PLANNING APPEALS AMENDMENT BILL 2001

Committee

Resumed from 20 August. The Chairman of Committees (Hon George Cash) in the Chair; Hon Graham Giffard (Parliamentary Secretary) in charge of the Bill.

Clause 11: Part V replaced -

Debate was interrupted after Hon Graham Giffard had moved the following amendment -

Page 20, line 29 to page 21, line 3 - To delete the lines and insert instead -

52. Enforcement of order

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

(2) The practice and procedure of the District Court and, in so far as they apply to the District Court, the Rules of Court of the Supreme Court apply with the necessary modifications in relation to the enforcement of orders of the Tribunal.

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

53. Failure to comply with summons or requirement of Tribunal

(1) A person served with a summons to give evidence before the Tribunal must not, without reasonable excuse, fail to attend as required by the summons.

Penalty: $5 000.

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

Penalty: $25 000.

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

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

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

Penalty: $10 000.

54. False or misleading evidence

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

Penalty: $25 000.

55. Offences against Tribunal

A person must not -

(a) interrupt the proceedings of the Tribunal;

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

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

Penalty: $10 000.

56. Contempt

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

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

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

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

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

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

57. Protection of members, practitioners, witnesses and others

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

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

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

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

58. Evidentiary provision

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

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

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

Hon GRAHAM GIFFARD: This matter was debated at length last night. After listening to and reflecting on the contributions of members, it seems to me that two areas of this amendment cause members most concern; that is, the insertion of proposed sections 52 and 56. The Government has examined those two provisions. As I say, I have listened to and I appreciate members' concerns for these provisions. I seek leave to alter the amendment by deleting those parts that deal with proposed section 52, enforcement of order, and proposed section 56, contempt.

Amendment, by leave, altered.

Hon PETER FOSS: I congratulate the parliamentary secretary on altering the amendment. He was presented with an impossible situation last night. A piece of legislation that was quite inadequately thought through was sent to this House, as often seems to be the case, and he was the patsy who had to explain it. Any member who has been a minister will have been faced with this problem at one stage or another when legislation has come from the other place. We have some sympathy for the parliamentary secretary. In this case, because the minister is a former member of this place and knows the standard of scrutiny that legislation receives in this Chamber, one would have hoped she would have some sympathy for the parliamentary secretary's predicament in having to handle something that was not well thought through. I certainly agree that proposed sections 52 and 56 should be deleted. Whether what is left is a remedy, I do not know. However, it is up to the Government to put forward

what it thinks is the remedy. What is left is certainly unobjectionable. Whether it is sufficient, I do not know. However, with the removal of proposed sections 52 and 56, it is certainly an improvement.

Amendment, as altered, put and passed.

Hon JIM SCOTT: I ask that the Committee deal with amendment 9/11 after amendment 10/11, which is the substantive part of the clause. If amendment 10/11 fails, amendment 9/11 will not be required.

The CHAIRMAN: The member has indicated that amendment 9/11 is contingent on amendment 10/11 being carried. The Committee will proceed in that regard, otherwise amendment 9/11 will not make sense.

Hon MURRAY CRIDDLE: I move -

Page 24, after line 6 - To insert -

(2) The party must register written interest in the matter with the Tribunal within 14 days of the lodgement of the notice of appeal.

The amendment is designed to minimise the potential for third parties to disrupt and delay the appeal process. Fourteen days seems to be a reasonable time for interested parties to register an interest in the matter. It certainly does not require the third party's final submission on the issue.

Hon GRAHAM GIFFARD: Although I have some sympathy with the intention of the amendment, which seeks to set time limits on persons with sufficient interest who wish to lodge a written submission, the Government does not support it. A requirement of this nature would be best placed in the tribunal rules rather than in the Bill. It is not necessarily appropriate to put a measure of this nature in the Bill.

The wording of the motion does not reflect the Government's view. The effect of it would be that no matter how significant a person's interests in an appeal, once the 14-day period had lapsed, that person would be unable to register a written interest and that would be problematic. The tribunal must examine a number of considerations when parties seek to register their interest in appeals. The strength of the interest is a consideration as is the timing of the submission to which Hon Murray Criddle referred. The tribunal will need to formulate its own rules about how it will apply the weight of people's interest in the matter as opposed to the timing of their submissions. For those two reasons, the Government does not support the amendment.

Hon MURRAY CRIDDLE: The summary by the parliamentary secretary was ambiguous. Is there any intention of putting a time limit on this? I can see this creating a very difficult situation in the future. We have discussed time limits in other areas. It seems that when any appeal is sought without a time limit, the issue roles on. This amendment is purely an opportunity for people to register their interest in what might occur later.

Hon GRAHAM GIFFARD: The Government is not opposed to a nominated time by which submissions should be received. The benchmark time should be set in the rules. However, the Government is saying that the tribunal should also be free to accept submissions after that date. This amendment would prohibit the tribunal after 14 days to take a submission no matter how sufficient that party's interest might be. That would be problematic. A time limit should be in the tribunal rules, although they do not cater for this in their current form. The Government believes that the tribunal should set a benchmark period, which may well be 14 days. However, the tribunal must also be able to go beyond that in the proper exercise of its discretion if it thinks that is appropriate. That would bring into play the sufficiency of the interest in the matter.

Hon MURRAY CRIDDLE: Will the parliamentary secretary ensure that the minister gets this message and that there is some form of limitation on the period in which the approach can be made? We simply cannot leave these things to roll on forever. The community is feeling frustrated when it comes to planning decisions, and that frustration is just starting to snowball. I ask the parliamentary secretary to take that on board.

Hon DERRICK TOMLINSON: The Opposition supports the sentiment of that which was proposed by Hon Murray Criddle. I refer to the debate we had on the motion by Hon Murray Criddle concerning amendment 5/11 to insert a final determination of 90 days in a category one appeal and 180 days in a category two appeal or all other appeals. My recollection was that the parliamentary secretary explained that it was the Government's preference - although nothing was formalised - that when appeals were lodged, there would be a period of seven days for processing, 14 days for discovery of information, then an indeterminate time for the hearing of the appeals, because they have a life of their own, and then a preference for seven days thereafter for the decision to be notified. If my recollection is correct, that would give a time frame of 21 days between the lodging of the appeal and the commencement of hearings. If a third party wished to register after 21 days, I suggest it would be too late. Given the preferred timetable that the Government has in mind - seven days followed by 14 days and the commencement of the hearing after 21 days - 14 days to lodge the appeal is a reasonable time.

I have listened to what the parliamentary secretary said. I join with Hon Murray Criddle in urging the parliamentary secretary to bring to the minister's attention the need to meet these deadlines as frequently as possible to minimise the inconvenience and cost to appellants.

Hon JIM SCOTT: I do not support this motion. I am very familiar with the way people become aware of these things and the way in which they are advertised, although often people do not become aware of them until very late in the process and it is then too late for them to put together -

Hon Murray Criddle interjected.

Hon JIM SCOTT: The parliamentary secretary's answer referred to the fact that, rather than restricting the ability at this level, it is better to get the whole process over more quickly instead of limiting people showing interest in the issue. At this stage we do not know whether we will get the third parties referred to by Hon Derrick Tomlinson. We are not necessarily talking about those parties in this case; it could be any other person. The Government's proposed model is looking at people being invited by the tribunal. It is likely that those people would not have a clue that this was going on until they were invited. Often, they would not know until it was too late and the 14 days had passed. It is better to have a more democratic process in which we can obtain all the information, rather than one that is unnecessarily hurried and does not provide all the information.

Hon GRAHAM GIFFARD: I advise Hon Murray Criddle and Hon Derrick Tomlinson that although it is not provided for in the draft rules, the Government is looking at that. I tried to explain the difficulty in having only a fixed cut-off date. However, I take on board the members' comments and will convey them to the minister.

Amendment put and negatived.

Hon JIM SCOTT: I move -

Page 24, after line 6 - To insert the following -

(2) In subsections (3) and (4), **"objector"** is a person who -

(a) made a submission objecting to the implementation of a proposal, to a person whose decision or direction relating to that proposal is the subject of the appeal; and

(b) is not a party to the appeal.

(3) In any proceedings on an appeal, regardless of the nature of those proceedings, an objector is entitled to be heard in the manner, and to the extent, afforded to a party but an objector cannot -

(a) examine a party or witness on their evidence, submissions, or statements without the consent of the party or witness;

(b) call witnesses unless the Tribunal permits or requires it.

(4) If the Tribunal is satisfied that the submissions to be presented by 2 or more objectors are substantially similar, the Tribunal may direct that those submissions be consolidated and be presented by 1 of the objectors on behalf of each of them.

This is an extremely important amendment as it will bring us into line with other jurisdictions around Australia, where for many years the third parties, as they are called - I consider them to be the first parties as they are the people who live with the developments in communities - are able to have a say in the changes that occur in their communities. Quite often these days people cannot rely on local government to represent their viewpoint in a dispute, for instance, between the local government and a developer over a proposal. Often local governments are developers and heavily involved in developments that create a lot of consternation in the community. Currently, there is no ability for those communities to have a say unless they are invited by the tribunal. This is an outrage. If we are truly a democratic society, this motion is essential to provide for the so-called third parties - the people who live with the consequences of the development - who are cut completely out of the process. The developers who make the money and leave are seen as the first parties.

The reality in any bureaucratic process is that the fewer people involved in that process, the easier it is. It certainly easier when there are fewer angles to be considered. It is unlikely, even when there is a strong community interest, that people would be invited by the tribunal to participate in that process. Even then, their ability to affect the outcome is limited when they cannot make an appeal. For instance, if the local government is the developer, there is no appeal about something that could be an absolute outrage. At least once a month around this State we hear about communities jumping up and down because they are very angry about development proposals. All members will be aware of developments in their communities, such as those at

Leighton Beach and Smiths Beach, which are considered by local communities to be inappropriate. I can think of some development proposals for small country towns, which dwarfed the existing townsites and which communities were given no say about whatsoever. The developer comes in, makes his money and then leaves. The lifestyles of those communities can be changed without their members having a say in the process. That occurs if the local government agrees to the development. Quite often, local governments like those developments because they improve the rate base, particularly if the local government is a development council, as some are.

I am concerned that it has taken so long to make this sort of change. When considered in the context of other amendments, such as the one that provides a definition of an objector and ties that down to people who are directly involved with an issue and to the evidence, this amendment is quite limited. For instance amendment 33/11 provides that a decision must be made on the grounds -

(a) that were submitted or relied on by a party;

(b) adopted by the Tribunal by reference to evidence, documents or other information disclosed to each party;

That amendment would limit amendment 10/11. This is just a small way for a third party to get in the door and put a community viewpoint. If we do not make such changes now, a lot of people will jump up and down in the future. Many people have contacted me about these amendments, not because I am driving this issue but because of their interest in it. Those people have come across situations in their own communities where they have been powerless to affect the decisions, even though those decisions affected them greatly.

I would like to hear the Government's position on this issue. The Government has indicated that it will look at this issue, but I do not really know what that means or how serious it is about that. I do not hold out a great deal of hope from the language that has been used. I would like to get something a bit more concrete from the Government about its intention in this direction, if it does not accept this amendment. As I said before, this is a proper, democratic amendment, which fits in with what the Premier recently said. In his speech on 24 April at the launch of a publication titled "Consulting Citizens: A Resource Guide", the Premier said -

> We came to office 14 months ago with a pledge to create an open and accountable system of government - one that encourages broader community participation in government decision-making.

People were not just going to be consulted. He continued -

> That pledge was based on a belief that to produce effective policy outcomes individuals and community groups need to be heard.

I do not think that the legislation put before this House provides a voice for people. Amendments such as mine are needed to put some teeth into what the Premier said. It is one thing to say these things, and another to do them. The Premier's speech continues -

> Most importantly, it strengthens our democracy. It encourages everyone to have a stake in shaping our community and a shared interest in its well being.

People want to be involved in the decision-making processes that affect them and they have much to contribute. I agree with the sentiments expressed by the Premier, but I wish to see some concrete action.

Hon GRAHAM GIFFARD: The Government does not support the amendment moved by Hon Jim Scott, which essentially inserts third parties into the Bill under the name of objectors. This matter was discussed in some detail by the committee when it considered this Bill, and the coverage of this issue in the committee's report is fair and accurate. It is a very good account of the views put during the deliberations of that committee. In particular, paragraph 3.3 on page 3 fairly sets out the view of the Government on third-party appeals as they relate to this Bill; that is, essentially, that the Government does not oppose third-party appeals per se, but does not support their inclusion in this Bill.

The process that the Government embarked upon in the development of this Bill was not contemplated to include third-party appeals. The Government took a minimalist approach to what it wanted to achieve. That might be considered a controversial statement by some, but that is the approach of the Government to the Bill. The Government did not invite submissions from key parties in the industry who might wish to make submissions on the question of third-party appeals. It would be very difficult for the Government, after a very extensive process, to add something significant to the Bill at the end of that process, when it did not openly canvass it or invite submissions on it. It would have to canvass those issues again. The minister has said on a number of occasions that she is prepared, once this Bill is out of the way, to look at the question of third-party appeals with an open mind.

Paragraph 3.8 of the report, on page 5, identifies the issues that must be grappled with in third-party appeals; how agreement to a third-party appeal right is translated into statutory form necessarily invites argument on various issues, concerning the sort of third-party appeals there should be. There has not been a consultative process to address those issues. It has not been developed as part of the Bill. The Government does not feel it appropriate to include a form of third-party appeal under the name of objector. For those reasons the Government does not support the amendment because we do not support the inclusion of third-party appeals in this Bill.

Hon DERRICK TOMLINSON: I was pleased to hear the parliamentary secretary reiterate the undertaking of the minister to give serious consideration to this matter. The undertaking was given during the second reading debate. It has been reaffirmed. Hon Jim Scott has presented a cogent argument that people who are not parties to a scheme or a proposal but who are affected by it should have the right to have their concerns heard. The Bill does open up that opportunity by allowing them to make submissions in an appeal hearing. Whether now is the right time, or this Bill is the right means by which to allow third parties to initiate appeals or to have more than the Bill now allows, is a matter of conjecture.

When this matter was debated during the second reading debate, I supported its referral to the Legislation Committee to consider the question of third-party appeals. Regrettably, the committee was not able to do that. Report No 1 of March 2002 of the Standing Committee on Public Administration and Finance on the Planning Appeals Amendment Bill 2001, reads at paragraph 3.11 -

> A Committee majority has decided not to include 3rd party appeals within its inquiry into the bill primarily because of time constraints relating to its passage . . .

Of course, there is some irony in that because we set a time limit on the matter being before the committee to try to expedite the Government's intention to have this completed before last Christmas. Here it is almost the following Christmas and the Government has finally brought the Bill on for consideration. However, the committee reported that it was not able to consider third-party appeals. The matter is worthy of consideration. Therefore, I commend the reiteration of the minister's undertaking that this matter will be given serious consideration. In doing so, I strongly urge the parliamentary secretary to bring to the attention of the minister the minority report of Hon Dee Margetts and Hon John Fischer.

Hon Graham Giffard: That is an interesting alliance.

Hon DERRICK TOMLINSON: I am simply asking the parliamentary secretary to bring it to the minister's attention and, in particular, to bring to the minister's attention that there must be a clear and unequivocal commitment from the Government that it is not the right time or the right piece of legislation and that it will find time in the near future to deal with third-party appeal rights. I think the parliamentary secretary has given a response to the first part, which is a clear and unequivocal statement that this is not the right time and this is not the right Bill to deal with it. He has indicated that the minister is prepared to consider that, but the report asks that it be done in the near future. It is desirable that the minister give some attention to this. I think she initially said it would be done within the next 12 months. I hope that I am not misquoting her. I think that is a reasonable undertaking.

I ask the parliamentary secretary also to bring to the minister's attention that there should be public hearings, as well as an invitation to make written submissions, for such an inquiry into third-party appeal rights. There is a recognition that there are interests beyond those of landowners, property owners, property developers, local governments or government agencies in land use and planning for land use in legislation such as the Metropolitan Region Town Planning Scheme Act. When amendments are proposed to the metropolitan region scheme or town planning schemes, there is a requirement that they be advertised and public submissions are called for and heard. In particular, individuals have an opportunity to be heard before tribunals. There is a precedent. It is an argument that must be considered, although the Opposition agrees with the Government that this is neither the right Bill nor the right time for these sorts of amendments. However, we urge the minister to act honestly in her undertaking to give this serious consideration in the near future.

Hon DEE MARGETTS: I am pleased with the comments of Hon Derrick Tomlinson about the minority report of the Standing Committee on Public Administration and Finance. The parliamentary secretary said that the committee discussed third-party appeals in some detail. Those who read between the lines of the report would find it obvious that the committee discussed in detail how to avoid dealing with that situation. That is unfortunate. As Hon Derrick Tomlinson indicated, the committee did not speak to anyone from the community about the issue.

Hon Derrick Tomlinson: You would think you had a democracy in this place.

Hon DEE MARGETTS: The committee did not deal with the issue of third-party appeals; it dealt with how to avoid the issue of third-party appeals. The people who invested time and effort in preparing submissions did not have that effort honoured. The submissions argued the case about third-party appeals one way or the other, and that is what the committee should have dealt with. Even those who were opposed to third-party appeals argued that the Bill, and presumably the committee, should deal with the issue. Unfortunately, the committee did not honour either side of that debate. That was very disappointing. I join with my colleague Hon Jim Scott in saying that rather than the minister making comments about dealing with the issue at some point in the future, we would like her to state when that will be.

I am very disappointed with the idea that the minister or anyone associated with the minister considered that the process ended when the Bill was drafted. I could give dozens of examples of people who fervently contacted the Government and decision makers prior to the drafting of the Bill to give their views about third-party appeals. Apparently once the Bill was drafted, the person with whom that "deal" was made considered it to be the end of the process. Many people would find it strange that a committee of the Parliament was considered to be a body that was involved after the process had ended. That is not a good way to consider the Parliament and the democratic processes of this State, especially when dealing with an issue about which so many groups have so strongly voiced their views to the Government over such a long time.

Hon BARRY HOUSE: I am compelled to rise to defend the treatment of this issue by the Standing Committee on Public Administration and Finance. The committee received a wide spectrum of submissions relating to third-party appeals, and it considered them to the limited extent that its brief allowed. That limited extent is defined in the legislation. Section 3.5 of the report states -

> The Committee notes two provisions of the bill -
>
> - in the course of disposing of an appeal, section 51(1)(e) enables the Tribunal, to an extent permitted by any regulation or rule, to *"receive submissions and representations in relation to any appeal before it, as it thinks fit"*;

The key words are "thinks fit". It continues -

> - under section 57 the Tribunal may, in its discretion, receive and consider a submission from a non-party if the Tribunal is satisfied that the non-party has "*a sufficient interest in the appeal*".

The Bill opened the door to some extent to other parties, and to that extent I think the committee did receive some submissions along those lines and did consider them. We did not conduct public hearings and we did not elaborate to the extent that perhaps some members of the committee would have liked. I guess in a perfect world we would like to have done that too, but we were under pretty intense time constraints to narrow our focus to what was actually in the Bill, and I think we did that. Section 3.10 of the report provides an explanation for any further treatment of that matter and states -

> If 3rd party appeal rights are to be considered for inclusion in legislation in the future, it will require the Government, the Parliament or the Committee to make a conscious decision to canvass and promote the issue. This will require extensive research and consultation if, and when, this is considered. . . .

That issue was considered by the committee to the extent that our brief allowed. Above and beyond that, it was not in the terms of reference of our inquiry into this legislation. The other point that is noted clearly in the report is that the committee members had diverse views, because the committee comprised representation from all the parties in this place. Two members of the committee lodged a minority report that clearly indicates their views.

I indicated in that committee that my experience in one local government had poisoned my attitude towards third-party appeals. Because the Shire of Busselton's town planning scheme at the time allowed third-party appeals, I saw third-party appeals used in quite a vexatious way to deprive the community of Dunsborough of a caravan park - a business worth $6 million to that community. I gather that the East Fremantle Town Council had third-party appeals at some stage. I am not sure whether it still does.

The committee did give this matter some consideration. It was not in our brief to conduct an extensive inquiry into this issue. If and when this is done in the future, by either our committee, the Government's own consultative committee or this Parliament, it will require separate terms of reference.

Hon DEE MARGETTS: As I said in the minority report, one would think that a committee of the Parliament at some stage would allocate time during its assessment of the legislation to look at the content of the submissions. If we are to say with any truth that the committee considered the content of the submissions at some stage during the weeks that we looked at that Bill, we should have allocated at least a minute - obviously more than a minute -

to look at the content of the submissions. However, no time was allocated. It is nonsense to say that a committee cannot allocate time to look at the content of the submissions.

Hon MURRAY CRIDDLE: The committee indicated that there would be an opportunity to consider this issue in future. As far as I am concerned, there was no indication that it would not be considered, if required, in future. That fact should be taken into account when considering this amendment. I do not want to see any reflection whatsoever on the committee. The situation as it arose is clearly indicated in paragraphs 3.10 and 3.11 of the committee's report.

Hon JIM SCOTT: I thought it was clear when I moved the motion to refer the Bill to the committee that third-party appeals was the issue with which I was concerned. Although I note that the committee had limited time to deal with that matter, I did not agree that the time was at all sufficient for the committee to deal properly with the issue. There was a rather silly shortening of the time, but I had to go along with it, as I did not have the numbers to change it. I was pleased, however, to have the Bill referred to the committee. I expected that a little more time would have been spent on considering the principal reason for which I had moved its going to the committee. The committee did a good job in some of the other areas it examined.

In answer to the parliamentary secretary's comments about the Government's minimalist approach to the legislation and amendments, it would be a more minimalist approach to deal with the addition of a couple of clauses at this point rather than go through the whole process of another Bill at another stage. This would be a minimalist approach and an easy, time-saving way to deal with the matter. When this Bill was proposed, I read previous submissions on planning appeals from the Environmental Defender's Office which sought consideration to including third-party appeals in the legislation. People have requested that before; it is not a new concept. As I said, it has been around in other States, for instance up to 20 years in New South Wales; it is not a matter that has not been tested. I mentioned, by interjection, that the City of Albany continues to have third-party appeals. It appears to be surviving perfectly well by allowing the community to have a voice.

Hon Murray Criddle interjected.

Hon JIM SCOTT: Yes. I feel very strongly about this issue. Although I do not want to take up further time with debate on this issue, I indicate that I will continue to push for third-party appeals, and I would like to hear from the parliamentary secretary that the Minister for Planning and Infrastructure will consider this issue. I wonder whether the parliamentary secretary knows how the Minister for Planning and Infrastructure intends to consider the issue. I would like him to put on record how the minister intends to do that over the next 12 months, if that is what she intends to do.

Hon GRAHAM GIFFARD: As Hon Jim Scott will recall, the minister previously gave a commitment that she was prepared to consider the issue of third-party appeals and would approach the matter with an open mind. However, she has not yet set out the details of how she envisages that process will occur. Hon Derrick Tomlinson referred to a 12-month period and that confirms my recollection of the minister's commitment, which still stands. However, it has not been set out in the precise detail that the member is asking for. The minister remains committed that she is prepared and intends to do that.

Hon Jim Scott: Is the process in place yet?

Hon GRAHAM GIFFARD: That will flow from the commitment she has given. She will approach that with an open mind.

Amendment put and a division taken with the following result -

Ayes (6)

Hon John Fischer	Hon J.A. Scott	Hon Giz Watson	Hon Robin Chapple *(Teller)*
Hon Dee Margetts	Hon Christine Sharp		

Noes (25)

Hon Alan Cadby	Hon Paddy Embry	Hon Barry House	Hon Bill Stretch
Hon George Cash	Hon Adele Farina	Hon Robyn McSweeney	Hon Derrick Tomlinson
Hon Kim Chance	Hon Jon Ford	Hon Norman Moore	Hon Ken Travers
Hon Murray Criddle	Hon Peter Foss	Hon Louise Pratt	Hon Ed Dermer *(Teller)*
Hon Bruce Donaldson	Hon Graham Giffard	Hon Ljiljanna Ravlich	
Hon Kate Doust	Hon Nick Griffiths	Hon Barbara Scott	
Hon Sue Ellery	Hon Frank Hough	Hon Tom Stephens	

Amendment thus negatived.

The CHAIRMAN: Members, given that that amendment was lost, there will be no need for Hon Jim Scott to move proposed amendment 9/11 because that was contingent on the previous amendment being carried. We now go to amendment 4/11 in the name of Hon Derrick Tomlinson.

Hon DERRICK TOMLINSON: On sober reflection, I will not proceed with this amendment. The intention of the amendment is capable of being read into the subsection as proposed. The additional words that I had intended to move are superfluous. Therefore, I will not proceed with this amendment.

The CHAIRMAN: Hon Derrick Tomlinson has indicated that he will not move amendment 4/11. We now move to amendment 23/11 in the name of the parliamentary secretary.

Hon GRAHAM GIFFARD: I indicated to a number of members earlier today that this is one of a number of amendments in my name that I do not now propose to move. The exception is that I want to move one committee recommendation that is in my name. I have indicated to a number of members that it is the amendment that is not on the list. I gave that earlier indication because if members had concerns, questions or difficulties, on reflection I did not think that it was necessarily appropriate that I provide answers about what is essentially a committee recommendation. Therefore, I indicated to members that I would not necessarily move the amendment. However, I hasten to point out that if those matters are picked up by other members, the Government will continue to support those amendments because it does not object to them. However, in terms of process, I did not think it was appropriate for me to move those amendments in my name if members had questions about or difficulties with them, which it appears may be the case.

The CHAIRMAN: The parliamentary secretary has indicated that he does not propose to move amendment 23/11 on the supplementary notice paper. It seemed to me that he was giving almost an open invitation to other members to consider the matter.

Hon DERRICK TOMLINSON: It is a pity the parliamentary secretary has taken that position, because the amendments in the committee report are of two kinds - those that were proposed by the minister and that the committee endorses, and those that came from the committee's deliberations. In some instances it is difficult to determine from the report as presented which amendments are proposed by the minister and which are proposed by the committee. I thought that the parliamentary secretary, in taking the position that he has, would at least indicate his support for the minister's amendment, so that the committee can make a decision about whether it will proceed with its recommendations. I hope that the parliamentary secretary is prepared to indicate to us that he is not prepared to support the minister's amendment so that the committee chairman can make a decision on behalf of the committee.

Hon BARRY HOUSE: As chairman of the Standing Committee on Public Administration and Finance, which considered and reported to the House on this Bill in March 2002, I feel bound to move these amendments. As a preliminary to my doing that, I inform members that the committee considered this Bill very conscientiously. We sought three extensions of time in which to produce the report. We were criticised publicly at one stage by the Minister for Planning and Infrastructure for delaying. However, the main reason for the extensions of time was that we were waiting on responses from the minister to certain questions posed. The committee had the parliamentary secretary, Hon Graham Giffard, substitute for Hon Ken Travers for the duration of the inquiry. I put on the record that he approached this task in a very cooperative and conscientious manner. There is no doubt that, at times, he was left in an invidious position because he was given no ammunition from the minister's office when it had been requested by the committee. If there was a breakdown in communication, I certainly do not lay any of the blame at the feet of the parliamentary secretary. Having said that, and I do not wish to dwell on it, the committee considered these issues at some length and put some thought into them, so I feel morally bound to move these amendments on behalf of the committee. I formally move -

> Page 25, after line 25 - To insert -
>
> (4) The President is not to review a direction, determination or order upon a matter involving a question of law if the President has given an opinion on that question of law under section 58.
>
> (5) A review by the Tribunal -
>
> (a) of its own motion is not to be made later than one month after the direction, determination or order is given to the party; or
>
> (b) on the application of a party is not to be made later than one month after the application is made.

The amendment is to insert two proposed subsections. The committee report outlines the preamble to and the brief reasoning for the amendment. It states -

This amendment ensures that section 61 cannot be used by the President -

That is the president of the tribunal -

to change a ruling on a question of law given under section 58. It prevents use of section 61 where the President has "second thoughts".

The report continues -

This amendment to proposed Section 61 puts it beyond doubt that, in a case where a referral has been made under s 58 - whether to the President or a delegate - and the Presidential member has ruled on a particular question of law, the President cannot revisit, reverse or modify his/her earlier ruling on that question in later review proceedings under section 61.

The amendment was proposed on the understanding that it would provide some consistency in the legislation.

Hon GRAHAM GIFFARD: I repeat that the Government supports the amendment. Hon Barry House attributed to the minister's office difficulties that the standing committee on Public Administration and Finance had in communicating with and gaining information . I do not disagree with him that, from time to time, difficulties in communication occurred between the minister's office and the committee. There was, nevertheless, an ongoing cooperative relationship. To the extent there were difficulties, it is not fair to attribute them to the minister's office. I suppose that, in hindsight, in observing processes we sometimes appear to be somewhat inefficient in the way we do things, because they must be done properly. The process of how members, as a working committee, had a relationship with the minister's office was as much the problem. It is not necessarily fair to say that the minister's office let us down, because I did not think that.

Hon Peter Foss: I think Hon Barry House is saying that we should not blame the committee.

Hon GRAHAM GIFFARD: I am saying that we should not blame the minister.

I support the amendment, and we supported the standing committee's proposal.

I refer to the more general question Hon Derrick Tomlinson raised. If it were not for the standing committee report and these issues being raised in the committee, I would not have moved an amendment. This amendment has been moved because it was raised in the standing committee context. The committee and the minister had a dialogue and, as a result, this amendment evolved. Had it not been for that process, I am not sure that this amendment would have evolved in my name. That is not the case with amendment No 24/11. That distinguishes itself, as I will explain when we deal with it.

I support the amendment moved by Hon Barry House.

Amendment put and passed.

Hon GRAHAM GIFFARD: I move -

Page 28, after line 12 - To insert -

(5) If the Minister gives a direction under subsection (2)(a), each party to the appeal may present the case of that party to the minister.

(6) The Minister is to have regard to the submissions of the parties and may have regard to any other submission received by the Minister.

(7) A copy or transcript of any submission to which the Minister has regard is to be -

(a) given to each party to the appeal; and

(b) published in the manner prescribed by the regulations.

This amendment was dealt with on page 26 of the committee report. Without going into the details of the second reading debate in the other place, the committee picked up that that was an issue. The minister had previously indicated that she would be prepared to entertain an amendment of this sort if it were to emerge from the processes of this place. The purpose of the amendment will be to ensure that, in relation to matters that the minister calls in, each party may present its case, the minister shall have regard to those submissions and may have regard to other submissions, and each party shall be given a copy of each submission to which the minister is to have regard. The effect will be to ensure that each party knows what has been put before the minister and what submissions the minister will be basing that decision on. This amendment arose from the committee's report, but it began a little before the committee commenced its deliberations. I commend the amendment.

Amendment put and passed.

Hon GRAHAM GIFFARD: I move -

Page 30, after line 13 - To insert -

(2) Without limiting subsection (1), the rules may empower the Tribunal to make and enforce such orders as it thinks necessary with respect to interlocutory and procedural matters, and for those purposes the rules may apply all or any of the *Supreme Court Rules 1971*.

(3) Section 42 of the *Interpretation Act 1984* applies to rules made under this section.

There are two elements to this amendment. I will speak to proposed subsection (3) first, because that was the original amendment. That proposed subsection is the same as proposed subsection (7) of amendment 30/11. The Government will not support amendment 30/11, although it does support proposed subsection (7). Proposed subsection (7) puts beyond doubt that the rules of the tribunal will be disallowable. Proposed subsection (2) of my amendment relates to interlocutory and procedural matters. The power of the tribunal to make these orders would otherwise be covered by proposed section 51(6), which refers to the powers of the Supreme Court necessary for hearing and determining an appeal. Removing that power will create some doubt about the power to make orders in procedural matters. Proposed section 69 provides that the rules may empower the making of orders for interlocutory and procedural matters. The tribunal will be able to adopt or apply any Supreme Court rules as it thinks necessary. This amendment arises as a consequence of reading proposed section 51(6).

Hon DERRICK TOMLINSON: The Opposition does not find this amendment objectionable. We are of the opinion that the tribunal should have the power to establish interlocutory and procedural rules. However, we would like from the parliamentary secretary some indication of which of the Supreme Court rules the tribunal might want to import. The amendment provides that the rules may apply all or any of the Supreme Court Rules 1971. I am not familiar with the Supreme Court rules. However, section 16 of the Supreme Court Act has 20 categories of rules that may be applied, many of which have not the vaguest semblance of relevance to the tribunal or the matters that would be of interest to the tribunal. Clearly, commonsense would suggest that none of those will apply. Will the parliamentary secretary indicate the rules of the Supreme Court that may be relevant, and which rules the tribunal may import on interlocutory and procedural matters? I hope they will be limited to interlocutory and procedural matters.

Hon BARRY HOUSE: It is worth pointing out that the parliamentary secretary's amendment contains only one part of the proposal that was put forward in the report of the Standing Committee on Public Administration and Finance. It also adds a further amendment from outside the committee's report.

Hon Graham Giffard: Which arose out of the deletion of proposed section 51(6). That is why it was subsequently added.

Hon BARRY HOUSE: I will comment on some of the recommendations proposed by the committee and that have not been picked up by the parliamentary secretary. He obviously does not intend to move to include these proposed subsections. Some of the proposed subsections focused on defining the roles of the minister and the president of the tribunal, and providing some accountability mechanisms that, on the surface, appear to be pretty obvious. The ones that have not been picked up by the parliamentary secretary in moving his amendment are found at pages 26 and 27 of the committee report, and include that -

(2) The Minister may direct the President to make a rule in accordance with the direction of the Minister and the President is to comply with that direction.

That clearly defines the various roles of the minister and the president in the scheme of things. The report continues -

(3) The Minister is to cause the text of any direction under subsection (2) to be laid before each House of Parliament, or dealt with under subsection (4), within 30 days after the direction is given.

That imposes some discipline on the minister and some accountability on the process. It continues -

(4) If -

(a) at the commencement of the period referred to in subsection (3) a House of Parliament is not sitting; and

(b) the Minister is of the opinion that that House will not sit during that period,

the Minister is to transmit a copy of the direction to the Clerk of that House.

Once again, it involves parliamentary accountability. This Government purports to be very supportive of that. The report continues -

(5) A copy of a direction transmitted to the Clerk of a House is to be regarded -

(a) as having been laid before that House; and

(b) as being a document published by order or under the authority of that House,

(6) The laying of a copy of a direction that is regarded as having occurred under subsection (5)(a) is to be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after the Clerk received the copy.

I invite the parliamentary secretary to clearly indicate in his response why those provisions which, on face value, seem to clearly define functions, roles and responsibilities and outline an accountability mechanism, have been left out of the amendment.

Hon GRAHAM GIFFARD: I will first address the points raised by Hon Barry House. Proposed subsections (2) to (6) in what is now amendment 30/11 on the supplementary notice paper relate to the minister directing the tribunal. The Government indicated when the committee report was formulated that the minister did not propose to support this amendment because, although it had some appeal, it was -

> . . . likely to be regarded as an inappropriate level of interference by the Minister into the independence of the Tribunal.

That is the reason the minister chose to indicate to the committee that she would not support those amendments. She happily agreed to support proposed subsection (7) because it clarifies, for everyone, that that point is beyond question. However, proposed subsections (1) to (6) deal with that issue of what the minister regards as interference in the independence of the tribunal. That is the reason this just lifts proposed subsection (7) out of amendment 30/11, because that amendment has those other provisions in it. Hon Derrick Tomlinson asked what sort of rules could be made. He did indicate to the Government some days ago that he would like some indication of the sort of rules we might be talking about. Without trying to speak on behalf of the tribunal and its dealing with this matter, and without trying to limit it, the sorts of rules I am advised that the tribunal will possibly determine to be appropriate would be those relating to affidavits, court experts, discovery and inspection, expert evidence, and the service of documents. Those are the sorts of examples we would offer to explain what sort of rules the tribunal might be making available. There are two elements to this amendment. One is for clarification, which was picked up in the committee's subsequent amendment, and the other arises out of proposed section 51(6), and is necessary for the tribunal to deal with interlocutory and procedural matters. I commend the amendment.

Hon MURRAY CRIDDLE: I put on the record my view that the minister is moving right away from accepting any responsibility. I have always objected to that. Once again, I put on the record that the minister should have some say in the proceedings. The amendment that the committee put forward would go some way to alleviating that position.

Amendment put and passed.

Hon BARRY HOUSE: I move -

Page 30, after line 13 - To insert -

(2) The Minister may direct the President to make a rule in accordance with the direction of the Minister and the President is to comply with that direction.

(3) The Minister is to cause the text of any direction under subsection (2) to be laid before each House of Parliament, or dealt with under subsection (4), within 30 days after the direction is given.

(4) If -

(a) at the commencement of the period referred to in subsection (3) a House of Parliament is not sitting; and

(b) the Minister is of the opinion that that House will not sit during that period,

the Minister is to transmit a copy of the direction to the Clerk of that House.

(5) A copy of a direction transmitted to the Clerk of a House is to be regarded -

(a) as having been laid before that House; and

(b) as being a document published by order or under the authority of that House.

(6) The laying of a copy of a direction that is regarded as having occurred under subsection (5)(a) is to be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after the Clerk received the copy.

Proposed subsection (2) picks up a couple of the points made by the committee, which were left out of the previous motion.

Hon GRAHAM GIFFARD: As I indicated a moment ago, the Government does not support this amendment. We were discussing it because there is a fair bit of overlap between this amendment and the amendment moved a moment ago. I draw members' attention to the point made in the committee report. The Government's view is that this is likely to be regarded as an inappropriate level of interference by the minister into the independence of the tribunal. For that reason the Government continues to oppose the amendment.

Amendment put and negatived.

The CHAIRMAN: Clause 12 is the next clause listed on the Notice Paper, but before we move to that clause we must go back to amendment 33/11 on page 2 of the supplementary notice paper. It is in the name of Hon Jim Scott and deals with an amendment at page 19, after line 22. Before Hon Jim Scott moves this amendment, it will be necessary for him to seek the leave of the Chamber to withdraw the amendment he moved on 26 June. If that is agreed, he can then move amendment 33/11.

Hon JIM SCOTT: The moving of both the original amendment and amendment 3/11 was contingent upon the passage of amendment 10/11. This amendment could be moved, but to some extent it is already catered for and is not really necessary. I do not think that it adds anything to the Bill.

Amendment, by leave, withdrawn.

Clause, as amended, put and passed.

Clause 12: Review of *Town Planning and Development Act 1928* -

Hon BARRY HOUSE: Once again on behalf of the committee that considered this issue, I move -

Page 30, after line 31 - To insert -

(2) In the course of that review the Minister is to consider and have regard to -

(a) the operation and effectiveness of the Town Planning Appeal Tribunal;

(b) the operation and effectiveness of sections 40(3), 42 and 43(3)(b) of the *Town Planning and Development Act 1928* as amended by this Act; and

(c) such other matters as appear to the Minister to be relevant to the operation and effectiveness of Part V of that Act.

The CHAIRMAN: That amendment is on the supplementary notice paper in the name of the parliamentary secretary. Does he intend to move it himself?

Hon GRAHAM GIFFARD: No. I am happy for Hon Barry House to move that. That is in accordance with the discussion I had with members earlier today.

Hon BARRY HOUSE: The amendment adds to clause 12, which requires the minister to carry out a review on the second anniversary of the operation of section 11 of the Act. The amendment aims to put some meat on the bones of the review. The Standing Committee on Public Administration and Finance's report states -

> *This amendment to Clause 12 is intended to reassure the Parliament that particular provisions which currently provide broad powers to the Tribunal and its President will be revisited by the Parliament so that the Parliament has the opportunity to more narrowly define those powers with the benefit of the Tribunal's experience in the interim. A sunset clause was considered, but the Minister has accepted Parliamentary Counsel's advice that there would be no way to impose a sunset provision short of rendering the Tribunal inoperable, which would be a very risky proposition giving rise to major transitional problems.*

The report then describes the relevant provisions, which are contained in the amendment.

Hon GRAHAM GIFFARD: The Government supports the amendment. As Hon Barry House said, it will give the review more focus. However, I note that as the Bill has been amended, and the proposed sections with the more general powers of discretion deleted, the review will consider fewer provisions. Nevertheless, the Government is, as it has indicated, happy to support the amendment.

Hon JIM SCOTT: Does this amendment limit the review to the areas listed in proposed new subclause (2)(a),(b) and (c)?

Hon Barry House: No, it simply defines certain things that must be included in the review.

Hon JIM SCOTT: I see; it defines things that need to be considered, as well as allowing any other matters to be considered.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 13 put and passed.

Clause 14: Schedules 3 and 4 inserted -

Hon GRAHAM GIFFARD: I do not propose to move this amendment, nor, for that matter, amendments 28/14 or 29/20. I understand Hon Barry House will move them.

Hon BARRY HOUSE: I move -

> Page 33, line 17 - To delete "Subject to the *Salaries and Allowances Act 1975*, a" and insert instead "A".

The committee considered that the words to be deleted did not convey the actual intent. That is the reason for the amendment.

Amendment put and passed.

Hon BARRY HOUSE:

> Page 33, after line 20 - To insert -
>
> (2) Subclause (1) has effect subject to the *Salaries and Allowances Act 1975*, if that Act applies to the member.

This amendment adds to the previous amendment.

Amendment put and passed.

Clause, as amended, put and passed.

Debate interrupted, pursuant to standing orders.