a rough aerial photograph and a diagram and something telling us what the generic nature of the vegetation type is. Something that was handled through the environmental assessment would have much more detail about the quality, value and function of the vegetation than we will get under part 5. As a mechanism, it is vastly inferior for us in coming to a conclusion about a clearing proposal.*

I ask the minister to comment on the views clearly expressed by witnesses that indicate there is a qualitative difference between the two appeal processes; that by deleting the appeal process under clause 5—which is the appeal on decision not to assess and to refer it under part V and the appeal that then exists under part V, division 2, is completely different—the level of information that is available to the community is nowhere near comparable either. It significantly restricts the community's ability to have an informed comment. I would be interested in the minister's comments in relation to those observations.

Hon DONNA FARAGHER: Without having it in front of me—I will correct the record if this is not the case—I understand that the Auditor General, in his 2007 report, actually said it was a robust assessment process with respect to clearing matters.

Hon Adele Farina: Was he comparing them, though, to the EPA approval process?

Hon DONNA FARAGHER: When we deal with matters surrounding clearing, advertisements, public information and the like, there is information on the department's website, it is advertised in the paper and people can ring up the department. Hon Adele Farina believes she is raising serious concerns. I draw her attention to the fact that the previous government wanted to remove all these appeal points with the exception of the conditions of the permit. The previous government wanted to go further than what we seek to achieve. I am not quite sure why there is a change.

Hon ADELE FARINA: If the minister does not want to address the issues, I can continue all night.

I now refer the minister to page 213 of the committee report, in particular paragraph 7.10, which states —

> The Office of the Appeal Convenor confirmed that the grounds on which the rights of appeal conferred by the EP Act in respect of clearing permit applications could be exercise are narrower than those on which the right of appeal can be exercised under section 100(1)(a) …

The Chairman asked Mr Sutton —

> *... once* [a proposal] *hits the clearing permit system, is it the case that the basis of the appeal is narrowed?*
>
> ***Mr Sutton**: Correct; it is really regarding the conditions of the permit. There can be a refusal of the permit, if it is refused; the conditions of the permit; and then, as you may be aware, when DEC is doing its assessment, it would be looking at the principles that are under the Environmental Protection Act. So same issue – more narrow assessment ...*

Here we have the Appeals Convenor, Mr Sutton, again confirming that the appeal right under part V is a more narrow appeal right than what we are seeking to delete under clause 4 at section 100(1)(a). I again ask the minister to comment on the fact that the reality is that although the minister says they are duplicate appeals, we have people with significant experience in the handling of appeals who are confirming that it is in fact a much narrower appeal under the clearing permit provisions.

Hon DONNA FARAGHER: Firstly, if a project is referred to the EPA, it has obviously made an assessment that the project does not need to be assessed because it can be dealt with under the clearing permit provision. There is already a point at which the EPA has looked at the proposal and has determined that it can be dealt with quite appropriately under part V of the act. I also make the point that as part of the Environmental Protection Act, in its decision as to whether to grant a clearing permit under part V the CEO must take into account any significant environmental impacts that are not related to clearing consistent with the overall object of the act.

Hon ADELE FARINA: It seems that the minister is of the view that the EPA has never made a mistake and never will make a mistake, which is contrary to a lot of evidence. I want to draw members' attention to the findings of the committee in relation to its review of these matters.

I refer to the committee's finding 40 at page 217 of the report, which states —

> **The Committee finds that the rights of appeal conferred by sections 102(1) … (3) and (4) … of the EP Act in respect of the CEO's decision to grant a clearing permit, or the conditions imposed on grant of a clearing permit, is a narrower right of appeal than that conferred by section 100(1)(a) of the EP Act.**

Finding 41 at page 218 states —

> **The Committee finds that if enacted, clause 5(1)(a) of the Bill will delete the current right to appeal against the EPA decision not to assess a proposal:**
>
> - **on grounds unrelated to the issue of a permit to clear native vegetation; and**
> - **on the ground that the proposal should be subject to Part IV assessment, rather than being dealt with under Part V, Division 2,**
>
> **in the event the EPA makes a recommendation that a proposal be dealt with under Part V, Division 2, and that there is no equivalent appeal process available under Part V, Division 2.**

Also, the committee's finding 42 states —

> **The Committee finds that in the event clause 5(1)(a) of the Bill is enacted, the decision of the EPA not to assess a proposal, when there is a recorded recommendation that the proposal be dealt with under Part V, Division 2, of the EP Act, will not be subject to appropriate review.**

I draw to members' attention that they were the findings of the Standing Committee on Uniform Legislation and Statutes Review. The committee strongly recommends to the house that this appeal right not be deleted.

Hon DONNA FARAGHER: My response to that is I also refer members to the government response to the committee's finding in relation to that recommendation. However, I stand to move an amendment standing in my name at clause 5.

The DEPUTY CHAIRMAN (Hon Michael Mischin): We have to deal with the current proposed amendment first.

Hon DONNA FARAGHER: I am not quite sure that we are dealing with an amendment.

Hon Adele Farina: I have moved an amendment.

Hon DONNA FARAGHER: My apologies.

The DEPUTY CHAIRMAN: As I understand it, the question before the committee is at 2/5.

Hon Adele Farina: That is correct.

Amendment put and a division taken with the following result —

Ayes (12)

Hon Matt Benson-Lidholm	Hon Kate Doust	Hon Ljiljanna Ravlich	Hon Giz Watson
Hon Helen Bullock	Hon Adele Farina	Hon Sally Talbot	Hon Alison Xamon
Hon Robin Chapple	Hon Lynn MacLaren	Hon Ken Travers	Hon Ed Dermer *(Teller)*

Noes (17)

Hon Liz Behjat	Hon Brian Ellis	Hon Alyssa Hayden	Hon Max Trenorden
Hon Jim Chown	Hon Donna Faragher	Hon Col Holt	Hon Ken Baston *(Teller)*
Hon Peter Collier	Hon Philip Gardiner	Hon Robyn McSweeney	
Hon Mia Davies	Hon Nick Goiran	Hon Michael Mischin	
Hon Wendy Duncan	Hon Nigel Hallett	Hon Norman Moore	

Pairs

Hon Linda Savage	Hon Helen Morton
Hon Jon Ford	Hon Phil Edman
Hon Sue Ellery	Hon Simon O'Brien

Amendment thus negatived.

Hon ADELE FARINA: I move —

Page 3, line 19 — To delete "(b) and"

The effect of this amendment is to delete the deletion of the right of appeal on the level of assessment of a proposal; that is, it seeks to retain the appeal right on the level of assessment of a proposal. The government is arguing that the appeal right on the level of assessment of a proposal is an unnecessary appeal right because the matters that are dealt with at the appeal level can be dealt with at the point of the Environmental Protection Authority bulletin report and recommendations. However, this evening the Minister for Environment said in answer to a question asked by Hon Sally Talbot that the only matters that can be considered at the appeal right on the Environmental Protection Authority bulletin report and conditions are those matters that are raised in the EPA bulletin report and recommendations. If that is the case, the arguments we have heard to date that the issues about level of assessment can be addressed at the Environmental Protection Authority appeal right on the EPA bulletin report and recommendations have not been accurate. I would appreciate some clarification on that point. Is it possible to deal with issues of level of assessment at the point of appeal right on the EPA bulletin report and recommendations? It is my view that regardless of the minister's answer, even if it is theoretically possible, the reality is that at that point in the process—that is, after the proponent has undertaken months of detailed analysis and assessment reports and lodged them with the EPA for assessment—no-one will say "Oops, we got the level of assessment wrong. Go back and complete a higher level of assessment". The reality is that that will not happen. To suggest that the removal of the appeal right on the level of assessment will not impact on the current EPA approvals process is delusional, quite frankly. The reality is that it will have a serious impact. The appeal right on the level of assessment is an appeal right that is frequently used by members of the community who are interested in environmental matters in ensuring that a higher level of assessment is imposed on a project and to ensure that issues of concern are included in the scoping of the assessment to be undertaken on that particular proposal. The opportunity for the community to have some involvement in those decisions will be lost by the removal of the appeal right. To suggest that an opportunity to comment for seven days after the lodgement of the initial referral papers is the same as an opportunity to appeal on a level of assessment is wrong. I will not quote all the comments contained in the committee report that support that argument. When we heard evidence from the Appeals Convener, he raised the fact that a lot of the issues picked up on appeal are valid issues that, had they been adequately assessed earlier by the EPA, would have been included as part of the assessment process and dealt with as part of the assessment process and in the EPA bulletin report and recommendations and should not have seen the light of day at the point in the process of an appeal to the Appeals Convener. The evidence from the Appeals Convener was that the appeals process plays a very important role in the checks and balances that are required in the system and that the removal of early appeal rights may result in a greater number of appeals at a much later point in the process, where it is much more difficult and costly to address those concerns and issues. It is for those reasons that the committee strongly recommends that this appeal right be retained at the level of assessment.

Hon DONNA FARAGHER: At the moment there is no opportunity for the EPA to receive input from the community at the beginning of the process. I would have thought that if a member of the community wanted to raise an issue at the early stage of the process—rather than at what one might argue is the more adversarial aspect of the process, which is the appeal point—that is a good thing. Therefore, as I have indicated many times, there will be a seven-day public comment period at the beginning of the process. I would have thought that Hon Adele Farina would have thought that that was a good thing, because we are giving the community an

opportunity to identify issues of concern at the beginning of the process rather than leaving it to the end of the process. I am not quite sure whether I followed the full logic of Hon Adele Farina, as not all proposals attract appeals on the level of assessment. It is not automatic that there is always an appeal on the level of assessment. It is a function of the Environmental Protection Authority to properly scope the environmentally significant issues of a proposal. As I have said, the opportunity for the community at the beginning of the process that we will now be providing has not been the case in the past. It is a good thing. May I also reflect on the fact that we are moving the levels of assessment from five to two, which are both public and non-public. Therefore, one could argue that the need for the appeal point is diminished. The level of assessment is moving from five to two. That has been well canvassed through community consultation, through the EPA and through the environmental impact assessment process undertaken by the chairman. As I say, the new administrative procedures will allow a period of public comment before the setting of a level of assessment, which I would argue is a good thing.

Hon SALLY TALBOT: I absolutely fail to see how the minister can sustain an argument that reducing the number of levels of appeal from five to two makes redundant the appeal provision. It would seem to me to be absolutely the opposite of that. Nevertheless, we are not getting any answers here. I ask the minister to expand on her comments about the duplicative aspect of some of these appeal points. I recall in the committee's report a couple of examples were used in which there might be two points of appeal in the same process and the appeals are essentially the same. I think one was in relation to South Street station and the other one is somewhere down south. I can understand what the frustrations would be in those cases. However, can I first ask the minister: is there any mechanism within the existing act for dealing with what is perceived to be vexatious appeals?

Hon DONNA FARAGHER: No.

Hon SALLY TALBOT: In that case why does the minister not move an amendment to introduce provisions for vexatious appeals? The minister is not interested.

Several members interjected.

The DEPUTY CHAIRMAN: Order, members!

Hon SALLY TALBOT: If the minister is not interested in responding to that suggestion, let me try something else. Let us not talk about introducing provisions for vexatious appeals, but with the new administrative procedures that are being introduced, would it not be possible for the EPA to make part of its recommendation to the chair a considered opinion about the validity of the points that are being made?

Hon DONNA FARAGHER: I am happy for Hon Sally Talbot to elaborate because I am not quite sure where she is heading with this. Is she referring to a circumstance where, during the appeal period, the Appeals Convenor receives advice from the EPA on the particular appeal point, for example, that either a third-party appellant or a proponent has put forward? I am not following the logic, so perhaps the member could expand it.

Hon SALLY TALBOT: Where I am leading is the possibility that the new administrative procedures could effectively operate to weed out or remove what might be considered to be vexatious appeals. I was going to say that I would use concrete examples given to the committee, but we do not have to do that. The minister herself referred to a circumstance in which there might be two appeals possible during the process and the appeals are identical; in other words, an appeal that has already been considered and ruled upon is then simply resubmitted. I put it to the minister that it would not be beyond the wit of the people who are able to draft recommendations for the minister to consider weeding out those pointless appeals. I do not want to keep calling them vexatious, because "vexatious" carries the connotation of somehow being mischievous, whereas I suspect that much more to the point in this context would be people who simply feel so strongly about it that they will simply make the point until there is no airtime left for it to be made, so I hesitate to call them vexatious. But I refer to appeals that merely reiterate points that have been considered already. Surely they are going to be weeded out by the minister's new administrative procedures.

Hon DONNA FARAGHER: With respect to when a proposal is being considered, I think we need to be clear on who has responsibility for determining appeals. It is the Minister for Environment, not the EPA. The determination of appeals and the merit or otherwise of an appeal is determined by the minister following advice through the Appeals Convenor, who obviously provides advice to me after seeking advice from whichever party—the EPA or another agency. So the appeal is to the minister. At the end of the day, it is based on merit and cases that are put forward. It is not the EPA that makes determinations on appeals; I do.

Hon SALLY TALBOT: The minister cannot have it both ways. She cannot argue on the one hand that this is a very resource-intensive process and that she is trying to conserve some of those resources and then say at the same time that it is not the EPA that makes the decision. The minister cannot sustain both ends of the argument. What I am asking the minister is: is it beyond our wit to contrive administrative procedures? Indeed, let us try the

administrative procedures that the minister has come up with to see whether they remove what she identifies as duplicative appeal points.

Hon DONNA FARAGHER: It is likely that it will be outside the scope of the EPA's power to draw up such administrative procedures. May I just again make the point that it is the minister who makes the decision with respect to appeals. The member talks about time lines. I have already indicated in response to a question from Hon Adele Farina examples of proposals not assessed by the EPA for which it can take on average 100 or more days, or 125 days, to deal with —

Hon Adele Farina: On average?

Hon DONNA FARAGHER: I am actually answering a question from Hon Sally Talbot.

Then there is another duplicative appeal point as such that the member then relates to a clearing point, so it would add on time. One appeal point and another appeal point for the same proposal will obviously increase time.

Hon SALLY TALBOT: The minister was very emphatic in her response to my question whether the existing act could facilitate the identification and prompt dealing with appeals that were perceived to be vexatious. I draw the minister's attention to paragraph 7.9 of the forty-eighth report of the Standing Committee on Uniform Legislation and Statutes Review. Page 215 refers to "Regulation Review: Clearing of Native Vegetation" and reads —

> The CNV Report, however, noted that in the event of a groundless or vexatious appeal under the clearing permit —

The DEPUTY CHAIRMAN (Hon Michael Mischin): Before we proceed any further down this track, I thought we were dealing with a proposal to delete certain words. Could Hon Sally Talbot explain the relevance of the committee report regarding vexatious appeals to the amendment and the question before the chamber?

Hon SALLY TALBOT: Do you wish me to explain that to you, Mr Deputy Chairman?

The DEPUTY CHAIRMAN: Yes, because I am having difficulty trying to work it out. As I understand it, the proposal is that the government remove a right of appeal on the level of assessment. That was a policy of the bill and was stated in the second reading speech. That aspect has already been voted on by the house and stands. The committee recommendation that informs this amendment is quite the contrary—that is, to retain that sort of appeal. There is an argument for saying that it is beyond the scope of an appropriate amendment if it is reversing the policy of the bill. Leaving that aside, what has the vexatious appeal point in the committee's report got to do with deleting these particular words and retaining a right of appeal?

Hon SALLY TALBOT: With respect, Mr Deputy Chairman, if I can answer your question by referring to the second reading of the bill and to numerous points in the many hours that we spent debating clauses 1 to 4 in committee where the minister has referred on numerous occasions to duplicative points of appeal. When the minister was asked to expand on exactly what she meant, her answer was that a duplicative point of appeal is a second point at which an appeal identical in substance, if not in concrete words used, was simply resubmitted. I have already qualified my use of the term "vexatious", but in trying to do that I sought to find whether these points of appeal are genuinely duplicative or whether, while there might be occasions on which they appear to be duplicative, they are in fact in substance, or, at least potentially, qualitatively different from each other. I am drawing on some of the evidence that was given to the Standing Committee on Uniform Legislation and Statutes Review inquiry. I cannot see that there can be anything out of order in me taking that stance.

The DEPUTY CHAIRMAN: Sorry, if —

Hon SALLY TALBOT: If I may continue. I introduced this section to the debate by asking the minister whether the existing amendment contained any provisions for dealing with vexatious appeals. The minister said no. I am asking the minister to reconfirm what she said and to do that in the context of further evidence that was presented to the committee on precisely the clause that we are dealing with now, clause 100 of the EP act, which is being amended by clause 5 of the bill under consideration.

The DEPUTY CHAIRMAN: I take a view that it is not relevant. In fact, Hon Sally Talbot has just spoken of vexatious appeals and is presenting evidence regarding that, and she has just told me that she is trying to draw a distinction between appeals that may be different in wording but the same in substance or different in substance that still have merit. I am sorry, but I do not follow it. In any case, it does not seem to have anything to do with the question before the chamber, which is whether those particular words be removed and a right of appeal be retained. My view is that it is not relevant to a question before the chamber.

Hon KEN TRAVERS: With all due respect, Mr Deputy Chairman of Committees, it is an interesting proposition that has been put to the chamber that when we agree to the policy of the bill, the policy of the bill extends down to each of the individual clauses and whether we support those individual clauses. Those are matters more appropriately contained in a debate about the detail, which is what we are now in—the committee considering the detail. I would have thought during the committee stage of a bill it is appropriate for members to put forward arguments about whether a specific clause should remain. If a member has sought to delete that clause, it is quite appropriate for that member to put before the chamber the reasons that member thinks that clause should be deleted. I would find it an interesting and unusual proposition if it were to be ruled that a member cannot put those arguments before the chamber. As I think members have heard many times in this place, we may not like what a member has to say but he or she has a right to say it and has an obligation to say it so long as the member is talking about whether a clause should or should not be included in the bill that is relevant to the debate before the chamber. I urge Mr Deputy Chairman to adopt that process, as has been the time-honoured tradition of this place.

The DEPUTY CHAIRMAN: Thank you very much for that, but as I see it we have had the second reading debate about the policy of the bill. One of the aspects of the policy of the bill was to reduce the number of levels of appeal. A further policy in the bill was to reduce them from five to two. I do not need to go into it in that detail. What we are debating now is a committee recommendation that one of the rights of appeal be retained, and I am prepared to accept debate on that. That is a question before the chamber. What I fail to understand is what evidence before the committee regarding so-called vexatious appeals has to do with retaining a right of appeal. The minister is being cross-examined on evidence given before a committee. I still do not see the relevance of vexatious grounds of appeal, and whether the EPA can deal with those, to whether a ground of appeal or right of appeal ought to be retained.

Hon ADELE FARINA: Perhaps I can help to explain how this has come about. The minister has argued that the right of appeal on level of assessment is unnecessary and that the issue can be accommodated by the community having an opportunity to comment, through administrative procedures, within seven days of the proposal being referred. Frequently, grounds of appeal are repeated at various stages at which appeals are provided through the EPA process, so we are getting a repeat of the same appeal grounds at various stages. It is the minister's argument that if we have to deal with that, it is taking up a huge amount of time when we are actually dealing with the same appeal grounds. Hon Sally Talbot was making the argument that if there is a concern that in some cases an appellant is using the same appeal grounds during various different appeal processes, we simply should not deal with those appeals that are a repeat of an appeal ground that has been previously considered and ruled upon, which is open to the minister to do. Equally, if that appeal ground has already been considered and a ruling made on it, it will not consume a huge amount of resources to pull that out and repeat it when dealing with that appeal ground, which goes back to the fallacy in the argument that these appeal grounds, because they might be repeated at one or two different appeal stages through the process, are causing a great drag on the approval process or are vexatious. That is simply nonsense. I think that was the point Hon Sally Talbot was making. That point is directly relevant to the issue, because the government introduced it as the justification for actually having this clause in the bill. If you have an issue, Mr Deputy Chairman, you need to direct your concern to the government, because it actually raised that.

The DEPUTY CHAIRMAN: The query I have has nothing to do with that, as opposed to the relevance of the argument to the question before the house.

Hon Adele Farina: Well, I disagree.

The DEPUTY CHAIRMAN: If I may finish, I think it is stretching the bounds of relevance. However, I will allow it to proceed, for the moment anyway. But I do remind members that not only does the debate have to descend into whether the clauses proposed and the amendments proposed improve the policy of the bill as already decided by the house, but also it must be relevant to the particular question before the house.

Hon KEN TRAVERS: Mr Deputy Chairman, I want to make one final comment, and I think it needs to be made before we move on. I do not disagree with your last point that the debate needs to be relevant to the matters before the house, but I think we need to be very careful about how we try to interpret what we mean by the policy of the bill. I say that because the long title of the bill is, "An Act to amend the Environmental Protection Act 1986 and for related purposes". That is the policy of the bill. How many appeal rights we may wish to delete is in the detail of the bill, and that is what we are now going through. I think all members have the right, as we go through each of the clauses that seek to remove an appeal right, to debate whether it is or is not appropriate for that appeal right to be deleted and to put to the house the reasons why they think that appeal right should or should not be deleted. Those reasons may include whether we already have other appeal mechanisms, or whether the minister has argued that it is vexatious. There may be any number of other reasons.

The DEPUTY CHAIRMAN: On that note, Hon Sally Talbot.

Hon SALLY TALBOT: Thank you, Mr Deputy Chair. I must say it is an unusual circumstance to find oneself debating with the person who is in the chair, but I appreciate the fact that you —

The DEPUTY CHAIRMAN: Well, life is a learning experience. Please proceed, and please maintain some relevance.

Hon SALLY TALBOT: Yes, it certainly is, Mr Deputy Chair, and in some cases much steeper than others, I must say.

The DEPUTY CHAIRMAN: Do you have a complaint that you would like me to take to the President?

Hon SALLY TALBOT: I would like to be allowed to proceed with my questioning of the minister.

Hon Norman Moore: What was your comment about the chair?

The DEPUTY CHAIRMAN: I am sorry. What was your comment? You were making an observation about my judgement, I think, or my ruling.

Hon SALLY TALBOT: No. I think you have made exactly the right judgement, Mr Deputy Chair, and I concur with it entirely.

The DEPUTY CHAIRMAN: Please proceed.

Hon SALLY TALBOT: The comments that I want to make are directly relevant to the bill; and just as I will keep my comments relevant to the clauses under discussion, I hope the minister will answer questions when they are asked of her.

Hon Norman Moore: Are you intending to change your strategy?

Hon SALLY TALBOT: Change what strategy?

Several members interjected.

The DEPUTY CHAIRMAN: Order, members! Please proceed.

Point of Order

Hon ED DERMER: Mr Deputy Chairman, it strikes me that there is at least one member of the chamber —

Several members interjected.

The DEPUTY CHAIRMAN: Order, please! We have a point of order.

Hon ED DERMER: It seems to me that the Leader of the House takes the view that he is under no obligation to stand when he wishes to contribute to the debate. I would like you to remind the Leader of the House of his obligation to stand if he wishes to make a contribution to the debate.

The DEPUTY CHAIRMAN: I think the point has been made.

Hon Norman Moore: Have you ever interjected yourself?

Hon ED DERMER: The honourable Leader of the House may wish to rise if he wishes to make a contribution to the debate, like everybody else.

Several members interjected.

The DEPUTY CHAIRMAN: Order, please! Has everyone finished? May I have a moment's silence, please, otherwise I will leave the chair. Hon Sally Talbot has the call.

Committee Resumed

Hon SALLY TALBOT: Thank you, Mr Deputy Chair. I want to return to the question that I was framing for the minister. It was in connection with the minister's very emphatic response to my question about whether, under the existing act, there are provisions to deal with what might be perceived as vexatious or repetitious appeals. The minister was very emphatic in her denial that that was the case. I was in the process of pointing out to the minister that this was not the evidence that was heard by the Standing Committee on Uniform Legislation and Statutes Review. I would like the minister to respond to the quote that was taken from the clearing of native vegetation report, which is found at paragraph 7.9 at page 215 of the committee report —

> The CNV Report, however, noted that in the event of a groundless or vexatious appeal under the clearing permit appeal provisions:
>
> *the opportunity for appeals to be dismissed quickly if considered groundless or vexatious.*

That is a direct quote from the regulatory review. Is that wrong advice?

Hon DONNA FARAGHER: I think Hon Sally Talbot is getting it a little wrong here.

Hon Sally Talbot: Then help me understand it, minister.

Hon DONNA FARAGHER: I am happy to help the member understand it. I am not sure that she will get it, though. The point is that the member asked a question with respect to whether the act contains any provisions to deal with the matters surrounding vexatious appeals, and I said no. That remains the case. However, obviously—this is in line with the comment here—appeals are dealt with on their merit. If as part of the appeals process, through advice that is provided to the Appeals Convenor and the like, a matter has been dealt with previously, or whatever it may be, it may well be dealt with more quickly. But that is through a process. It is not through the act itself, which is the question that the member asked. I put it to the member again that appeals are determined on their merit, and they are determined by the minister.

Hon SALLY TALBOT: Well, that being the case, minister, I refer the minister back to her new administrative arrangements. Surely, during that seven-day period, it will be possible for the officers of the EPA to consider the material that is presented to them, and to include in their report to the EPA chair their considered opinion that a certain argument is repetitive or duplicative; and that would, therefore, be taken into account in the chair's recommendations. We put it to the minister right at the beginning of this debate that we were broadly supportive of the new administrative arrangements. We said also that that period of time might be quite short. I think one figure that was mentioned earlier tonight was eight or 10 years. I think I was the one who suggested that it might be possible after six months to report back to the house about a decreasing number of appeals because of the quality and timeliness of information being exchanged between appellants and proponents and the EPA and the ministerial decision-making process. I would like the minister to comment on why her new administrative arrangements will not effectively weed out many of what she is calling duplicative appeals.

Hon DONNA FARAGHER: For the benefit of the member, there are two separate processes. There is the EPA process. There is also the appeals process, in which I determine the appeals. The member is referring to the administrative procedure. That is the EPA process. The process by which appeals are determined is through the process in which the minister determines the appeal. It is as simple as that. It is a separate process.

Hon ADELE FARINA: The minister has stated that we do not need the appeal process on the level of assessment, because she is offering, through administrative arrangements, an opportunity for the community to comment, in the seven-day period before a decision is made, on the issues that are of concern to the community. The minister seems to think that it is an either/or situation; that is, if we have one, we do not need the other. The reality is that those two mechanisms offer completely different processes and outcomes. As I pointed out, the opportunity to comment up-front is at a time when very little information is made available to the community and the seven-day comment period is not long enough to provide any sort of substantial notification and considered response. Although it is acknowledged that the appeal right is dealt with by the minister, and not by the EPA, the reality is that it provides a check and balance on the EPA decision as to whether to assess or not to assess. I think that is very important, and that opportunity cannot be substituted by an opportunity to comment up-front because the comment would not be on a decision that has been made.

If the minister was so confident that the opportunity to comment would adequately compensate for the removal of the appeal on the level of assessment, the minister would introduce the administrative arrangements first and then come to this house and say, "Since we have introduced these administrative arrangements there has been a substantial decrease in the number of appeals on the level of assessment, clearly indicating that that gate is no longer required because we are now more effectively dealing with issues in this pre-decision comment period, and on that basis we will remove the right of appeal on the level of assessment." But the minister has not put provisions in place to do that. The minister has not done that because she cannot have any confidence that the comment period at the beginning of the process will adequately compensate for the removal of the right of appeal at the level of assessment stage. That is the concern that members on this side of the chamber have and there is nothing that the minister has said to date that provides members on this side with any confidence that the administrative process can adequately replace an appeal right which provides an opportunity to review a decision that has been made by a separate body, being the minister, and which provides a check and balance to ensure that the EPA will make decisions appropriately. I do not believe the minister has said anything different to dissuade any member on this side from the concerns that we have expressed to date. It is for those reasons that this appeal right should not be deleted at this time. If at some time down the track, after the introduction of the administrative procedures, the minister can illustrate that there has been a decline in the use of the appeal right because of those administrative procedures, members on this side of the house would be more than happy to consider the deletion of that appeal right. But until such time as the minister is able to substantiate that it is not needed, I think the Parliament would be making a considerable error to delete that appeal right.

Hon DONNA FARAGHER: I remind the member that when it comes to the level of assessment, if the EPA determines that it is to be "not assessed"—with the exception of a determination that it is "not assessed but can be dealt with under the clearing permit provisions"—that appeal point remains. When it comes to the issue of the level of assessment, that will be removed; but we are moving from five to two, if I can put it in that way.

Hon Adele Farina: But that doesn't make any difference.

Hon DONNA FARAGHER: I have listened to the member silently, so she can listen to me now.

I want to clarify the term "not assessed" and appeal points in that regard. Generally for "not assessed"—disregarding issues surrounding clearing permits because then there are comprehensive appeal rights and I know that we are going to agree to disagree on that—there is still an appeal point. With respect to issues surrounding the level of assessment, I will tell the member the average time taken now to resolve level of assessment appeals. In 2005 the average time taken was 81 days; in 2006, 170 days; in 2007, 149 days; in 2008, 121 days; in 2009, 106 days. These are days taken to resolve those appeals. I can tell the member that in all those years between 2005 and 2009 the number of appeals that led from a non-public assessment—if I can put it in that way—to a public level of assessment was two.

Hon Adele Farina: And what about increasing the level of assessment? But then "public" is a level of assessment?

Hon DONNA FARAGHER: What I am saying to the member —

Hon Adele Farina: Minister, why not provide full information to the chamber?

Hon Norman Moore interjected.

Hon Adele Farina interjected.

Hon DONNA FARAGHER: I am trying to inform the member of issues in terms of time lines and those sorts of things. A significant amount of time is taken to deal with matters surrounding assessment appeals. In terms of increasing from less public to more public, the number between 2005 and 2009 was two. Therefore, in all of that time there have been only two occasions when we have seen an increase in that regard. I just put that to the member. Again, appeal rights with respect to the report and recommendations to the EPA's report when it has been assessed remain, and in cases when the EPA determines that it is "not assessed" and it is not dealing with issues surrounding a clearing permit, there is still an appeal point. Even when it is dealing with it inasmuch as it is not assessed but can be dealt with as a clearing permit, there are comprehensive appeal rights within the clearing permit, which is duplicative.

Hon ADELE FARINA: It is not duplicative; it is different. For the information of members I refer to table 6 on page 131 of the report, which deals with appeals in terms of the bill. In 2005 the number of appeals on the level of assessment was 14, and the number of appeals resulting in a change of level allowing additional scope was five. In 2006 there were 18 appeals on the level of assessment and one resulted in a change. In 2007 there were 12 appeals on the level of assessment and four of those resulted in a change on the level of assessment. In 2008 there were seven appeals on the level of assessment and the number of appeals resulting in change was zero. In 2009 there were eight appeals on the level of assessment and the number resulting in a change in the level allowing additional scope was five. Those figures, therefore, are at odds with the figures that the minister has just indicated, and they show that a significant number of appeals that are lodged do result in some change. They are, therefore, having an impact.

Amendment put and negatived.

Hon ADELE FARINA: Dealing with committee recommendation 4/5, I move —

Page 3, line 19 — To delete "(c)"

Paragraph (c) of section 100(1) of the Environmental Protection Act deals with "the content of any instructions set out in a public record under section 48B(1)". Section 48B(1) deals with the authority to keep public records on schemes referred to it, and reads —

> (1) The Authority shall, subject to this section, keep a public record of each scheme referred to it under the relevant scheme Act and shall in that public record set out —
>
> (a) whether or not that scheme is to be assessed under this Division; and
>
> (b) if that scheme is to be assessed under this Division, any instructions issued by the Authority under section 48C(1)(a) concerning the scope and content of an environmental review of that scheme.

Section 100(1)(c) provides a right of appeal on the content of any instructions set out in a public record under that provision. That enables community members who have an interest—in some cases it may even be landowners, and, therefore, proponents who might have an interest—to actually appeal against instructions issued concerning the scope and content of an environmental review of that scheme.

Given that once an environmental review of a scheme is undertaken, individual proposals within that scheme do not need to be separately assessed, the assessment of schemes can have a great impact on the approval of developments down the track. I would have thought that the opportunity for the community to comment on the scope and content of an environmental review of a scheme takes on greater relevance when we look at the issue of derived proposals, and that after a scheme is approved, various individual proposals will not need to have environmental assessment because the scheme has been assessed. In those circumstances there should be an opportunity for the community to be able to appeal on the scope and content of an environmental review of an assessment.

This has been raised on a number of occasions, including around the greater Bunbury region scheme. Members are aware that there were a significant number of community concerns about that, and the community wanted to know that the greater Bunbury region scheme was being environmentally assessed at an adequate level. Also, the Margaret River district planning scheme has been subject to a lot of local controversy about what had been included in that scheme. That issue has been on foot for quite a number of years now and is still awaiting resolution. The community has a growing interest in the nature of schemes, particularly town planning schemes, and there has been a greater call by the community to be involved in the process that determines town planning schemes for their areas.

Removing the ability to comment on any instructions in relation to the scope and content of an environmental review of a scheme will impact on the community's ability to participate in that process and to have its concerns heard about the environmental aspects that will be impacted by the scheme. I would really appreciate the minister commenting on why the government is of the view that this appeal right needs to be deleted.

Hon DONNA FARAGHER: We are simply seeking to remove the appeal point about the content of the instructions; not the scope.

Hon Adele Farina: I am sorry, but can't you read?

Hon DONNA FARAGHER: Can I just finish? It is with respect to the content of the instructions; not with respect to the actual assessment. It is the issues that are looked at as part of the assessment. There is no appeal point if looking at, say, a proposal for a mining project with the Environmental Protection Authority when they are looking at part IV and it has been assessed; this point is not available. In actual fact, it is usually only used by proponents who are often trying to seek to remove elements that the Environmental Protection Authority should consider. The appeal point is on the content of the instructions, not the scope, and it is before the process of assessment actually starts. We are dealing only with the factors that would be considered and that need to be addressed.

Progress reported and leave granted to sit again, pursuant to temporary orders.