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

Committee

Resumed from 7 September. The Deputy Chairman of Committees (Hon Jon Ford) in the chair; Hon Donna Faragher (Minister for Environment) in charge of the bill.

Clause 5: Section 100 amended —

Progress was reported on the following amendment moved by Hon Adele Farina —

Page 3, line 19 — To delete "(c)"

Hon ADELE FARINA: I am not sure whether the minister had finished her response to my question. I might give the minister an opportunity to advise whether she had anything further to add.

Hon Donna Faragher: No; I think I had finished.

Hon ADELE FARINA: I want to thank the minister for pointing out that section 48B(1) of the Environmental Protection Act deals with the instructions and not the scope of the assessment, which is exactly what I said when I read out the provision. Nevertheless we have had that repeated. We gather from what the minister has told us the reason the government is deleting this provision is that in the government's view more often than not it is the proponent that makes use of this provision. In view of that, the government does not feel there is a need to have this appeal provision. If the government's reasoning is any more extensive than that, perhaps the minister could explain that to the chamber. To date I do not have a clear understanding of why the government feels this appeal provision is not necessary.

Hon Donna Faragher: I responded to that last night.

Hon ADELE FARINA: I asked a question; I do not think it is unreasonable to expect a response.

Hon Donna Faragher: I responded to the member last night.

Hon ADELE FARINA: No, the minister did not. I am happy to read the minister's response to me. It says nothing about the reasons the government considers this an unnecessary appeal and what the government's reasons for deleting it are. As the government is promoting the bill and wants the support of the chamber, I do not think it is unreasonable for the government to provide the chamber with an explanation of why it has formed the view that this appeal provision is not necessary and should be deleted from the act.

Hon DONNA FARAGHER: There is not an equivalent appeal for proposals on the content of the instructions. It is an unnecessary appeal point. It is not an appeal point that is utilised when the Environmental Protection Authority is assessing another project under part IV. It is an unnecessary appeal point, and, I might say, is rarely used as well.

Hon ADELE FARINA: Just for the record, we are getting rid of an appeal right to facilitate a faster approvals process; however, it is very rarely used and therefore it is not really holding up the approvals process at all. That is interesting. The only explanation that has been given by the government is that it is not available for different proposals and therefore it is unnecessary. Clearly, when this Parliament passed the legislation, it considered the appeal right to be important; otherwise, it would not have passed the legislation providing the appeal right. The best explanation we can get from the government is that it now does not think it is necessary, and we are not required to have any reason or justification for why it has formed that conclusion.

Hon Donna Faragher: I have given you a reason. If you don't like the reason, vote against it.

Hon ADELE FARINA: I do not think the minister has provided a reason.

Hon SALLY TALBOT: To carry on the same line of questioning that Hon Adele Farina has started, the second reading speech refers to an existing approvals system that has created uncertainty and delays. If I have understood the minister correctly in relation to this amendment that has arisen from the committee report, paragraph (c), which is to be removed, certainly does not, by her own admission, lead to delays.

Hon Donna Faragher: But it is an unnecessary appeal point.

Hon SALLY TALBOT: Is it the cause of uncertainty?

Hon DONNA FARAGHER: It is an unnecessary appeal point.

Hon SALLY TALBOT: What consultations has the minister had with proponents that confirm that statement?

Hon DONNA FARAGHER: Perhaps I can give the member a couple of examples. The first relates to the director generals group in terms of the four bills that were put forward, and planning is part of it. The primary point is that it is unnecessary, but it also causes confusion. I have had examples in which I have either dismissed

or upheld an appeal based on the content, and it has been seen, often by a proponent, that I have made a determination on the entire project when, in fact, the determination of the appeal has been only on the content of the instructions under which the assessment needs to be carried out. Obviously, the entire assessment process needs to be undertaken. Often there is a misunderstanding when an appeal is made on the content of the instructions in that it could be seen that the minister is making a decision on whether a project can go ahead. I have had an example in which I have made a determination on the content, and then subsequently I have read in the paper that it has been thought that I have made a determination on whether the proposal can go ahead, which of course is pre-emptive because all I have made a determination on is the content of the instructions. That is an example.

Hon SALLY TALBOT: I thank the minister. That makes sense as far as it goes. But the minister surely is not suggesting that a proponent is literally misunderstanding her determination. Am I correct in that?

Hon DONNA FARAGHER: I am saying that confusion can occur, yes.

Hon SALLY TALBOT: Does that not take us straight back to the point that many of us on this side of the chamber have made during this debate? There are two points. The first is that if it is a simple misunderstanding, surely clarification could be made by a simple amendment to the act by just inserting a clarification statement. That is the first thing. The second and much more substantive point is that again, by the minister's own admission, she is pushing appeal points to the back end of the process. When a negative assessment is made by the minister of the content of an instruction, let us say the proponent did not literally misunderstand but thought the whole project had been knocked back, then walked away and did not do anything else, and let us say the proponent thought it was an indication given to him by the government of attitudes towards aspects of this proposal, would that not be an example of what proponents have been telling me ever since the minister formulated the bill? That is, they are worried about having these points pushed to the back end of the process. Move them forward and I think the minister would not have anything like the opposition amongst third parties that the minister has accrued with the method and substance of what she is trying to do.

Hon DONNA FARAGHER: I make the point that agreement on instructions is best reached through discussion and consultation with the responsible authority. I reiterate that there is no equivalent appeal for proposals. It is, therefore, an unnecessary appeal point, and that is the government's position.

Hon SALLY TALBOT: I have one last question on this point: is there any part of the new administrative procedures that affect this particular appeal right, more specifically the removal of this right?

Hon DONNA FARAGHER: No.

Hon ADELE FARINA: Will the minister clarify that with the deletion of this appeal right we are not actually deleting section 48B of the principal act? Therefore, the requirement to maintain a public record of the instructions issued by the authority under section 48C(1)(a) concerning the scope and content of an environmental review of a scheme will still be required to be maintained by the EPA.

Hon DONNA FARAGHER: Yes.

Hon ADELE FARINA: I thank the minister. Following on from that, I am not sure of the section, but is the section under which the minister can require a more full assessment section 43?

Hon Donna Faragher: Yes.

Hon ADELE FARINA: Is that appeal right to the minister available in respect of an instruction concerning the scope and content of an environmental review of a scheme?

Hon DONNA FARAGHER: I refer the honourable member to section 48E, "Minister may direct further assessment or reassessment of schemes by Authority". That is an equivalent provision, but relating to schemes.

Hon ADELE FARINA: I would like to digress a little to respond to a comment the minister made in response to a question I asked when we were last considering the bill. The minister disputed that it could sometimes take only a couple of weeks for an appeal matter to be considered. I refer to evidence that was received by the Standing Committee on Uniform Legislation and Statutes Review and recorded on page 129 of its report on this legislation. The Appeals Convener was asked about the range of time taken to resolve appeals. In an answer provided to the committee at a hearing on 15 February 2010, the Office of the Appeals Convenor advised that the time taken to resolve appeals against an EPA decision not to assess a proposal had taken between nine and 799 days. Whenever we asked the EPA Appeals Convener about those proposals that had taken a lot longer to consider, the reason was often that the proponents had delayed the process in terms of providing further advice or responding to questions that had been asked of them, or the proponents reconsidering whether to proceed with the proposal. There were also some instances when elections had got in the way, or there had been a requirement for consultation with another minister and the two ministers reaching a decision had taken a considerable period

of time. Other evidence was heard by the committee in relation to the time taken to resolve appeals on level of assessment. The Office of the Appeals Convener advised that the appeal time varied between 12 and 540 days, and that the median time for appeals on level of assessment varied between 67 days and 131 days, not the 180 days the minister referred to in responding to my question.

Hon Donna Faragher: I said "average".

Hon ADELE FARINA: We are talking about the median time.

The Office of the Appeals Convener also advised that in its normal processing of appeals, its reports on 80 per cent of appeals were provided to the minister within 30 days of receipt of the EPA report. That does not seem to me to be a particularly lengthy period to resolve appeals. I think it is important that we get this statistical information on the record, because it varies quite substantially with the impression created or suggested by the government that it is taking an outrageously long time to resolve these appeals. The evidence of the Appeals Convener suggests that in 80 per cent of cases, appeals are turned around in a very reasonable time. There are occasional examples of it taking longer, and often that is as a result of delays by the proponent or delays that are caused by specific incidents occurring at the time, such as elections.

Hon DONNA FARAGHER: I do not intend to delay this debate any further. Hon Adele Farina can refer to elements within the report but the information that I provided yesterday is correct and it relates to the average time taken. In fact, this information was provided through the Office of the Appeals Convenor. Hon Adele Farina can try to challenge what I am saying but this is the information that I have on the average time taken.

Hon ROBIN CHAPPLE: The minister might be aware that I appeal a number of projects.

Hon Donna Faragher: I have seen a couple.

Hon ROBIN CHAPPLE: The minister's statement is interesting because when it comes to fairly large or major projects, the turnaround time is inevitably fairly quick because of the size and strategically important nature of the project. I have an appeal on one at the moment that is over a year old and we are still waiting on that but because it is not a significant or important project, it is pushed out. We need to realise that when it comes to what are called significant projects, the turnaround time on the strategic projects that need attention is quite quick. We seem to have lengthy delays with other projects that are not of that nature. That is more to do with the resourcing of the Appeals Convenor than being able to deal with matters. I have had discussions about that with the Appeals Convenor and the staff. Quite often it is because a lot of issues go before the Appeals Convenor. I think it is important to put that in perspective.

Hon DONNA FARAGHER: The complexity of the appeals and the number of appeal points need to be taken into account too. Obviously, it is on a case-by-case basis. We get a number of quite technical and complex appeals. I would agree that the Office of the Appeals Convenor does an exceptional job. The member and I do not disagree in that respect.

The DEPUTY CHAIRMAN (Hon Jon Ford): We are dealing with an amendment that seeks to delete paragraph (c). Whilst I do not want to stifle the debate, I note that some more general questions about clause 5 are still being asked. It would be useful just for procedure and understanding of how we are moving ahead to deal with the question at this time. There are plenty of amendments to clause 5 so there will be plenty of opportunities to talk about general things. I just make that point.

Amendment put and negatived.

Hon ADELE FARINA: That takes me to committee recommendation 5/5. I move —

> Page 3, line 24 — To delete the line.

This amendment relates to trying to retain the appeal right against a recorded declaration under section 39B, which is a declaration that a proposal is a derived proposal. We already debated this issue at length during consideration of an earlier clause because they were related. I will state again that the lack of use of strategic assessments, and therefore the lack of history in determining whether a proposal is a derived proposal, despite the fact that the EP act does provide guidelines for making that assessment, has led to a lot of concern in the community about what sort of projects will be determined to be derived proposals. It is my strong view that, until these provisions are tested further, it is in the best interests of the community and the environment to retain this appeal provision. It is for that reason and the fact that the government has really not advanced any reason why the appeal right should be deleted that the committee recommends that we delete the line that intends to delete the appeal provision.

Hon SALLY TALBOT: This is a very important amendment that I was gratified to see come onto the supplementary notice paper in the committee's name as a committee recommendation. Even people in this

chamber who did not take a close interest in various sections of the Environmental Protection Act before this debate started will have worked out by now that one cannot look at section 100(1)(f) without referring to section 39B—obviously, because that is referred to in that subsection—and one cannot read section 39B without referring to section 37B, which defines "strategic proposal". Section 37B(2) states —

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

I restate for anybody who has just tuned in that the Labor Party does not disagree with the Liberal Party about the desirability of encouraging proponents to undertake strategic proposals, whether the proponent is the government, the state or a private company. However, the problem that we began to perceive the very wide boundaries of during debate in this place last night is in understanding the relationship between the strategic proposal and the derived proposal. Were they one and the same thing, we would have effectively lost the strength that was put into the act when the whole notion of strategic proposals and strategic assessments was introduced. Hon Adele Farina has referred on a number of occasions to the Smiths Beach strategic assessment. I also think that earlier in the debate we confirmed that James Price Point, or the single LNG processing plant, is likely to be the subject of a strategic assessment, and in that case the proponent is likely to be the state. There is, surely, by definition a critical difference between a strategic assessment and the subsequent derived proposal. As I say, if they were one and the same thing, we would have lost the whole advantage of doing strategic assessments because the strategic assessment is in some sense—perhaps, others can help me—a broader, more general concept. It looks at a proposal on the macro level, whereas a derived proposal will look at it on the micro level. None of that quite captures what I am trying to say, but by definition, a strategic assessment is a big project that in some crucial way lays the ground for a particular proposal to come along in subsequent years. The minister has confirmed that when we talk about subsequent years, we might be talking about a very lengthy period of up to 10 years, and perhaps in some circumstances even more. By putting in place an appeal point on the question of whether or not a proposal is a derived proposal, surely the intent of putting that appeal point in place was to put a safety net in place to ensure that the critical environmental approvals that were articulated in the strategic assessment are then not in any way circumvented by a particular proposal that comes along and gets picked up under the skirts of the strategic assessment. Last night during the debate I attempted to tease out some of the specific problems that this appeal point might have been designed to pick up. The problem that I chose to focus on last night was the corporate history of a particular company. Let us leave aside a private company being the proponent and go back to the circumstance in which the state is the proponent in a strategic assessment situation and a private enterprise comes along to pick up the specific proposal. The point I made last night was that the EPA could miss the fact that a company has a poor environmental record. As we have said several times, the EPA would be the first to point out that its employees are only human and can only work with the information that they are given. Even if the EPA had not erred, there might be a gap in the information that was presented to it. Surely we need to honour and respect the fact that the appeal right was put there for a reason and that the reason is very likely to be, in a general sense, along the lines of picking up the circumstances, the likes of which I have been articulating. The first question I want to ask the minister is whether the intention is to collapse the distinction between the strategic assessment and a subsequently derived proposal.

Hon Donna Faragher: I answered these questions quite fully yesterday and previously.

Hon SALLY TALBOT: I think that is terribly clever, minister, because I have not actually asked that question previously. If the minister has answered it already, perhaps I need to go back and look at the minister's answers and ask some questions that I might have got different answers to yesterday. I will rephrase the question. If there is no intention to collapse the distinction, how far away from the strategic assessment can the derived proposal be while continuing to remain within the criteria that are laid down for a proper determination that it is a derived proposal?

Hon DONNA FARAGHER: I have responded to this question on numerous occasions. However, I refer the member again to the definition to which she referred and read out just a moment ago. Section 37B(2) of the Environmental Protection Act states —

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

I also referred the member to section 39B of the EP act, which is titled "Derived proposals".

Hon SALLY TALBOT: I cannot see how the minister can consider that to be an answer to my question.

Hon Donna Faragher: Read the act.

Hon SALLY TALBOT: I am reading the act right now, minister; thank you.

Hon Donna Faragher: Good.

Hon SALLY TALBOT: If we had a future proposal that has been designated a significant proposal, would it, for example, include the specific geographical parameters of that proposal? I mean, there must be a yes or no answer to that.

Hon DONNA FARAGHER: Yes, it would.

Hon SALLY TALBOT: How far into the technical specifications of a proposal would the original strategic assessment go? Would it, to use the example that I referred to last night, refer to the lining of tailings dumps or the storage of waste material?

Hon DONNA FARAGHER: Again, the proponent would need to provide sufficient detail to the authority. I refer the member again to section 39B(4), which states that "the Authority may refuse to declare the referred proposal to be a derived proposal if it considers that". I am not going to read that through again. I reiterate that we are not proposing to remove the clause with respect to this matter. Therefore, I fail to see the relevance of what the member is referring to. The member is now moving quite beyond the scope that we are at in relation to this matter.

Hon SALLY TALBOT: I think time will demonstrate that either the minister's understanding has failed, or her imagination has failed.

Hon Donna Faragher: Don't be condescending!

Hon SALLY TALBOT: Just listen to what I say.

Hon Donna Faragher: No. You are being condescending, as usual.

Hon SALLY TALBOT: Just listen to what I say, and then try to respond. The problem that the minister is creating is that she is putting on record the lack of certainty and the lack of thought that has gone into these measures. What we on this side of the chamber are trying to do is lay out some parameters that will come back to haunt the minister, because the instant this appeal right is removed, if the minister has not actually destroyed the possibility of strategic assessments, she will find that people will run a mile from this sort of thing. I say that because, by the minister's own advice, people are going to need to have more recourse to the courts to sort this out. This is the minister's chance to put on record that she does not believe that will be the case. Yet when we press the minister to give us specific details about how she imagines these measures are going to work, she just falls back on empty rhetoric.

Hon Donna Faragher: I just refer to the act.

Hon SALLY TALBOT: I conclude my comments on this committee amendment by asking the minister to confirm again for the chamber that this appeal right has never been exercised.

Hon DONNA FARAGHER: No.

Hon SALLY TALBOT: No, it has never been exercised?

Hon Donna Faragher: I just said no.

Hon SALLY TALBOT: I asked the minister to confirm that it has never been exercised. So, the minister is not saying no, she is not confirming?

Hon Donna Faragher: No, it has never been exercised.

Hon SALLY TALBOT: I thank the minister.

Amendment put and a division taken, the Deputy Chairman (Hon Jon Ford) casting his vote with the ayes, with the following result —

Ayes (12)

Hon Helen Bullock	Hon Jon Ford	Hon Linda Savage	Hon Giz Watson
Hon Robin Chapple	Hon Lynn MacLaren	Hon Sally Talbot	Hon Alison Xamon
Hon Adele Farina	Hon Ljiljanna Ravlich	Hon Ken Travers	Hon Ed Dermer *(Teller)*

Noes (16)

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

Pairs

Hon Matt Benson-Lidholm	Hon Helen Morton
Hon Kate Doust	Hon Wendy Duncan
Hon Sue Ellery	Hon Phil Edman

Amendment thus negatived.

The DEPUTY CHAIRMAN (Hon Jon Ford): The question now is that clause 5 do stand as printed. Hon Adele Farina has the call.

Hon ADELE FARINA: The committee also submitted amendment 6/5, which is very important because it deletes the word "or". Given that it is a consequential amendment, and the other amendments have been, alas, lost, I will not be moving this amendment.

Hon DONNA FARAGHER: I move —

Page 3, after line 28 — To insert —

(1A) Delete section 100(2).

This amendment picks up an oversight that was drawn to our attention by the committee, and I thank the committee for that. Essentially, it removes the appeal rights for proponents that disagree with the EPA's decision to refuse to declare a derived proposal.

Amendment put and passed.

Hon ADELE FARINA: I want to draw members' attention to the fact that as a result of the amendments that have been lost, in effect, we are now moving to a position to delete four or five appeal rights that currently exist under the legislation. The argument that has been presented by the government is that these appeal rights are taking a lot of time to resolve and therefore delaying the approvals process. It is important that members be aware of evidence received by the committee that at least 50 per cent of delays in the time taken to resolve appeals under part IV of the EP act was due to proponent delay, and that Mr Sutton of the Office of the Appeals Convener said that it can be significantly more than 50 per cent; yet the deletion of those appeal rights does not address the issue of proponent delay in resolving appeals that will remain with the passage of this bill. I am interested to hear from the minister, given that the policy behind this bill is to deal with speeding up the approvals process, what the government proposes to do to speed up the proponent response time to those appeals that will remain with the passage of this bill. It seems that this bill does not address that issue at all, and to the best of my knowledge the proposed administrative arrangements do not address that issue at all either.

Hon DONNA FARAGHER: No, the bill does not deal with matters related to proponent delay. I would not disagree with the Appeals Convenor that there are times when there are delays from the proponent. It might not be a delay as such; it may be because they want to seek further information or whatever it may be. There might be a number of factors why that is the case. At the end of the day, that is a matter for the proponent. There may be a number of factors for the delay; it may be as a result of the proponent, or the Appeals Convenor waiting on advice from the Office of the EPA or the Department of Environment and Conservation. There could be a number of factors why there may be a delay.

Hon ADELE FARINA: This very much goes to the point of clause 5 of the bill, which seeks to delete a range of appeal rights, because the time taken to resolve the appeals is adding, in the government's view, a significant time to the approvals process. The evidence that the committee heard from the Office of the Appeals Convener is that it does not actually stop the clock running when the proponent is causing the delay, so that provides proponents and industry with an opportunity to say that when it is taking, say, 500 days to resolve an appeal, it is

because the appeal process is too cumbersome, the Office of the Appeals Convener is taking too long to finalise and process appeals and the departments are taking too long to provide advice on appeals. They can put the blame squarely on the shoulders of government when, in a number of instances, those delays are caused by proponent delay. It concerns me that the Office of the Appeals Convener keeps no statistics on when there are delays. When an appeal is taking longer than the median 30 days to resolve, what is causing that delay? I am interested to hear from the minister whether she will consider, as part of the proposed administrative procedures or new administrative procedures, the requirement for some recording of what is actually causing those delays.

This legislation is being presented to the chamber on the basis that the time taken to resolve appeals is too long. The allegation is that government is taking too long to resolve these appeals, but the anecdotal evidence that I have is that in the majority of cases the delays are actually caused by the proponent. I think it is important for the community and for this Parliament to understand exactly where these delays are occurring and the reasons for those delays. However, to date that sort of information is not being recorded. I ask the minister what measures she is proposing to address this issue, so that we can record the cause of the delays and the length of those delays so that when we come to consider these matters in the future, we can do so on an informed basis. At the moment we cannot access the evidence that this chamber should be presented with when considering a bill of this nature because it is not recorded.

Hon DONNA FARAGHER: Although I have heard what the member said, the specific questions that she is asking do not relate to the bill.

Hon Adele Farina: Yes, they do.

Hon DONNA FARAGHER: They do not, because the fact is that we are seeking to remove duplicative and unnecessary appeal points. It is not about the administrative procedures of the Appeals Convener or how long someone might take to do this, that or something else when getting back to the Appeals Convener, whether it is a proponent, a government agency or whatever. We are removing duplicative and unnecessary appeal points. That is the matter that we are dealing with within this bill.

Hon ADELE FARINA: The second reading speech addresses the issue of the length of time that is being taken for approvals and the need to streamline the approvals process with timeliness and certainty, so I think my point about timeliness is relevant. The argument on clause 5, which deletes appeal rights, is driven by wanting to reduce the length of time it takes to issue approvals by reducing the number of appeal points through the process. If that is the objective of the bill, and the committee has heard evidence from the Appeals Convener that in excess of 50 per cent of the cases in which there are delays are proponent delays, I do not think it is unreasonable for the chamber to ask what administrative regime is being put in place to either require faster responses from the proponent or at least monitor the length of time that it is taking for the proponent to respond and the cause of delays that are occurring through the process. In that way, when we consider these issues in future, we would have that information to make informed decisions.

The evidence by the minister in the second reading speech is that this bill is part of a package that includes a set of administrative arrangements. The Standing Committee on Uniform Legislation and Statutes Review heard evidence from officers of the Office of the Appeals Convenor that this bill is part of a package that includes administrative procedures that seek to address this whole issue. I do not think, therefore, that my question is unreasonable. The Parliament should be afforded the courtesy of a reply on what measures the minister proposes to take to ensure that for those appeals that remain in place efforts are made to ensure timeliness and streamlining of those appeal points.

The DEPUTY CHAIRMAN (Hon Jon Ford): Members, the question before us now is that clause 5 stand as printed.

Hon ADELE FARINA: I asked a question and I do not think it is unreasonable to expect an answer.

Hon Donna Faragher: It does not relate to the clause we are dealing with. I have responded to this ad nauseam.

Hon ADELE FARINA: No, the minister has not.

Hon Donna Faragher: I have, actually!

Hon ADELE FARINA: I have explained the relevance of the question to the clause we are currently dealing with. If the minister takes the attitude of not replying to questions, I will stand and read the full committee report from page 1 to page 260, and I will not sit down until I finish. If that is what the minister wants, that is what I will do. It would be far more helpful and respectful of this place and her position if she sought to reply to the questions asked. They are reasonable questions. The minister has an obligation to answer questions to inform this place and to present evidence in support of the bill that she seeks this place to approve. The problem in this place at the moment is that the government has the majority of numbers. Although the government gave a

commitment that it would not use its numbers to push bills through this Parliament and would be respectful of the process and the role of this Parliament and this chamber to review legislation, the reality is this government is not having any regard to the role of this chamber in the consideration of the bill before us. The government is of the view that it has the numbers, so it can just push any piece of legislation through. It is of the view that it does not owe this place the courtesy of replying to questions and providing it with the information it seeks to review a piece of legislation, and to make decisions on and explore issues with legislation. We have a role to play here. The minister has an obligation, as a minister of the Crown and as a minister in this chamber, to respond to questions. I again ask the minister to respond to the question I put earlier. If the minister again chooses not to answer the question and simply provides a comment, I will proceed to read the full committee report.

Hon DONNA FARAGHER: That would be interesting.

I remind the member that the bill before us does not deal with administrative arrangements of the Appeals Convenor. There is a section within the Environmental Protection Act that refers to the procedure of the Appeals Convenor. That is not what is being dealt with through this bill. I appreciate that the committee has given consideration to issues surrounding timeliness. These matters have been canvassed through the second reading debate, and through clause 1 and other matters. I refer to the fact that I have responded on numerous occasions. We have been debating this bill for many hours—that is fine; that is part of the process—but there is nothing in the bill before us that relates to the Appeals Convenor's role and the procedures that may be utilised by him.

Hon ADELE FARINA: I would like to inform the chamber of the committee's report on this bill. It states —

> … This Report sets out the Standing Committee on Uniform Legislation and Statutes Review's (**Committee**) inquiry into the Approvals and Related Reforms (No. 1) (Environment) Bill 2009 (**Bill**), which proposes amendments to the *Environmental Protection Act 1986* (**EP Act**).

Point of Order

Hon BRIAN ELLIS: I fail to see the relevance of this to the clause.

Hon Ken Travers: You could have let her go for a bit longer and you might have seen it!

Hon BRIAN ELLIS: We have already heard the member's statement that she is going to read the whole report. Where is the relevance?

The DEPUTY CHAIRMAN (Hon Jon Ford): Much of the report is relevant to the bill. However, the report has been tabled in the house, so it would not be difficult to see how a standing order that deals with tedious repetition and other matters along that line could be argued. Before we dig ourselves into the trenches, I would like to make an observation and the committee can choose which way it wants to go. A minister can be asked a question and the same rules apply during the committee stage as apply during question time. The minister can answer the question in any way that the minister wants to answer the question or the minister can choose to not answer the question. Of course, members asking questions also have a number of opportunities to ask what they want. We tend to not get into relevance arguments during the committee stage because there are certainly plenty of opportunities to make broad-ranging comments. I make that observation, but I will see how the debate proceeds before I make any further comment.

Committee Resumed

Hon ADELE FARINA: I would like to offer the minister another opportunity to respond to the question. The argument that the government is putting is that clause 5 of the bill is necessary to delete various appeal provisions in the act to affect the timeliness and efficiency with which the approvals process under the Environmental Protection Act is progressed. The Standing Committee on Uniform Legislation and Statutes Review heard evidence from the Office of the Appeals Convenor that more than 50 per cent of the delays that occur that are longer than the median time taken to process an appeal are the result of proponent delays. The Office of the Appeals Convenor also advised that the office does not keep any records on the causes of delays that result from that appeals process. What has been put to the chamber is that we should support clause 5 of the bill because of the length of time being taken to assess appeals. However, if the length of time is associated with delays by the proponent, it puts a very different complexity on the relevance of clause 5 of the bill and the deletion of those appeal rights.

Hon Ken Travers: And whether we should or shouldn't support the inclusion of that clause in the final bill.

Hon ADELE FARINA: Absolutely. It is for that reason that I ask the minister: in relation to those appeal rights that will not be deleted by clause 5, what mechanisms will the minister put in place to ensure the timeliness of those appeals, particularly for proponent response times, and will the minister instigate through administrative

procedures any recording of the cause of any delays that might result so that we can get an accurate picture of whether those delays are proponent-caused delays or government agency–caused delays?

Hon DONNA FARAGHER: Again I refer to the fact that we are not dealing with the administrative procedures of the Appeals Convenor and how these matters are dealt with. I do not intend to put a time frame on when proponents respond to an appeal. At the end of the day that is their decision and it is at their cost, quite frankly. If they want to take longer, that is their decision. It relates to their project. If they want to delay it, that is, quite frankly, their decision. We are seeking through this bill to remove unnecessary and duplicative appeal points. Matters surrounding the administrative procedures of the Office of the Appeals Convenor are not what we are dealing with. As I have said earlier this evening, there will be occasions when proponents take longer. I do not disagree with that comment; I have already said that. But what I am saying is that it is a matter for the proponents.

Hon SALLY TALBOT: If there is a lesson in all of this, surely it is about the importance of the second reading speech. Hon Adele Farina is the chair of the Standing Committee on Uniform Legislation and Statutes Review. One can see, using no imagination at all, the amount of work that has gone into the production of this report.

Hon Donna Faragher: And we have given the government's response.

Hon SALLY TALBOT: I am therefore not speaking for Hon Adele Farina whose work speaks for itself. I just suggest to the minister that one of the ways in which she has got herself into this mess is because the second reading speech —

Hon Donna Faragher: There is no mess.

Hon SALLY TALBOT: The minister has got herself into a mess. If she looks behind her, she will see her colleague who will tell her what sort of mess she has got herself in.

Hon Simon O'Brien: Having to put up with all your nonsense!

Hon SALLY TALBOT: No. I am a very good reader of body language. I know what is upsetting Hon Simon O'Brien.

The second reading speech does not say what the minister is really intending to do, and that is what this forensic analysis of the bill exposes. All this high-flown rhetoric in the second reading speech is just garbage. We have here a government and a minister who are dancing to a particular tune, and we can hear that music loud and clear. It started when we got the leaked documents from the industry working group, and it has got worse and worse every day since then. And, my God, we have still another two years of this to go!

Hon Simon O'Brien: You have a lot longer than that.

Hon SALLY TALBOT: As I say, I do not purport to speak for Hon Adele Farina, let alone for the committee that she chairs, but I think the lesson in this for all of us is that the second reading speech has to be a document that upholds both the letter and the spirit of what the bill intends to do; and that is not the case here. We have here a second reading speech that is full of deceit. It is an attempt to dress up the motives of the government and the minister in high-flown language and motherhood statements about improving efficiencies when in fact all they are trying to do is make the process more difficult, less transparent and less likely to achieve the outcomes that they claim to have identified. As I said before, the government and the minister will be found out because in a matter of months proponents will be coming back to them complaining because their proposals will be bogged down in legal proceedings for years and years; and the minister will rue the fact that she has put her name to this travesty of a second reading speech.

Hon DONNA FARAGHER: There are a number of other committee recommendations that we have not dealt with, but there is another amendment standing in my name and I am happy to move to that.

Hon ADELE FARINA: I advise that I will not be moving committee recommendations 7/5, 8/5 and 9/5 because they are consequential amendments to previous amendments considered by the chamber and lost, and there is therefore no value in moving them.

Hon DONNA FARAGHER: I move —

Page 4, after line 6 — To insert —

(aa) delete paragraph (d) and "or" after it;

This is consequential on the removal of the appeal right under amendment 27/5, which we dealt with earlier, and deletes the reference in section 100 to the removed appeal, and that again relates to the committee recommendation.

Amendment put and passed.

Hon ADELE FARINA: I will not be moving committee recommendation 10/5, as these aspects have been picked up by previous amendments that have been moved by the minister.

Clause, as amended, put and passed.

Clause 6: Section 101 amended —

Hon ADELE FARINA: I will not be moving committee recommendation 12/6.

Hon DONNA FARAGHER: I move —

Page 4, after line 14 — To insert —

(aa) delete "section 100(1), (2)" and insert:

section 100(1)

Again, this is consequential on the removal of the appeal right dealt with earlier by amendment 27/5.

Amendment put and passed.

Hon ADELE FARINA: I advise that I will not be moving committee recommendations 13/6, 14/6, 15/6 and 16/6, as these are consequential amendments.

Hon DONNA FARAGHER: I move —

Page 4, lines 26 to 30 — To delete the lines and insert —

(d) delete paragraph (dc);

Again, this amendment is consequential on the previous amendment.

Amendment put and passed.

Hon ADELE FARINA: Committee amendment 17/6 is also a consequential amendment, so I will not move that.

Hon DONNA FARAGHER: I move —

Page 5, line 1 — To delete "(d), (db) and (dc)" and insert —

(d) and (db)

I move this amendment for the reasons outlined previously.

Amendment put and passed.

Hon DONNA FARAGHER: I move —

Page 5, after line 5 — To insert —

(1A) In section 101(2) delete "(c), (d) or (dc)" and insert:

(c) or (d)

I move this amendment for the reasons previously outlined.

Amendment put and passed.

Hon ADELE FARINA: I advise the house that committee amendments 18/6, 19/6 and 21/6 are also consequential amendments and do not need to be moved.

Hon DONNA FARAGHER: I move —

Page 5, line 10 — To delete "or (2)".

Amendment put and passed.

Hon ADELE FARINA: I advise that committee amendment 20/6 will not be moved as it is a consequential amendment.

Clause, as amended, put and passed.

Clause 7 put and passed.

Clause 8: Section 107 amended —

Hon ADELE FARINA: I point out to members that the Standing Committee on Uniform Legislation and Statutes Review recommended that this clause be opposed. The reasons for the committee's opposition to the clause are contained in recommendations 15 and 19. I think that I have previously read those recommendations into *Hansard*. I again remind members that the committee is strongly of the view that the course of action being taken in this bill is not supported by any evidence that has been presented to the committee in hearings or by anything that has been presented to this place.

Clause put and passed.

Clause 9: Section 101A amended —

Hon SALLY TALBOT: Can the minister provide an explanation for the replacement of the 28-day period with 21 days?

Hon DONNA FARAGHER: The amendment of the appeal period to 21 days will align the appeal period with those for other part V environmental regulation functions. It does not significantly affect the appeal rights; it simply aligns it with other aspects of the part V regulations.

Hon SALLY TALBOT: Does the minister have an explanation of why those discrepancies existed in the act in the first place? Can the minister clarify when the countdown starts?

Hon DONNA FARAGHER: As I understand, there was perhaps a regional concern with postage and how long it might take. However, in actual fact the appeal process commences only once the applicant or permit holder has been notified. But as I understand it, there was a regional concern.

Hon SALLY TALBOT: Are provisions now in place for those lodgements and applications to be done electronically?

Hon DONNA FARAGHER: I understand it is done through registered post so that there is documentation in terms of when it is sent and the like.

Hon ROBIN CHAPPLE: Having read the briefing provided to the EPA from the industry working group, I understand in fact that it will result from misunderstanding in the Legislative Council of the meaning of "notified". Is that correct?

Hon Donna Faragher: Yes.

Hon ROBIN CHAPPLE: Going on from there, the industry working group recommendations basically identified that there was some controversy about removing this in total, so it thought a better idea was to align it with part V of the act and the 21 days as opposed to the current 28 days.

Hon DONNA FARAGHER: The views of the industry working group are irrelevant to the matters I am dealing with here. As I have already outlined to Hon Sally Talbot, I have simply identified that it aligns the appeal period for other part V environmental regulations, so there is consistency in the appeal period. Others are for 21 days; this is for 28. We are simply trying to ensure that there is consistency with the 21 days. The industry working group may well have those views. I am simply saying to the member, through you, Mr Deputy Chairman (Hon Jon Ford), that we are trying to ensure consistency in appeal periods.

Hon ROBIN CHAPPLE: I thank the minister for her response. I point out that the minister so far has complied exactly with the recommendations laid out in the industry working group sheet I am running through. She has dealt with every clause in exactly the same manner that is articulated in the document that was sent from the industry working group to the director general. Quite clearly, we are following the script.

Clause put and passed.

Clause 10: Section 102 amended —

Hon ROBIN CHAPPLE: This is a really interesting clause. It performs a very important function and is often used by industry and local governments. I have read a note that it is very seldom used, but, indeed, it is used to ensure that during works approvals and that sort of thing, dust management programs can be amended. It is a time when a number of amendments on works approvals and licences are modified. It has been used consistently by local government and other small industry groups to have input into the process. As a previous consultant who has worked for local government and industry, I have seen this as a very effective method of ensuring that local authorities and indeed other industry groups have input, especially into dust management and those sorts of things. I am concerned that it is being removed.

Hon DONNA FARAGHER: It is not an appeal on the conditions. I understand that the appeal rights to be removed have never been utilised by a third party because decisions that properly affect the applicant or the works approval or licence holder have not been utilised by a third party.

Hon ROBIN CHAPPLE: I am afraid the department has got it wrong because, as a consultant, I have used that part several times on behalf of local government in Esperance, Port Hedland and a number of other locations to amend licence conditions.

Hon DONNA FARAGHER: To clear this up, there are, of course, appeals against the conditions of a licence, but this clause removes the appeal rights for third parties against the refusal, revocation or suspension of a works approval or licence, not against the conditions of the licence.

Hon ROBIN CHAPPLE: Using that process, how can one go through an amendment of the licence without that appeal provision?

Hon DONNA FARAGHER: It is a different appeal right.

The DEPUTY CHAIRMAN (Hon Jon Ford): I draw members' attention to the new amendment schedule on supplementary notice paper 94, issue 6. It has one difference from the previous notice paper on the last page.

Hon ADELE FARINA: Perhaps it would help Hon Robin Chapple if the Minister for Environment could point out the appeal provision that she believes he would have utilised when lodging those appeals against the licence conditions. The Standing Committee on Uniform Legislation and Statutes Review heard that this appeal right had never been used. It is a concern to me if it is being regularly used —

Hon Robin Chapple: I would not say that it was used regularly, but it has been used.

Hon ADELE FARINA: But it has been used by local government as a mechanism for local government to have some input into the conditions of licence approvals. I would very much like to get some comfort from the minister that there is another appeal provision that is not being deleted so that those rights still remain, because I am sure that local government would like to retain those rights.

Hon DONNA FARAGHER: I refer the committee to section 102(3) of the Environmental Protection Act. We are seeking to delete "refusal or" in section 102(3)(a) but not "specification". "Specification" would refer to conditions and we are not seeking to delete it. We are not seeking to delete from paragraph 102(3)(b) the words "an amendment". I refer to a revocation, suspension or refusal. That part is not utilised and has never been utilised, as I understand, by a third party. They would be dealt with by an applicant or holder of a permit.

Clause put and passed.

Clause 11 put and passed.

Clause 12: Part IX Division 2 inserted —

Hon ADELE FARINA: I would be grateful if the minister could explain how these transitional provisions will operate, because I am being asked a lot of questions about what will be the impact on a proposal that was referred to the EPA before this bill was enacted but during which time the bill is enacted. I have also been asked about the point at which that impact will occur. To give an example, if a proposal has been referred to the EPA, and the EPA has made a decision on the level of assessment under the current legislation, and the bill is then enacted, what implication will that have for the appeal right on the level of assessment?

Hon DONNA FARAGHER: I will go through a couple of elements to assist the member. The bill does contain transitional arrangements that apply for the purposes of part II to decisions made before the amended act comes into force. For appeals in respect of proposals, the transitional provisions provide that the EP act as in force immediately before the amended act comes into operation will continue to apply in respect of decisions made by the authority before the day the amended act comes into operation.

Hon Adele Farina: Can you please explain that in plain English?

Hon DONNA FARAGHER: Let me just go through each one first. With respect to appeals in respect of clearing permits, works approvals and licences, which is obviously part V, the transitional provisions provide that it will come into force immediately before the amended act comes into operation and will continue to apply in respect of decisions made by the CEO before the day the amended act comes into operation.

Hon ADELE FARINA: So would I be right in saying that in the illustration that I have provided, when the bill comes into effect at the time that the EPA has made a decision on the level of assessment and we are in the process of the 14-day appeal period on the level of assessment, that will not change, and that the provisions under the current legislation will continue?

Hon DONNA FARAGHER: That is correct.

Clause put and passed.

Clause 13: Section 41 amended —

Hon ROBIN CHAPPLE: This proposed amendment to section 41 is to insert after section 41(3) a new subsection (4). Can the minister identify how this may affect parallel processing and decision making with the Department of Indigenous Affairs or agencies such as that, because clearly there is a process at the moment?

Hon DONNA FARAGHER: It would need to be minor or preliminary works. In the case of the Department of Indigenous Affairs, for example, it could be a minor survey work, heritage work and the like. But it would need to be approved by the authority.

Hon ROBIN CHAPPLE: If there was a section 18 application before DIA, and that was going through its process, would the EPA have the ability to move forward with an assessment before the resolution of that section 18 application, or would both processes now work in parallel rather than being dependent on the result of one or the other?

Hon DONNA FARAGHER: I will use the example of the Department of Indigenous Affairs and a section 18. If a section 18 is needed to do minor or preliminary works —

Hon Robin Chapple: That would be a section 16.

Hon DONNA FARAGHER: — and if the Environmental Protection Authority agreed to the minor and preliminary works, and if they did not affect the EPA's consideration of the proposal before it, then, yes, that could be a circumstance. But, I reiterate that it would have to be minor and preliminary works that the authority would agree to.

Hon ROBIN CHAPPLE: For the minister's edification, a section 18 application is a request to allow for the removal, destruction and/or the making of a material difference at a cultural site. Currently, that process is gone through, but the EPA does not make a decision until after there has been a deliberation on the section 18 application, because if DIA says there can be no destruction, then the whole EPA process falls over anyway.

Hon DONNA FARAGHER: The provision allows for the decision-making authority—be it DIA, the Department of Environment and Conservation, or whichever—to authorise those works, but only after they have been authorised and are deemed minor and preliminary. Again, consent must be sought from, and given by, the EPA, but it allows the decision-making authority to authorise that particular action provided, obviously, that the EPA has been informed and it has granted its consent.

Hon ROBIN CHAPPLE: Who defines at what stage it is minor: the agency, the proponent or the EPA?

Hon DONNA FARAGHER: The EPA.

Hon ROBIN CHAPPLE: Given that, quite often, the EPA is not informed about what is going on within DIA, or indeed its level of assessment, how will the EPA determine whether it is minor or not if information is not provided between the two agencies? There have been a couple of cases in the past couple of years of information having not been exchanged, and they led to a complete breakdown in the system.

Hon DONNA FARAGHER: The proponent would have to come to the EPA seeking, I suppose, consent for those works to be undertaken. If the EPA agrees that they are minor and preliminary, that would then allow the DMA to be authorised to then proceed, whether it is DIA—sorry, Mr Deputy Chairman, I should be talking through you—or DEC, or some other agency. The proponent would have to come to the EPA.

Hon ROBIN CHAPPLE: The minister is saying that in the case of section 18, if it is considered to be minor, that the EPA will be the decision-making authority on whether or not section 18 will go ahead based on its understanding of whether it is minor or major. The EPA will then be making a determination about process over another agency. This has been part of the problem to date.

Hon DONNA FARAGHER: No. We are not saying that if section 18 is required, the EPA then makes that determination. The EPA makes a determination on whether the works are deemed minor or preliminary. If they consent to those works, that allows the DMA, in this case the Department of Indigenous Affairs, to be authorised to then carry out its requirements under its act with respect to a section 18 appeal, for example. The EPA would not do the assessment under section 18; all it is doing is providing the consent and therefore the authorisation for that DMA to do the work.

Hon ROBIN CHAPPLE: You are explaining it, and I am really getting it. So, from here on in, DIA have to come to the EPA —

Hon Donna Faragher: The proponent.

Hon ROBIN CHAPPLE: Invariably the DIA does the bidding of the proponents. The proponent and/or the relevant decision-making authority have to come to the EPA—I see that the minister is nodding her head. I want the minister to say yes.

Hon Donna Faragher: Yes. I will let you know when it is no.

Hon ROBIN CHAPPLE: The proponent and the relevant decision-making authority have to come to the EPA prior to them continuing?

Hon DONNA FARAGHER: Yes.

Hon ROBIN CHAPPLE: Thank you. The minister has set a brand new precedent.

Clause put and passed.

Clauses 14 to 17 put and passed.

New clause 5A —

Hon DONNA FARAGHER: I move —

Page 3, after line 10 — To insert —

5A. Section 48F amended

In section 48F(3)(a) delete "section 100(3a)(d); or" and insert:

section 100(3a)(c); or

Essentially, this corrects a drafting error that was identified by the department where there has been a reference to derived proposals in section 48F(3) in relation to the implementation of assessed schemes, rather than a report on the assessment of the scheme as it should be. It is a drafting error that was picked up by an excellent officer.

Hon ADELE FARINA: Could the minister please explain again the reasons for the movement of this amendment? I am sorry that I did not follow all that the minister said. I would appreciate some further explanation of how this has been identified and what it is seeking to rectify.

Hon DONNA FARAGHER: As I understand, the department was simply working through the Environmental Protection Act and identified this error. It stems back to 2003 and should have been picked up at that time. It deals with assessed schemes. Essentially it was a drafting error that was not picked up in 2003.

Hon ADELE FARINA: I thank the minister. What I do not understand is what the error is. The minister says that it deals with assessed schemes. If it should not be dealing with assessed schemes, what should it be dealing with and how does this amendment correct that?

Hon DONNA FARAGHER: It should refer to the report on the assessment of the scheme. Currently it does not.

Hon ADELE FARINA: I am sorry, but we have to look at other sections. I do not understand how changing section 100(3a)(d) to section 100(3a)(c) changes it to referring to reports. Section 100(3a)(c) refers us back to subsection (1)(e), which is "the content of, or any recommendation in, the report prepared under section 48D in respect of a scheme". I have got it.

New clause put and passed.

New clause 18 —

Hon GIZ WATSON: I move —

Page 10, after line 25 — To insert —

18. Section 122 deleted

Delete section 122.

This new clause is to delete section 122. The thinking behind this is that one entire chapter of the report of the Standing Committee on Uniform Legislation and Statutes Review was dedicated to the question of administrative powers being used. Chapter 6 is entitled "Appropriate Review and Delegation of Administrative Power: Principles and Evidence". The introduction to the committee's comments in chapter 6 reads on page 153 of the report —

> The Committee has found that the practical effect of enactment of clause 5(1) of the Bill will be to remove from the EP Act the opportunity (and right) for public review of critical decisions made by the EPA prior to issuing its report and recommendations … The Executive proposes that instead, there will be provision for public comment prior to the EPA decision on whether or not to assess a proposal or

> scheme. This constitutes a transfer of the framework governing public participation in respect of the relevant decisions from the legislative to the administrative realm and from one of review to one of contribution to the decision to be made.

The committee then goes on for a considerable period after that, from page 153 through to the end of that chapter and the committee's conclusions on page 211. Members will be pleased to hear that I am not going to go through that blow by blow, but I do want to point out the committee's conclusions at page 211, which reads —

> The Committee is of the view that implementing the proposed administrative changes through administrative procedures, rather than through provision in the EP Act or regulations, when accompanied by enactment of clause 5(1) of the Bill could have the practical effect of derogating from the ability of the Parliament to set the framework for environmental impact assessment in the State.

… In forming this view, the Committee notes that the Executive's position is that the EP Act mechanisms for public input into the environmental impact assessment process—the various appeal provisions proposed to be deleted by enactment of the Bill—are replaced by administrative mechanisms for that input. While changes to the EP Act and regulations made pursuant to it are subject to the scrutiny of the Parliament, administrative procedures made pursuant to section 122 of the EP Act are not.

This goes to a matter that I particularly want to raise; that is, the Environmental Protection Act is unusual in that it has a provision to use this power to have administrative procedures. It is set out at section 122, and reads —

> (1) The Authority may from time to time —
>
> (a) draw up administrative procedures for the purposes of this Act and in particular for the purpose of establishing the principles and practices of environmental impact assessment;
>
> (b) amend or revoke administrative procedures drawn up under this section; and
>
> (c) publish in the *Gazette* any administrative procedures drawn up under this section and any amendment or revocation of those administrative procedures.

A little further on, at section 123, much like other pieces of legislation that regulate regulation-making powers, the Governor may make regulations for a series of purposes.

Seeking the chamber's support for this proposed amendment to delete section 122 would remove the capacity of the EPA to make administrative procedures for the matters that I have read out, and require it to fall back on section 123, which is the regulation-making powers. My proposed amendment solves the issue that the Standing Committee on Uniform Legislation and Statutes Review has identified in chapter 6 about the appropriate oversight role of Parliament on regulations. It also addresses the concerns raised in submissions to the committee about the process; that as much as people might find some comfort in hearing there will be administrative processes that the EPA will undertake to ensure public participation was not affected, a lot of people were not comforted by the fact that if those administrative procedures were changed there was no opportunity for Parliament to have any impact on those changes. Mr Deputy Chairman, my proposed amendment goes to the concerns the committee has raised. I seek the house's support for this amendment.

Hon SALLY TALBOT: This is a very difficult amendment to consider. It is not straightforward. It seems to me that the government is effectively pushing members on this side of the house towards this kind of amendment. It is pushing us towards it because of the extremely problematic way in which things like amendment bills, regulations and administrative procedures are being treated by this government.

I take members back to some comments I made, so long ago that I cannot even remember when we started debate on this bill, about the process that the government has gone through to get to this point. The government would have us believe that there is some kind of broad consensus. I can see that a number of advisory groups, committees and working groups have been set up to provide input into this whole process to look at assessments and approvals. We know this because we talk to people in this city and in this state. They are also increasingly keen to talk to us on this side of the house about some of the problems they have in dealing with this government. It is not just that there is no consensus behind this bill; there is deep, sincere and convicted opposition to the measures in this bill, and it is coming from the government's own working groups. The Environmental Stakeholder Advisory Group, for example, made no recommendations that could in any way have been interpreted in one's wildest imagination as being enshrined in this bill. In fact, ESAG went the other way and said that nothing should be done to remove transparency and procedural fairness.

Hon Peter Collier: Sorry!

Hon SALLY TALBOT: I will take that as the beginning of a round of applause being led by Hon Peter Collier.

Hon Ken Travers interjected.

Hon SALLY TALBOT: I thank Hon Ken Travers. I do not know how applause is recorded in *Hansard*.

Hon Ljiljanna Ravlich: Clap, clap, clap!

The DEPUTY CHAIRMAN: Order, members!

Hon SALLY TALBOT: Now we seem to be getting very tired.

The minister's own advisory group, ESAG, recommended nothing like what we see enshrined in this bill. ESAG includes representatives of the Chamber of Minerals and Energy of Western Australia, people who are not traditionally aligned with this side of the chamber as a collective; individually, some of them may be, but not as a collective. I have been told—I am sure that Hon Giz Watson has heard the same concerns—that almost every member of ESAG was frankly appalled when the minister's staffer and some officers from the Office of the Environmental Protection Authority walked into a meeting of that group and informed them of what the minister was about to table in this house. Hon Giz Watson is nodding, so I think she, too, has heard those stories. In fact, there is more to the story. The second part of the story is that after the minister had formulated the substance of the bill and the removal of these points of appeal, she had a little panic attack and went back to the OEPA and said that the government needed to remove the impression that it was reducing transparency, openness and accountability. If that is not the case, the minister needs to stand and explain the real story. I have raised this matter previously in the chamber and she has not taken the opportunity to do that.

That brings me to the standing committee's recommendations about section 122 of the act. Recommendation 9 states —

> **The Committee recommends that the Minister for Environment provide the Legislative Council with the Executive's explanation as to why it is appropriate for prescription of the:**
>
> - **period for public comment; and**
> - **information to be made available to the public,**
>
> **in respect of the environmental impact assessment of a proposal to be by way of administrative procedure, rather than in regulation.**

I am not aware that the minister has done that, certainly not in the context of the consideration of this bill or in the consideration of the committee's report. Before I continue with my remarks on Hon Giz Watson's amendment, perhaps it would be appropriate for me to give the minister the opportunity to respond to recommendation 9 of the standing committee.

Hon DONNA FARAGHER: Very quickly, I suggest that the member perhaps inform herself of the government's response to the committee report and of the fact that these procedures have never been regulations. Just very quickly so that we can deal this evening with the government's position on this amendment, the government will be opposing the amendment. Essentially it seeks to remove the Environmental Protection Authority's power to make administrative procedures relating to such matters as public involvement, availability of information and reporting. That seems to be a rather extreme approach and would remove the EPA's capacity to develop and clarify its administrative process for assessment under part IV of the act, which provides clarity and certainty with respect to the work of the EPA. For those reasons, the government will not be supporting the amendment.

Progress reported and leave granted to sit again, on motion by Hon Donna Faragher (Minister for Environment).