Extract from *Hansard*
[ASSEMBLY - Tuesday, 7 August 2001]
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Mrs Cheryl Edwardes; Ms Dianne Guise; Acting Speaker; Mr Bernie Masters; Mr Mark McGowan; Mr Mike Board; Mr Pendal; Mr Rob Johnson; Mr Pendal; Mr John Kobelke; Mr Rod Sweetman; Mr Hendy Cowan; Mr Ross Ainsworth; Mr Matt Birney; Mr Max Trenorden; Dr Janet Woollard; Mr Paul Omodei; Mr Colin Barnett; Deputy Speaker; Mr John Bradshaw; Ms Alannah MacTiernan; Speaker

PLANNING APPEALS AMENDMENT BILL 2001

Second Reading

Resumed from 28 June.

MRS EDWARDES (Kingsley) [3.07 pm]: This Bill proposes the abolition of ministerial appeals, and the restructure of the Town Planning Appeal Tribunal. It therefore also deals with the tribunal's constitution. The Bill will create two tiers of appeals: a level 1 appeal will be a simple matter, and a level 2 appeal will obviously deal with more complex issues. Ministerial involvement will remain in at least three ways. The minister will have a call-in power for areas of state and regional significance and the power to direct that a submission be referred to the tribunal. Further, everyone will have the right to access a minister at any time and place for any reason. The Bill also provides for third party submissions. These will not be a third party right of appeal as such; however, a third party with sufficient interest in a matter will be able to provide a submission to the tribunal and be heard. The Bill also deals with a matter outside the planning appeals process; that is, section 10 of the Town Planning and Development Act, which deals with enforcement provisions.

These changes are made under the banner of transparency and accountability. I will discuss issues such as why the Bill has been put forward, some of the concerns that have been raised about its structure and criteria, and what parts of the existing system are failing to meet those concerns. I may also raise some other areas of concern.

Firstly, I refer to the issue of consultation. In her public statements, the minister has been very strong on full community consultation and has said that communities should be more intensively involved in consultation,. However, it would appear that this opportunity has not been afforded to people in the planning area. Stakeholders have told me, as they have told the minister, that extensive consultation among the stakeholders was anything but full and timely. They regarded the timeframe as limited and inadequate. The Western Australian Municipal Association has a process for local government member councils, which is a lengthy process because of the structure and the nature of that association, and as such the timeframe for consultation could not be met.

Ms MacTiernan: Do you know that we started this over a year ago?

Mrs EDWARDES: I am the member for Kingsley. The minister will have a chance to respond. Major groups, such as the Australian Association of Planning Consultants and the Royal Australian Planning Institute, were invited to respond only days before the finalisation of the legislation. Once the Bill was out in the public arena ongoing forums and consultations took place. The stakeholders went to a great deal of time and effort to respond to the minister with some of their concerns that they wished to have addressed by way of amendments. To date the only response has been: "Maybe we ought to look at that as an amendment; we will address that in the rules or the regulations". It is absolutely abhorrent that the minister is asking this Parliament to pass legislation which she is about to change by circulating draft rules, and it is a breach of parliamentary process. If the minister wants to change matters in the future which are substantively in the Bill, that is a different issue. The minister might have an argument on her hands about whether that should be properly dealt with as delegated legislation, but to come into the House and to ask the Parliament to pass legislation which this Government is already looking at changing is quite inappropriate and is a total breach of parliamentary process.

As far as the consultation process is concerned, many will say that no personal contact was made with anyone who was invited to comment in a reasonable or extended timeframe, nor were they invited to be part of the process. I would like the minister to tell me about that consultative process - who was invited to be part of the process in preparing the Bill and who was invited to comment in a reasonable or extended timeframe.

Ms MacTiernan: What they all say is: "This is so good".

Mrs EDWARDES: I will tell the minister what they say. I have requested a copy of the draft rules. I know that they have been completed. I thought that before the Parliament was asked to debate this legislation, those draft rules would have been made available, not only to me and this Parliament but also to the stakeholders, who have a great interest in the implementation of this new process. They want a far greater level of consultation about those rules. I know these will be only draft rules at the moment, because the president once appointed will obviously put his or her stamp on them, but a number of people have a lot of concerns and questions about how this new process will work. A lot of the answers are contained within the rules. A number of people felt that it would have been far more appropriate for those draft rules to have been made available. The mere fact that this

Government is already contemplating changing the rules and the substantive provisions of the legislation is quite inappropriate and a breach of the parliamentary process.

Why is this change being put forward? I was provided with briefing papers by the Ministry for Planning. I thank the officers for the briefing they gave to not only me but also the Liberal Party. The first reason that is given in the briefing papers is to relieve the minister of workload. The minister has said at various functions that it is unreasonable that one person should deal with so many appeals when many of them are very minor. I will come back to that. One of the benefits of the current system is the fact that minor matters, and therefore simple matters, have been dealt with in a very effective and in the least costly way.

The second reason this change is being put forward is the perception of political interference. I do not accept allegations of prejudice or bias in this area. There may be a perception of personal political bias if the information about reasons, decisions and the like is not being conveyed. However, I go back to not only the two ministers in our Government but also the two ministers in the previous Labor Government, who were Bob Pearce and Pam Beggs. When they took over their positions, noises were made about doing away with ministerial appeals. They did not do away with the appeals, because it was felt that that would discourage people from appealing. The system worked. I do not accept that there was any level of prejudice or bias in the decision-making of those two ministers and the two ministers in our Government.

The third reason given is the desire to retain the best features of the tribunal and of the ministerial appeals system. I will speak about that aspect shortly.

The fourth reason is the policy commitment. I will speak about a couple of areas in which the policy commitment has not been relayed in the drafting of the legislation.

The benefits of the ministerial appeals system have been well recognised. The reasons people have given are that the system is quicker, less intimidating, informal and inexpensive. What is the make-up of the people who make most ministerial appeals? The number of appeals in any one year varies between 700 and 900. If one takes an average of 800, are 50 per cent of that number mums and dads? Does that represent those types of appeals that deal with setbacks, carports, size of windows, colours of roofs or picket fences? If those are the sorts of appeals coming before the minister, to put them before the tribunal, even in tier 1, will inhibit those people in a perceived and maybe very real way. People will see the tribunal as being much more formal. It will cost them more, particularly those in regional areas. People will not believe that it is as simple as putting in a quick letter to the minister and a $250 cheque.

The concerns about the ministerial appeals were that the system needed independence and some transparency. The reasons for a decision was a major issue. Although I recognise that the Freedom of Information Commissioner last year commended the ministerial appeals system for the way it dealt with freedom of information appeals, most people felt that they should not have had to go through that process and that information should have been readily available. An obvious reason for that are the limitations and restrictions under FOI legislation dealing with third parties and the need for their approval and the like. Putting that aside, those were the issues. There were some real benefits in the ministerial appeals system and also some real concerns.

We need to ensure that, with any change in the system, applicants - half of whom are mums and dads - who currently enjoy the informality of the ministerial appeals process can still be accommodated under the new system. The process must be flexible enough to be able to accommodate their issues and all interests. Much has been made of the fact that the new process should be accessible and timely - that was the very essence of the ministerial appeals process. In its direction statement, the Government recognises that people were voting with their feet. For all the complaints levelled against it, and apart from the one-off example here and there, people found that the ministerial appeals system was appropriate and met their needs.

In its direction statement, the Government also recognises that the tribunal has to accept some blame and responsibility that, in any given year, 30 or 40 cases out of 800 went to the tribunal. The cases were far more costly and there were delays in obtaining decisions. The delays were not something that the minister should accept and they were unacceptable to the community.

There is nothing in the Bill that makes the appeals process more accessible and user-friendly. The mums and dads will be the ones who miss out in this process. There is a strong case that the current appellants who use the ministerial appeals system will effectively be deterred or denied a right of appeal by virtue of the structure. It will affect the Joe Publics - the mums and dads. The suggestion of a more informal threshold or two-tier approach will not give the level of confidence to appellants that the Government thinks it may. It will not allay

the concerns of appellants looking for a swift and simple outcome. Under the current system, appellants can elect how their matter will be heard. That choice will be taken away from them. When a case reaches the tribunal, appellants will not know how it will be heard and whether it will be a level 1 or level 2 hearing. Level 1 is the more informal system and legal representation will be at the appellant's choice. Level 2 will deal with cases in a more complex way. The appellants will not know because the president of the tribunal has the power to determine at which level a case will be heard. There is a view that the criteria for level 1 are inappropriate and that the $250 000 guideline is far too limiting and a greater range of types of applications should be included. This is an area that the Government is looking at changing. I will speak further on that. The appellant should be given the choice of whether he wants a level 1 or level 2 hearing rather than have the president decide. Appellants know that a level 1 process is very simple. It does not matter what the application is as the appellant will take the risk and decide who will hear it and whether he will have legal representation. The choice will be with the appellant. Some of the benefits of the ministerial appeals system can be reintroduced into the new system.

Under the Bill, written submissions will be accepted if both parties agree. One of the advantages of the ministerial appeals system was to allow parties to make written submissions. Parties could obtain formal instruction on how the submission was to be framed and what it needed to contain. The written submissions did not have to be as formal under the ministerial appeals system. Under the new system, mums and dads will be disadvantaged because they will not know how to represent themselves if they do not want to pay for a lawyer. Even if they do provide a written submission to the Town Planning Appeal Tribunal, they will probably seek advice for which they will have to pay. People who live in rural and regional areas must be able to make written submissions. If written submissions cannot be accepted, or if they are not agreed to by either party, those people will have to either fly or drive long hours and stay in a hotel. The cost of that adds another inequity between people who live in the country and those who live in the city.

The explanatory notes acknowledge the benefits of the ministerial appeals system, and the numbers of appeals directed to the minister confirms that. The more simplistic processes that were promised as a result of the restructure of the tribunal have not occurred; legal debate will continue. It costs money to talk to a lawyer on the telephone, or for a lawyer to reply to a letter, and it also costs money to receive advice from a lawyer - that is before one goes to the tribunal. Legal representation costs money. The process that has been put in place deals primarily with matters of law. This Bill will prohibit mums and dads from appealing to the Town Planning Appeal Tribunal. The process will be perceived as being more legalistic than the current system.

Ms MacTiernan: Can you explain that argument again?

Mrs EDWARDES: Perhaps the minister will listen to me instead of one of the government members. We will discuss those issues in more detail at the consideration in detail stage. The appeal tribunal will be perceived as being more legalistic if it is structured this way.

Ms MacTiernan: Why?

Mrs EDWARDES: Particular sections in the Bill deal with it.

Local councils will also be another difficulty. Mediation must be involved if matters are to be dealt with in a more simplistic way; however, that is not provided for in the Bill, and I will talk about that later. The issue of mediation in respect of local government has not been addressed. Neither the minister nor I have the answer to that issue - certainly the Land and Environment and Court does not have the answer. In most instances under the tribunal system, officers who represent local councils before the tribunal are not delegated with decision-making powers; that does not occur under the ministerial appeals system. As a result, decisions that are made during mediation are not final; they must go back to the local councils. The local councils recognise that; it is one of the major factors for delays before the tribunal. That did not happen under the ministerial appeals system. Those delays add a further cost burden that may not be of one's own making. A process has not been provided to deal with those delays.

Experiences in Western Australia and on the east coast show that it is unlikely that an appellant would not be represented by legal counsel at a tribunal. Again, that is because of the complexities of the tribunal appeal system. That may be only a perception, particularly when trying to sell the first tier as a simple non-legalistic approach. Once the legal eagles are involved, it will bring some criticism of the tribunal appeal system.

Currently, there is a time delay between the last date of a hearing and the day that a decision is handed down. I do not know whether the minister has details of some of those time delays. I have been told that there can be delays of up to 12 months. Debate occurred in this Parliament about a previous member of the Industrial

Relations Commission who did not make quick decisions; that is not acceptable because a decision delayed is not justice. The processes to have the matters heard may be in place, but the processes to allow the decisions to be handed down must also be in place. However, no time frames have been put in place under this Bill, and the major stakeholders and the members of the public have a major concern that that may lead to delay.

Another issue that has been raised about the proposed structure and process is the criteria for an effective tribunal. Many people believe independence should be contained in the structure and process; however, some people question whether ministerial intervention will allow for complete independence. Another issue is whether decisions will be transparent under the ministerial call-in power. Another issue is procedural fairness.

Ms MacTiernan: Compared with the Bill that you proposed when you were in government?

Mrs EDWARDES: We are talking about the minister's Bill. If the minister wants to go back to our Bill, I am happy to do that.

Ms MacTiernan: I presume your Bill set your standard. Is that correct?

Mrs EDWARDES: I am talking about what stakeholders have raised with me and with the minister. Let us get back to the game before us.

I have mentioned that the criteria for an effective tribunal are transparency and procedural fairness. Another criterion is accessibility. As I have indicated, the accessibility that is proposed under this Bill will prohibit access by many of the mums and dads who currently have access through the ministerial appeals system. Other criteria are specialist expertise, reasons for decisions, legal expertise, and efficiency. Efficiency will be the critical element, and we should revisit this process in 12 months. The ultimate measure of this tribunal's success will be whether it is good for all parties, and whether its decisions are informed and are reached fairly and quickly. Delay and cost are the two critical concerns that have been raised with the minister and me.

One issue that has been raised in this debate is that the criterion of ministerial involvement has not been met. Another issue is that the Bill provides that the minister may call-in any appeal that is of state or regional significance, and concern has been expressed that the words "regional significance" may be broad and wide-ranging. Proposed section 18 deals with the representations to the minister. One issue is how that will be determined and how broad and wide that will be.

A mediation process does not form part of the legislation and should be included. That process could be carried out informally and internally by the tribunal; however, the more informal and internal the method of operation of the tribunal, the less confident and certain will be the stakeholders and users of the tribunal.

I turn now to costs. Some of the delays in decisions being made by the Land and Environment Court, which obviously lead to increased costs, are caused by the councils. I have already said that that can happen through the non-delegation of decision-making power and the mediation process, or through expert witnesses not being made available to the court. One of the concerns of the Land and Environment Court is that because everyone wants to use the same expert, that expert is always busy. Perhaps that suggests how much of a business or an industry has developed because of that process. My attention has been drawn to the costs involved in a simple service station appeal - the developer's costs totalled $250 000 and the council's costs totalled $150 000. One of the issues that stakeholders have is that because no damages or costs are awarded unless the appeal is vexatious, some of the costs that are being bandied around in the system currently will be quite prohibitive to people who have to decide whether to appeal. In the Land and Environment Court in New South Wales, the average cost of a simple appeal - I have mentioned some of the matters that constitute a simple appeal - ranges from $10 000 to $15 000. In the case of a local council, that cost does not take into account the time of the council planner. One council in New South Wales defends about 90 appeals a year. That council's costs add up to $1.4 million in legal fees and expert witness costs. Therefore, appeals to the tribunal have proved to be an expensive exercise. In New South Wales, local governments have complained about the costs associated with appeals; however, a substantial number of those hearings involve third-party appeals against local government decisions. That is another area of concern that has been raised. The New South Wales legislation defines no general third party right of appeal, except in the case of designated development. However, the objectors can be heard and given their day in court. The process provided for in this legislation appears to be similar to that process. However, questions have been raised about who will have sufficient interest under the third-party submissions, what will be their standing, and how will the Government deal with the issue of delay as a consequence of involving third parties that has been raised in those hearings in New South Wales.

Ms MacTiernan: Do you know that third parties are basically involved now?

Mrs EDWARDES: I know that the chairman of the tribunal - I think it was in a Busselton decision - has already said that third parties should be heard.

Ms MacTiernan: Are you suggesting we no longer allow them to be heard?

Mrs EDWARDES: I am asking who will have sufficient interest; what will be their standing; will they be able to lead evidence; will their submissions be subject to cross-examination; will their submissions be shared with all the other parties in the appeal process; and what will their status be? The Victorian and New South Wales systems, and the system currently in place in Western Australia, differ. Is the Government proposing to put in place only the current practice in this State, or will it be wider?

Ms MacTiernan: What do you understand that practice is?

Mrs EDWARDES: I understand that third parties have a right to submit. However, I am not sure whether the third parties should be only those who have had an involvement with the local council, or whether they should also be those third parties who the local councils did not hear and should have heard. Also, I am not sure who will make that decision. I am hoping to get an explanation from the minister.

Ms MacTiernan: The president will make that decision.

Mrs EDWARDES: That will not give any confidence to the people who will need to decide whether they will appeal. No certainty will be put in place.

Ms MacTiernan: There is no certainty at the moment.

Mrs EDWARDES: At the moment, a person can decide to bypass the tribunal and go to the minister. That is the whole point: people will no longer have that choice. Therefore, the system that the Government is proposing to put in place is one that accommodates all interests, particularly those people who have been using the ministerial appeals system. I am pointing out to the minister what the problems are likely to be, and what are the concerns of all those people.

Ms MacTiernan: At the moment, if you put in your ministerial appeal, you do not know who the appeal's convener will talk to or who the appeals committee member will talk to. The convener and the committee member can talk to anyone. They can also take submissions without telling people that they are taking those submissions.

Mrs EDWARDES: However, they are not paying expert witness costs or for lawyers. Therefore, the system that the Government is putting in place is of a different level. If the minister does not understand that, she has a major problem because it will exclude -

Ms MacTiernan: I don't think you have analysed what is going on at the moment.

Mrs EDWARDES: I have analysed it in some depth. I am not sure that the minister has read it in full.

Another issue of concern is hardship versus compassion. Hardship is provided for in the legislation. I am not sure which definition of "hardship" will be used in the legislation. A response from the office of the Minister for Planning and Infrastructure quoted a dictionary definition of "hardship". I thought that the definition would come from past cases concerning planning matters, in which it has been determined, rather than just looking up the definition in the *Oxford Dictionary*. I am not sure that it even came from the *Oxford Dictionary*, because the source was not identified.

Another issue that will differ between the ministerial appeals system and the new process concerns other matters that can be taken into account - those of merit or compassion. The Minister for Planning and Infrastructure recently determined a case concerning a proposed subdivision in the Shire of Capel. She rejected that appeal. This issue quite properly fell within the ministerial appeals system. The minister rejected the appeal on the basis that it fell outside the town planning provisions of the Shire of Capel and she said that the Shire of Capel could deal with the matter. Yes, it could, but it would create precedent and be at an added cost, not only for the local community, but also for the individuals concerned and the shire. The shire did not wish to go down the precedent path. It was happy to support -

Ms MacTiernan: That is right. It wanted erratic decisions to be made by the minister rather than any -

Mrs EDWARDES: No. This was a classic example of the minister avoiding making a real decision.

Ms MacTiernan: No. I made a decision. I could have made the easy, populist decision that ignored the proper planning of the area, but I chose not to do that because it would create precedent. There cannot be a situation in which it does not create precedent.

Mrs EDWARDES: This would not have created precedent.

Ms MacTiernan: Why not?

Mrs EDWARDES: It was going to be a one-off. Everyone supported this proposal because of the circumstances, which included a disabled daughter and grandchild. As such, it was appropriate.

Mr Masters: The situation that the member for Kingsley and the minister are discussing occurred in my electorate. I can assure the minister that there was strong community and other support for it.

Ms MacTiernan: I am not disputing that. Provision should be made in the town planning scheme to allow decisions such as that. What I have said -

Mrs EDWARDES: One-off allowances are not made in town planning schemes. That was the whole point of this exercise. The ministerial appeals system was effective in cases such as this.

The other issue that involves the question of hardship concerns the creation of the arbitrary threshold. Again, there does not appear to be much logic to that. The $250 000 threshold is a major issue. The minister has said that no-one will know who the individual determining the matter will be. It is a simple process to create a level of certainty and confidence in the system by ensuring that when a notice is sent out, the person is told under which tier the matter will be considered, who the matter will be heard before or a date on which that decision will be made. It is a simple process to fix. The minister should not defend that. She should listen to the concerns that are being raised and consider how to address them. They can be addressed very simply.

A critical issue is the less than $250 000 threshold. People believe that it is far too low and will put far too many appeals in the second tier than was anticipated. I have been told that the minister is already looking at changing that in the rules. Is that the case?

Ms MacTiernan: I am prepared to consider a submission that has been made that a single dwelling be improved.

Mrs EDWARDES: A single dwelling on its own may not be appropriate. That may not deal with the issue of putting far too many matters into the second tier.

Ms MacTiernan: Hang on. You were talking about mums and dads. Are you talking about mum and dad subdividers?

Mrs EDWARDES: What if it is a four lot instead of a three lot subdivision?

Ms MacTiernan: The member for Kingsley should be sensible. Look at the Supreme, District and Local Courts. Some people might argue what is magical about a $50 000 payout? Why does one case go to the District Court and another to the Local Court? Those cut-off points are always chosen. There is nothing magical about them. It is the way that the legal system has been organised for the past 400 years.

Mrs EDWARDES: It does not mean that I am not being sensible because I am raising issues that have been raised with the minister as well as with me. The next time the minister interjects she will tell me to grow up, or she will use some of the other comments that she uses when people do not share her views.

Ms MacTiernan: There will always be debate about where the mark is set.

Mrs EDWARDES: The minister is defending her position, but she should at least give me the courtesy to put some of the concerns that stakeholders have raised with me on the record. The minister will soon have an opportunity to defend her position. She should allow me to do what I have been asked to do and what the Opposition believes in.

Ms MacTiernan: I am not stopping you.

Mrs EDWARDES: Thank you. I received a response from the minister's office and it is appropriate to put it on the public record. When can members expect to receive a copy of the draft tribunal rules, particularly given that they put in place the operation of the tribunal and will probably address many of the concerns raised by stakeholders? The time frames for determining applications will probably be included in the rules, as they are in the Land and Environment Court of New South Wales. Delivery of services in rural areas is a critical issue. When I spoke to local councils, developers and builders in several regional areas, the major concern was the cost

of putting someone on a plane and accommodating them overnight for a hearing. That may happen on more than one occasion if mediation is involved. How will the delivery of regional services be addressed? I know that in the past, provision was made within the ministerial appeals system to go on site. I take it that the tribunal may do this. Is there a process for dealing with appeals in country or regional areas on a regular basis, so that those matters can be dealt with at a reduced cost to local councils, builders and developers?

While I may know the answer to this, the maximum penalty and the daily penalty must be addressed and put on the public record. The other issue concerning proposed new section 10 is that of the direction for stop work orders. Although local governments support this wholeheartedly, a stop work order on a $30 million or $40 million development for a minor issue such as the size of a window could potentially create a situation in which liquidated damages are sought, which will outweigh any benefit that might be achieved through the change of the size of a window. As such, the suggestion has been to provide for an order for a stay of proceedings, but there is no head of power under the current Bill to allow that to occur. If that is the minister's proposal, a head of power must be provided. If the minister does not propose to do that, the Opposition wants to hear exactly what will be done. No-one knows whether an appeal will take two, four, six or 12 months, because no-one has any understanding or knowledge of how the new system will operate or how timely it will be. How will the minister deal with those situations in which a stop-work order is potentially expensive and is of a minor nature?

The Opposition would like to know how "hardship" will be defined. Rather than the ordinary dictionary definition, how is the term normally defined within planning proceedings? The other issue concerns proposed new section 18(2), which deals with the extent to which someone must be aggrieved before he or she can make representations to the minister. How is that to be used, and clarified? The principal registrar will not only have the function of the executive officer to the tribunal, but also will be one of its senior members. What will his role be? Are the president and members to be full-time or part-time, and how will this be determined, and when? In particular, a determination must be made on whether the role of the president is to be full-time or part-time. A provision is included in the Bill to allow the exclusion of legal representation if agreed to by the parties. If legal representation is excluded, this could offend competition principles. What system has been put in place to ensure that simple, minor issues can be dealt with very quickly? One proposition that could have been developed was a ministerial appeals system to be dealt with through the delegated power of the president or another member of the tribunal. It would not become a tier 1 matter. It would still be dealt with, but the minister would be substituted, while all the other aspects of openness, reasons for decisions, and sharing of documents would be preserved. A far simpler process than the tier 1 category could have been put in place, but that can still be done, even with the tier 1, through the rules of the tribunal. This is another reason for the importance of the rules of the tribunal as proposed in this legislation.

What is the status of those with a "sufficient interest" under clause 57? Can they lead evidence, or be cross-examined? Where legal representation is not supported by an appellant, an industry develops for other forms of advocates, generally not legally qualified. Consideration should be given to a code of standards for such people, who will represent others before the tribunal. While it may be a friend or a relative representing appellants in some cases, in others appellants may pay sums of money without getting the level of representation they may expect.

Cost and resourcing of the tribunal is another major issue. I will ask the minister for an operational chart to be presented, showing proposed staffing levels, how the budget for the tribunal is to be determined, and where the money will come from. This matter links up again with the part-time or full-time nature of the office of president and the members. Under this Bill, if the term of the current tribunal president has not expired when the legislation comes into operation, he will automatically become president. That is not an issue in terms of the current holder of the office, who is highly regarded in the planning community and in local government circles in this State. His opinion is actually taken above all others, which presents a problem. Does he enjoy this status because he is chairman of the tribunal, and hence regarded as an expert, or is it due to the merit or otherwise of the legal advice being provided? Is it the case that, as the chairman of the tribunal, if he makes a decision, that is the path that is followed, despite what anyone else may think? If the current chairman becomes the president, will he be prepared to work part-time? Lawyers are trained to be impartial, and they know the rules relating to conflict of interest. They would withdraw from any case in which such a conflict existed. I have no concerns with the way the current chairman has operated, but the perception is still very much that his view is influential because he is the chairman.

The issue of remuneration should be addressed, and the president should be employed full-time. In New South Wales the chief judge is employed full-time, along with four other judges and nine commissioners. Mediators

are called in from time to time, and the registrar and deputy registrar are also trained as mediators. Given the workload that will result from ministerial appeals under this legislation, this model should be looked at seriously. The tribunal will require intensive management to begin with, to make sure that it is set up on a firm footing. If a president is appointed part-time, that level of management may not be possible. The resourcing of the tribunal will be critical if it is to be timely and effective. There is also the issue of the resourcing of the Crown Solicitor's Office, which represents the Western Australian Planning Commission in most appeals. Given the increased workload, the Crown Solicitor's Office will need more resources.

Ms MacTiernan: Why would the WAPC not simply send a planning officer?

Mrs EDWARDES: As I understand it, that has not been the case to date.

Ms MacTiernan: The Government is talking here about a vastly different system, as the member for Kingsley has acknowledged. A lot of the appeals will be class 1, and a class 1 appellant has the right to impose a legal veto -

Mrs EDWARDES: That is provided for in the Bill, but I do not think that will happen in practice.

Ms MacTiernan: Why not?

Mrs EDWARDES: Because, by its very nature a tribunal will be seen to be far more legalistic and prohibitive to ordinary people, who will automatically get legal representation.

Ms MacTiernan: They will not do that when they have the right to bar the other side from having a lawyer.

Mrs EDWARDES: We will soon see what the practical effect will be, once the new system is up and running. Increased costs will result for local councils, responsible authorities, developers and applicants.

The other issue raised is transitional provisions, and the increased workload. How will the transition occur, with the increased number of appeals coming to the minister? How many appeals to the minister were pending at 30 June, and how many were pending at 30 July? The answer to these questions will provide information on the rate at which appeals are being received. I do not believe the Government will receive the rush of appeals it may have been concerned about, by making 1 July the commencement date. I was advised in an answer to a question on notice that the number of appeals received between 10 February and 31 July was 173.

At the moment the cost of an appeal application is $250, whether the appeal is made to the minister or to the tribunal. Is this amount to stay the same, or to be increased, and will there be a cost differential for the various tiers of appeals? If the fee is to be increased, it should not be used as a revenue-raising exercise. If the minister were to increase the application fee, it would become prohibitive for the ordinary mums and dads.

I bring the minister's attention to her direction statement and point out a couple of issues encompassed in it that are not reflected in the Bill. The first deals with mediation. The direction statement states -

> to establish a framework to entrench a genuine mediation process that would encourage parties to settle disputes outside of formal hearing;

I totally support that. Mediation must be available to ensure the decision-making process is effective, timely and cost-effective for not only the parties but also the tribunal. However, nothing in the substantive part of the legislation establishes the framework for a mediation process. If mediation is to be included in the rules of the tribunal, we would like to see a copy of those rules to determine how it will happen.

The minister also referred to the call-in appeals in the direction statement. It reads -

> to allow the Minister for Planning to call-in appeals for ministerial determination only in exceptional cases where the appeal raises issues of regional or state importance.

The Bill deals with the call-in power in matters of regional or state significance, but it does not restrict those matters to "exceptional cases". Why has that not been incorporated? Did the minister discuss it with parliamentary counsel? What is her view on the call-in power, and what matters would she regard as being of regional and state significance? What examples come readily to mind?

The other point deals with third parties. I have talked about the current practice for third party submissions. I would like to hear from the minister about the practices under this legislation. Will the submission provision be restricted to parties that have had a right to be heard by local councils, or will it be open to parties that should have been heard by local councils but were not? The direction statement states -

> to provide to third parties, either individuals or community groups, who were heard as of right before the original decision was made, with the right to be heard during the appeal;

As I understand it, the direction statement refers to only those parties who were heard as of right before the original decision was made. However, the legislation is much broader than that, and could mean that people in Kununurra could make a submission on their opinion of an appeal in Esperance. There is no limit other than the requirement for a third party to have what might be described as a significant interest. Is there a precedent in planning decisions as to what might be regarded as "significant interest"?

I referred to the tier 1 appeals. In the direction statement, under the heading of proposed restructure, the minister provides an example of an appeal against a setback condition or extension to an existing dwelling as something that would not require the same degree of formality or analysis as an appeal against a refusal for a 200-lot subdivision. Why did the minister set the bar at a three-lot subdivision? I am not a planner or an expert in the area, but where, why and how did the minister determine that a three-lot subdivision would be an appropriate cut-off point?

Ms MacTiernan: Average mums and dads - about whom you seem so concerned - do not engage in subdivisions larger than two or three lots.

Mrs EDWARDES: I would dispute that.

Ms MacTiernan: Does the average mum and dad in your area engage in four-lot subdivisions?

Mrs EDWARDES: I am sure a number of people in Wanneroo would do that.

Ms MacTiernan: I have been hearing ministerial appeals for six months. The overwhelming majority of subdivision applications relate to two or three lots.

Mrs EDWARDES: It would be interesting to do an analysis of those ministerial appeals.

Ms MacTiernan: Our view is that once people start getting into four-lot subdivisions, they are well and truly in the realms of full-on commerce. The local councils and the Western Australian Planning Commission have a right to expect those cases to be heard properly. You cannot claim the average mum and dad -

Mrs EDWARDES: I have only a few minutes remaining, and I ask the minister to develop that argument further in her reply, because I dispute that belief. I think that some people in the Wanneroo area would engage in subdivisions greater than three lots. I am sure the member for Wanneroo will hear from those people.

In summary, the mums and dads will provide the most criticism of this legislation. They will be disfranchised. They are the very heart of our society. Under this legislation, they will be crucified and become caught in a level of bureaucracy in which they have previously not been involved. The ministerial appeals system has enabled them to access quick and cheap justice. I have already referred to the types of issues that generally go before the minister: setbacks, car parks, window sizes, roof colours and picket fences. Will the minister advise us about the number of ministerial appeals that were from mums and dads and the number that were from developers?

It is important to provide a simple appeals process that allows for accessibility and reduced costs while ensuring delays do not occur. Delays cost everybody money. Delays, cost and timeliness are the biggest issues. Everybody is concerned about delays. It is well recognised that many people use the ministerial appeals system because of past experiences with the tribunal. Time limits have not been incorporated into the legislation, although they may well be in the rules. The New South Wales Land and Environment Court is required to dispose of 95 per cent of class 1, 2 and 3 appeal applications, which are probably the relatively simple appeals, within six months. Ninety-five per cent of the more complex matters of class 4, 5 and 6 appeals applications must be disposed of within eight months. Fifty per cent of reserve judgments in all classes must be delivered within 14 days of the hearing, 75 per cent must be delivered within 30 days and 100 per cent must be delivered within 90 days. All our courts should follow that practice. Resourcing will be the biggest issue, as it will have a bearing on whether delays occur. As I said, delays mean costs.

It is absolutely critical that we receive a copy of the draft rules before we go into consideration in detail. I understand they are prepared, and that it would be a simple matter to make them available to not only Parliament but also everybody else. The minister mentioned that a review will be conducted in 12 months; again it is something that is not in the legislation, and I believe it ought to be.

MS GUISE (Wanneroo) [4.08 pm]: I support this Bill, which will bring openness and accountability into the planning appeals system in Western Australia. The legislation effectively limits the minister's powers to matters of regional and state importance, which I think is the way to go.

It is no wonder that the public has become very cynical of the process. The political and personal considerations of a former minister are thought to have contributed to past decisions.

Mr Barnett: Did this minister act politically?

Ms GUISE: The member will get a chance to speak later, but I am standing and it is my time.

Mr Barnett: You do not come in here and attack people on issues you know nothing about.

Mr McGowan: He has woken up, and he is not happy.

Ms GUISE: The community strongly believes that too much power in the appeals process has been vested in one person, and it thinks the situation should be addressed.

Mr Barnett interjected.

The ACTING SPEAKER (Mr Andrews): I call both sides of the House to order. I am interested in what the member has to say.

Ms GUISE: Thank you, Mr Acting Speaker. I believe that my electorate also wishes me to speak on this subject. A number of examples within my electorate illustrate how the wishes of the community, supported by local government, were overruled by the former Minister for Planning, Graham Kierath. I could refer to myriad examples, but I will focus on two. I know that other members could add to these examples. One example, which I think is a classic, is an application for a 40-metre long fixed jetty to a waterfront property in residential Mindarie Marina. The jetty was to be of a fixed design, constructed on lot 100 Clarecastle Retreat, Mindarie, and partially within the adjoining marina. When the application was originally received it stated that the purpose of the jetty was to moor two commercial fishing boats. The City of Wanneroo requested full details of the intended purpose of the jetty so that the amenity impact could be properly assessed. The applicant responded by suggesting that the requested details were irrelevant and unnecessary, and requested that the use aspect of the proposal not be considered.

In December 1999, the Wanneroo City Council was advised that the application for the jetty represented the third attempt to gain approval for this fixed 40-metre jetty. The initial proposal was rejected in 1998. Once again, the council requested a detailed explanation for the use of the jetty: particular details of the type, use, length, width and height of the vessels intended to be moored; proposed operating times and days; all activities intended to be carried out on the property - the jetty; the number of employees, how the employees would arrive at the site and if by motor vehicle where they would park, the noise output of the vehicles, how the vehicles would be loaded and unloaded; and, finally, an acoustic consultant's report demonstrating that the proposed activities both at and in the vicinity of the jetty could be contained within the levels of the Environment Protection Act 1996.

The jetty in question was of a commercial scale. Members will remember those wonderful advertisements for tranquil Mindarie residential lots. The jetty was considerably larger than anything else in the marina. The jetties that are there at the moment are floating jetties that rise and fall with the tide and they are attached to the residential lots. The council then recommended that the Western Australian Planning Commission refuse the application. So the saga continues. Subsequently, the applicants appealed to the minister against the City of Wanneroo's refusal to grant planning consent for the proposed 40-metre jetty for the mooring of two 16-metre boats. The minister upheld the appeal, a decision that was seen to be flawed given the number of conditions the City of Wanneroo had imposed on the development. The council wished to impose 11 conditions, only to find out that the applicant again approached the minister to have eight of the 11 removed. The WA Planning Commission considered the application on 31 October 2000, and resolved to refuse the proposal as verbally advised to the City of Wanneroo. This was subsequently referred back to the WA Planning Commission and upheld.

I refer to a press release entitled "Kierath Mindarie jetty talks 'grossly improper'" on page 6 of *The West Australian* of 22 November 2000. The article refers to the intervention by the former minister and the reversal of the decision which would have stopped the development. The whole sorry saga was questionable and smacked of political intervention. The former local member's dubious role was also outed when a report of the appeal was obtained under the Freedom of Information Act. Although he had written in support of the objectors in 1999, by February 2000 he was singing an entirely different tune and was stating in a letter to the minister that the council's decision was flawed - something he did not share with the local constituents in Mindarie. The local residents and the local government authority had every right to be angry and questioned the manner in which this application and appeal were handled. They were not the only ones. In fact, the council was so cross it indicated

that it would ask the Ombudsman to investigate the role of the former Minister for Planning in making the decision to allow for a 40-metre fixed jetty for commercial boats five metres away from residential homes. Local residents felt that the decision was distinctly against the intended use and outcome for the area and the needs of the local people.

But there is more! In April 2000, an application was lodged with the City of Wanneroo to alter zoning and site restrictions for lot 51, St Malo Court, Mindarie. It provided a draft structure and development plan depicting the construction of a four-storey apartment building 12-metres high. I do not believe there is another four-storey building in the whole City of Wanneroo. In fact, there might be one exception at Mindarie, but it is right down low and in the commercial area. This was right in the middle of the residential lot - forget the requirements that are put in place by the Department of Environmental Protection to make sure the ambience of the area is not upset. It is going to stick this four-storey monstrosity right in the middle of everyone else and to hell with their view and the ambience. The proposed structure and development so significantly departed from the rest of the area that it was strenuously objected to by a number of local residents and the Mindarie community group. The City of Wanneroo refused to approve the application, only to have the former Minister for Planning overturn this decision upholding the appeal. Again, there was total disregard for local opinion and no credence was given to the collective ambience of the area. It was the second time in six months that the former Minister for Planning had overturned a City of Wanneroo decision regarding development in Mindarie. Last year Parliament was advised that the former minister had overturned 64 per cent of 2 264 planning decisions he had reviewed under the ministerial appeals system.

On behalf of the constituents in Wanneroo, I want to say that it is time things changed. It is imperative that planning appeal decisions be made independent of the Minister for Planning, so as not to raise concerns that political patronage has influenced the outcome. The new Minister for Planning fought strongly for an independent appeals tribunal process and is to be congratulated for presenting this legislation which I urge all members to support.

MR MASTERS (Vasse) [4.17 pm]: I have a great deal of sympathy for the Minister for Planning and Infrastructure, who is here at least in body if not in spirit, because planning is one of those portfolios in which one side or the other is invariably upset. There is no alternative; it is an adversarial process; a no-win situation is created in most cases. I have genuine sympathy both for the previous minister and for the current minister in those dealings. As difficult as the planning appeals process might be, it is important that we come up with an appropriate, open, fair and timely process that can be put in place to serve the needs of all Western Australians - and I emphasise the word "all". I am more than prepared to offer my support for this legislation, but as the member for Kingsley has pointed out, as Her Majesty's Opposition we need to raise some genuine concerns.

It is interesting that I am hearing laughter from the government ranks, and mainly from new members of Parliament. We are actually operating under a Westminster system of democracy, in which it is the Crown's delegated responsibility for the Opposition to keep the Government honest, to pry and to prod and to make sure that the Government, unlike in the 1980s, does not get away with corruption or similar inappropriate behaviour. So when I stand up and say that we, as Her Majesty's Opposition, have genuine concerns, it is entirely appropriate that we make those concerns known to both the minister and to the other members of the Government.

I will go through some of the concerns that I have. Firstly, a significant cost is involved in the planning appeals process. Even if it is as simple as the cost of - to use the member for Kingsley's term - mums and dads applying to the minister for a ministerial appeal under the current system, or what was the current system, a fee is involved. Those people normally do not have the expertise to put words down on paper to make the sort of planning sense that a minister or his or her representative could take into consideration.

Normally an indirect cost is involved when the appellant hires advisers, consultants and even a lawyer to gather together the information necessary to put a case. Under the proposed tribunal system I fear that although the direct cost of applying for an appeal may decrease, especially if someone applies for a level 2 appeal rather than a level 1 appeal, there will be an increase in indirect costs because of the need to hire more lawyers, advisers and consultants under what is, I think the minister will agree, a more legalistic system than the previous ministerial appeals system. I am concerned at the cost of the new system to ordinary people in the street.

I am concerned about the rigidity or lack of flexibility. I understand that the new legislation contains no requirement for mediation. I would have thought that mediation would have been an excellent first stage in trying to resolve any planning appeal. I have been involved in this area in the past, both as a member of

Parliament advising constituents and on one occasion as a person seeking redress. I have been involved in the Small Claims Tribunal. The first stage in the small claims assessment process is mediation. The clerk of courts calls the two parties together and invites them to try to resolve their differences around a table. It has rarely worked in cases of which I am aware but, nonetheless, I would have thought it a desirable first step in a new planning appeals process.

I am concerned about the issue of timeliness. One aspect the ministerial appeals process could not be criticised for was the relative speed with which ministerial appeals were dealt, compared with the time taken for appeals that went through to the previous tribunal. Normally, under the ministerial appeals system the process would take between three and six months, yet I understand an appeal to the tribunal could take between 12 and 36 months. The Opposition has concerns that the Government will not be prepared to put the necessary funding into the new tribunal process to make sure it works to the necessary extent. I hope I am wrong; nonetheless bearing in mind that there may be as many as 500 or 600 appeals to the new tribunal, the small funding and small staffing levels available to the tribunal at present, compared with the funding available to the ministerial process, are sounding a warning bell that funds need to be transferred from the ministerial office to the new tribunal. Those resources will need to be significantly increased because I fear the process will be more legalistic than it was previously.

I am concerned that there is no reference in the legislation, the minister's second reading speech or anywhere else to the word "compassion". It is important to recognise that we, as politicians, especially those who are members of the Government of the day, are dealing first and foremost with people. Laws, precedents, tribunals and relevant or associated non-human attributes come a long way second. I have genuine concern that the reference to the word "hardship" does not provide enough flexibility for the tribunal to consider genuine compassionate needs. I note that the minister in her second reading speech used the words "will not affect the application of sound planning principles". By using those words about the hardship requirements of the Bill, the minister will tie the hands of the tribunal to such an extent that hardship will never be genuinely considered on compassionate grounds.

The previous ministerial process had many virtues. One was that the genuine needs of human beings could be taken into consideration. If that meant sound planning principles needed to be put aside for legitimate reasons - my understanding of the planning laws is that the ability to do that is inherent in the Act - the minister's words "will not affect the application of sound planning principles" cause me some concern. As the member for Kingsley has pointed out, some constituents in the Shire of Capel in my electorate had a daughter who was intellectually or physically handicapped as a result of a motor vehicle accident. She produced a child some years later. The family quite understandably sought a planning appeal decision that would allow that woman to have a certain degree of independence and not rely on the welfare of the taxpayers of Western Australia. I understand the reasons that the minister refused the appeal, but I must say that under the new set-up of the tribunal the decision-making process will have an equal lack of compassion in any similar situation.

On the issue of ministerial call-in provisions, if my memory serves me correctly, the previous minister arranged for a review committee to look at the entire planning appeals process. One of the strong options that needed to be considered was a move over to the tribunal-based system, while retaining a ministerial call-in power. My memory tells me that the previous minister supported that ministerial call-in ability only in limited circumstances. Again, if my memory serves me correctly, the then opposition spokesperson on planning, who is now the Minister for Planning and Infrastructure, criticised the minister of the day for daring to have any ministerial call-in powers.

Ms MacTiernan: That is simply incorrect. We made it very clear in the direction statement we put out at the time that we did see an ongoing role for a call-in power. We believed that the call-in power needed to be transparent and that the minister needed to make a decision upfront and not wait to see how the case was going before intervening. However, from the outset, we said that our fundamental criticism of the previous minister's Bill was not the call-in power but the way general appeals would be dealt with. Perhaps if the member for Kingsley handed you a copy of the direction statement, you would see the very public position we took on call-in powers.

Mr MASTERS: I thank the minister for those comments. My memory tells me something else. My clear recollection is that at the time the review document was released, when the then minister offered his support for the call-in powers, the present minister strongly opposed it.

Ms MacTiernan: You are confusing me with *The West Australian*.

Mr MASTERS: The minister may have changed her view in the lead-up to the state election.

Ms MacTiernan: No.

Mr MASTERS: If so, I commend the minister for having the strength of character to change her mind in a very public way.

Ms MacTiernan: Member for Vasse, you are a man of considerable intellectual rigour.

Mr MASTERS: Can you put that in writing?

Ms MacTiernan: I would be very keen for you to produce the document wherein I ever made such a claim. From the very outset I have always said that there was a role for a call-in power.

Mr MASTERS: I will check with the media.

I have had an interest in the planning appeals process for some time. Five years ago I suggested to the people involved in the planning appeals process that there was a simple way to overcome the many objections that were made against the appeals process. I suggested that the minister place on the public record all submissions on appeals that he or she received. The best way of doing that was to make all documentation available to the Parliament so that Parliament could scrutinise it.

Ms MacTiernan: At which stage should the material be made available?

Mr MASTERS: At the end of the process.

Ms MacTiernan: After a decision has been made?

Mr MASTERS: At the time a decision is made. The information used as the basis for the decision would be made available for public scrutiny. My suggestion did not go very far.

The minister has said on a number of occasions that the reasons for ministerial appeal decisions are not published. There may be no legal requirement under the previous arrangements for the minister's decisions to be made public. I wrote to the previous minister on 10 or 12 occasions in either support of, or opposition to, appeals and the minister gave me, as a matter of public record, the reasons for his decisions. All the parties involved were given copies of, or access to, the minister's decisions.

Ms MacTiernan: I do not dispute that the previous minister did that as a matter of routine, but the process that led to the decision was not transparent.

Mr MASTERS: I will get to that in a moment.

Ms MacTiernan: There was no publication of decisions in a form that allowed them to form a set of precedents. There was no overview; people did not know how things were going.

Mr MASTERS: The minister is concentrating on a very legalistic aspect of the process. The minister has claimed in her statements that there has been no publication of appeal decisions. I say that there was.

Ms MacTiernan: When did I say that?

Mr MASTERS: In the second reading speech.

Ms MacTiernan: I said there was no requirement.

Mr MASTERS: The absence of a requirement should not be construed to mean that the previous minister did not, in spite of that -

Ms MacTiernan: The one before him? Your bloke?

Mr MASTERS: I have only been in Parliament since 1996 and I cannot speak about previous ministers. I am well aware of the previous minister publishing his decisions by letter because of my involvement with the Dunsborough Caravan Park issue. Based on the minister's decision, I entered into a long correspondence war with him because I disagreed with his decision for a number of reasons. I am well aware that ministers' decisions have been published, if not in the format that the minister is suggesting.

I am concerned that parties who appear personally may be represented by an agent or a legal practitioner. I cannot support that provision of the Bill unless each party has a power of veto at all levels of the appeals process. Because of my involvement as a member of Parliament in previous ministerial appeals, I am aware that the sorts of people involved in such appeals are a Joe Blow; an average citizen, a mum or a dad. They would be

intimidated by any court of law or tribunal in which an agent or legal practitioner represented the party against whom they were appealing. The intimidation is real; there is no argument about it.

Ms MacTiernan: Just think that through. Does the member expect the whole council to troop up? How would a council, as a respondent, be represented if it were not represented by an agent? One cannot expect the entire council to turn up to an appeal.

Mr MASTERS: No, that is a fair comment. Somebody needs to represent both sides of the argument. Most councils have a lawyer on their staff and would, in some cases, elect to have a lawyer present. More often than not, councils choose to have a planning expert rather than a lawyer represent them at appeals. There is still a degree of intimidation associated with a planning expert. The average person in the street is scared witless when he has to deal with a lawyer.

The Small Claims Tribunal uses mediation and does not allow one side to force the other to have representation. The parties represent themselves at the tribunal unless both parties agree otherwise. The likelihood of intimidation is greatly reduced. I have had experience of the Warden's Court. I remember one hearing that I attended in order to listen to the proceedings; I was not involved in the case. A member of the public who had a strong objection to a mining proposal represented himself. Apart from the magistrate, no lawyers were present in the court. The person fainted. Proceedings were disrupted for about 10 minutes while that person was resuscitated.

Ms MacTiernan: Has the member ever been to the Small Claims Tribunal?

Mr MASTERS: Only once.

Ms MacTiernan: Thousands of Western Australians - ordinary mums and dads - have been to the tribunal.

Mr MASTERS: The minister was not listening. I said that the tribunal was excellent.

Ms MacTiernan: There is a Small Claims Tribunal and a Small Debts Division of the Local Court.

Mr MASTERS: I am talking about the Small Debts Division.

The explanatory notes of the Bill list seven objectives for the new planning appeals system. All seven objectives could have been included in the current ministerial appeals process if there had been a willingness on the part of the previous Government and this Government to incorporate them. It is claimed there was a denial of natural justice at various stages of the process. For example, a respondent was not obliged to forward his response to the appellant. It could be argued that, by retaining the current ministerial appeals process, a respondent could be obliged to forward his response to the appellant. That could be a modification to the existing ministerial appeals process.

Reasons for decisions are not published and it is a strong argument against the current ministerial appeals process. It would have been a simple problem to overcome if there had been the political will to do so.

Ms MacTiernan: I think the member has missed the point.

Mr MASTERS: The explanatory notes state -

> There is the potential for bias arising from political and personal influence unrelated to planning considerations.

People who suggest that there will be no potential for political or personal influence unrelated to planning considerations under any system put in place by any Government, are not living in the real world.

Every aspect of government has the potential for political and personal influence. The more transparent and open the process, the greater the minimisation of those two influences on planning considerations. A conflict exists in the Bill concerning the final dot point in the explanatory notes under the heading "The need for the Bill". The mere fact that hardship is an issue that must be considered by the tribunal suggests that there is potential for influences other than planning considerations to be taken into account. The Bill admits that influences other than good planning considerations must be taken into account - for example, hardship - yet, the explanatory notes suggest that that is one justification to change the system.

Ms MacTiernan: We will take it out if you want.

Mr MASTERS: I would be happier if it were expanded to make it more reflective of human needs and include the words "compassion" or "compassionate" as one of the requirements for the tribunal's considerations.

I am aware that the minister has some sympathy for a type of planning appeals system such as the New South Wales Land and Environment Court being introduced into Western Australia. I reserve my judgment on whether a New South Wales style of land environment court is good or bad. However, I will quote from a number of sections of a land environment court ruling dated Tuesday, 6 September 1983. The judge in charge of this court case was a former Whitlam minister, Jim McClellan, otherwise known as Diamond Jim. The case involved the applicant, Reginald Alfred Perry Newton, representing a group called the Coastal Residents Against Pollution - CRAP. Mr Newton appealed a decision made by the Wyong Shire Council and the Minister for Public Works and Ports to allow a discharge of treated secondary sewage waste into the ocean. This issue was not similar to those we have seen on television which involved untreated sewage being allowed to enter Sydney Harbour and the surrounding beaches. The waste was secondary-treated waste water that was of high environmental quality. As members can see, the document that Judge McClellan produced is not small, and there is no point in summarising it. However, I will quote from a number of sections of the conclusions of the court. It states -

> It is perhaps not surprising that the objectors should cling so doggedly to their pre-conceived delusions in the light of the reference by the applicant's senior counsel . . . to the "people who presently like to come there for their holiday but may not be so keen on bathing in diluted sewerage." Making allowance for the hyperbole of advocacy this is wildly astray as a description of effluent treated to a secondary level discharged under pressure into the turbulent waters of the ocean.

I am trying to set the scene. It continues -

> It would be difficult to imagine a case in which members of the public were given more ample opportunities to take part in the decision-making process. From the moment that it became apparent that the scheme had aroused public controversy the Minister's doors were open to the objectors. They were allowed to select world-ranking consultants, Binnie and Partners to subject the E.I.S. and the proposal which they found objectionable to a critical scrutiny at public expense. They were able to attend public meetings convened by this firm and to give public voice to their criticisms. The Minister, fully aware of the urgency of the project and of the expense and public inconvenience occasioned by delay, nonetheless leaned over backwards to give full play to the democratic processes envisaged in the Environmental Planning and Assessment Act. C.R.A.P.'s reaction was to question the fairness of the umpire of its own choosing and to refuse to accept his decision.

It further states -

> In the first place, I would comment that in my own experience I have encountered in this Court no environmental dispute in which the subjective views of the local community have been aired ad maiorem nauseam than in the present case.
>
> . . . I had an uneasy feeling that an attempt was being made to smuggle into planning and environmental law a new doctrine which might be expressed as follows: If local residents, however mistakenly, believe that a proposed scheme will be environmentally damaging, that belief is a factor, and an important one, which determining authorities should take into account in reaching their decisions.
>
> A determining authority is directed by s.111 of the Environmental Planning and Assessment Act to take into account to the fullest extent possible all matters affecting or likely to affect the environment of an activity. It is hard to see how the delusions of local residents fit into this category.

My reason for quoting at length from that court case is to show certain deficiencies in the New South Wales Land and Environment Court that I hope will never occur in Western Australia. As I mentioned previously, I have sympathy for the minister and the Bill and am prepared to support it, subject to the appropriate changes, to overcome the Opposition's genuine concerns. The minister must also be aware that one can go too far to try to make sure that due process is met. As has occurred in New South Wales, the Land and Environment Court has resulted in significant delays to a number of planning and development processes whereby the original decision of the minister or planning authority was upheld.

I hope that this planning Bill works. It must be cost efficient, flexible and timely and incorporate compassion. If it fails in any of those areas, I regret that we may well go down the path of the New South Wales Land and Environment Court. Unless that process is done correctly, it poses greater risks than the ministerial appeal process that the Government is currently trying to overturn.

MR McGOWAN (Rockingham - Parliamentary Secretary) [4.47 pm]: I support the Bill. The principles espoused by the Bill are good and they meet a pre-election commitment that was given by the then Labor Opposition about the planning appeals process. The ministerial appeals system that took up the vast bulk of appeals involved with planning lent itself to accusations of bias and corruption. It lent itself to a belief in the wider community that decisions may have been made on inappropriate grounds. The system enabled individuals to use influences outside of appropriate planning considerations in an attempt to get their appeals approved.

The then Opposition spokesperson on planning proposed the concept of abolishing ministerial appeals. I am pleased that, early in its term, the Government is delivering on another promise and that it is sticking assiduously to all of the commitments it made prior to the election.

Mr Barnett: Remember the promise of a railway into the heart of Rockingham?

Mr McGOWAN: The Leader of the Opposition made an interesting point, and I am pleased that he is on the ball. He said that the Government committed to a railway link into Rockingham, and we did. Indeed, we are delivering on that promise.

I would be pleased if the Leader of the Opposition would come to my electorate so that I can show him the site and prove to him that the site is in not only the city of Rockingham but also the electorate of Rockingham, and that the decision meets the widespread community demand. The Leader of the Opposition said that the Government made a pre-election commitment to a so-called loop. The Government's pre-election transport policy shows that we made no commitment to a so-called loop, but we did make a commitment to a Rockingham rail link.

Mr Barnett: That is not what you said in the campaign.

Mr McGOWAN: I said no such thing, and nor did the minister. It is interesting that the Leader of the Opposition has said that, because he said a lot of things during the last term of government about issues such as one vote, one value and One Nation, and he now seems to have some form of amnesia about those comments. The truth of the matter is that when he was in government, he believed in one vote, one value, and he did not want preferences to be given to One Nation. However, unfortunately he has decided to live on his knees rather than die on his feet; and he will find that will not only make his knees sore but also make it difficult for him to get up in the morning. The Leader of the Opposition has no right to talk about commitments that we made during our last term in opposition, because we are delivering on our commitment on railways, and that commitment is much loved in my neck of the woods. I would love the Leader of the Opposition to visit my electorate and put to the people his views about that matter.

It is great that the minister is delivering on the commitment that we made when in opposition. It overturns a long history of the ministerial planning appeal system being much favoured by appellants. Each year, there is an average of 700 ministerial appeals, yet there is an average of only 30 appeals to the Town Planning Appeal Tribunal.

Mr Barnett: What do you think the reason for that was?

Mr McGOWAN: The Opposition is backing this Bill, is it not?

Mr Bradshaw: Yes.

Mr McGOWAN: Was that a yes?

Mr Sweetman: We are backing it, but with reservations.

Mr McGOWAN: I am interested to know, because I heard some of the Opposition's speeches, and it seems to me that the Opposition is falling into the classic trap of criticising everything.

Mr Barnett: Why do people go for ministerial appeals?

Mr McGOWAN: The reason is that it is a simpler, easier system.

Mr Barnett: It is a quicker process.

Mr McGOWAN: Yes, it is. Does the Leader of the Opposition support the old system or the proposed new system?

Mr Barnett: I am just asking a question.

Mr McGOWAN: Why is the Leader of the Opposition criticising this Bill if he intends to back it?

Mr Board: Because there must be safeguards to make this tribunal accessible to the community, and we have not seen them yet.

Mr McGOWAN: I agree that it must be accessible, but, as I have said, the ministerial appeals system can lead to a perception of bias. It can also lead to corruption, and to decisions being made on inappropriate grounds. Anyone who knows anything about administrative law will say that these sorts of decisions should be made -

Mr Barnett: Do you think the bureaucratic process is free of all those evils that you have ascribed?

Mr McGOWAN: Perhaps the Leader of the Opposition should abolish the court system. Perhaps the Attorney General should make decisions on criminal cases, commercial litigation and all forms of disputes, and we should not have a court system in Western Australia. Is that what the Leader of the Opposition is advocating?

Mr Barnett: Focus on the issue.

Mr McGOWAN: No; it is the same principle.

Mr Barnett: The question I asked was why do people use the ministerial appeals process. We will support the Government in getting rid of the ministerial appeals process, but we want to ensure that people have ready access to the tribunal when dealing with planning disputes and appeals. So far, the minister has not been able to demonstrate that, and that is the issue in this debate.

Mr McGOWAN: The system that has been in place since 1928, if I remember correctly, can lead to a perception of bias. It can also lead to corruption, and to decisions being made on inappropriate grounds. This new system will do away with that. The minister has put in place mechanisms for the so-called smaller appellants to avoid a legalistic system -

Mr Barnett: Why then are you supporting a Bill which will still allow the minister to intervene?

Mr McGOWAN: As members know, planning issues are often of state and regional significance.

Mr Barnett: Will the minister still be able to intervene politically?

Mr McGOWAN: Does the Leader of the Opposition oppose giving the minister the power to intervene?

Mr Barnett: You are arguing that the minister should have no role and we should get rid of ministerial appeals. If that is the case, how will the average punter - the mums and dads - get low-cost, ready access to appeal? You are arguing that the appeal process must be pure, but you are now arguing that it is appropriate that the minister intervene. We are trying to get this legislation into decent shape. We support the principle of getting rid of ministerial appeals, but we must look after the interests of those average people. That is what this debate is about. Can you explain why, having said all that, you now support the right of the minister to intervene, when that intervention may be subject to political interference, personal prejudice and all the other things that you have ascribed to the appeals process?

Mr McGOWAN: Planning issues often have state significance.

Mr Barnett: There is a house in Cottesloe that has not yet been heritage listed. Is that of state significance?

Mr McGOWAN: The Leader of the Opposition should let me answer his questions. He seems to think that he owns this place, but he does not. Last year, a heritage issue arose involving the silos in Fremantle, because in 1943, during the war, some of the smaller silos had been used partly to communicate with submarines. However, an issue of state significance also arose, because those silos had an impact on the effective and commercial operation of the Fremantle Port Authority. Therefore, as opposition heritage spokesperson at that time, I did not take up that issue, because I realised that on odd occasions, issues of state significance might override other interests; therefore, that intervention power is required. That is the experience in other jurisdictions that have that intervention power, and I support that and believe it is a good thing. If the Opposition wants to be a purist and oppose that intervention power, it can do that. We will see what it decides to do about that matter.

The new tribunal will provide opportunities for informality and flexibility. It will also allow third parties to make submissions. That has been a development in administrative law for the past 12 to 15 years, and it gives standing to third parties who may not be in a direct plaintiff-defendant position but are a relevant group with an interest. Those parties cannot appeal or stop a planning issue, but they can make a submission, and that is a good thing. I support giving the minister a call-in power for issues that are of state significance and that may affect the economy of the State and a range of things other than the immediate issue at hand.

I appreciate that the minister is delivering on a commitment on ministerial appeals and planning issues, but a range of other Bills have ministerial appeal powers in what are really analogous situations. Section 9.7 of the Local Government Act 1995 provides that an affected person may appeal to the minister. The minister may deal with that appeal under section 9.8 of that Act. That appeal provision operates with regard to people who are aggrieved by the decision of a local government in a non-planning matter.

If a person is offended by a decision that affects his business or livelihood, or by a local government decision in relation to land that he controls, he has an opportunity to appeal to either the Local Court or to the Minister for Local Government. The Bill that contains that provision was passed through Parliament with bipartisan support and was recently enacted. The situation for an appeal under the Local Government Act is similar to that which exists at the moment.

An appeal provision is included under the Environmental Protection Act 1986. It provides that people who are aggrieved by decisions made by the Environmental Protection Authority may appeal to the minister. Under section 100(4), a person who is aggrieved about an order concerning an issue such as pollution, can appeal that decision to the minister. The minister has the power to overturn the EPA's decision. The minister has opportunities to make decisions on environmental matters, which may well be made on grounds that are not relevant. There may be a perception of bias, undue influence or any number of things. Under the Environmental Protection Act another mechanism exists for ministers to potentially act without taking relevant considerations into account. Under the Heritage of Western Australia Act 1990, the minister can make a decision on whether something that is a potential heritage site is listed on the heritage register. I recall that an issue arose in the electorate of the Leader of the Opposition during the term of the previous Government, about a property in, I think, John Street. I am not familiar with John Street. I assume that it is an appealing street. A person wanted to knock down an older property and the council objected. I think the proponent appealed against the council's decision to the Minister for Planning under planning laws and not heritage laws. The minister at that time was Mr Graham Keirath, the former member for Riverton and close colleague of the Leader of the Opposition.

Mr McRae: They were good friends.

Mr McGOWAN: They were very good friends. I recall that the minister said on a radio program that he had taken a drive down the street and did not think that the building in question warranted heritage protection.

Mr Barnett: I agree.

Mr McGOWAN: I do not know the particular issues concerning that building and I did not get involved, despite appeals by local residents and others for me to do so. Although the Leader of the Opposition and I might consider that it is not a heritage building - I have not seen it - we are not in a position, just by driving down the street one Sunday afternoon on the way home from the beach, to say whether it is a heritage building or not. That is not our role. Maybe there is a fundamental disagreement here.

Mr Barnett: The point is, was it on any heritage list?

Mr McGOWAN: Was it on the Town of Cottesloe's interim register? In any event, the Town of Cottesloe made a decision on this matter. The principle that I am trying to put across to the Leader of the Opposition is that the minister drove down the street one day - he might have been going at speed - I am not sure how fast he was going - and decided that the house did not have any heritage value. He did not go inside the house. It is not his decision to make, because he is not someone with relevant experience or expertise in that specialised area.

Mr Barnett: There was no strong case that it was a heritage house.

Mr McGOWAN: The general point I am trying to make to the Leader of the Opposition is that under the relevant Acts - the Heritage of Western Australia Act, the Environmental Protection Act and the Local Government Act - the former planning appeals system lent itself to that sort of decision-making process, in which a minister drove down a street and decided whether something was causing pollution. He or she decided whether something had heritage value or whether an individual -

Mr Barnett: Did the minister seek advice?

Mr McGOWAN: Where is the requirement for a minister to seek advice? There is no set process. The minister is not even required to set out the reasons for his decision on an appeal. My plea to the Minister for Planning and Infrastructure is that this legislation will involve a broad range of issues and not just those concerning planning. Although this Bill is a great start, those broader issues must be considered. The former Government's record on these matters was not good. I recall that shortly after I was elected in 1996, the former Minister for

Planning was not even a member of Parliament, yet he was making decisions on planning matters after the election.

Mr Board: Your minister did that.

Mr McGOWAN: I do not recollect another minister doing that. This was a huge issue in 1997. Although he was not a member of Parliament, Mr Richard Lewis was making decisions on about 50 separate appeals. Decisions were being made by a minister who was not elected. These broader issues require examination by the Government. I hope the Minister for the Environment and Heritage and the Minister for Local Government will examine the appeal provisions under each of the Acts and ensure that decisions are made in the light of proper process. An adherence to natural justice must be ensured, and when decisions are made, the reasons for them must be published. Decisions must be made on the basis of relevant and properly examinable grounds, rather than on the whim or the feelings of a minister on a particular day. Those things must be dealt with.

MR BOARD (Murdoch) [5.07 pm]: The Planning Appeals Amendment Bill is an extremely important piece of legislation. It is important not just because it deals with the appeals process, but also because, in effect, it will set the direction for planning approvals and decision making by councils, particularly in discretionary decision making, for whatever period this legislation is in place. This side of the House treats planning appeals as being of great importance. From that point of view, members will support any legislation that allows greater transparency and support for the community, particularly in planning appeals. What we do not have in front of us at the moment is a clear and rational explanation of how the tribunal will bring about that important reform. Those of us who have spent time in local government, and there are many in this House who have, know that nothing is more emotive or more greatly occupies a council's time than planning decisions, particularly those involving council discretion, such as those which deal with amenity or on which there has been community input. Most town planning schemes set up by local government with the support of planning authorities may involve five years of deliberations before they are approved and incorporated into the metropolitan region scheme. The individual schemes must be subjected to a very long statutory period in which the people help to judge what kind of community they wish to live in. Issues to be considered include zoning for residential and industrial areas, buffer zones, the usage of the blocks themselves, streetscapes and the amenities people expect. People in many areas create for themselves a theme and an image based upon what is included in the town planning schemes. Some areas have height restrictions and amenity codes. A whole range of restrictions are placed on various developments, approvals of subdivisions and buildings. All these provisions are included in town planning schemes, often after five to 10 years of input from the community. Input is also made by local councillors, who have an important role in planning decisions. For most people, the major investment they will make in their lives is in their residential property. Nothing is more sacred and emotive than the desire to protect that property against invasion. That invasion might take the form of inappropriate development, loss of amenity, noise, overlooking buildings, and a whole range of other issues which affect not only their lifestyle and their enjoyment of their property, but also its value. Local town planning schemes, as well as the whole planning process, plays an integral part in the cohesiveness of our communities. This is one of the reasons Governments of both persuasions have supported the ministerial appeal system, which has given discretionary power to the minister to support community involvement when there has been no third-party right of appeal. All ministers have rejected third-party rights of appeal; that is, from people who are not involved such as the owners of the property or the council. Taking community expectations into account in planning decisions is the function of the ministerial appeal process. The majority of planning decisions by councils that are appealed have been made by those councils with the intention of having the minister make a discretionary decision. Built into the council's town planning scheme is a process by which the council can look at the loss of amenity or value, or the effect upon lifestyle, which cannot be put into words in the scheme itself. In many town planning schemes, particularly those with which I have been associated, opportunities existed for the council to make a decision in the overall interests of the community.

Ms MacTiernan: Does the member for Murdoch acknowledge that it was the Liberal Government in 1997 that made a decision to abolish ministerial appeals?

Mr BOARD: That Government made a decision to try to make the ministerial process more transparent.

Ms MacTiernan: No, it wanted to abolish the ministerial appeal process.

Mr BOARD: In 1997 the Government wanted to move to a system under which people could afford an appeal process, which was not subject to delay. I am not against abolishing ministerial appeals, but the reason people flocked to the new process was that the minister had the ability to look at issues beyond what was written in black and white in the town planning scheme. I fear that, unless that discretion is retained in the tribunal system,

the result will be very black and white decisions time after time, which will not allow councils to support their discretion. This will be reflected in town planning schemes, and a process will result which, while adhering to the law, may affect the community's input into the decision-making process.

Ms MacTiernan: It is an interesting idea, but I do not understand its logic. Is the member for Murdoch saying that the minister should be removed from the process? How will that help?

Mr BOARD: I am not saying that the Opposition wishes to remove the minister -

Ms MacTiernan: I know that, but why will it lead to more rigidity in the councils?

Mr BOARD: Because the Bill is setting up a tribunal headed by a lawyer.

Ms MacTiernan: Which it is now.

Mr BOARD: Yes, but the new process will result in rigid decisions that will support the town planning schemes as they are written by local authorities, which will remove the discretion that councils had. A very black and white decision-making process will result, which will diminish the community's input and its expectation of discretion on their behalf. The community does not have a third-party right of appeal, and often councillors reject something that they know will go to appeal before the minister, hoping that the minister will make a discretionary decision in favour of the community. That happens regularly.

Ms MacTiernan: The member for Murdoch is really arguing for something quite different, which would be interesting to discuss at a later stage. He is arguing for the abolition of appeals on the merits, and just allowing -

Mr BOARD: I am arguing for an appeal system that allows for discretionary decisions that are in the interest of the community. A major debate took place in Australia 10 or 12 years ago around the theme of moving away from rigid town planning schemes and replacing them with schemes that were almost totally discretionary.

Ms MacTiernan: This is a cyclical debate. Circles of development exist in the town planning area, by which periods of flexibility are followed by times in which people react against that flexibility, and then control becomes the mechanism. It is just one of those cyclical things -

Mr BOARD: People want to get it right.

Ms MacTiernan: Over-correction then takes place, and so the circle moves. That will not change.

Mr BOARD: The Opposition does not want to see things over-corrected to the point that the community input is cut out. It does not wish the situation to arise in which people have only written rights under the law. This at least gives certainty to developers, but it cuts out what could be considered orderly planning in the community interest.

Ms MacTiernan: It is an interesting point, but I have to say that the Government is not aiming at diminishing discretion.

Mr BOARD: What the Government has argued is that the ministerial appeals system has been cut out because it may suffer from bias.

Ms MacTiernan: That is true of ministerial discretion.

Mr BOARD: The reason the ministerial process was held on to for so long was that it was discretionary.

Ms MacTiernan: No, it was a question of replacing the council's discretion with the minister's discretion. It then becomes a matter of judgement as to whether the Opposition thinks it appropriate that a minister should, meeting in secret, be entitled to substitute his discretion for that of an elected council meeting in public.

Mr BOARD: When I acted as the Minister for Planning on many occasions, and had to deal with a number of these appeals, I can assure the minister that the majority of the appeals before me resulted from the councils not wishing to make a decision.

Ms MacTiernan: That is true, and it is very bad.

Mr BOARD: That is right, but it meant that the community wanted that discretion in the system.

Ms MacTiernan: The councils had the discretion. They did not want to tell their ratepayers what they were really doing. They would knock back an application, and then go behind the back of their ratepayers and tell the minister it was okay if the application was appealed.

Mr BOARD: I am glad for those interjections, because they go to the very point I am trying to make. We could continue to make this point in the consideration in detail process. In moving to the process outlined in the Bill, it is important that the Government empowers the community and does not shut it out through either a very tight legal process or a time delay that will not allow it to have the sort of input it has enjoyed so far.

Ms MacTiernan: Did you compare notes with the member for Vasse, because he was railing against that?

Mr BOARD: No, he was not. We are saying the same thing. The Minister for Planning and Infrastructure has served as a local councillor, so she would know that because discretion is built into the system, councils make many decisions that are in the community interest but against the letter of the town planning scheme. If parties appeal, what will happen with the minister's tribunal?

Ms MacTiernan: It will be exactly the same. I will explain how it works. There is a wide range of discretion within both the R codes and the rules regulating subdivision. They are things that are mainly appealed. A party can appeal only when there has been some discretion. If discretion has not been used, there is no basis for appeal. The mechanism will not eliminate discretion, but provide a means for the tribunal to ask if the exercise of discretion was right or whether it should substitute its view. It is not about whether there can be discretion.

Mr BOARD: A minister might drive past a house to get a feel for the local decision-making process. That is important. I would hate to see that taken out and replaced with a tribunal which is removed from local input and which applies the letter of law. That would result in some sterile decisions that are not in the interest of the Western Australian community. I provide this as a warning. I would not say that it is the minister's intent, but working groups often find that, in trying to be consistent, their decisions get tighter and they create a sterile environment. Fewer appeals will be made and local town planning schemes will be amended to reflect the decisions of the tribunal. The minister's system will create a regime in Western Australia that is much tighter than she intends. I let her know that now so that she can deal with it when she sets up the tribunal, frames its expectations and implements its decision-making processes. We want a better system, not a worse system. We want a system that reflects community interest, not one that diminishes it. She has the opportunity to do that if she takes those things into account.

I shall deal with many of the other aspects I want to raise during the consideration in detail process.

MR PENDAL (South Perth) [5.22 pm]: I suspect I will be in a very small minority in this debate. I express my regret that the legislation, particularly the provision that will abolish ministerial appeals, is before the House. I will outline my reasons for that in a moment. I believe it is entirely the wrong decision, notwithstanding that I recently helped a constituent with a ministerial appeal in which, on the face of it, the minister clearly should have ruled in favour of my constituent. In fact, the minister ruled against my constituent. However, I repeat my contention that we will live to regret this day. The Government is about to turn an eminently simple and fair town planning appeals system into a complicated, convoluted, legalistic and ultimately very expensive process. I can understand a minister for planning - in this case, a minister for planning and infrastructure - coming to office and wanting to rid herself of many of the less important decisions that bogged down her predecessors. In fact, in debate in two Chambers over the years, I have expressed the view that, were I ever to reach the lofty heights of being a minister for planning, I would want to reform the process by which a minister becomes involved in that intimate detail. However, this Government has identified a very serious problem and applied entirely the wrong solution. It is applying the wrong solution in circumstances that puzzle me. The Government will bring in a system that I thought would have been anathema to a Labor Government. The system it plans to introduce will mystify a process in the law; yet we spend years in this place trying to demystify the processes of the law. Town planning matters are not matters of life and death, but they are, as the member for Murdoch said, often matters of lifestyle, and decisions, usually stupid decisions, made at the local government level can sometimes badly affect the way people, particularly in urban areas, have to contend with their castles. As the minister properly pointed out in her second reading speech, a system to allow appeals against town planning and local authorities has been developed. Over the years, we have seen the system progress - it has been very good progress - and bring the law within the grasp of a greater number of ordinary people. By passing these amendments today - notwithstanding that they are Labor policy - we will turn all that on its head and return to the law all the mysticism that we have tried to extract from it. For that reason, it is a very retrograde step. I quote from the minister's second reading speech -

> . . . the ministerial system has traditionally involved the allocation of an appeal case to one member of the town planning appeal committee who confers with one party and then the other, usually independently of each other, contacts any others who appear to have a significant interest in the

> outcome and prepares the report and recommendation for consideration by the minister. Those reports are presented by two or three full-time appeal committee members to the minister, who makes a determination in consultation with them.

That seems to be a good layman's description of what we have experienced with ministerial appeals over the past decade or two. Later in the second reading speech, the minister said that "the ministerial system has been favoured by many appellants on the grounds of speed". There is no harm in that. The minister also said that many appellants favoured that system because of cost saving - we should all applaud that - and informality of proceedings. The minister, in her second reading speech, provided reasons for the retention, rather than the abolition, of the present system. What does the minister have to say about its alleged shortcomings? She clearly thinks it is full of shortcomings. She should not throw the baby out with the bathwater. If the system in itself is working reasonably well as an alternative to the tribunal - I believe it is - the minister should expedite and improve the ministerial appeal system.

Ms MacTiernan: Why not the other way around?

Mr PENDAL: Just a minute. The minister was having a consideration in detail stage debate a while ago - this happens to be a second reading speech - and I am happy to deal with those things when we get to the consideration in detail stage.

The minister made a very valid argument when she said that one of the deficiencies of the present system was its "lack of transparency". I agree. The solution is not to abolish it, but to make it transparent. How might we make it transparent; by throwing out this Bill, for example? I recall not so long ago making a similar suggestion about appeals in the environmental field. One way to make appeals transparent, and one way to make ministerial appeals transparent, would be, for example, for them to be able to be tabled in this place. Hundreds of instruments are tabled in the course of a parliamentary sitting, and that is good. We could add to that process of transparency, keeping the current system with its simplicity and managing it in a way that is cost-effective for the affronted constituent, by the simple tabling of those documents. Most of the recommendations made by the members of the Town Planning Appeal Committee, whether under this Government or the previous Government, would be accepted and endorsed by the minister of the day. Nothing is wrong with that either. However, that appeal mechanism would be tabled here, and, therefore, the sort of transparency that the minister feels is absent would be in place.

The minister and some members have talked about the interminable delays which occur. I have heard that, when the minister came to office, she was confronted with several hundred ministerial appeals with which she had to deal. I have a lot of sympathy for that. Before the minister re-entered the Chamber, I mentioned that - God forbid - had I become a minister for planning I would have ensured that a minimum amount of paperwork for these town planning appeals came across my table. What is the solution? If the problem is the paperwork jamming up with the minister, then a greater number of people should be appointed to deal with the appeals. As practice would have it, ministers almost automatically give their stamp of approval so, finally, under the suggestion that I am making, transparency would come into play by the tabling of that instrument in the House itself. In other words, I acknowledge that we have a problem, but I think we are going out of our way to make the matter more difficult.

In her second reading speech the minister said that "reasons for ministerial appeal decisions are not published". All right, let us publish them in the manner that I mentioned earlier. The minister also made reference to "community confidence in the ministerial appeal system". The inference is that the community exhibited a lack of confidence. Where is the evidence? Have we ever seen any serious level - or for that matter any level - of corruption in the process that has been in place? I, as a member of Parliament, certainly have not seen that evidence. I would have expected that if any minister, premier, departmental head or the Auditor General had found that misbehaviour or corrupt activities had occurred, that would have been reported to the appropriate authorities, including this place. Has that ever been done? It has not. Therefore, one has to question the accuracy of the statement that there is a lack of community confidence in the ministerial appeals system. However, if that had occurred, then that misbehaviour, misconduct or corruption ought to have been taken to the appropriate authorities.

One of the great benefits of this system was that people could make an appeal either through their local member of Parliament or independently, they could lodge that appeal at virtually no cost to themselves, and ultimately the recommendation was often made on the grounds of commonsense. I have been impressed by the number of committee members who have made inspections in their electorates, seen one side of the story, gone back and weighed up the evidence from the other side and then presented to the minister of the day a recommendation that

was not necessarily based on town planning principles, but on commonsense. That is why I am saying that today we are on the brink of throwing out the baby with the bath water. If deficiencies exist, we should be tackling them. If the system is inefficient, we should be tackling the inefficiencies. If we need to appoint more referees, for want of a better word or description, we should appoint them.

Ms MacTiernan: That is disgraceful!

Mr PENDAL: The minister whinges and snorts about it being disgraceful. I will tell her what the Labor Government is doing: it is turning back the clock. It will institutionalise, formalise and make more complicated something that does not need to be institutionalised, formalised or made more complicated. Why does the law need to be even further removed from ordinary people? That is what will happen if we remove the right to a ministerial decision.

This is another little victory for the legal profession. We will have no more ministerial appeals; we will have a tribunal with a lawyer, which is a lovely piece of elitism if ever I saw one. We will not have only ordinary members of the tribunal; we will have some senior members and some ordinary members, both of whom will have their own little pecking order, again mystifying an area of the law that we should be spending time demystifying.

Mr Johnson: Who is going to appoint them?

Mr PENDAL: The minister and the Cabinet of the day will appoint them. The lawyers will be the winners again. We will have registrars, whereas at the moment we do not; we will have a principal registrar, whereas at the moment we do not; we will have other officials described in the minister's second reading speech, whereas at the moment we do not; and we will have an executive officer. This is a wonderful conversion to bureaucratic form and we are replacing one of the simplest, most efficient, cost-effective and ordinarily transparent systems it is possible to have. We will legislate today to make the word "complication" a plus, and will this in the name of improving the administration of law in this State.

I remind members that this is the closest to the law that most people out in the suburbs and the towns who will be subject to this legislation will ever come. Most people do not get caught up in the law by committing burglary or murdering or raping people. Being involved in one of the huge number of town planning appeals - most of which over the years, by the minister's own admission, have gone on to ministerial appeals - is the closest most people in my electorate ever come to the day-to-day working of the law.

What we will do is make something that is simple complicated; we will make something that is inexpensive ultimately very expensive; we will make something that is not overly bureaucratic into a very serious layer of new bureaucracy. Why? I know that this will fall on deaf ears, but I can only appeal to the minister, even at this late stage, to send the Bill off to one of the standing committees of the House.

I am sure that other parts of the Bill are probably commendable, but the most important part is that which will affect ordinary people most. It will line the pockets of other people when the people who will do the lining can ill afford it. This is a perfect Bill to send off to one of the five standing committees and to have its committee members run the rule over the Bill in the public interest, which is what we should be doing in this Chamber right now.

The Bill will pass on the numbers. It certainly will not pass with my support. It is a piece of reform that does not take us into the future at all but takes us back about 30 years when we started the process when the first forms of appeal came into being in Western Australia. I cannot believe that this sort of legalism, elitism, nonsense and bureaucracy will be added into the system by a Labor Government that should be looking after the battler who can ill-afford these added burdens when wanting to make an appeal to a minister.

The minister said in her second reading speech that one would find that a very small number of all the appeals that had been lodged in the past X number of years went to the Town Planning Appeals Tribunal and that most went to the minister. Why? I will tell members. The first process costs money. Even today, lodging a ministerial appeal can cost money. Some of the poor beggars who set out to make a simple appeal to the minister find themselves forced to go to town planning experts, engineers, urban developers and planners. Even that process has its shortcomings. I appeal to the House not to make heavy something that should be eminently light, simple, non-bureaucratic and non-costly. We still have the opportunity not to do that by referring the Bill to a standing committee.

On the run, because I have one minute to go, I want to seek some advice. Is it competent for a member to move that a Bill be referred to one of the five standing committees of the House on the grounds that the member is talking? The moment I sit down I lose my opportunity to do that.

I accept that the Bill is well-intentioned. I accept the lament of the minister who came to office saying that she could not deal with appeals in a hurry because of the huge backlog; but I repeat, this is entirely the wrong solution. There are other ways in which we should be dealing with the matter rather than making such heavy weather out of something that should not be heavy weather at all. If the Bill is sent to the appropriate standing committee, not only will it show our serious attitude to the committee system but also it will open the Bill to a little non-political, bipartisan scrutiny that might eventually have an invaluable result for our constituents.

The ACTING SPEAKER (Mr Dean): The logical way for the member to have his wish is to move that the Bill be referred perhaps to the Economics and Industry Standing Committee, at the time the motion is put that the Bill be read a second time.

Mr PENDAL: I will follow that advice. If the Bill is in that category, the committee will have the opportunity to confirm the Government's view of it. Given what I have heard around the Chamber, I want to test the matter, because I feel strongly about it. If I am in a position to do so before I resume my seat, I will move formally that the matter be referred to the appropriate standing committee.

The ACTING SPEAKER: That in essence is the spirit of what the member wants to do, but he has not put it in writing and has sat down. If it is the wish of other members, I will accept that motion, as long as it is in writing.

Point of Order

Mr JOHNSON: The member did sit down in deference to your speaking, Mr Acting Speaker. I am sure that the member for South Perth would have resumed his standing position once you had delivered your comments to the Chamber.

The ACTING SPEAKER: I accept that.

Amendment to Motion

The ACTING SPEAKER: If the member is to move an amendment to the motion, I must have it in writing.

Mr PENDAL: We are dealing with the second reading of the Bill. The motion is that the Bill be now read a second time, to which I move -

> That the motion be amended by inserting after the words "a second time" the following -
>
> > and then referred to the Economics and Industry Standing Committee for examination and report.

MR KOBELKE (Nollamara - Leader of the House) [5.49 pm]: I assume that the member for South Perth is moving the amendment under Standing Order No 171; if not, we need some clarification. If it is moved under Standing Order No 171, as I interpret that standing order, such a motion can be moved only at the conclusion of the second reading debate. I am not sure if the member for South Perth is assuming that the minister will not reply.

The minister has a right of reply. The second reading debate is not concluded until the minister has exercised that right. Other members also want to speak in the second reading debate. Unless the House is advised that the member for South Perth is moving the motion under a different standing order, it is not appropriate to accept the motion at this stage.

Mr PENDAL: I believe that is what I have done.

The ACTING SPEAKER (Mr Dean): No. I suspect that Standing Order No 170 applies -

> Amendments may be moved to the motion for a second reading if they are strictly relevant to the bill, . . .

Points of Order

Mr KOBELKE: I have always found that the advice of the Clerk has been accurate when interpreting standing orders. It is given freely to all members. I suggest that advice be taken. Standing Order No 171 is specific and it is not appropriate to take a different standing order that does not apply to this matter and extend the application of a different standing order. Standing Order No 171 relates directly to the referral of a Bill to a committee. The motion moved by the member for South Perth relates directly to the referral of the Bill to a committee at the

conclusion of the second reading debate. Standing Order No 170 cannot be extended to override Standing Order No 171. The member for South Perth is attempting to have the Bill referred to a standing committee. That process is dealt with at the conclusion of the second reading and not halfway through the debate. If it were taken at this stage, a number of members who want to contribute to the debate would be denied the opportunity. I do not know whether it is the intention of the member for South Perth to deny members the right to contribute further to the second reading debate. I assume it is not his intention and that he intends to have the consideration in detail referred to a committee. If that is the intention, the member is seeking to exercise his right under Standing Order No 171, but he cannot do that at this stage.

Mr JOHNSON: Standing Order No 170 is the appropriate one. Standing Order No 171 applies when a Bill is to be referred to a legislation committee. This House does not have a legislation committee but it has standing committees that look at Bills in general terms and consult with members of the public. They investigate matters and do the work they should be doing. That is what the member for South Perth is moving. I support that view. The House is dealing with Standing Order No 170 and not No 171. The motion moved by the member for South Perth is perfectly legitimate and should be put before the House.

The ACTING SPEAKER: The intention of the member for South Perth is not to exclude members of the House from debating the Bill. I do not intend to exclude the member for South Perth from moving the motion. This matter will be best concluded if the member for South Perth moves his amended motion at the end of the second reading debate. That way, all parts of this argument will be satisfied. Would this satisfy the member for South Perth?

Mr PENDAL: It would. I have no intention to exclude any member from speaking on this Bill. I do not want to exclude a ministerial response. The minister might concede some of the points made in the debate. The standing orders are deficient. Is the House dealing with this issue under Standing Order No 170 or No 171?

The ACTING SPEAKER: Standing Order No 170.

Mr PENDAL: I am happy to wait until the conclusion of the second reading debate before I again propose the motion.

Acting Speaker's Ruling

The ACTING SPEAKER: I rule the member's amendment out of order at this stage.

Debate Resumed

MR SWEETMAN (Ningaloo) [5.56 pm]: I have seen the issues in this Bill from both sides; by that I do not mean to say that I held one point of view when I was on the other side of the House and a different view now that I am on this side of the House. I have spent a considerable amount of time in local government. With this Bill, the minister is doing what I and others in local government did. If there was an issue in our community or shire that was too hot to handle, an easy way out - a cop-out - was to refer the matter to the minister. The shire would knock back an application on a planning matter and advise the applicant of his right of appeal to the minister. It was an abrogation of our responsibilities. I fought against it on some occasions but on others I gave in. It does not make the process right. It unduly loads the minister's office with unnecessary appeals. It would have been good if ministers over the past few decades had the means to determine which appeals were frivolous; that is, matters that could have been dealt with by local governments and should have been sent back for them to deal with. That situation will continue with a planning appeals tribunal. Some local governments will be sour about rulings made by the tribunal in the same way as they were about rulings made by the minister. The local governments should reflect on the times when they referred matters on appeal unnecessarily to the minister. This is the focus of my contribution to this debate.

We are elected to the Parliament to take certain responsibilities. When ministers are sworn into office, they assume extra responsibilities to uphold the interests of the people of this State. It is a big workload. The points made by the member for South Perth were not lost on me and I hope they are not lost on the Government. The minister is able to add extra resources to help her and future ministers handle planning appeals.

Ms MacTiernan: It does not work like that. The minister, not the staff, has the right and responsibility to sift through evidence and make a decision. Legislation does not give staff members the right to determine appeals. It is appalling that it is suggested that I rubber-stamp appeals applications.

Mr SWEETMAN: I am not suggesting it.

Ms MacTiernan: I know the member is not. The suggestion has been made by other members in the House today. It amounts to an abrogation of a minister's responsibility. Having more staff does not deal with that part of the problem. In any event, that is not the fundamental problem.

Mr SWEETMAN: Until this Bill passes into law, and comparing the old system with the existing system, the opportunity existed for people from the minister's appeal committee, when considering an appeal, to visit the area that was the subject of an appeal. There seems to be no provision for the chairman of the tribunal or members of the tribunal or people representing their interests to visit such areas.

Ms MacTiernan: Does the member think that ministers should do that - apart from the example of Graham Kierath driving down John Street?

Mr SWEETMAN: No, but their officers do. I have spoken to officers who represented the minister while they gathered information and evidence to assist the minister in making a decision on an appeal. To that end, it has worked.

Sitting suspended from 6.00 to 7.00 pm

Mr SWEETMAN: I sincerely believe that the minister has abrogated her responsibility and has given future ministers the opportunity to sidestep their responsibilities. The Minister for Planning and Infrastructure is in a unique position to exercise the wisdom of Solomon on issues concerning appeals. I am concerned that if this tribunal is set up, its reference points will be entirely different from the minister's. The tribunal will tend to take a legal, clinical position on matters that come before it, whereas, even if she does not take that view herself, the minister has that expertise available to her. In addition to that clinical view, she is able to take a more practical approach and apply a practical, inquiring mind to the issues that are being appealed to her.

For as long as I can recall taking an interest in local and state government, planning issues have been controversial. To some extent, it surprises me that this minister is content to see her responsibilities handed over to a tribunal. The minister is known to be unafraid to make controversial decisions if she thinks that is required in whatever matter with which she is involved.

Mrs Edwardes: Don't encourage her.

Mr SWEETMAN: I do not wish to encourage her.

Ms MacTiernan: What was that?

Mr SWEETMAN: I made the point that the Minister for Planning and Infrastructure is not afraid of controversy, therefore, I cannot understand why she would want to sidestep the issue of appeals. Is it much more difficult to keep up with the workload because of the additional portfolios that have been heaped on ministers due to the reduction in the number of ministers from 17 to 14?

Ms MacTiernan: The member is not familiar with the concept of issues of principle. Is that a foreign concept?

Mr SWEETMAN: Ministerial decisions involved with planning issues are subjective, as are issues of principle. For as long as I have taken note, planning issues have been controversial at state and local government levels. Shortly, I will outline some practical examples about my experiences of dealing with different ministers over a long period. When I was in local government, I dealt with the ministers of the day, Hon Pam Beggs, Hon Bob Pearce and, since being involved in State Parliament, minister Kierath.

Mr Bradshaw interjected.

Mr SWEETMAN: We all know that no deal is perfect. When a minister makes 700 or 800 decisions a year, of course there will be some concern and conjecture about whether all the decisions made by the minister were right. It would equally be so of any tribunal or institution that was set up to take the place of the Minister for Planning and Infrastructure in this process.

I refer to a matter that was appealed in the mid 1980s at Coral Bay. The Brian Burke Government set up an environmental review of the marine and terrestrial environment of the Coral Bay area that was undertaken by Rory O'Brien. In late 1984 or early 1985, he briefed the Shire of Carnarvon on his findings and the final report was ultimately issued. To paraphrase all the recommendations, he said that there should be an immediate moratorium of development at Coral Bay and that within five years the bay should be closed.

At that time, when I was a councillor, the Shire of Carnarvon thought it was a great idea. The reasons for supporting those recommendations were not all environmental. Coral Bay had always been a problem to the

Shire of Carnarvon because of planning approvals, building permits and the like. At the time there were many reasons why the Shire of Carnarvon wanted to be shot of Coral Bay. We were naive enough to think that we would have no problem closing Coral Bay. The first person to make application to develop was turned down. The applicant was then advised of his rights to appeal to the minister, and he did. In almost record time, the minister upheld the appeal. The Shire of Carnarvon was dumbfounded. The report commissioned by the Government of the day had recommended that the bay be closed. However, when the shire accepted the report's recommendation, the minister of the day - in that very same Government - upheld the appeal.

Some good came from that decision because a management regime for the reef and the adjacent land was put in place. In the ensuing 16 or 17 years, as a result of that decision, the environment has improved rather than being further degraded. In highlighting that case I ask the minister whether a tribunal would have made the same decision. An appeal was made to the minister who made the decision.

Ms MacTiernan: Was it an appeal against a planning decision?

Mr SWEETMAN: It was an appeal against a development proposal.

Ms MacTiernan: Those policy settings can be made in other ways. The member referred to a strategic policy setting that was made. My view is that those decisions should not be made randomly on appeal; they should be made through proper deliberation of policy.

Mr SWEETMAN: Those decisions are made on policy. This is where subjective views are being applied.

Ms MacTiernan: Effectively, a decision of the shire to change its town planning scheme could have made that decision. The strategic decision that was applied to Coral Bay should not have relied on a development application that was then knocked off on appeal.

Mr Sweetman: The minister may have missed my preamble. The State Government of the day had commissioned a study, and certain recommendations were made. Those recommendations included a moratorium on development and a proposal to close Coral Bay within five years, and the Shire of Carnarvon accepted those recommendations. However, the very Government that commissioned that inquiry upheld the appeal. The local council accepted those recommendations, but the minister, on appeal, did not accept them.

Ms MacTiernan: I would have thought that that was an argument against ministerial appeals.

Mr SWEETMAN: I am using the benefit of hindsight to illustrate that the minister made the right decision, because local government was making decisions for reasons other than those contained in that report.

Ms MacTiernan: I put it to you that that should have been preceded by a change in policy. A strategic change of direction such as that should not be made on appeal, and I have mentioned this point when dealing with country applications for subdivisions in rural areas. People have provided me with many sound arguments, however it is not appropriate for me to overturn on appeal planning policy that has been developed in conjunction with the planning commission and the local authorities. If the policy settings are wrong - and this is often the basis of these appeals - we must change the policy settings.

Mr SWEETMAN: That is correct. However, what damage can be done by those policies in the interim? Policies should simply be, particularly in cases like this, the preferred option.

I turn now to subdivisions in the east Carnarvon area. As a councillor in local government, I prepared the submissions and led the charge, on behalf of the Shire of Carnarvon, to have an area of Carnarvon exempted from the requirement that deep sewerage be part of the approvals process before subdivision could go ahead. At that time, very little land was available in Carnarvon. The small amount of land available was privately owned, and most of that was in sewered areas of the Brockman estate. The price of those blocks was between $20 000 and $25 000. Traditionally in the east Carnarvon area blocks have been in four and five acre lots. One at a time the various owners would proceed to subdivide, and they would put four, five, or 10 residential blocks up for sale. Many requirements must be met before the approval to subdivide is granted. These requirements include power, water, roads, crossovers, and all those types of things. The headworks charges and the cost of putting the sewerage in also had to be taken into consideration. It was horrendously expensive. The cost, even in the mid to late 1980s, was something like $20 000 a block just for deep sewerage, because rather than the entire area in east Carnarvon being subdivided at the same time, small parcels of land with different owners were being subdivided at different times. Therefore, nobody wanted to be the first to put up his hand to pay for the $1.5 million worth of sewerage infrastructure required to allow a subdivision to go ahead.

Local government prevailed upon the minister. We knew it would be difficult to convince him to grant an exemption for sewerage in east Carnarvon because of the policies that had been laid down. The process allowed for approval of subdividing, but many conditions applied. In our argument to the minister, we had to satisfy him that there would be no impact upon the environment or the health standards. Therefore, we commissioned studies that stated that the soil was suitable for leach drain, septic systems indefinitely. However, the minister was concerned about creating a precedent that would affect future subdivisions, not only in Carnarvon but statewide. We all know there is nothing better than a precedent when people are trying to get approval for a difficult issue. However, I believe the minister had the good sense to issue an exemption. That exemption exists today and, as a consequence of that exemption, most of east Carnarvon has developed. That was a Labor Government minister.

I am sure that precedent has created some problems for ministers, but the situation in Carnarvon had to be looked at in isolation. I encouraged the minister to isolate the precedent created in Carnarvon, and to say that extenuating circumstances allowed for that exemption to be made. However, the point I am making is that he was a member of Parliament, and he was a minister. I believe that the reference points he used to assess the matter were different - and would be different today - from those used by a tribunal. I do not believe there is a snowball's chance in hell of a tribunal today granting a similar type of exemption, even though many similar development opportunities around the State are just waiting to happen if the minister is brave enough -

Ms MacTiernan: You do not believe that ministers would grant those types of exemptions today?

Mr SWEETMAN: No, I think a minister would be more likely to grant exemptions these days than a tribunal would be. A tribunal will err on the clinical and legal side during its deliberations.

In closing, I ask the minister to guarantee that this new tribunal process will not be more expensive than the previous process. I have heard horrendous stories about people who believed they could subdivide and make money out of it. However, these people, who were not wealthy, faced a loss-making situation even before the approvals had been put in place. Some people are spending up to $100 000 for their approvals under the current arrangement. I ask the minister to guarantee that this new tribunal will be fairer, particularly to the smaller developers, because the people who want to subdivide land are not always rich.

I turn now to the charter of this new tribunal. I know that the minister wants to sidestep and depoliticise the issue. The minister's call-in option will still enable ministers in the future to buy into planning issues. The process will not be free of perceived political interference. I have made points in this House about how clinical and prescriptive the assessment in the tendering process has become. However, that has not alleviated the suspicion that has surrounded the tendering process, whether it be in the Building Management Authority or the Department of Transport. A decade or so ago, often the finger was pointed and an attempt was made to identify the person who had corrupted that process. Equally today, when tenders do not go the right way, the same finger pointing occurs even though there is a far more technical and clinical way of assessing tenders. I think we will end up with a similar scenario with the new town planning appeals tribunal. At the end of the day, I do not think that issues of political impropriety or interference in this process will be sidestepped.

MR COWAN (Merredin) [7.18 pm]: The minister stated in her second reading speech that the Planning Appeals Amendment Bill would remove ministerial appeals. I believe that the minister was taking some licence because the capacity for ministerial involvement still remains in this Bill. There is also capacity for an appeal to be dealt with directly by the minister. However, I take the minister's point when she alluded to the fact that there are two streams: the popular stream of making an appeal directly to the minister, and the less popular method of making an appeal to the tribunal. The minister's process attempts to circumvent the direct approach to a minister, and to build into the amending legislation a requirement that all appeals must start the process with the tribunal.

There is nothing wrong with the approach along this path, as long as the issues of contention are dealt with. In this particular case, the direct appeal to the minister was always made because of the efficiency, cost savings, and the speed with which the appeal was dealt with. Other points that were not so favourable related to matters associated with accountability and the challenge that was always thrown to a minister because, effectively, there were two parties. One was a statutory organisation - the local government or the Western Australian Planning Commission - which would indicate what was possible within the planning laws of the State. The other, generally the landowner or his representative, would say that that was not what he wanted. There were two parties and one was going to be aggrieved. There will always be someone saying that the development is inappropriate. It dismays me a little that in this instance, a capacity for ministerial intervention remains. I do not have any difficulty with ministerial intervention. The general view of the National Party is that the buck stops

with the minister. There needs to be a capacity for ministerial review, perhaps not at the initial stages such as hearing and considering an appeal, but certainly to review a determination made by the tribunal under special circumstances. I do not think for one moment that ministers should deal with every decision made by the tribunal in which there is disputation, but there may be occasions on which that can be done. Provisions have been included to enable the responsible minister to make a submission; for the tribunal to refer the matter to the minister for a submission; for the minister, by his own intervention, to make a submission; and, finally, to call-in an appeal and deal with the issue. I know those provisions exist, but some would say that they do not cover all areas that have been dealt with in the debate tonight.

There will be occasions when someone, somewhere will make an appeal based on extenuating circumstances, but in the process creates a precedent. Inevitably, the people who are involved in planning and the process of dealing with appeals will not seek to break a precedent. On a number of occasions planning rules or laws may need to be overridden. I do not think there is any capacity for this, because before there can be a call-in of an appeal, as the minister has titled it in her amending Bill, it must have a certain status. It must have a significant impact on the area that is the subject of planning or it must relate to a matter of public interest. I would be interested to know how that will be determined.

On a number of occasions individuals may seek to overturn planning decisions. I will give members an example. There is a basic rule in agriculture that the planning commission should not permit an area of agricultural land to be reduced to a size that is no longer economic. That is notwithstanding the fact that, many years ago, farm areas were divided into lots - forgive me for not being able to give members the precise area in hectares - of, say, 400 hectares. The area used to be 1 000 acres. A homestead block of 160 acres was located within that farm area. In modern planning or decision making, many of those lots have disappeared and agricultural lots can be about 2 000 hectares, with no smaller area or homestead lot. There are instances in which one generation of a farming family may seek to subdivide in order to build a house, so that, should the generation to whom the farm has been extended make a decision that causes the mortgagees to be concerned and perhaps conduct a mortgagee sale, the investment in the house on the property has been protected. Those requests are invariably refused by the planning commission or local authority. The minister receives on appeal many requests to allow for parcels of agricultural land that are not economic to be set aside. The number of occasions on which the minister upholds those appeals is small. Some subjective matters must be dealt with.

Ms MacTiernan: Hold on, what is your point? You said that the minister doesn't do it either.

Mr COWAN: I am sorry that the minister cannot understand what I am talking about. The point I am making is that the existing process does not work, and the minister will not contribute to making it work better with this legislation.

Ms MacTiernan: It will not make it worse. That is why, when you get back to what I was saying earlier, these are policy matters. I agree with you.

Mr COWAN: Of course they are policy matters. Who is responsible for policy? The minister! I have just explained that the minister does not have the capacity, in the example that I gave, to intervene in the decision-making process on compassionate grounds. Unless the minister has the policy right and unless she is able to show that everybody who works within her department has it right and is implementing it, this legislation will be deficient in that single area that I used as an example. The minister may shake her head, but that is a fact. She indicated that it is a matter of policy. Who determines policy? The minister. The minister cannot intervene based on the rules and provisions. We will deal with those areas in the consideration in detail stage. I am pleased that while the minister does not concede that I am wrong, she does at least recognise that she is responsible for policy and that by excluding herself from this process, other than in planning matters of some significance, she is effectively unable to ensure that policy is implemented.

The determination that must be made by the tribunal president as to whether there can be legal representation will be of great interest, because many people will be reluctant to go before an appeal tribunal without some form of legal representation. I would be pleased to think that on those occasions on which an appeal is made, the president pays great heed to the provision in the legislation that permits the appellant to ask that there be no legal representation. That is very important. I am now dealing with some issues that are more relevant to be discussed during the consideration in detail stage of this Bill.

It is difficult for me to accept that appeals dealing with land to a value of less than $250 000 or three lots in a subdivision will be heard by a tribunal sitting as one member. I believe that provision intended to cover an average householder seeking to develop a residential lot; however, the value of many blocks will exceed

$250 000. Consideration may need to be given to the concept of adding an additional clause covering a single residential lot. Other provisions in the legislation will still allow the tribunal president to intervene in a particular case. It would be reassuring to many people who do not have an axe to grind to be able to make changes to the planning requirements of the land they have purchased and want to develop under general appeal. I believe that is the general expression used these days. A simple appeal could be heard before a tribunal of one person who could deal with the issue. I assume that would be the principal registrar rather than anybody else; I may be wrong about that. However, consideration should be given to ensuring that there may be that small add-on to that area so that a simple appeal related to a single residence of a value exceeding $250 000 can be made by a person seeking planning changes to an area that a person wants to develop as a single residence.

Ms MacTiernan: I indicated earlier that the Government was considering some addition like that, but there must be a caveat on that. Some of the more controversial applications have involved very large single residences, particularly those that spread over a number of lots. However, in principle there is room to move on that matter.

Mr COWAN: Yes, and in those exceptional cases the tribunal will have the capacity to refer to them. It is preferable to capture the issue there rather than exclude individuals who may want to develop an area of land for a single residence that requires changes to the planning rules and regulations.

One of the critical issues about this legislation is that recognition has been given to the path that was chosen by most people when they wanted to appeal - that is, the ministerial process - because of the speed with which the decision was made, the costs and the simplicity associated with it. I am amazed that there is no provision in this legislation for a time limit by which an appeal must be heard. There is a requirement for the time of lodgment of an appeal. However, there is no provision in the legislation for these appeals to be heard and determined.

The member for South Perth raised an issue and I am equally amazed about two other issues. First, the minister "may" make a submission in writing, or may give an oral submission, or may delegate that opportunity to a staff member on her behalf. I shudder to think that an oral submission may be made by a minister to a tribunal in these issues and no evidence taken of it, other than perhaps minute taking conducted by the tribunal itself.

Ms MacTiernan: I shall explain that. This will be a court of record. There will be transcripts of the proceedings. All of the evidence will be fully transcribed.

Mr COWAN: It is encouraging to hear that. I would prefer, if a minister were to intervene or become involved in an appeal process, that the appeal "shall" be conducted in writing rather than "may" be conducted in writing. By all means, a member of staff can be invited to support that written submission by giving some -

Ms MacTiernan: You are happy for ministers to have the right to make decisions in secret, but the idea of a minister walking into the court and giving oral and fully recorded submissions is abhorrent. The logic defies me.

Mr COWAN: It is entirely appropriate that there should be a written submission. The minister will never change my view on that.

The final point I make is that nowhere in this legislation is there a limit imposed on the tribunal's making a determination. I would be pleased if the minister in her response could tell me that I did not read the Bill well enough.

Ms MacTiernan: What do you mean?

Mr COWAN: There are 30 days in which to lodge an appeal.

Ms MacTiernan: No, there are no time limits in respect of ministerial appeals. However, we will do the same as is done in the Land and Environment Court of New South Wales; that is, introduce practice directions to deal with the matter.

Mr COWAN: I ask the minister to refrain from making comparisons between this legislation and the ministerial appeals process. Every member agrees that we must change that process because of its deficiencies. Let us recognise that we are all seeking to improve it. I ask the minister to stop telling me that her judgment is based on the ministerial appeals process and that this is what we did before; therefore, this legislation is good enough. If she does that, she may as well abandon the legislation now, or I will give her one assurance: the request by the member for South Perth to refer this legislation to a committee of the House will be supported strongly by every member, because that is clearly not what we want. We are looking for improvements to the legislation. I ask the minister to refrain from telling me that what we did last time was okay, therefore we will do it with this Bill, otherwise we need not go ahead with the Bill.

As I said, I want to see evidence of a clear indication that finite time limits will be placed on the tribunal when making determinations. Even if the minister were able to give ministerial extensions of time, the public must still be reassured that the process in this legislation is able to deal with an appeal in a prescribed period.

Secondly, if a minister is to intervene in an appeal, he or she should do so in writing. As the member for South Perth said, although we are reassured that the process will be conducted as a court of record, there is nothing better and more public than this Parliament. It would be a wonderful thing if any written submission made by the minister were tabled in this place for every member to examine, should they wish to.

The third issue to which I wish to refer is ministerial accountability. It is a matter not so much of accountability but of the capacity of a minister to want to call something in or to be able to make a submission based on those compassionate grounds that inevitably arise. The member for Ningaloo raised that issue, and other members have done precisely the same. There will be occasions when, no matter what the minister's policy might be, there will be a need for policy to be clearly enunciated. It is unlikely that a tribunal established in the very formal sense in which this tribunal will be established is ever likely to vary from not so much policy, but practice. If the minister wants to change policy, she may need the capacity to extend those areas or conditions upon which she can intervene, or which she can call in, as she has called in a particular appeal, and make her recommendation and determination. Again, this is an issue of accountability. If the minister makes such a decision, notwithstanding the fact that it might be in a court of record, it should be tabled. It does not have to be tabled every week. Given the number of appeals that are dealt with at the moment, there would be little difficulty with the minister's tabling on a quarterly basis the decisions she has made on appeals and on her intervention.

Members of the National Party support the principle associated with improving the appeals process in planning matters. We regret that the good points associated with ministerial appeals appear not to have been brought into this legislation. We will get a bureaucratic structure, and that structure will leave us with a very complicated process, which effectively was why the appeals tribunal was overlooked in the first place in favour of ministerial appeals. Nothing in this legislation gives a minister capacity to act on the basis of compassion, and there is a need for that in planning. Nothing in this legislation indicates that there is a requirement for greater accountability, particularly by the minister. That is a deficiency and it must be dealt with.

MR AINSWORTH (Roe) [7.42 pm]: I support the principle of improving the planning process, and I share some of the concerns raised by my colleague the member for Merredin. For all its flaws, the previous system, which included ministerial appeals, gave people who genuinely believed their cases had not been appropriately dealt with by the Western Australian Planning Commission another independent avenue whereby their applications could be looked at and a ministerial decision made, in many cases in their favour. Although some ministerial appeals in the past have been controversial, the inflexibility of some of the planning rules is the reason some of those appeals appeared on the minister's desk. As an example, broadacre agriculture is not practised on some rural land, particularly some smaller parcels of rural land adjacent to towns like my home town of Esperance. In general, it is inappropriate to break up viable economic broadacre farms into smaller lots, which are not economic if they are farmed as a single entity. However, some of the smaller existing lots, particularly those that were surveyed between the 1890s and the 1920s, are nowhere near viable farm size. In fact, in some cases, the land type is not conducive to the type of agriculture that is practised in the general area. One could argue that some of the clearing and the subdivisions that occurred 100 years ago were inappropriate for the land use because they were made without due understanding or consideration of the capability of that land to be used for agriculture. Some of those lots fall outside the shire's special rural subdivision area. Therefore, when an application is made to subdivide those uneconomic small areas into two or three lots, which might then be saleable or used for other purposes, the inevitable result is that the application is rejected on two or three grounds. After a member has looked at several rejected applications on behalf of his or her constituents, the member could almost predict the answer before he saw it. It seems that four or five stock phrases are used to reject applications. Depending on the circumstances, phrases 1, 3 and 4 will be used in one letter and phrases 2, 4 and 5 will be used in the next letter. By and large, after a member has seen those rejections two or three times, he has seen the lot. They are not based on the facts presented in the application. The issues of the size of the land, the capability of the land to be used for broadacre agricultural purposes and the topography of the land, or whatever it might be, can be spelled out clearly in the application. In many cases, applicants send in colour photographs to back up the case they are trying to put, so that a person sitting in judgment on their case in Perth can make a realistic appraisal of what they are trying to say and understand the reason they are saying that theirs is not the standard case and extenuating circumstances make their applications legitimate. These facts seem to go straight over the head of whoever makes the decision. The people making the decisions rely on these stock-

standard phrases. Because a piece of land happens to fall outside the designated special rural area of a particular shire, it makes the opportunity for rejection that much easier.

One argument for not making a decision in favour of these types of cases, even when one can see clearly from the evidence that genuine extenuating circumstances suggest that it would be legitimate to grant the application, is that if the application were approved, a precedent would be set. The argument that a decision might set a precedent is the greatest excuse for doing nothing I have ever come across. I argue the other way: if a case is put forward, whether it is through a ministerial appeal process or another process, and a person can justify his argument on the basis of facts, and that argument is backed up with incontrovertible evidence that can be accepted by a minister, or by whoever is sitting in judgment of the application, and a decision is made based on those facts, the fact that that application for subdivision is approved does not automatically mean that a near neighbour who lives half a kilometre away will automatically receive the same treatment if the situation he finds himself in is totally different. Each case is taken on its merits. When dealing with some of the applications which are outside the norm, which do not fit tight criteria that are totally inflexible and which do not take into account the fact that Western Australia is not cut up into neat blocks that are nice and square on the map, are all the same size and have the same features, there are so many variations that it is hard to set a policy that will encompass everything that could be encountered and not have a few anomalies fall over the edge. When that situation arises, which the ministerial appeal process gave us, at least a person had a chance, in some cases that had merit, to get an independent assessment by a minister who was not constrained by the rigid adherence to a set of rules which, in themselves, are quite okay but which do not cater for every situation. When that process was in place, people could go through the appeals process at low cost and generally fairly quickly. I hope the minister takes account of some of those factors in the legislation before us. I am sure it is not unique to my electorate; I am sure that every member, particularly those with rural or semi-rural land in their electorates, goes through this process. Similar arguments could be put by members with city electorates that a case is outside the rules and regulations, does not fit the standard mould and, therefore, deserves special consideration.

My fear is that the tribunal will be acting almost like a government instrumentality, even though it is supposed to be independent, and that we will get the same type of bureaucratic, rigid response that is handed down by the Western Australian Planning Commission. For that reason, we should have an alternative process. That would be particularly appropriate for small subdivisions of only six, 10, 20 or 50 hectares in a rural area that someone wants to cut in half. I cite the case of a family with a very small agricultural lot. The parents built a house at one end of a single-title block and their daughter and son-in-law built a house at the other end. They want to split the block in two so that the young couple can establish equity to raise funds to develop a tourist facility. The block is on the main highway and lends itself to such a development. They would not make $10 a year farming the property because the land is so terrible, but what they want to do is ideal. They have hit a bureaucratic wall because the proposal is so far outside the box. The bureaucrats cannot come to terms with it, so the simple solution is to reject it.

The same may happen with this tribunal, particularly if legal costs are involved. The developments I am talking about could not carry those costs. If the legal bill were $5 000, it would be far too much for these people to consider starting action. There must be a degree of flexibility. That need not be a replica of the old ministerial appeal process, but something akin which is accessible to all regardless of their means and which is sufficiently independent that they do not get bogged down by a rigid, bureaucratic framework. People have not been able to get beyond that framework in the past, but they should be able to do so.

MR BIRNEY (Kalgoorlie) [7.54 pm]: When I first read this Bill it suddenly hit me like a tonne of bricks that, if this legislation were passed and the minister were to clear her desk of these 700 or 800 appeals she must deal with each year, she would have a lot more time on her hands to attend cocktail parties, knees-ups and so on. Of course, as we all know, the Minister for Planning and Infrastructure is fond of attending functions, cocktail parties and so on. It is not surprising that she is promoting this legislation with a degree of vigour. A significant contrast can be drawn between this minister and former Ministers Kierath and Lewis. Former ministers, particularly those from this side of the House, would have been hesitant to shirk what is obviously a significant workload. Those two ministers approached this task with a good deal of vigour and discharged their duties well.

Having said that, I accept the advantages and disadvantages in both the ministerial and tribunal systems.

Several members interjected.

Mr BIRNEY: I appear to have woken a couple of the vegies in the patch. I am very pleased that they have come to life. It is late in the evening and I am happy to provide them with a source of entertainment. If they listen carefully, they might learn something.

I reflect the words of the member for Ningaloo when he said that in the past ministerial appeals have been used as a mechanism to overcome some of the inadequacies of local government. To be more specific, it is well known that on occasion councillors see fit to vote on certain matters according to what they see as the public interest, but they may also do so to retain their seats on the council. Some decisions become very controversial and councillors are lobbied by all sections of the community. At the end of the day, they are faced with making a decision. Some councillors do not make the right decision because they know a backstop is available; that is, the ministerial appeal option.

I will give one example that is relevant to my electorate of Kalgoorlie. The former Government was intent on building a group of 14 units to house some of the nurses in Kalgoorlie-Boulder. The land chosen adjoined Finnerty Park, which is a nice green park in a good suburb. The Government owned the land next door. As is their right, a number of residents of the suburb of Hannans kicked up a stink and applied a great deal of pressure to the councillors and the mayor to reject planning approval for the development. The drawings for the units complied with all the planning criteria involving setbacks, height and so on. However, the councillors voted against it because they were worried about their seats on the council. We cannot blame them for that. They knew that this development met all the planning criteria, but they voted against it because they had been lobbied hard and the ministerial appeal option was available.

Several members interjected.

The ACTING SPEAKER (Mr McRae): I remind members to my right that all interjections are unparliamentary.

Mr BIRNEY: The law is often grey. I am not referring only to planning law but to all manner of law. That is demonstrated well when one sees two Queen's Counsels on opposing sides of an argument and both are convinced they are right. Ultimately those decisions are determined by a court of law.

When a planning appeal is lodged and it is not obvious whether it complies with the law, the minister is faced with making a decision after consulting her committee. On those occasions, the minister may be faced with making a decision in the community interest, on compassionate grounds or, dare I say, on political grounds. It does not necessarily follow that all political decisions are bad. It could be argued that some are in the public interest. When the ministerial appeals process is abolished and the decision making is handed over to the tribunal, how will it deal with those legal grey areas when it is hard to pigeonhole a certain application? How will it deal with those matters involving compassionate grounds or local interest issues? We are talking about a handful of bureaucrats who may be well informed but who may not have the minister's political nous - but that may be debateable.

Mr Hyde: It is asking for corruption.

Mr BIRNEY: The tribunal option may well be fraught with danger in that it may become a bureaucratic nightmare. Speakers before me have said on a number of occasions that people are choosing the ministerial option because it is quick, cheap and an informal way of getting matters dealt with.

How will the tribunal address those matters? At the end of the day, as I think another member said, 95 per cent of appeals go to the minister and five per cent go to the tribunal. The clear choice for appellants is the ministerial appeal process. We may need to take some of the good options from the ministerial appeal process and install them in the tribunal process.

Mr Hyde: You want an easy ride for the Alan Bonds and Christopher Skases.

The ACTING SPEAKER (Mrs Hodson-Thomas): Order!

Mr BIRNEY: The member for Perth and the member for Riverton remind me of the two old blokes in *The Muppets* who sit on the balcony making funny remarks. They are completely irrelevant but they amuse themselves all day and all night.

Mr Hyde: We know what Richard Lewis and Graham Kierath did.

Mr BIRNEY: Madam Acting Speaker -

Several members interjected.

The ACTING SPEAKER: Order!

Mr BIRNEY: This may even have been a knee-jerk reaction.

Several members interjected.

The ACTING SPEAKER: I am having difficulty hearing. I remind members that the member for Kalgoorlie has the floor.

Mr BIRNEY: I thank you for your protection, Madam Acting Speaker. A case could have been mounted to tinker with the edges of the ministerial appeal process. A number of members in the House are of the opinion that the ministerial appeal process is somewhat flawed. However, I am not totally convinced that it should have been completely and utterly abolished.

I notice that the Bill provides for the president of the tribunal to have legal qualifications, although the existing tribunal has a chairman. What fate is to befall the existing chairman of the tribunal?

I note also that the Bill will change the requirement for the tribunal to have a quorum. Perhaps the minister will clarify why the quorum of, I think, three will be reduced to only one, which effectively is not a quorum. If a tribunal or committee is to be established, why would it not need a quorum? Is it intended that only one person will be able to deal with matters?

What new monetary and staffing resources does the minister intend to throw at the tribunal? The member for Merredin referred to probably the most important point in this debate; that is, the time limit the minister intends to impose on the tribunal. I note that time limits will be imposed on people who intend to appeal. The Bill does not appear to impose a time limit on the other parties. That could be a big issue for someone who is trying to progress a development. Delays can be expensive. I urge the minister to address those points.

I accept and understand that there are problems with the ministerial appeal process. However, a number of concerns have been raised here tonight about the proposed tribunal appeal process, and I urge the minister to take some of them on board.

MR TRENORDEN (Avon - Leader of the National Party) [8.04 pm]: I am particularly interested in this Bill, which has an interesting history. Many people were aggrieved because of the ministerial appeal process. On the other hand, many people have been given great relief because of it. Like many processes, although it was flawed, it had some very positive aspects. It was quick, clean and simple, and people were able to use the process without cost. The process involved someone from the minister's office looking at a site, talking to the people involved - such as local government members and the individual making the appeal as well as anyone with a third-party interest - and giving a written report to the minister.

That process did not require people to attend the decision-making process, it did not require people to pay any costs and it did not require them to get any professional advice if they did not want to. I assure you, Madam Acting Speaker (Mrs Hodson-Thomas), although you probably do not need assuring, that over 15 years, throughout the terms of many ministers, both coalition and Labor, many people in my electorate who did not have any expertise used the ministerial process and won their case because the process was good, clean and logical. That will be lost in the process proposed in this Bill.

As the lead speaker for the National Party, the member for Merredin pointed out that, in essence, the National Party supports the Bill. However, we do not do that with an open chequebook because it will create a regulated, bureaucratic process. In addition, for the first time, country people will be compelled to appear before the tribunal.

It could be argued that, as most of the people in my electorate live no more than three hours from the metropolitan area, travelling would not create a great impost. However, for many people it would. People in my electorate, especially husband and wife teams, run single businesses, whether they involve farming or residential activities, and many hold down jobs. My electorate is very urban, and land issues are frequently being contested. It is not a matter of the very good land there being held for agriculture. I have continually been told, and I have no doubt that it is true, that some of the best farming land in Australia was in the suburbs of Melbourne. The fact that land can be used for agriculture does not protect farming land. If a metropolitan area wants to grow; it will grow whether it be London, New York or wherever. As the number of Melbourne suburbs is increasing to the north west some very good farming land is being taken up for suburbia. The same pressures are apparent in my electorate, not due to suburban growth, but because people are seeking a lifestyle in places such as Toodyay, west of Northam, west of York, west of Beverley, Pingelly and Brookton because they are beautiful places to live in. That is creating a complicated range of issues that people want to appeal against. It is therefore important that the facility be available to enable them to do so.

I am very worried that they may be required to front up in court where the opposing side, whether it be local government or a developer, will be represented by very senior legal counsel. That could mean that an appeal that should have involved very low costs could cost an absolute fortune.

Ms MacTiernan: It is fundamental to the system that the appellant to any class 1 matter, which covers the smaller developments - a three-lot subdivision - can veto the other side having legal representation. If the appellants do not want legal representation, they can veto the other side having it.

Mr TRENORDEN: If that is the case, I am delighted. However, that is not the way I read the Bill. The Bill says that the person who is sitting in the chair can elect to have legal representation.

Ms MacTiernan: The basic presumption is for the veto. There must be some provision whereby the tribunal can, under certain circumstances, overrule that. However, the basic presumption in the vast majority of cases will be that, if the appellant does not want legal representation, he can veto the other party having it.

Mr TRENORDEN: That would be a good thing if it were to occur. I have a question on the limit of $250 000. In my electorate, particularly in places such as Toodyay, it does not take much for a subdivision to reach the limit of $250 000.

Ms MacTiernan: The $250 000 limit does not apply to subdivisions. The $250 000 limit applies to building applications. Subdivisions are treated differently - not on the basis of the value but on the number of lots.

Mr TRENORDEN: I appreciate the minister's clearing up that point. She will be aware that places in my electorate, such as Toodyay, have development pressures on them. The development is creeping out from Chidlow, which is not in my area, and into places such as Wundowie, where there is a fair bit of development and action.

The other point to which the minister needs to give serious consideration is accountability. The minister should put any approach to the court on the basis that her decision is tabled in this House beforehand. The minister's responsibility is to this Chamber, and not to any other process. Of all people, the minister knows that her responsibility is to this House. I support the minister of the day - whether it be this minister or somebody else - becoming involved in the process. I do not contest that; it is an important process. The minister is not accountable to that court process, but to this House. I am not concerned whether the minister reports to the House the instant the decision is made or periodically. I am concerned that when the minister decides to get involved, she puts her reasons for that in writing before the House. I hope the Government is establishing a process that will work in the future.

I refer to the current system, which the minister so strongly opposes. The factor that I presume the minister dislikes the most - certainly members on the government side interjected on this point - is that the minister of the day does not have to give written justification for his or her decision.

Ms MacTiernan: That is only a small part of it.

Mr TRENORDEN: It is still an important part. In opposition, members opposite objected because the minister of the day was not required to give a written reason to this House or to the general public for his decisions. The minister gave those reasons to the person making the appeal, but that was not public information. In many cases ministers from both sides of the Parliament were involved in fairly public debates because of the perception about why decisions were made. That perception was sometimes real, and sometimes not; it does not matter. The point is that strong reasons exist for ministers' decisions to be made public. The Burt Commission on Accountability and the Commission on Government were clear on the question of what ministers should do when they intervened in a process. It is clear and it is beyond debate that ministers have a responsibility to put the reasons for their decisions before this House.

Ms MacTiernan: Do you think that should have been the rule that governed decisions in the previous Government? Why was it we never had a situation in which the decisions made by coalition ministers were tabled in this House?

Mr Pendal: It was a different era. There is now a whole level of suspicion of government that has prompted that. There is nothing wrong with that, and it will save the minister's job.

Mr TRENORDEN: I am on record as saying that; today is not the first time I have said that. I said that when I was on the government bench. However, members do not always win those arguments. Members of the Court Government had these debates in the party room, just as the Labor Party did. The issue of ministers being responsible and reporting on those actions is now history; it is resolved: ministers must report to Parliament. It is

not a process about which ministers have a choice. The process is not that a court records what the minister of the day is saying. I do not want to pick on this minister in particular; it is the minister of the day. That process of recording the decisions as part of a court record is not the process to which I am referring. I am talking about a parliamentary process. I have referred to the recommendations of the Burt Commission on Accountability and the Commission on Government, which clearly state that any minister who gets involved in a process must report to the Parliament.

I support the amendment moved by the member for South Perth. I want the minister to report to the Parliament. I am not saying that the minister should not get involved in the appeal process. I want the minister to get involved in every case in which she feels it is warranted.

Mr Hyde: Even with the reporting procedure, Parliament cannot overturn the decision that a minister has made with a quorum of one.

Mr TRENORDEN: With all due respect for the member for Perth, that is not what reporting is about. History has shown that not every minister has been aboveboard in this process. Reporting is necessary, so that everyone in this Chamber, including government members, can find out the reasons that the minister of the day has done a particular thing. It is not for this House to overturn the decision.

Mr Hyde: Will people in your electorate or mine who have been badly done over in a planning decision - maybe by their local council - get a better result if the minister of the day does not overturn a decision for whatever reasons? I would argue that perhaps a planning appeals tribunal that is more transparent would overturn a decision.

Mr TRENORDEN: That is not what I am talking about. If an appeal is made to a tribunal - or whatever it will be called - and the minister of the day decides to intervene, the reason for the minister's intervention must be in writing and presented to this House. That is not because the member or I could change that decision; the purpose would be open and accountable government. That is clearly spelled out in a large number of reports. It gets thrown around this Chamber with gay abandon, but it is no longer an option. It is now the practice.

Ms MacTiernan: I understand the point you make about openness, but it is getting silly because the sort of thing we are talking about is in a public forum. The concerns of the inquiries and the Commission on Government have been about secrecy. This provision that you are concerned about involves the minister making a submission in the full gaze of a public court. There could not be a more open process. I do not mind; the member can put forward the amendment. I have no problem with its going in, but the member is being a bit silly about this. The member is concerned about openness. The submissions that we are talking about are made in a public court. They are transcribed. Everyone, including the public and the media, is entitled to be at the court and to hear everything the minister says. If you want me to say that the transcript will be tabled in Parliament within 14 days, I am happy to do that. I just think that you are getting yourself down a cul-de-sac.

Mr TRENORDEN: No, I do not want the minister to say that the transcript should be tabled in the House within 14 days. I want the minister to table the written reason for her intervention. The minister does not understand the process. She is responsible to the House; she is not responsible to a court or accountable for any process outside this Chamber.

Ms MacTiernan: That is right. This will be very public - the public and the media will know.

Mr TRENORDEN: That is not the point.

Ms MacTiernan: If you want to put it in, I have no problem with that. The member can move an amendment.

Mr TRENORDEN: The minister should do the correct thing and put it in herself.

Ms MacTiernan: No, because I think it is silly. However, if you want a silly provision in the Bill, I will put it in for you.

Mr TRENORDEN: Put it in. That is good.

Ms MacTiernan: You draft it and we will look at it. That will give you a little sense of ownership of it.

Mr TRENORDEN: The minister is telling this House that I am being a little silly in this process.

Mrs Edwardes: She called me that too, so you are in very good company.

The ACTING SPEAKER (Mrs Hodson-Thomas): Order, member for Kingsley!

Mr TRENORDEN: I have a fair bit of respect for the minister, because we spent many years debating across the table in the Public Accounts Committee. Therefore, I know that she does not mean those things personally, and I am not taking them personally. However, I point out to the minister that she is putting on record that she thinks she should be accountable in another place.

Ms MacTiernan: Accountable to the public. Our prime responsibility is to be accountable to the people who elected us. Many things must be tabled in Parliament because that is the only way they can be made public. However, when we are talking about submissions that will be made in a public court, it is unnecessary and is just an added layer of bureaucracy. However, if you want it in the legislation, you put it in.

Mr TRENORDEN: It is not a matter of whether I want it; it is now the confirmed, due process of this place. It has been debated ad nauseam. To make it clear so that the minister understands, I want the minister of the day to become involved in certain appeals. It is absolutely essential that she do so. In fact, I would have no objection if the Bill went further than it does and contained an appeal mechanism to the minister that was rarely carried, unless there was an outstanding case in which that should occur. It gets back to what I believe the member for South Perth said; that is, the minister is responsible, not to the court, but to this Chamber. That is where her responsibility lies.

Another point concerns compassion being shown in some of these decisions. Many people who are involved in the planning process are just going through the normal processes of life. They do not understand the complexities of the planning process and that different local government bodies have different rules. We heard about that today when members spoke about two houses being built on one farm block. Some councils do not allow that; others do. A range of rules exists, and we are a little naive if we believe that the general public understands that each council has a different planning scheme. When the appeal stage is finally reached, we must make sure that compassion is built into the process.

[Leave granted for the member's time to be extended.]

Mr TRENORDEN: I am pleased that the minister has indicated on the record that if a person ticks the box and says that he or she does not want any legal activity in the court, that will not happen. That makes it much easier for average individuals who want to get on with their life and who do not have deep pockets to pay legal bills they run up. Also, people do not want to be fazed by the process of going to the court. They must have confidence that the process is fair and open. I am pleased that the minister is nodding her head about that, because I am sure she understands that the process about which we are speaking may be confusing to Mr and Mrs Average, who do not have a town planner or a legal person involved in the process but who have a good argument on some of the issues that have arisen in the past about cancers, families and other matters, when rules of compassion can be brought into the situation.

Mr Hyde: Surely, it will also mean that developers, instead of thumbing their noses at the local community, will work with the local council and the community, knowing that this will be their best shot, rather than what happens at the moment; that is, it does not matter what happens at the council, they will appeal to the minister anyway.

Mr TRENORDEN: With all due respect, that is not what I am talking about. I am saying that Mr and Mrs Jones, who live on a block at the back of somewhere - it does not matter where it is - may have experienced a special circumstance in their lives. They live on that land, and maybe they want to do something very simple, such as to subdivide 10 or 100 acres in my area, or perhaps a battleaxe block in the member's area. No developers, planners or lawyers are involved. It is just that some special circumstance has arisen in their lives. One of the good things about the ministerial appeals process is that in those cases the people did not have to attend or bear the costs, and they were treated with compassion. One will find that a reasonable number of the 700 decisions a year fall into that category.

Mr Hyde: If those people had gone to their local council originally to get a scheme amendment, and if the town planning scheme reflects what the community wants, there should not be 700 appeals to the minister. Rather than adopting a bandaid approach, the schemes should be fixed up first of all.

Mr TRENORDEN: Best of luck, because this is a confused area of planning.

Mr Hyde: I know. I was there for six years.

Mr TRENORDEN: Yes, I know. I keep saying to my constituents that the most important thing in their lives is planning - 90 per cent of them do not believe me - so that when people buy their house they know that a panel beater is not located beside it or that the farmer who is growing a crop beside their property can spray his wheat

crop with a chemical because that is what he needs to do to continue his livelihood. All those things should be simple, but they are not. That is the real world.

The last issue concerns the timing of the process. It must not be open-ended. I would be concerned if the court evaluated its own activity and then decided what is fair in the process. I hope that the member is right and that there are not 700 appeals a year. However, what happens if there are 1 000 or 800?

Ms MacTiernan: What is the point?

Mr TRENORDEN: The time factor in appeals.

Ms MacTiernan: How long it takes?

Mr TRENORDEN: Yes.

Ms MacTiernan: Can you name one court in which time limits are put into the process?

Mr TRENORDEN: No, but the minister wants to make this a legalistic, bureaucratic process. I am trying to tell the minister that she should not do that. If she does, she will get egg on her face, because people will get very angry. Many of these appeals should be handled quickly, because people's lives are involved. The minister knows that somebody will appeal to this court because he or she has cancer and is dying.

Ms MacTiernan: That is right. However, not all appeals that go into the ministerial appeals system are necessarily dealt with quickly. As I said, I had 370 appeals before me. Some of them had been outstanding for about six to nine months.

Mr TRENORDEN: I agree with the minister, but there must be confidence in the process. If the minister wants to quote the example of the courts, I point out that the public does not have confidence in the courts. What I hear about the courts is that they are slow and expensive. The last thing the minister wants is the population of Western Australia saying to her in a year that her process is expensive and slow.

Ms MacTiernan: I assure the member that we will be keeping a close watch on it.

Mr TRENORDEN: I hope the minister will.

Ms MacTiernan: For the reasons that he said: we do not want the system to grind to a halt; therefore, obviously we will want to do that. However, the member for Perth made some very good comments when he talked about addressing the reason for there being so many appeals.

Mr TRENORDEN: I have made the points I want to make. In summary, there are two issues. The National Party wants the minister to be accountable and wants a situation in which Mr and Mrs Average - if that is the correct term - can be confident of the appeals process.

DR WOOLLARD (Alfred Cove) [8.30 pm]: I will support this Bill because it is better than the status quo. It protects the Minister for Planning and Infrastructure from undue pressures applied by vested interests.

Last weekend I inspected some very special bushland in the south west which is in private ownership and which the local authority said cannot be cleared. However, I was informed that the owner believes his political connections will ensure a successful appeal against the shire council.

Ms MacTiernan: Where was this?

Dr WOOLLARD: Down south. Whether or not the landowner's view is fanciful, it is clearly important that any decision that overrides the wishes of a local community, as determined by a local authority, should be met with absolute independence to restore public confidence to the planning appeal system. Planning appeals would be unnecessary if we constructed a system whereby the community's wishes had priority over the developer's wishes when planning decisions are made in the first instance.

I have spoken before about a community approval test and intend to continue pushing for that extension of democracy into the area of important planning decisions, particularly when they affect the local and wider environments. The continued threats to sell off part of the Heathcote riverfront parkland and heritage buildings in my electorate of Alfred Cove are a prime example of how the current system does not give adequate representation to the views of the community. Petitions from local people who want to save Heathcote continue to flow into my office and I will continue to present them to the House. However, I must ask: why is it necessary for the community to fight to keep what is already theirs? I will be making suggestions at a later stage of this debate about the way in which the Bill can be improved.

MR OMODEI (Warren-Blackwood) [8.32 pm]: I rise to make the House aware that I have an interest in this matter and I will not be debating or voting on the issue; I wish I could.

MR BARNETT (Cottesloe - Leader of the Opposition) [8.33 pm]: I will be brief and probably the last speaker from the Opposition. The Opposition will not oppose this Bill. We recognise that there are issues concerning the ministerial appeals process and that the Government intends to change it. They are issues that we, as the former Government, grappled with.

No matter what the Government does to a system, whether it be in education, health or in this case planning, eventually the minister is responsible. It appears to have been forgotten in this debate that no matter what system or structure is in place, the minister is responsible. Planning is a difficult area, in which conflicts occur between individuals, companies, private and community interests or private and broader public interests. There will therefore always be disputes, and there obviously needs to be an appeals process for resolving or mediating those disputes. It is easy to criticise the planning minister of the day when that minister makes a decision in a contentious issue. I acknowledge the current planning minister was effective in doing that during the time of the previous Government. Members may remember the debate about the wharf development at Mindarie and many other projects around the State. There will always be difficult, contentious planning issues. This minister at some stage will have to deal with issues such as the Underwood Avenue bushland, Leighton Beach, the land at Moore River, Mauds Landing and a host of other issues. One way or another those decisions will be made and they will make one group in the community happy and another group in the community equally unhappy.

Ms MacTiernan: We know.

Mr BARNETT: The reality of being a planning minister is that the minister must adjudicate and make decisions. The point of my saying that is that it does not matter how the decisions are made, whether by way of tribunal or appeal to the minister, eventually the minister is responsible. That is the way it should be. However shaky the hierarchy may be, the minister of the day is at the top of that hierarchy. I can think of different examples in the various portfolios that I have had, but I will give one totally unrelated example. When the previous Government introduced the School Education Bill - it was similar to the planning appeals process - I as minister had to decide whether a child would be suspended from school. It was an absurd situation that a minister should do such day-to-day administrative tasks when the matter had already been considered and a recommendation had been made by the principal of the school. The solution in that democracy was that the minister should play no role. I did not accept that. I would not close off to an appellant the ability to finally go to the minister if the appellant was aggrieved or dissatisfied, whether it be about a matter of discipline, a matter of inclusion or exclusion of a child with a disability, or whatever. At the end of the day it is essential that members of the community have the ultimate ability to go to the minister who is the responsible person. The public must ultimately be able to get to the minister at the top of the tree. Once that change was made in education, I believe only one matter came to me, which was dealt with appropriately by the Director General of Education. However, on that rare occasion the issue was so unusual that it justified the minister giving it personal consideration. That is one matter of judgment - members may call it politics - reflecting community values and applying commonsense. Someone must be able to do that.

There appears to be a parallel in the planning process. It is not logical for the Minister for Planning and Infrastructure to deal with many minor appeal processes such as the siting of a carport, the type of material used on a roof, fence issues and the like. Those issues should not get to the level of a minister in general circumstances. It is therefore appropriate and sensible that those issues be dealt with somewhere below the level of a minister, whether that be by a tribunal or by the minister's delegating that authority to an appointed officer or a panel in some way. However, as a general principle of our system of government, if those processes are seen to fail or someone is still aggrieved and has gone through various checks, steps and balances, they should be allowed ultimately to go to the minister; and that will happen.

In an ideal world there would be fewer appeals if all local authorities had updated town planning schemes, if all architects and builders submitted proposals that complied with them, and if local councils made decisions consistent with their planning schemes. However, we all know that some planning schemes are out of date, that some architects, builders and property owners might try it on, for whatever reason, and that councils can be swayed in their decisions by political or lobbying groups. Therefore, in any world there will be a system of appeals. The focus should be on trying to ensure that planning schemes are updated, that councils follow their policies properly and that the building and professional architectural industry do the right thing. We want to minimise the number of appeals and give the greatest certainty to people developing property and building things; indeed we want to give that to the whole planning process. As the member for Ningaloo said, there has

been a trend in recent years for councils, when faced with a contentious local issue, to dodge the issue by making an unpopular decision in the knowledge that it will go to the minister on appeal. That is not responsible conduct by councils. They must be prepared to make decisions. That has added to the problem. We should be trying to reduce the number of appeals in the first place. That is desirable.

The current ministerial appeals system when dealing with contentious issues has been subject to attack. The contentious planning issues will not go away because of this; they will be just as contentious whether they are handled by a minister or by a tribunal. The Leighton Beach, Mauds Landing and Underwood Avenue bushland issues will be contentious, no matter what the process. I am not suggesting that is the minister's motivation, but the minister of the day will not escape public scrutiny and public pressure, because the minister will be responsible. The ministerial appeals process provided a rapid system, despite its deficiencies and the anomalous situation in which almost minor matters went to a minister. That process dealt with a lot of issues quickly and it was functional. If those decisions are to be taken away from the minister, the process must be replaced with something which will be equally low cost and timely in its response in dealing with issues and which will get through the volume of appeals. I am not convinced. The member for Kingsley, who started this debate, and others have said that they are not convinced that the proposal to send all those matters to the tribunal will be either cost effective, timely or, indeed, certain for people. That is the problem. This system of doing away with ministerial appeals and putting them to a tribunal will clearly favour those opponents in a case who have the resources and who have either the experience, the financial capacity or the corporate or business ability to bring in consultants or advisers, whether they be legal or planning consultants and the like. The little battler - the mums and dads as the member for Kingsley said - will be squeezed out by this process.

Ms MacTiernan: In favour of whom?

Mr BARNETT: In favour of the more powerful contestant in the case.

Ms MacTiernan: Who are the other contestants?

Mr BARNETT: They will be property developers and the people with greater resources.

Ms MacTiernan: No, that is not how it works.

Mr BARNETT: I am sorry, but that will be the reality. That is what will happen. The minister will take away a low-cost process. The system will tend to favour -

Ms MacTiernan: You obviously do not understand the basis of appeals.

Mr BARNETT: The minister can respond in due course, because this debate will continue for several days. The minister must be able to convince us - I will be happy to be convinced - that the small person in the city or the country has an ability to take his or her appeal to the tribunal, have it dealt with in a rapid period, without endless delays, at minimal cost and without getting caught up in a system that is either legalistic or heavily overladen with consultants, advisers and the like. I am not convinced. If the Government wants to get rid of ministerial appeals, it needs to replace that process with a similar system that can deal with appeals to most of the minor cases quickly, efficiently and cheaply. It does not have to be the minister; she can delegate that authority. The bigger issues of major developments and contentious matters will require a full-blown process one way or another. That is one of the prime concerns.

I also have a concern with the way in which the minister is proposing to reflect government policy or public interest issues. The minister said that this would be a full and accountable system. If an appeal process is to go to the tribunal, and the minister wants to present a public policy or public interest issue, she will appear at the tribunal and present a case. That is open; it is public. I do not have a difficulty with that. The minister has been a minister only for a while. The Crown Solicitor's Office will be absolutely paranoid about ministers appearing before tribunals. The minister will be on such a strict script of what she can and cannot say that it will be almost useless as an exercise. There is a fundamental failure in that system. Let us say that the minister believes there is a public interest issue of coastal development, or whatever it might be, and she is to appear at the tribunal as a minister and put her point of view. If the tribunal does not adopt the minister's point of view and makes an alternative decision, what will the minister do? The minister has put a point of view and has failed. However, the minister is responsible for defending the actions of the tribunal. She is immediately caught in two positions. She has put a point of view and has vacated her position at the top of the pyramid to present a submission as a minister. However, at the end of the day, she is at the top of the pyramid and must defend not only the process but also every decision made beneath her in that system. That is a failure in the system. The minister is putting herself in a dreadful position. As soon as one of those highly contentious, Leighton Beach-type issues arises, the

minister puts her view, submits her evidence and the decision goes the other way. Her immediate responsibility as a minister is to defend the tribunal and the decision. She must publicly defend that process.

Ms MacTiernan: Is that like previous Attorney General Foss who used to defend the Supreme Court? Is that the same sort of obligation?

Mr BARNETT: The minister can think of examples if she wants. However, I am saying that the job of a minister is either to defend people working below the minister in the structures of government and their decision or, if she is not happy with the decision, to change the decision in some way. That is why an appeal to the minister ultimately allows the minister to have the final say. Why should the minister have the final say? Because, at the end of the day, the minister is responsible. She will have to defend every decision made. She cannot sit at the top of the pyramid and be a player below. That is the dilemma into which this legislation takes the minister. That is why I think it will be a fumble.

Ms MacTiernan: The fundamental jurisprudential problem you have is that tribunals stand outside the bureaucratic process.

Mr BARNETT: Only if a person elects to go to the tribunal.

Ms MacTiernan: You are presenting it as though a court or a tribunal bears the same relationship to a minister as does a public servant who is answerable to the minister. It is absurd!

Mr BARNETT: No, it is not absurd.

Ms MacTiernan: The separation of powers means that the court system will operate quite independently.

Mr BARNETT: I understand that argument.

Ms MacTiernan: I am not responsible for the court.

Mr BARNETT: However, the minister will be.

Mr Ripper: Is the Attorney General responsible for the decisions of the Supreme Court?

Ms MacTiernan: I have already asked that.

Mr BARNETT: No, it is not like that. We are talking about a mix of private interest, public conflict and government policy.

Ms MacTiernan: It is absurd!

Mr BARNETT: It is not absurd. When the minister gets her first contentious issue, she will have to decide whether she will support the tribunal, her own view, government policy or the view of another minister. She will be drawn into those conflicts whether or not she likes it. In the current situation, an appellant can opt to go to the tribunal and that is it. The appellant has opted to go that way; therefore, that person has given up the right to go to the minister. It is that person's choice. In that case, the minister is safe. Whatever the tribunal decides, that will be it; the person chose to go to the tribunal and that is the decision. However, at the moment, people have an option of going to the minister. The minister is closing off that opportunity so they cannot go to the minister. I do not mind restricting it in trivial cases. How will the minister deal with those contentious issues? For example, the minister may have a conflict in her portfolio. She is keen to build the southern railway in a direct route past the city of Perth. Many people in the city of Perth will be very upset and concerned about the prospect of a railway and overhead powerlines along the foreshore. The minister does not seem to see that as a major issue. If the City of Perth and the public told the minister that they are against the decision as a planning principle, what would the minister do as planning minister? In her one portfolio, the minister is advocating something on a transport basis, which may well be against the principles of good planning. Immediately there will be a conflict. What would the minister submit to a tribunal if that matter went to a tribunal? Would the minister appear as transport minister or as planning minister?

Ms MacTiernan: We do not have that altruistic problem.

Mr BARNETT: The minister may not have a choice.

Ms MacTiernan: We do not see that those things can and need to be separated in the way you are claiming.

Mr BARNETT: The minister might not have the choice, because someone might take an action in one court or another. The mistake the minister is making in her role as a minister is taking herself off the top of the pedestal. Someone must be ultimately responsible. Under our Westminster system of government, like it or not, that person is the minister. That is one of the major weaknesses in the system. We will not stand in the way of this

legislation. However, it takes away from people ready, quick, low-cost access to resolving often quite minor disputes in the greater scheme of things, but which need to be dealt with and resolved. I am not convinced that that access will now be available. The minister must convince this Parliament. No commitment to extra resources has been made. If the Department for Planning and Infrastructure process is to close, no funding or resource commitment has been made to the tribunal. That is essential, otherwise there will be endless delays. Planning processes are bogged down in this State. If the minister wants to clear up that situation using this legislation, good luck to her. She should think carefully and, if she has not already done so, she should talk to officers at the Crown Solicitor's Office about ministerial responsibility and where she will sit. As minister she will not be able to wander into a tribunal and express her views. That option is not available to a minister of the Crown; she will be in a straightjacket.

Who will reflect the public interest? If the minister stayed at the top of the tree, she would have the ability to do that. Ultimately, the responsibility would be hers and she would make the final decision. As the member for Merredin said, there will always be cases that do not fit into the system. I know what the minister is trying to do, and she has support in divesting some of her decision-making power.

Ms MacTiernan: The existing legislation allows a minister to make such a presentation to the tribunal.

Mrs Edwardes: But that provision would have been rarely used because of the large number of ministerial appeals.

Ms MacTiernan: It is interesting that the member for Kingsley has interjected, because in her former incarnation as the Minister for Labour Relations she made submissions to the Industrial Relations Commission.

Mr BARNETT: On wage cases.

Ms MacTiernan: Yes, on matters of policy, but she often lost. Why did that not cause civilisation as we know it to collapse?

Mr BARNETT: This relates to planning and it is a difficult area. The Opposition is not convinced about but does not have a great objection to the principle being introduced. However, it is not being done in the right way to provide good service to ordinary people in this State. I am not convinced about how this minister or future ministers responsible for planning will balance their ministerial responsibilities given the way in which this Bill is structured. That is the fundamental flaw in what the Government is trying to do. It is not beyond the wit of members of Parliament or officers of the Crown Solicitor's Office to achieve what the Government wants with a better piece of legislation and to leave for those rare circumstances the ultimate right to pursue a course of appeal to the minister. At the end of the day whether or not the minister likes it, no matter what legislative procedures are put in place, the minister will be responsible, as she should be.

MR JOHNSON (Hillarys) [8.55 pm]: I will be brief because I want to speak to the amendment to be moved by the member for South Perth.

Planning issues are often contentious. The current systems, which have been amended over the years, are not perfect. We can try to make a system better, but it is important to the people of this State that, when we do so, we achieve something.

As the Leader of the Opposition said, coalition members will not oppose this Bill, but we think it can be improved. I agree with the member for South Perth that this is the type of Bill that should be sent to a standing committee to be subjected to further examination so that Parliament can pass legislation that will help the people of Western Australia. Many questions need to be asked.

Mr Ripper: The Opposition could do the hard work of getting amendments drafted if they thought improvements could be made.

Mr JOHNSON: The Deputy Premier has dropped in for a short while and I appreciate his interjection.

Mrs Edwardes: Money was mentioned.

Mr JOHNSON: I remind the Deputy Premier that he was a member of the committee that recommended the establishment of these standing committees. We spent many arduous hours looking at this situation. This is a classic example of a Bill that should be referred to a standing committee. I have no doubt that we will be voted down when the amendment is put, because the Government has the numbers. However, I ask members opposite to reflect on what the public will think. They will know about it and they will think about it. This Bill needs very careful consideration. It contains many aspects about which members on this side are unhappy. The Government took ages to introduce the legislation after it came to office and we had weeks off because there was

no legislation to debate. However, the Government wants this Bill, which will affect the lives of thousands of Western Australians, to be rushed through.

Mrs Edwardes interjected.

Mr JOHNSON: Speeches made by members on this side of the House never convince members opposite - they wear very narrow blinkers.

As my colleagues have said, those most affected will be the ordinary mums and dads of Western Australia who work hard to earn a living and enjoy a reasonable life. In the past, the cheapest and quickest way to lodge an appeal was to approach the minister. This minister is abrogating her responsibilities. Some of the responsibilities in her transport portfolio were moved to the Minister for Police within a few weeks of this Government's coming to office, so her workload was reduced. Does she want to reduce it even further? At the end of the day, a minister of the Crown is responsible for any legislation that comes under his or her portfolio. If it is too hard for the minister to look at the appeals herself, that is a pretty poor show and a bad reflection on the Labor Government. I ask members to remember that.

If I were the member for Wanneroo or the member for Joondalup, I would be concerned, because they are areas of great growth. The growth in Wanneroo will be enormous and, as a result, many appeals will be lodged.

Mrs Edwardes: By Italian market gardeners wanting to subdivide more than three lots.

Mr JOHNSON: The member is correct, members of the market gardening community who have lived in the area for many years and who want to subdivide their properties will face tremendous problems.

Mrs Edwardes: They have more than three lots.

Mr JOHNSON: Yes. They will face enormous costs and will be required to go to court, and most people do not like doing that. In the past, it has been simpler and more comfortable to appeal to the minister. People choose to go to the tribunal rather than the minister for particular reasons, but the Government is removing that choice.

That is one of the reasons that this Bill should be examined by the standing committee. If we do not send this Bill to the committee, what Bills will be sent? Are these committees being set up to placate government backbenchers, to appoint them to chairmanships, or so that they can while away their time travelling overseas and interstate? If that is the intent behind it, it is a sham.

Mr Ripper: I note that you served on committees in the previous Parliament.

Mr JOHNSON: Yes, and they were very useful.

Mr Barnett: And he did so with distinction.

Mr JOHNSON: We did not introduce a Bill providing for chairmen to be paid. I support that proposition, but the Government introduced it.

Mr Ripper: The coalition put forward that proposition, but the relevant clause was ruled out of order by the President.

Mr JOHNSON: The Government is doing it now. I do not have a problem with that, because it is fair and committees do extensive work. The standing committees have an enormous amount of work to do examining the different portfolio areas. The standing committee of which I am a member has an enormous number of issues to examine. Much of the work will involve briefings and information gathering. That will be useful to members, but is that what this Parliament wants the committees to do, or does it want them to do something more useful? The standing committees were set up not only to deal with peripheral issues but also to examine Bills where doing so would be useful to the people of Western Australia.

Mr Barnett: He spoke so passionately and brilliantly in support of the establishment of the committee.

Mr JOHNSON: He certainly did, but his attitude changed when he moved to the other side of the House. The coalition party had the numbers on that committee. However, we went along with almost everything the Deputy Premier said. It was a bipartisan committee because we all supported the principle of democracy, open and accountable government and best practice in this Parliament for the people of Western Australia. I hope the Deputy Premier will talk some sense into his colleagues and support the amendment, because it is the only way this Government can proceed with credibility on this Bill. If the Government vetos it and rushes it through the Parliament, we will have only today to speak on it during the second reading debate before it is dealt with in consideration in detail. We will not be able to examine the deeper aspects of the legislation as should occur with a Bill of this significance.

Mrs Edwardes interjected.

Mr JOHNSON: Absolutely. As the Labor Party told us during the election and the Government tells us almost daily, the Government is accountable and it will be rigorously open and transparent with everything it handles. Let us see the Government put its money where its mouth is tonight by supporting this amendment. I am almost certain that will not happen. I do not believe this Government is in power to be open and accountable. The minister is abrogating her responsibility so that if any large political appeals arise, the minister will not be lambasted by the media; the tribunal will be.

Mrs Edwardes interjected.

Mr JOHNSON: Yes. It is very interesting that the minister has the call-in power. What appeals will she be involved in? Will they be from LandCorp wanting to undertake some developments? Will it be some of the big developers such as the Buckeridge Group of Companies? Will she take an interest in some appeals and not others? That would be very political.

Ms MacTiernan: Don't you think your friends at BGC will -

Mr JOHNSON: I do not have many friends in the building industry. The minister may have friends.

Mrs Edwardes interjected.

Mr JOHNSON: Yes, members on this side of the House are my friends. Does the minister not think she is abrogating her responsibility to the tribunal?

Ms MacTiernan: In what way?

Mr JOHNSON: By passing virtually all the appeals to the tribunal.

Ms MacTiernan: I am a bit puzzled. In 1997 your party said in this Parliament that it supported the abolition of ministerial appeals. In 1999 it introduced legislation to abolish ministerial appeals. I am puzzled.

Mr Barnett: We are saying that your Bill does not do it properly.

Ms MacTiernan: No, the member for Hillarys said that he does not agree with the principle of appeal.

Mr JOHNSON: The minister knows that her comments are a little misleading. I am saying that any system can be improved. As far as I can recall, that was why we introduced legislation in 1999.

Ms MacTiernan: I refer you to the *Hansard* of September 1997.

Mr JOHNSON: The Labor Party is in government now.

Ms MacTiernan: I am trying to work out what your stand is in opposition.

Mr JOHNSON: I am saying that we should look more deeply into this Bill so that we pass the best possible legislation.

Ms MacTiernan: You are not. You said that I am abrogating my responsibilities.

Mr JOHNSON: You are, according to this Bill. Perhaps the minister should look at certain cases and not others. Perhaps, as she said, the balance is not right. She will be able to call in whichever cases she likes.

Ms MacTiernan: Is that different from your model?

Mr JOHNSON: I am informed it is.

Ms MacTiernan: In what way?

Mr JOHNSON: I will leave that to our shadow spokesperson.

Ms MacTiernan: You don't have a clue.

Mr JOHNSON: The minister is trying to shift any political flak that arises from appeals to the Town Planning Appeal Tribunal. That is a clever move. I do not dispute that. The public will see it; they will know that the minister is still behind an issue. The minister will be able to appoint the tribunal and the president.

Ms MacTiernan: The Industrial Relations Commission, the Workers Compensation Tribunal and every other tribunal is appointed by the Government of the day. Shock-horror, what a terrible thing.

Mr Barnett: Would you put pressure on the appointees?

Ms MacTiernan: To do what?

Mr Barnett: To bring about a decision favourable to you or the Government.

Ms MacTiernan: I am on this side of the House, not that side; we do not do things like that on this side.

Mr Barnett: Do you have a history of intimidating or putting pressure on people appointed to bodies in your portfolios?

Ms MacTiernan: Me, personally?

Mr Barnett: Yes, you, personally.

Ms MacTiernan: Not to my knowledge. Are you implying something here? Come on, come on, tell us.

Mr Barnett: In the six months you have been a minister, have you ever put any pressure on board members in your area of responsibility?

Ms MacTiernan: In the six months I have certainly suggested to some board members, who in my view were not capable of discharging their duties, that they might consider their positions.

Mr Barnett: Having conceded that you have done that, why would you not -

Mr Ripper: It is a tribunal, not a board.

Ms MacTiernan: That is right. We will get Foss, QC in here to give you a basic lesson on the separation of powers. The whole premise of your debate has been to confuse totally the relationship between a minister and a member of the minister's bureaucracy with the relationship between a minister and a tribunal. That is your fundamental, illogical error.

Mr Barnett: The problem is you have too much form to be trusted.

Ms MacTiernan: I would like to hear about it.

Mr JOHNSON: Obviously the Leader of the Opposition has a concern about pressure the minister may have put on somebody on a board or committee.

Ms MacTiernan: I would like to hear about it.

Mr JOHNSON: My concern is similar. Would she put pressure on the tribunal?

Ms MacTiernan: Member for Hillarys.

Mr JOHNSON: Is the person she intends to appoint as president of the tribunal someone she knows well?

Ms MacTiernan: No decision has been made. The legislation is not through yet. What an absolutely silly line of argument.

Mr JOHNSON: What about the current chairman?

Ms MacTiernan: If I am not mistaken, the current chairman was appointed by the coalition when in government.

Mr JOHNSON: Yes.

Ms MacTiernan: You are asking whether we are prepared to reappoint people the coalition has appointed. I have a history of reappointing people the coalition has appointed.

Mr JOHNSON: Does the minister know the present chairman well?

Ms MacTiernan: Yes, I know many people.

Mr JOHNSON: Does the minister know him fairly well or very well?

Ms MacTiernan: What a ridiculous and absurd question.

Mr JOHNSON: I am asking whether the minister knows him very well.

Ms MacTiernan: That is ridiculous.

Mr JOHNSON: If the minister wanted to suggest to him that an appeal should be decided in a certain way, would she do so?

Ms MacTiernan: I have a very clear understanding of probity when it comes to legal matters and there is absolutely no way I would do that. I suspect the reason you are pursuing this line of questioning is that you have seen that happen in the past eight years.

Mrs Edwardes: We had the ministerial appeal process.

Mr JOHNSON: As the minister knows, in opposition, members hear a lot of information.

Mr Barnett: Have you had a history of discussing appeals with mayors of local authorities outside the process?

Ms MacTiernan: I would not have thought so.

Mr Barnett: Let's not talk about you. Do you think it inappropriate for the minister to discuss a ministerial appeal with a mayor outside the appeal process?

The DEPUTY SPEAKER: I have allowed a fair amount of latitude. I would like the discussion to come through the Chair and I would like to hear from the member for Hillarys.

Ms McHale: If the member for Hillarys has nothing to say, he should sit down.

Mr JOHNSON: That is very rude.

Mr Ripper: Perhaps you should take the hint and ask the questions the Leader of the Opposition is asking.

Mr Brown interjected.

The DEPUTY SPEAKER: I draw members' attention to the member for Hillarys who wants to continue his speech.

Mr JOHNSON: Thank you, Madam Deputy Speaker. When I stood, I did not get one word out before getting a barrage from the other side. I must be hitting a nerve.

Mr Ripper: We wonder whether you will follow the Leader of the Opposition's line of questioning.

Mr JOHNSON: The Opposition has many questions it needs answered, not just for our information, but also for that of people in the community. I repeat that this legislation should be sent to the relevant standing committee so that the people of Western Australia can make submissions and ask questions. It will not stand the Government in good stead to rush this issue through the Parliament. I trust that when the member for South Perth moves his motion, the Government will do the right thing, use its commonsense and exercise some democracy in this Bill.

MR BRADSHAW (Murray-Wellington) [9.10 pm]: I support this legislation. Over the years that I have been a member of Parliament, I have continually heard complaints from local government that it might as well pass planning applications because their decisions will be overturned by the minister on appeal. In fact, just over half of the appeals that go to the minister are approved. It has been my experience that the planning ministers with whom I have dealt - Hon Richard Lewis and Hon Graham Kierath - have been conscientious. It is easy for people who do not support the decisions made on appeal to say that the minister shows bias, the minister has been got at or the decision favours a friend of the minister. I support this legislation because it will remove any connotation that the minister may have been influenced in some way. We should be heading in this direction, and I do not see it as a bad thing that we are going down this track.

The Minister for Planning and Infrastructure made an interesting point in the second reading speech. She stated -

> . . . the ministerial system has traditionally involved the allocation of an appeal case to one member of the town planning appeal committee who confers with one party and then the other, usually independently of each other, contacts any others who appear to have a significant interest in the outcome and prepares the report and recommendation for consideration by the minister. Those reports are presented by two or three full-time appeal committee members to the minister, who makes a determination in consultation with them.

The minister does not normally make the decision. Let us face it, the minister is not as close to the ground as the members of that committee. In those appeal cases, a representative of the minister visits the site over which the appeal has been made and prepares a report. The person who is in that position makes a decision, then makes a recommendation to the minister; and the minister can override that recommendation. It would be interesting to see how many of those recommendations the minister has overridden. It is those decisions of the minister that count. The inference is that ministers in the past - certainly in the 18 years I have been here - have overturned local government planning decisions for the wrong reasons. It would be interesting to know how many recommendations the minister has overturned. That might reduce considerably the allegations of bias. In my experience, Hon Richard Lewis and Hon Graham Kierath were conscientious and probably read a lot of the

paperwork involved. However, they would have been ripping through the paperwork at a great rate, and I am sure they would have relied heavily on the advice they were given.

It is interesting that ministers were able to base their decisions on compassion. Over the years I have had considerable doubt about compassion being a basis for making or overturning planning decisions that have been made by either the local council or the Western Australian Planning Commission. Planning decisions should be made for proper planning processes - even though I supported the case in Capel, which was one of the exceptions in which compassion should have been brought into play and the appeal upheld; it was not. In general, compassion should be put to one side and proper planning decisions made. However, it is unlikely that decisions made on compassionate grounds will affect the future planning processes of Western Australia.

One of the things I have noticed over the years is that people are determined to get their subdivisions approved. Often they are knocked back because the local councils say the development does not fit within the by-laws or the town planning scheme. We need an appeal mechanism so that things that do not quite fit the mould can be considered separately, and if good reasons exist, the local government decision can be overturned. That is the why I support appeals. Sometimes people are in dire straits. Last year a constituent with some property in my electorate was in financial troubles, and he needed a subdivision to be approved to get him out of his financial problems. Under those circumstances, it is important that appeals tribunals work within a satisfactory time frame, so that decisions are not strung out too long. I hope the minister can put my fears to rest and that the tribunals will be adequately resourced and a time frame put in place for the hearing of appeals, otherwise, like a lot of bureaucracy, appeals will be put in a basket and will be dealt with eventually. In the meantime, some of those people will go through hell. In some cases they are on the verge of financial ruin or have other problems and they need decisions to be made quickly. Even if they do not get the decision they want, they can work on other ways to get through their problems.

I noticed that the minister will include environmental specialists in the system. That is a good thing in some ways, but it makes me wonder whether the fact that they do not like chopping down trees will mean they will stop trees being cleared for future subdivisions. It narks me, coming from the country, which has been well served by the timber industry over the years - I know that is debateable - that it is all right for people to knock down trees to build their houses, but we cannot knock down trees so that people can have employment, which keeps the towns in our great State going. It will be interesting to see what role the environmental specialists will play in this, and whether they put a few spokes in the wheels of developers.

I support the legislation on the condition that time frames are put in place for appeals to be heard, so that people are not strung out for a long time waiting for a decision. Often appeals cost a lot of money, particularly when millions of dollars are involved in the development. Resources must be in place to ensure that the tribunals have adequate staffing to deal with all these cases that will now go before them.

MS MacTIERNAN (Armadale - Minister for Planning and Infrastructure) [9.18 pm]: I thank all the members who have made a contribution to the debate tonight. I am not sure whether everyone is lining up with their support for this legislation, although some members have indicated their support, for which I thank them. It is a significant change, and I accept that some members have legitimate concerns.

I will make a few general comments. Western Australia is the only State that has retained a ministerial appeals system. It is considered by many to be an archaic system. There has not been a great crisis in the other States and Territories in Australia that have moved away from the system under which ministers reserve for themselves this power. Perhaps some of the views expressed here tonight are concerns about change, so they are not necessarily well founded. However, it is important to remember that the appeals with which we are dealing are appeals against the decisions of, by and large, democratically elected local authorities, and, in some instances, of the Western Australian Planning Commission. They are not appeals against decisions of public servants. That is very important, because if one opinion is substituted for another, due credence and respect must be given to local government.

I was a bit disappointed tonight to find that very little support for local government was given, at a time when local government should receive our attention. Because the local government annual conference is being held in Perth at this time, I thought that perhaps members would think more deeply about the nature of these appeals and why they believe that the opinion of democratically elected members of local councils should be overturned so readily. We should give thought to the reasons there are so many appeals. In the course of debate, many of the reasons were identified. Quite often, policy settings and town planning schemes have not kept up with reality and are out of step with the needs of the community. That problem will not be resolved by papering over it and by allowing some of these matters through on ministerial appeal. We must confront the situation, which is the

advice I often given to appellants. I tell them to take up the matter with their local council. If the town planning scheme is clearly inadequate in their view, and in the view of many people in the community, they should take up the matter with their local council and get the scheme amended.

That also applies to the degree of control and the fetters that have been placed on local government, particularly over the past eight years, in planning matters. Local councils cannot sneeze without getting ministerial approval. Over the next 18 months, the Government will look at changing that, to allow local government more autonomy so that a council can get on with the business of ensuring that its policy settings and its town planning schemes are more reflective of the needs of its community.

A second reason has been identified by a number of members - indeed, I made reference to it in the discussion paper that has been referred to here tonight; that is, the prevalence of some local authorities to do the hospital handpass to the minister on a difficult issue. They do not want to decide the issue so they hand it on to the minister. What appals me about that - I do not have any difficulty making hard decisions, and I have done much of that in the six months Labor has been in government - is that quite often the way in which that happens is a fraud on democracy. For example, councils will say that they oppose a development because they understand there is resident and ratepayer pressure against the development. However, they then go around behind the scenes and nudge-nudge, wink-wink to the minister and the minister's minions, saying that they do not mind if the minister approves it. It is not healthy for democracy to allow councils to hide behind that subterfuge.

Mr Barnett: That is going on in local government now. That is the point we were making.

Ms MacTIERNAN: I said that that happens.

Mr Barnett: Don't be self-righteous about it. Everyone recognises the point.

Ms MacTIERNAN: Yes. I am glad that the Leader of the Opposition recognises the point. What I was trying to bring home to the Leader of the Opposition prior to that was that when we talk about substituting the minister's discretion for that of local government, we must remember that it is not analogous to the circumstance of the minister substituting his opinion for that of one of the subordinates in his department. That is the analogy the Leader of the Opposition was drawing. He said that he wanted to preserve the right, quite properly, to overturn certain discipline orders that had been proposed by departmental staff because, at the end of the day, the minister is responsible for those departmental staff. I agree with that argument. However, it does not pass muster as an analogy that will add any value to this debate because, quite frankly, local authorities have their own standing and are democratically elected. I know that members on the other side may have become confused after the conduct of some previous planning ministers under the coalition Government, who treated local governments as though they were subordinates. However, they are not subordinates, and if the minister's discretion is to be substituted for that of local government, it must be done with considerable care.

The third reason for so many planning appeals is that at the moment it is possible to simply try it on. That has been recognised by a number of speakers here today. Because it seems that the planning minister is not in any way constrained in the exercise of discretion, the view is that it costs only $260, so it is worth a go. Regardless of whether there is terribly much merit in the case put forward, there is always an off-chance that it will get through. The elimination of ministerial appeals will ensure that we deal with that issue.

Mr Barnett: With ministerial appeals, the reality is that in the vast majority of cases the minister of the day accepts the recommendation of the tribunal or committee.

Ms MacTIERNAN: I am very keen to take up that issue, because I am appalled by what I have heard here tonight on that matter. However, perhaps I will go through a bit more detail about some of the issues that have been raised. The member for Kingsley expressed concern about consultation. I will set out some of the background to this. The Labor Party put out a very publicly launched, widely circulated directions statement over a year ago. It took submissions on that directions statement, and it went into the last election with a clear policy that it would go down the path that has fundamentally been enshrined in this legislation. Labor then corresponded with a wide range of interest groups on that matter and circulated its draft Bill. It then convened a forum, to which the various participants came and debated the provisions of the Bill. I will list some of the groups involved in the initial comments and in the forum.

They are the Australian Association of Planning Consultants WA, the Australian Institute of Urban Studies, the Environmental Defender's Office (WA), the Law Society of WA, the Property Council of Australia, the Royal Australian Planning Institute, the Urban Development Institute of Australia and the Western Australian Municipal Association.

Mrs Edwardes: How much time did you give those organisations to respond to the draft Bill before you finalised it?

Ms MacTIERNAN: We had a forum which went for about four to five hours.

Mrs Edwardes: Was that after the Bill came into Parliament?

Ms MacTIERNAN: No, it was before the Bill had been finally determined, not after the Bill came into the Parliament. At the end of that forum we were complimented by the participants. They said they found it a very rewarding and refreshing experience and that it was not one that had been afforded to them on the previous planning Bills that had come before the Parliament.

Mrs Edwardes: What changes did you make as a result of that?

Ms MacTIERNAN: During that evening numerous changes were made as a result of the discussions in the forum. One interesting aspect was that by having all the players there at once, we were able to get a better consensus because obviously some came from very different directions. As the member can imagine, the Law Society in many respects came from a different direction from the UDIA. It was interesting to have that interactive dialogue with those various parties. I do not believe there has been any criticism of the consultation process. It could not have been a more open process. The Government has a clear mandate. It went to the election with a great deal of detail -

Mrs Edwardes: I am sure you will acknowledge that letters have been sent to you since then?

Ms MacTIERNAN: Yes, and those letters are all being considered.

Mrs Edwardes: They are letters from people who are concerned about the level of consultation.

Ms MacTIERNAN: I must say to the member for Kingsley that the feedback the Government has been getting indicates that far more consultation has occurred than those entities have ever had previously. There will obviously be people who do not want ministerial appeals abolished. I understand that but that will not happen. We will not abrogate our responsibilities and we will not breach our election commitment.

The member for Kingsley asked that we put before the House the draft rules, which we hope to finalise tomorrow. We will ensure that the member for Kingsley receives a copy of those rules. The member for Kingsley correctly understood that they are draft rules only at this stage. They will need to be finalised by the president of the tribunal, whoever that may be. It is also important to understand that the rules will have the force of regulation and will be disallowable.

I am puzzled by some of the member for Kingsley's comments. It is true that the Government acknowledged the ministerial system was favoured over the tribunal system because it presented a more flexible system. We recognised that it was inappropriate to get rid of the ministerial system without dealing with some of the problems of the tribunal. We recognised that the tribunal must be substantially recast to enable it to deal expeditiously and in a cost-effective way with an undoubted increased number of appeals. It is for that reason that we proposed the amendments to the legislation. The amendments are to the quorum; the classification of appeals into simpler and larger appeals, rather than a one-size-fits-all appeal; and the capacity for ordinary and senior members to deal with different levels of appeals to enable matters to be dealt with more expeditiously. We will clearly deal with those matters during the debate.

I presume the member for Kingsley believes the choice of veto should be purely with the appellant, and she also asked whether submissions should be in writing only.

Mrs Edwardes: You have brought together three issues in one sentence. The issue was the election by the appellants as to the choice of tier of the appeal. There should be the ability to choose that tier without agreement.

Ms MacTIERNAN: It is important to understand that another party has an interest in the appeal. Although appellants' interests must be protected, so must those of respondents. The whole subtext of the Opposition's comments indicated that the interests of the respondents were not interests to which regard should be paid. I would not support any suggestion that an appellant has a right to determine the way in which an appeal will be held. For example, on the member for Kingsley's theory, a very large developer with a 250-lot subdivision could make a decision that he or she wanted the subdivision to be a class 1 appeal, and it would therefore automatically and completely inappropriately become a class 1 appeal. He or she could apply a veto so that the

local authority - which might be the Shire of Northam, for example, as the member for Avon talked of a lot of subdivisions going on there - would be denied the right of legal representation in a major subdivision.

Mrs Edwardes: Why is it inappropriate?

Ms MacTIERNAN: It would be inappropriate to deny a local authority the right to legal representation in an appeal on a major subdivision. I would have thought that was a basic right. With major issues of that scale, a local authority has a right to have its case properly argued. As I said, one matter that concerned me about the subtext of the debate tonight was the assertion that only the rights of appellants need be afforded protection. I suggest that the protection of the rights of respondents, particularly local authorities in certain instances, is very important, especially against powerful developers. Often there is a real David and Goliath situation, in which Goliath is the developer, not the local authority.

Mr Hyde: Hear, hear!

Ms MacTIERNAN: The former Mayor of Vincent obviously supports that view.

I agree with the member for Kingsley that if both parties are in agreement, they should be able to proceed by way of written submissions. I will double-check to ensure that is the case; however, I do not have a difficulty with that. There has been a lot of talk about mums and dads and ordinary property developers. Often people of modest means make development applications, particularly for rural subdivisions. However, I must say to members that one aspect that I found to be very instructive was the fact that the overwhelming majority of ministerial appeals that come before me are not appeals in person. Almost inevitably the appellants use planning consultants, surveyors, architects or other professional people to prepare submissions.

I do not see that as any different. I have spoken to some of the planning consultants who traditionally have shied away from going to the tribunal. Under the new regime, and perhaps because the ratio of dismissals to upheld appeals has changed somewhat with a new Government, a number of planning consultants are going to the tribunal and finding it is nowhere near the daunting procedure they had previously heard. It will be even less daunting when we have made these amendments.

When the tribunal was recast in the 1970s, there was an intention to reduce the level of formality with which proceedings were held. Unfortunately, the main experience of most of the people who took over as chair of the tribunal was in the Supreme Court. One way or another, they managed to turn the tribunal into a forum with procedures not unlike those of the Supreme Court. We need to get back to basics. I have no doubt that this will be a very user-friendly jurisdiction, particularly in relation to class 1.

I inform members, particularly those on the other side who have argued time and again that injured workers should be able to present themselves at workers compensation forums without the benefit of solicitors, that it is possible for people to represent themselves using something other than lawyers. In any event, it is clear that people have a choice: if they want lawyers, they can have lawyers; if they do not want lawyers, they do not have to have lawyers. In fact, they have the power to veto lawyers for the respondents.

Mr Masters: At level 1 and at level 2?

Ms MacTIERNAN: No, only at level 1. Level 2 applications are quite substantial developments. Frankly, the case for the battler draws a bit thin when one looks at class 2 applications, although the member obviously has a different definition of a battler. Interestingly, much emphasis has been placed on the mums and dads. The overwhelming number of metropolitan appeals come from the western suburbs. One rarely sees in any one night a host of what we would call mum-and-dad battler appeals.

Mrs Edwardes: Have you done an analysis of that?

Ms MacTIERNAN: No, I have not done an analysis of it.

Mrs Edwardes: The councils I have been talking to say something different. They say that 50 per cent of those doing ministerial appeals are actually the mums and dads.

Ms MacTIERNAN: What does the member mean by “mums and dads”? Alan Bond is a dad. Janet Holmes a Court is a mum. I find that sort of language rather strange. In my experience, about 30 per cent of appeals are rural subdivisions. Of those that relate to the metropolitan area, the vast majority come from the western suburbs.

Mrs Edwardes: What about the market gardeners in Wanneroo?

Ms MacTIERNAN: No. A very small percentage of the appeals that I have dealt with fall into that category. Certainly, the overwhelming percentage of the non-rural applications -

Mrs Edwardes: They would probably be some of the rural ones because of the change of use.

Ms MacTIERNAN: I am talking about the ones in the electorates of the members for Roe and Avon.

The member for Kingsley expressed concern about tribunal members.

The DEPUTY SPEAKER: I ask that all members contain their conversations. I am having trouble hearing the minister, and I am sure that the Hansard reporter is having the same difficulty.

Ms MacTIERNAN: The member for Kingsley expressed concern about whether tribunal members would be able to travel. They will be able to travel. I urge members to examine the Small Claims Tribunal, whose referees regularly travel to country areas to hear claims. I am confident that few rural people will be disadvantaged. I suspect that the majority of rural cases will be dealt with by written submissions. The local councils will not want their staff resources tied up travelling to the city or attending hearings in the country. Many appeals will be undertaken by written submissions.

Mrs Edwardes: If somebody brings an appeal against the Western Australian Planning Commission in the country, for instance, what will be its view? The minister said that the local councils would not want to put themselves to that expense, but the Planning Commission might.

Ms MacTIERNAN: The Western Australian Planning Commission will also consider accepting a recommendation that written submissions be made for the smaller subdivisions. In any event, if there must be a hearing, it is open to the tribunal to hear those matters in the country district.

There is some ambivalence about the call-in powers. Some members argued that they undermine what we are trying to do, and others said it is important to keep them. It is the Government's view that matters of state and regional significance will require the minister to retain some capacity to make decisions. The community requires many facilities that no local authorities want; for example, homes for disabled people or facilities for minority groups. Those facilities are routinely rejected by local authorities, but they must be sited somewhere.

Mrs Edwardes: Will they have regional significance?

Ms MacTIERNAN: That will depend on the nature of the facilities. Some facilities may have state significance and others may have regional significance; for example, a local authority may reject approval for the private sector to invest in pipelines that would undermine regional development. Often with a proliferation of many small councils, one council may make a decision that is contrary to the interests of the broader community. That has happened in areas that have doughnut councils. They are the types of instances in which the State Government will intervene.

Labor supported the previous Government's desire to retain the call-in power. However, it believed the legislation lacked transparency because there was no limit on when the minister might intervene. He could have intervened at any time during the appeal process, and we thought that was unacceptable. It would be evident at first instance whether a matter is of state or regional significance. The Government has put a time limit on the minister to make a decision within 14 days of the appeal being lodged about whether the appeal is to be called in. The Bill provides that within a further 14 days, the decision to call in that appeal must be gazetted.

Mrs Edwardes: The decision to call in or the reasons for that decision?

Ms MacTIERNAN: The decision to call in. There is a mechanism, and we can detail that during the debate, but the decision shall be made public within 14 days.

Mrs Edwardes: All you need to table in the *Government Gazette* is the decision to call in, not the reasons for that decision.

Ms MacTIERNAN: We will be making it clear that we have made the decision to call in.

Mrs Edwardes: But you will not be tabling the reasons for the call in.

Ms MacTIERNAN: No. There will be no secrecy about the call in, because we will be tabling the fact that we have done that. The member for Vasse indicated some support for the legislation. I appreciate that. The

member made some good points. He expressed some concern about the cost to the State of ministerial appeals, and about the funding of the tribunal. I will outline the process, because there seems to be some naivety about how these decisions are made, and there also seems to be a view that ministerial appeals do not have a cost. The appeals committee has one part-time member, who conducts the basic investigation and prepares a report. That report then goes to a panel of three or four members of the ministerial appeal committee, who vet that report and determine whether to support that report or issue another report. After that two-stage process has been completed, the third process is that those three or four full-time members of the committee present the report to the minister.

Those processes involve a lot of staff time. Therefore, our intention is that the funds that are used to run the ministerial appeal system will be diverted to the tribunal.

Mrs Edwardes: What is the budget for that?

Ms MacTIERNAN: I can get those figures for the member. The ministerial appeal committee has 16 part-time members, three full-time members and four administrative staff; and the tribunal has three administrative staff and seven members. There is some overlap.

Mrs Edwardes: Are the seven members full time or part time?

Ms MacTIERNAN: They are part time. The staff of the tribunal did not operate out of the minister's office but had their own office and administrative staff. Therefore, it was necessary to maintain two offices. That will not be necessary under the proposed system. We believe that we can fund the tribunal by using the money that was used to fund the ministerial appeal committee, and that we can produce the same result. However, if we find that the tribunal requires more resources, we will put more resources into it. We believe that in the first instance, the allocation of those resources will be sufficient.

There has been a lot of talk about compassionate grounds. That is an important aspect of ministerial appeals, and many members have written to me about various appeals. However, I remember clearly from my days as a City of Perth councillor that that aspect is often overused and the claims cannot be substantiated. In one appeal that I have had as Minister for Planning and Infrastructure, a party claimed that she needed to subdivide a lot of land that she owned to make provision for her psychiatrically disabled daughter. We undertook a search of properties in her name and found that she had eight homes in the immediate area. Obviously she did not need to undertake a subdivision in order to -

Several members interjected.

The DEPUTY SPEAKER: Order! I ask members to show courtesy to the minister and the Hansard reporter.

Ms MacTIERNAN: Hardship or compassionate grounds can be taken into account when a case is lineball. That is the tribunal's view and the view I have adopted. It is not acceptable to use those grounds if to do so would suborn the planning process. Many of the issues raised tonight were arguments against proper planning.

Some members railed about the notion that this will be used as a precedent. Many ministerial appeals are based on precedent. People use exactly that argument - "Everyone else in the area has been able to do it, why can't I?" or "So and so up the road was allowed to do it." Practice has shown that if we allow one person to subdivide in certain circumstances or to develop outside planning grounds, that then becomes the basis for appeal by many other people in the area. Members understand that. No doubt people have come to them and pointed out that other people have done things in their district contrary to the rules and regulations. The complainants believe that they have been dealt with unfairly.

It will be difficult to go through all the issues. I summed up the major issues that have been raised. Members will have opportunities during the consideration in detail stage to obtain more detail.

The member for Kingsley referred to the New South Wales Land and Environment Court in relation to time limits. The Government has looked at this and research indicates that they are simply administrative directions; they are in no way enshrined in legislation or regulations. They are administrative targets.

Mrs Edwardes: They are part of their rules.

Ms MacTIERNAN: If the member has evidence to the contrary, I will look at it. They are benchmarks that apply only to the assessors, not to the judges. My notes state that no judge is subject to these time limits.

Mrs Edwardes: Where does it say that?

Ms MacTIERNAN: I am referring to notes I have been given. If the member can provide evidence to the contrary, I will be interested to see it.

One of the other interesting subtexts is the proposition that the tribunals will act in a bureaucratic way and will not take into account the real needs of the community. Members should look at the results, because 96 per cent of appeals to the tribunal are resolved by mediation, and mediation will be enshrined in the rules. Of the balance, about 50 per cent are upheld and 50 per cent are dismissed. There is no basis for thinking that the tribunals, by nature, will be unsympathetic to the appellants. Although it is certainly true that the president of the tribunal will be a lawyer, not all of the participants will be lawyers. The Government envisages a wide range of people with planning, local government, surveying, environmental or heritage backgrounds being usefully appointed to serve on the tribunal. The member for South Perth does not support the abolition of ministerial appeals.

One last point concerns the appalling suggestion made by a number of speakers that in any event, the minister just rubber-stamps the decisions of the town planning appeals committee. In my case, that is absolutely not true. The suggestion that this should be done is appalling. I take my obligations seriously. I have never made a decision -

Mr Barnett interjected.

The SPEAKER: Order, members!

Mr Barnett: You just made allegations against a former minister.

Ms MacTIERNAN: What former minister?

Mr Barnett: Not one person on this side said that former ministers rubber-stamped decisions.

Ms MacTIERNAN: No. I am not saying that former ministers did. A number of members, including the member for South Perth, said that, by and large, ministers just rubber-stamp, and not in any pejorative way -

Mr Barnett: No-one said that.

Mr Pendal interjected.

Ms MacTIERNAN: I am talking about the members for South Perth and Murray-Wellington. They implied and openly stated -

Mr Barnett: Richard Lewis and Graham Kierath did not do that.

Ms MacTIERNAN: I am not saying that they did. I am saying that the suggestion was made tonight that it is just a question of employing more staff, because basically ministers just rubber-stamp what is put before them. That is not true in my case. Every appeal that I deal with is analysed thoroughly before a decision is made.

I do not think that I should spend hours dealing with whether a side setback should be measured from the wall to the fence or from the fence to the wall. My time would be more constructively spent dealing with the sorts of issues that were raised by the member for Roe. Vexed planning issues must be dealt with, particularly in relation to rural subdivisions. Those are the sorts of issues that a minister should deal with. Ministers should be trying to get policy settings right and should not be dealing with individual examples of the application of the Draft Residential Design Codes. A minister should work to get the R-codes right and should not be involved in the application of the R-codes. A minister should concentrate on getting rural subdivision policy right, and not deal with the application of those rules. My endeavour to end the ministerial appeals system is designed not to lighten my workload, but to ensure that I can spend my time on matters that ministers should deal with.

The other point that I found a little disappointing was that many members seemed to misunderstand the whole issue of transparency and what is wrong with the current process. It is a question not simply of publishing the decisions, but of the whole way in which those decisions are made, how the assessment of a case is handled, the transparency of that process, the right of each party to know what has been said in relation to its case, and the opportunity for a party to answer the case made against it. I thank all members who made contributions. By and large, they were thoughtful contributions. There is no doubt that there will be some interesting debate over the remainder of this week.

Question put and passed.

Bill read a second time.

Referral to Economics and Industry Standing Committee

MR PENDAL (South Perth) [10.05 pm]: As I foreshadowed earlier I move -

> That this Bill be referred to the Economics and Industry Standing Committee for consideration and report by Thursday, 27 September 2001.

This is a perfect candidate for further and serious substantial consideration by a standing committee of this House. I said during the second reading debate that we have in Western Australia a low-key system of ministerial appeals that is inexpensive and easily accessible to everyone in Western Australia. However, we are on the verge of abolishing that to replace it with a costly, formal, bureacratised and elitist form of appeals. The ultimate outcome of this Bill once passed will be to deny real access to the people who can least afford it when they are aggrieved by, for example, a local government town planning decision.

That is the very antithesis of what a Labor Government should be doing in this State. I oppose it; I find it offensive. My constituents have never conveyed good reasons to me for abolishing ministerial appeals. If there were the slightest hint of any impropriety, misbehaviour or act of corruption we have ways of dealing with it. The fact that there has been a deficit of that behaviour commends the present system to the people of Western Australia.

MRS EDWARDES (Kingsley) [10.06 pm]: I support the motion for a number of reasons. In my speech during the second reading debate, I outlined a number of key issues that were raised with me by a broad range of people. In her response the minister attempted to deal with some of those, but she did not deal with all of them. She misunderstood some of the issues, for a number of possible reasons, such as talking to someone when opposition members were speaking or she could not hear correctly. The corner in which she sits is not conducive to hearing well everything said in the Chamber. When the minister was on her feet I interjected and she asked what I meant. She confused in one phrase three issues I had raised.

Ms MacTiernan: I understood them all and addressed all of them.

Mrs EDWARDES: No, the minister did not. I propose to raise a large number of other matters during consideration in detail. Many people would like to be consulted further on a wide range of issues. The minister said that wide-ranging consultation had occurred on this Bill. She knows very well that the people I was referring to were not those who support the continuation of ministerial appeals. I have copies of letters that were sent to the minister. People generally support the thrust of the direction the Government is taking. However, they have some major, fundamental issues about whether the Bill will work in practice. They are the people in the community making planning decisions and developing land, who would like greater involvement. The Western Australian Municipal Association, for instance, has made it very clear to the minister that it would like more time in which to receive feedback, because of the consultation it must have with the member councils. That has been indicated clearly to the minister. She can say that the Government consulted and held a successful forum that resulted in a number of changes. That is not the view of most people involved. They were pleased that they received a copy of the Bill and had consultation through the forum. However, they wanted more.

This legislation is a major change for planning in Western Australia. Sending the Bill to the committee will allow for a greater range of consultation to take place, which is something that the present Government was elected on: openness, transparency, accountability and wide-ranging community consultation. All these things are referred to regularly by the Government, and particularly this minister, who should therefore support such a motion in an endeavour to allow that broad-ranging consultation to occur. Some of those who have participated in the system, other than those whom the minister listed as having participated in that forum, may also like an opportunity to have a say on the legislation.

I have indicated that there is a better approach, and most of us on this side are saying that the Government is throwing out the baby with the bath water. Problems were perceived with the ministerial appeal system, but the benefits of that system - its informality, quick results and low cost - have not been appreciated. If those other elements are added, such as transparency, openness, sharing of information and the publication of reasons for decisions, this could have been done with a very simple system, like that which exists in the United Kingdom. It could be dealt with as a lower level of the tribunal system, or the powers could just be delegated. A very simple system could have been developed, with a far better approach than that contained in this Bill. When the previous Liberal Government drafted legislation, it did not consider itself the fount of all options and directions that can

be imagined. Sending this legislation to the committee allows a greater range of options to be canvassed, and perhaps it will result in a better approach.

I support the motion on the basis that it will allow for increased and improved consultation and may very well lead to a better approach to planning appeals decisions in this State, particularly for the mums and dads. I know the minister is asking who the mums and dads are. She can be flippant about that, but people in the community know who the little person is, and that is whom the Opposition is talking about. Many little people throughout the metropolitan area and in country regions have held on to large tracts of land, made a living from that land, and have now reached the point of retirement. Now, as a form of superannuation, they want to subdivide that land. Those are the little people and the mums and dads the Opposition is referring to. For all the reasons I have already put, in addition to this last and most vital one, the Opposition supports the motion. The rules - the way this legislation will be implemented - have still not been made available. While they are draft rules, it is critical, before the legislation passes through this House, that they be made available not only to this Parliament but also to those stakeholders. If the minister thinks she will give those rules to me tomorrow, and we continue to debate this legislation for the rest of this week, without the benefit of feedback from the community, which has a part to play in this process, she is wrong. If she is so keen on openness, transparency, accountability and broad-ranging consultation, the minister needs to have the feedback from all of those people before the legislation goes through this Parliament. The minister may just want to make a few amendments to the Bill to address some of the concerns raised by those people. The other point is whether those rules contain issues that should be in the substantive part of the legislation - the old substantive delegated legislation debate which sometimes rages. The House has not even attempted to address any of those issues. For all those reasons I support the motion moved by the member for South Perth.

MR COWAN (Merredin) [10.14 pm]: I, too, support this motion. I am sure my National Party colleagues will echo that support - even though I have not asked them to.

Mr Barnett: Nothing has changed then.

Mr COWAN: Yes, it has. It is recognised by the House as a whole that there needs to be some variational change to the laws that are in place for planning and appeals to planning laws. This is a novel attempt by the House to see greater participation by members of this Parliament in the way in which legislation is framed. It would be appropriate for a committee that has been established by a previous motion of this Parliament to examine legislation and to endorse what has already been presented to the Parliament by the Government or to make improvements through the process of greater consultation. I can assure the minister that a number of people have some concerns about this legislation that has been put forward. Bodies like the Western Australian Municipal Association and other local government organisations have expressed their concerns about the legislation. It would be appropriate for the committee to be in a position in which it could bring those bodies that are associated on a daily basis with planning issues to the table for their input and to make a recommendation to this Parliament about what should or should not be varied.

It would not be appropriate to argue that this would cause us to see some slippage in the timetable the Government might have for the passage of this legislation. If the Government followed the course in the motion moved by the member for South Perth, it is likely it would get a basis for cooperation and agreement with the whole House, and after 27 September the Bill will be passed through the Parliament much quicker than it might otherwise expect; or we can have the debate, which might take us through to 27 September, because it will be argued clause by clause. When in opposition, the Government taught us some very good lessons. We will produce exactly the same formula of delay and obfuscation of legislation if we think we are not getting due consideration for our proposals and amendments from the Government.

It is appropriate for us to try the new provisions under the standing orders to allow legislation to be considered at this stage rather than the other alternative, which is to have a select committee of inquiry. This is appropriate and, as a consequence, it will be supported by the National Party.

MR JOHNSON (Hillarys) [10.18 pm]: I support the motion moved by the member for South Perth. This Bill does not have a deadline. It is not of vital importance to the Government to pass it in a certain amount of time. It is not a life and death Bill. However, it will alter the lives of many people in Western Australia.

The concerns raised by this side of the House, particularly by the member for Kingsley, and my colleague the member for South Perth - he has put forward some very good points - warrant further consideration in detail.

The Opposition will not oppose the Bill. However, at the moment it is not a good Bill. It is not the best Bill that can come out of this Parliament.

It may go against the grain for the Government, particularly the minister, to think that they have introduced a Bill that is not perfect. I ask the minister to show a bit of commonsense, take a bit of advice and put it to the people. Many people have expressed their concerns to the Opposition, and they may have expressed those same concerns to the Minister for Planning and Infrastructure.

The purpose of these standing committees is to consider Bills of this nature. The Deputy Premier is a person for whom I have a lot of time. The Deputy Premier, the Leader of the House and the Minister for Police served on the Procedure and Privileges Committee when they were in opposition. That committee enjoyed tremendous bipartisan support and achieved much. It changed the standing orders of this House, which had not been done for decades. I took the Deputy Premier at his word. I thought he meant what he said in that committee and the House when he espoused the virtues of these standing committees. I know people change their minds when they move from one side of the House to the other. That is inevitable; but I would like to think that the Deputy Premier is a man of integrity. He must understand our point that if this sort of Bill should not be sent to a standing committee, what sort of Bill should be sent? Would he send only some fanciful Bill about which he is not bothered and let a committee waste its time on it? Half the House thinks the Bill warrants being sent to a committee for consideration in greater detail. Let us see a bit of democracy. Let us give democracy to the people of Western Australia, who still want to have a say on this important Bill, which will affect many lives. I ask that of the Deputy Premier in particular, because he is a very influential member of that side of the House. He is the Deputy Leader of the Labor Party and the Deputy Premier of this Government. I ask him to search his conscience, show some integrity and agree to the motion moved by the member for South Perth. It is a genuine motion. The member for South Perth did not move it for political reasons. It was not the Liberal Party that moved it, although it and the National Party support the motion, because they have the same concerns as the member for South Perth. We have very genuine and strong concerns. The Deputy Premier is the most senior person on the government benches. I ask him to talk to the Leader of the House.

The Government has probably decided to vote against the motion, but I ask the Deputy Premier to show some decency and let this one go. If he will not let this one go to a standing committee, what sort of Bill will he let go? What sort of Bill does he think should be sent to a standing committee?

Mr Ripper: I think we should see how the practice of the House develops.

Mr JOHNSON: That answer is beneath the Deputy Premier. We are putting a genuine case for sending this Bill to a standing committee. The Bill has no deadline for its introduction, nor is it a matter of life and death. I ask the Deputy Premier and the Leader of the House, and I would ask the Minister for Police if she were here, to try to live up to the comments they espoused so vigorously in the House in relation to Bills going to standing committees. Those ministers should not make a farce of those comments: they should carry out in government what they said they would do in when they were in opposition.

MS MacTIERNAN (Armadale - Minister for Planning and Infrastructure) [10.23 pm]: Almost 18 months ago, when we were in opposition, we went to the public with a clear proposition for abolishing the ministerial appeals system, and we outlined the way in which we would do that. We clearly have a mandate and an obligation to proceed with this legislation. The mover of this motion is opposed to the policy of the Bill. He does not believe that ministerial appeals should be abolished. That is the motivation for this motion.

This matter will be debated in full during the consideration in detail stage. It will also be debated in full in the Legislative Council. I remind members that not only did the Labor Party announce in considerable detail what it would do 18 months ago, but also this Bill was second read in this Parliament over a month ago - so members opposite have had plenty of opportunity to get whatever information they needed to proceed. I have no doubt that the member for Kingsley has been well informed and that we will have a vigorous debate. That is as it should be and that is what will happen. However, the Government will not tolerate another four years of pretence that the Opposition wants to abolish ministerial appeals.

I will remind members of what happened when the coalition was in government. After the scandal involving the penultimate Minister for Planning, there was a move by the then Labor Opposition to amend the town planning appeals legislation to require the minister to give reasons for his decisions, because over the previous four years the practice had not been to give reasons for decisions. When Labor introduced that legislation into Parliament, it was voted against by those people now sitting on the opposition benches on the grounds that they were on the verge of introducing legislation that would get rid of ministerial appeals. Two years after that date, they came into Parliament with a Bill. It just sat there, and finally it was debated. After about six or nine months, it got a

three-day run in March 2000. It got another day in August 2000, and then it was consigned to the dustbin. It was a highly flawed model. The other model, about which the member for Kingsley and many opposition members keep talking, has been tried. The previous Government put forward the other model, which was basically to keep ministerial appeals under another name. That model was tried and was soundly rejected by the community. That is why the previous Government did not proceed with the legislation. That is why the legislation sat in this Parliament for over a year.

Mrs Edwardes: That is not the model I put forward. You are again misrepresenting or deliberately misunderstanding the situation.

Ms MacTIERNAN: The previous Government had time to put forward a decent, workable model.

Mrs Edwardes: We debated your legislation, and it does not meet the criteria you laid down.

Ms MacTIERNAN: The legislation before us encapsulates the spirit and the substance of the discussion paper that Labor put out over a year ago, and the substance and the spirit of the election commitments it made. There is a great deal of ambivalence on the other side regarding the abolition of the ministerial appeals system. That is not to say that there are not real issues to be debated. I acknowledge that there are and that we should make sure that a system is in place that will be suitably flexible and informal, without compromising transparency. The Government is more than happy to have discussion and debate. If the member for Kingsley or any other member is able to come up with decent amendments that do not contravene the spirit of the legislation, the Government will not have difficulty accepting those amendments. It will look with great interest at anything that comes forward. However, it will not allow a motion moved by somebody who is opposed to the abolition of ministerial appeals to be used to once again put this whole process on the backburner.

Those on the other side made the undertaking in 1997; they did not deliver on it. We will now deliver on it, and we can debate it. We will not allow lack of action by the previous Government to be replicated in this regard. We have made this commitment to the community and we will act on it. We look forward to quality amendments from those on the other side. If they deliver those amendments, we will be more than happy to entertain them. This is the way that a Bill of this nature, for which we clearly have a mandate, needs to be progressed.

MR BARNETT (Cottesloe - Leader of the Opposition) [10.31 pm]: The minister has passed up a rare opportunity in this Parliament. Members on this side - I speak only for the Opposition - recognise that the Government intends to abolish ministerial appeals. Some of us may have some equivocation as to whether that is appropriate, but that is recognised. That is not the question that will be discussed at the consideration in detail stage. The Government may claim a mandate for that; it probably can. We recognise that it has the numbers in both Houses to do that. This motion was about allowing for some of these issues to be dealt with in a sensible and constructive way. Indeed, the Opposition has indicated broad support for this legislation.

The Government had an opportunity to refer this Bill to a committee for a fairly brief period to allow open and constructive discussion about those matters on which we might agree that would then allow the Bill to have a fairly easy and rapid passage through both Houses. The Government has chosen not to do that, so the only option available to us is to debate the Bill clause by clause, which is not a very productive process. The reason for forming standing committees is when there is broad agreement - even though some people might prefer to maintain ministerial appeals, and there is broad recognition that the Government will do that - and a number of sensible suggestions have been made about the mechanism and about how that might be done; in particular, how average, middle-income and low-income citizens who have a planning appeals issue can deal with it. However, this Government, in a most arrogant manner, has decided it will not do that. It will tough it out in this House for days and days, and then have the Bill go through the same process in the upper House; and the irony of it is that in the upper House the Bill will probably go off to a committee. Here there was an opportunity to sit down on an issue that was not particularly politically charged and, in a largely bipartisan sense, to try to come up with some sensible amendments - not just to look at the detail but to change some of the structure of this Bill so that it will work effectively. This Parliament would have been able to put some decent legislation in place.

The minister has decided not to do that. She will probably get her way at the end of the day, and what this State will have is a deficient piece of legislation. The Government has the choice of having its policy based on good legislation or on poor legislation. It has chosen to have its policy based on poor legislation.

Question put and a division taken with the following result -

Ayes (20)

Mr Ainsworth	Mr Cowan	Mr Johnson	Mr Trenorden
Mr Barnett	Mr Day	Mr Masters	Mr Waldron
Mr Birney	Mrs Edwardes	Mr Pendal	Ms Walker
Mr Board	Mr Edwards	Mr Sullivan	Dr Woollard
Dr Constable	Mrs Hodson-Thomas	Mr Sweetman	Mr Bradshaw *(Teller)*

Noes (29)

Mr Andrews	Mr Hyde	Mr McRae	Mrs Roberts
Mr Bowler	Mr Kobelke	Mr Marlborough	Mr Templeman
Mr Brown	Mr Kucera	Ms Martin	Mr Watson
Mr Carpenter	Mr Logan	Mr Murray	Mr Whitely
Mr Dean	Ms MacTiernan	Mr O'Gorman	Ms Quirk *(Teller)*
Mr D'Orazio	Mr McGinty	Mr Quigley	
Dr Edwards	Mr McGowan	Ms Radisich	
Mr Hill	Ms McHale	Mr Ripper	

Pair

Mr Marshall	Dr Gallop

Question thus negatived.