

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

Second Reading

Resumed from an earlier stage of the sitting.

MR D.A. TEMPLEMAN (Mandurah) [5.57 pm]: Mr Speaker, I am sure the members present will be very keen to stay in the chamber to hear my contribution to the second reading debate on the Approvals and Related Reforms (No. 1) (Environment) Bill 2009. I can see they are rushing; this could be a very, very interesting five minutes!

On behalf of members in this place, I congratulate the new member for Armadale on his inaugural speech and warmly welcome him to the Legislative Assembly; I am sure he will make many, many wonderful contributions to the debates in this place. It is also great to acknowledge the many friends, family members and supporters who are waving madly in the gallery and who have come along to support him.

Mr C.J. Barnett: They're rushing for the doors, too!

Mr D.A. TEMPLEMAN: They are rushing for the doors! This was going to be one of my best speeches, and some might like to stay! I am aware, of course, that Mr Speaker will rise very soon and take the mace—well, he will not take the mace, someone else will—and he will, of course, vacate the premises.

I am very happy, with this huge audience, to talk about this important bill, which I have read.

Dr G.G. Jacobs: Unlike the others!

Mr D.A. TEMPLEMAN: Ha-ha-ha—yes!

I was very interested in the comments of the new member for Armadale when he highlighted, during the last half of his speech, some issues about where the state is currently placed with regard to its economic circumstances. I think it is very important to acknowledge that we only need to look at what has happened around the world in the past few months—indeed over the past year—to see some of the environmental catastrophes that have occurred. We saw the environmental catastrophe in the Gulf of Mexico earlier this year and the months it took to stem the cascade of oil that flowed in that part of the world, and in Hungary, only last week, we saw the breaching of a dam that was holding back some absolutely toxic waste, which, of course, made its way into the Danube River, which, of course, is the main drinking water source for a significant number of countries in Europe. We have also seen, off our own shores in the north, environmental fires, if members like, or oil leaks in the seas to our north and north west areas.

What all this underpins is that it is all very well for governments to ensure and pursue —

The SPEAKER: Member for Mandurah, I hate to do this as there are so many hanging on every word —

Mr D.A. Templeman: I was only getting warmed up, too, Mr Speaker!

The SPEAKER: — but we are just going to adjourn for an hour, at which point a Speaker will resume this chair.

Sitting suspended from 6.00 to 7.00 pm

Mr D.A. TEMPLEMAN: I am very keen to continue my remarks on this bill—after having just gnawed my way through a lamb shank! It was very, very fine Western Australian lamb, I might say!

Dr G.G. Jacobs: Did it get stuck in your throat?

Mr D.A. TEMPLEMAN: That is what the minister would be hoping! But I can tell the minister that I am a much more feisty sort of fellow. The minister would have had to give me the Heimlich manoeuvre if I had choked on the large bone that I was gnawing my way through. It was a very nice wine—not wine; I did not have wine—piece of lamb, may I say, as the Leader of the House strides in.

I must say that I am pleased to be back in the chamber, because before I was rudely interrupted by the dinner break, and was sliced down, Mr Speaker, by you vacating the chair, hence leaving no-one in the house to listen to me continue my remarks, I had been building up to a very important point that I have been pondering in the past hour. Before the break I had mentioned the fact that we have seen only recently a number of very significant environmental disasters in other parts of the world, and also to the north off our Australian coast late last year with the oil spill in the Indian Ocean. These events highlight that in this race that we are having to ensure our economic viability, and in our endless pursuit of resources, it is absolutely critical that we put in place through our legislative framework the very best checks and balances to protect our unique Western Australian landscapes and our marine environments. Therefore, I am always concerned when we are confronted with bills that are designed to in many ways water down those very important checks and balances.

This state is blessed with a huge amount of resources that may be subject to mining and exploitation. That is occurring every day. Every day, the Minister for Environment and the Minister for Mines, and a range of other relevant ministers, are faced with pressure from mining moguls, and by companies large and small, to open up more and more resources for exploitation. As has been said in this place on a number of occasions, this opposition is not opposed to sustainable and quality job creation. It certainly is not opposed to ensuring that there is a fairer distribution of the benefits of this resource exploitation. However, we are merely the custodians of our resources for future generations. The minister representing the Minister for Environment said in his second reading speech that this government is committed to ensuring the economic development of the state. He said also that the government wants to ensure that a rigorous environmental impact assessment process is in place. However, we must be very, very careful when we seek to do anything that may water down the checks and balances that we need to put in place to ensure the protection of our natural assets.

For those reasons, as was articulated very clearly by the member for Gosnells, our lead speaker on this bill, the opposition is very sceptical about what is being proposed in this bill. This bill proposes to change the appeals processes and review mechanisms that are currently in place. Therefore, it is only right that the opposition is seeking to very carefully and transparently hold the government to account on these matters. During consideration in detail, we will be arguing very strongly about why we oppose—indeed, in many cases fervently—many of the clauses in this bill. As I have said, we are merely the custodians of our resources for future generations. We therefore need to put in place environmental constraints and regulatory frameworks that are rigid and transparent and that will withstand the test of time.

Western Australia has some of the most unique landforms and some of the most unique marine and terrestrial species in the world. We also have some of the most endangered and threatened species in the world, both flora and fauna. Therefore, it is even more important that we, as the custodians of future generations, look at legislation such as this very closely and that we be very mindful of the legacy that we will be leaving for future generations of Western Australians. In my view—I think this is a view that is shared by all members on this side—we should be very concerned about any attempt to achieve economic goals at the expense of lasting environmental benefits. I am not sure whether the member for Gosnells will be proposing any amendments to this bill during consideration in detail, or whether he will simply be raising concerns about a number of clauses. However, I hope that a greater number of members will be present in this chamber for that debate. It always astounds me, when we debate important legislation such as this, that we are often bereft of the attendance of members in the chamber to listen to the debate and to take the time to understand what the bill means.

If this bill becomes law, it will, if we like, water down a range of important measures that have been in place for some time. On the issue of the community having its say, the member for Gosnells mentioned that members of the community should maintain their right to not only make comment but also have their comments heard. I am sure everyone in this place has examples of perhaps very minor or even major developments in their electorate. One of the things we are seeing in communities throughout Western Australia is a crisis of confidence in processes. There is a crisis of confidence in a lot of councils at the moment. For example, people we speak to think that, regardless of whether they put in their submission or take the time to lobby their local councillors or local representatives, at the end of the day, the local government will have its way and the proposal will go through; the council will approve it. It is sad that there is that level of mistrust by a lot of people.

I want to pay tribute to those many conservation groups that we all have in our electorates throughout Western Australia. In my case it is the Peel Preservation Group. In other communities it will be the small group that is concerned about protecting public or regional open space, about parks or about urban sprawl in regional parks or open spaces. We really must remind ourselves of the work those people do. Quite often they are reasonably small in number and many of them are very good at organising things. Some of these people have been fighting for the environment for decades. For decades they have put countless hours into providing submissions, whether it be to the Environmental Protection Authority, the Minister for Environment, the Premier, their elected members or their councils. They quite often operate on a next-to-nothing budget. They utilise every single resource they can possibly get. But, gee, they are absolutely critical parts of our democracy, particularly in areas such as mine where we have seen a massive increase in urban development. It is the PPGs of the world—reflected in other groups throughout the state in all our electorates—that are quite often the only voice that calls upon ministers of the day, governments of the day, local councils of the day or the EPA of the day to remind them about the importance of biodiversity, of maintaining unique landscapes, of protecting our water catchments and our coastal and marine assets and of protecting the areas of our state that are unique to Western Australia.

When I see bills such as this come before us I ground myself. I think it is important to be grounded about our electorate experiences. I take my hat off to the current and past members of many environmental groups throughout Western Australia. I hope they keep doing the wonderful job they do. We need groups such as Environs Kimberley to fight to protect the Kimberley and, of course, to fight the current proposal for a gas hub. Whether we agree or not with them it is absolutely essential that these groups exist in our communities. I have

been an environment minister and had blues with the now member for Gosnells when he was the chief executive officer of the Conservation Council. I may need a slight extension of time, Mr Speaker.

Mr R.F. Johnson: You told me 15 minutes.

Mr D.A. TEMPLEMAN: Yes, but I am on a roll.

[Member's time extended.]

Mr D.A. TEMPLEMAN: I will finish with these comments. The member for Gosnells and I used to have some very interesting debates. But I keep thinking how important it is that we have a strong non-government sector working for environmental protection, along with a range of non-government agencies that exist in our community, including the WACOSSes of the world. This government's approach has been quite often to defund some of the projects some of these groups are involved in because by defunding them it reduces the resources the groups have to fight important campaigns. I think it is important that any government, no matter what flavour it is, should encourage a strong conservation and environmental sector. The Department of Environment and Conservation funded such groups through its grants system. Because so many projects in this state have a future potential economic benefit and are proposed in some of our most fragile and unique marine and terrestrial landscapes, it is absolutely critical that we have a well-resourced conservation sector that will put up the arguments about protecting whales in Camden Sound and argue for environmental constraints to ensure the checks and balances we need.

I have always feared a similar situation to that which occurred in the Gulf of Mexico this year. People say, "Oh, but it won't happen here." I bet the people involved said about the Gulf of Mexico, "Oh, it won't happen here; we've got all these things in place." Can members imagine what would happen if a major leak such as the one in the gulf occurred in a place such as —

Ms J.M. Freeman: We did have.

Mr D.A. TEMPLEMAN: That is right; we did have. But imagine if it were of the scale of what happened in the Gulf of Mexico.

Mr R.F. Johnson: It has nothing to do with this bill.

Mr D.A. TEMPLEMAN: The Leader of the House should not try to close me down. This is very critical to this debate.

Mr R.F. Johnson: I'm sure it is but it has nothing to do with this bill.

Mr D.A. TEMPLEMAN: The Leader of the House may live in Hillarys where—everything in Hillarys is destroyed—it is all houses now. I am very concerned about the environment where I am. Imagine if an oil spill of that nature occurred off the Kimberley coast. It is feasible. If we continue to allow oil and gas exploration, particularly oil, it is possible something similar to what happened in the gulf could occur.

Dr G.G. Jacobs: It has nothing to do with this bill.

Mr D.A. TEMPLEMAN: Is the minister saying it would not happen?

Mr R.F. Johnson interjected.

Mr D.A. TEMPLEMAN: I am saying that bills like this that seek to water down the important checks and balances in this place could allow things like that to happen. I do not think anyone on the government side should be bold enough to say it will not happen. Can members opposite imagine if such a spill occurred on the Kimberley coast? The Kimberley coastline is amazing. A lot of it is—inhabitable is not the right word—difficult to get into.

Mr I.C. Blayney: Inaccessible.

Mr D.A. TEMPLEMAN: Yes, inaccessible. Thank you, member for Geraldton. I knew he was here for one reason—to advise me, and I take his advice with great approval. He is my living dictionary!

Dr G.G. Jacobs: Get on with it.

Mr D.A. TEMPLEMAN: The Minister for Water is not.

Several members interjected.

Mr D.A. TEMPLEMAN: Can members imagine all this oil coming into places that are, as the member for Geraldton quite rightly said, inaccessible?

I will conclude my remarks by simply saying that for very good reasons the opposition will oppose this bill. Very good arguments will be made during the consideration stage of the bill. I hope members opposite will be

present in the chamber to listen to the debate and not simply follow the government line as they have been steamrolled to do on this occasion, and on many occasions in the past.

MS J.M. FREEMAN (Nollamara) [7.19 pm]: I will speak briefly on the Approvals and Related Reforms (No 1) (Environment) Bill 2009. The contributions by the previous two speakers were very concise, but I want to provide some personal insight into my concerns about this bill, which will remove three extremely important appeal rights. I understand from the speeches of both the member for Gosnells and Hon Sally Talbot that the Environmental Stakeholder Advisory Group, which was established in June 2009 to look at how to ensure that these things happen in a much more timely manner and are more conducive to development by stripping away red tape, never made a recommendation that these three appeal rights be removed. That is a very important point. The government is telling us that these changes will provide transparency and certainty and will streamline the appeals process. Quality, timelessness and certainty were the words the minister used. That language can be used, but that is not what the bill delivers, so that has to be questioned. I stand here to do that tonight.

I will relate a situation that is occurring for many people in Mirrabooka. In the 1970s, Homeswest developed land near what was the Atlas tip site. Documents show that because the tip site was not sealed, the groundwater had been contaminated. The groundwater is very deep in this area, so it is only a problem for those who access the groundwater. However, Homeswest never told the residents that there was any question of groundwater contamination. It never made people aware that they should not put in bores in this area because of the potential groundwater contamination. This matter came under the health department and then the environment department. People think that those departments look after our interests and will assess such things. People believe that those departments will help to ensure their safety and health and that they will protect the environment around them. However, neither department placed any limits on the development of that land. The land was developed by the housing department because housing was needed. Twenty-odd years later, someone put in a bore and then his whole garden started to die. He checked what was going on and found that his water was contaminated. I understand that seven or eight bores in the area are also contaminated. We have been told that this contamination does not breach World Health Organization limits. However, the water is not good for gardens, so people should close their bores. The gentleman who went out of his way to check what the problem was then had a memorial put on his title to say that a bore could not be used on the land because the groundwater was contaminated. He was not told that when he purchased the property. The placing of the memorial on his title has devalued his property. He tried to discuss the matter with the department but there is no transparency. He has experienced stonewalling and miscommunication. This person has been placed in a very stressful situation, which has caused him to become quite ill.

I raise this matter simply because I think it is important to remember our history and why these sorts of processes and appeal rights were put in place. The ESAG review said that these three appeal rights enhance public good and ensure public confidence. This bill is taking away the sorts of things that might have prevented something quite hideous happening to Indigenous heritage in the Burrup. I was recently very lucky to tour the rock art of the Burrup. I understand that many bits of rock art have been destroyed. Some of the rock art is still inaccessible. Perhaps if there had been the level of transparency, scrutiny and clarity of the process that is available under the present act, but which will be removed by this bill, that travesty might not have occurred at the Burrup. My colleagues articulated the argument much better than I have done, but I have provided a perfect example of why the public good needs to be ensured. The environmental group that the Minister for Environment herself put together to go through and find ways to remove red tape said that these three appeal rights should not be removed because of the public good, so we are right to oppose this bill.

DR G.G. JACOBS (Eyre — Minister for Water) [7.26 pm] — in reply: I thank those who have made a contribution to this debate. Three of the speakers have significant environmental credentials, with two being previous environment ministers and one a former chief executive officer of the Conservation Council of Western Australia. I thank them for their contributions tonight. I will address some of the comments made particularly by those three speakers. To provide some context, this bill will remove the right of appeal in essentially four areas. I will make the case that this will not weaken the environmental process but will instead streamline it without shortcutting it.

The first issue concerns the planning scheme area. The right of appeal in and around the content or scope of intent in an assessment is being removed. However, that does not mean that this is going to weaken the rigour of the environmental process or the thoroughness of an assessment. Another was the derived proposal issue, which was raised by the member for Gosnells. I will talk about that a little later. Another issue was that of clearing. It was deemed that there would not be a right of appeal in the early part of that process. I will explain this later to the member for Gosnells, because he believes that it is likely that something will be missed in an assessment if it just goes to clearing. Of course, the fourth area is the level of assessment. Under this bill, the five levels of assessment will be subsumed into two, one being non-public interest and the other public interest.

The member for Gosnells said that the bill was misnamed and that it should talk about assessment rather than approvals. He implied that because the government put “approvals” on the front of the bill, that means that every assessment that comes before it will automatically be an approval. This is one of a suite of four bills. There is no sinister intent here. The member’s argument is about semantics. I did not believe the bill should be called an assessment bill; it should, in fact, be called an approvals bill. In and around some of the examples that the member for Gosnells talked about in the Exmouth Gulf Strait Salt issue and proposal, I have to say that the advice I get is that we are not changing the checks and balances in this measure. We are not changing the environmental impact assessment process. There is ability for ecological nutrient flow studies, and, importantly, there is an ability for community to have input in this process. We are not changing any of that in this process. In fact, it was Dr Paul Vogel who some time ago initiated an environmental impact assessment review process. In that review process there were some recommendations in and around some of these administrative issues. I have to tell the member for Gosnells that the advice I have is that process and those recommendations strengthened the assessment process and gave opportunities for community to have input.

Mr C.J. Tallentire: If I could just clarify something. I was using the Exmouth Gulf example to show how that assessment had been improved by community engagement that was well resourced. That is what we are missing at the moment. The present system does not allow for the resourcing of third party appellants. But in that case, they were very lucky and they were able to team up with a company and to get a trawler and to get the scientific testing, the isotope testing, to see where the nutrients came from. But that does not happen in most proposals, and I am saying that the new system needs to go in that direction; that is, having funds to give to people to do that research.

Dr G.G. JACOBS: The bill before us is about this process, and my argument is that there is no change to the checks and balances in the environmental impact assessment, and in recent times, since the review, the recommendations are to strengthen the public input process.

The other issue was that proposals were stalled. Finding 19 of the forty-eighth report of the Standing Committee on Uniform Legislation and Statutes Review stated that there was evidence that in over 50 per cent of cases the process was hamstrung because of the proponent. I understand that that may be the case, but 50 per cent was not hamstrung by the proponent, and it is those processes we are looking for in this bill—not to shortcut but to streamline.

Mr C.J. Tallentire: The committee also presented numbers, and the actual number of appeals was very small.

Dr G.G. JACOBS: They are small in number, but the advice I have is that a considerable amount of effort goes into those appeals. In fact, if there is a way of trying to streamline this process without shortcutting and still having community inputs and still allowing for the environmental impact assessment process, I think one could understand that changes—albeit a small number, but often complex—often need a fair bit of work in those appeals.

The member for Gosnells stated that there was only one strategic assessment project. However, my advice is that there have been eight. One of the other issues about the still quite low number of strategic assessment projects is that because there are duplications and because proponents believe they have to go through a process with strategic assessments and then again another appeals process through a derived proposal, that there is a disincentive in the system in that they have to go through the appeals process twice. That is probably a disincentive for the proponents to do the strategic work.

Mr C.J. Tallentire: I think you might be confusing the nature of strategic assessments here. The example given, of course, was the James Price Point gas hub. That is the direction in which strategic assessments, as we mean them in the context of this bill, are going.

Dr G.G. JACOBS: I understand that. I thank the member for Gosnells for that comment. One of the other issues that the member for Gosnells brought up was that a derived proposal—originally it might not even have been a twinkle in the eye of the proponent—may sneak through after a strategic assessment; that is, from left field comes a nuclear power plant or something that was not in the strategic project at all. If the member looks at part IV the Environmental Protection Act 1986—nothing is changing here—he will see that the definition of “derived proposal” refers to the process. I will cut to the chase about the strategic proposal and the third proposal and what is acceptable. Section 39B(4) reads —

(4) Despite subsection (3), the Authority may refuse to declare the referred proposal —

That is, not automatically approved under the strategic proposal —

to be a derived proposal if it considers that —

- (a) environmental issues raised by the proposal were not adequately assessed when the strategic proposal was assessed;
- (b) there is significant new or additional information that justifies the reassessment of the issues raised by the proposal; or
- (c) there has been a significant change in the relevant environmental factors since the strategic proposal was assessed.

Mr C.J. Tallentire: Minister, that is exactly right and that is my whole point. That is why there could be contention around whether something is new. The EPA might have one view and the community might have another; that is why we need that appeal right to be retained.

Dr G.G. JACOBS: In this assessment proposal it is quite clear that if there is anything out of left field that was not within the sentiment and content of the strategic proposal initially, it will not be allowed and will not automatically go through. It is my contention that there is a check and balance there. In the 40 hectare clearing example, the member for Gosnells seems to imply that if it just went to a land clearing assessment, something would be missed in the bigger picture—whether it be water, as the member gave the example, or whatever. The clearing assessment done by the EPA involves agencies, including the Department of Water. It looks at the issue and potential of acid sulfate soils and the water source availability, so that there is the ability in that clearing assessment—it happens today—for all those bigger issues to be considered. The member for Gosnells referred to a turf farm, I believe. There is no point in undertaking clearing to establish a turf farm if there is no water. The advice that I have is that this issue is covered by communication with the EPA, the Department of Water and any relevant agency, and it would be absolutely ludicrous for them to not have that in their assessment for clearing if there was an implication for the water source or there was not sufficient water for the project to take place.

Mr C.J. Tallentire: DEC officers would not look at the implications of the production of the product of the turf farm, whereas the EPA would.

Dr G.G. JACOBS: The assessment clearing process under the land clearing provisions involve other agencies in looking at the implications of the clearing assessment outside just the land that is cleared. The other agencies look at the ecological impact and other issues associated with that.

I will comment on the contributions of the member for Rockingham and other members, and I thank them for their input. I note that the member for Rockingham talked about capacity and the amount of work the Appeals Convenor has, and about giving agencies the ability to do the work. I take that on board. They are matters of government and they are continually being assessed. I will not comment on the James Price Point and other proposals. However, as the Minister for Water, I must make the point that the water capacity of Onslow is about 0.31 gigalitres and the capacity from the Cane River bore field is about 3.5 gigalitres. Onslow has not run out of water. There is capacity in the system to continue the approved developments, but not any new development. There is the capacity also to expand the Cane River bore field by about 50 per cent to improve the water capacity in the future. Of course, other plans in the Pilbara will be announced in due course. I thought it was a bit rich for the member for Rockingham to talk about the rules of assessment that come under the Department of Mines and Petroleum. They do not come under this bill and are not assessed by the relevant agency here. We understand there are benchmarks and complexities in the assessment of mining approvals. Added to that are issues of native title.

The member for Mandurah talked about the Gulf of Mexico, toxic water flowing into the Danube and accidents in the Timor Sea. It was a great speech, but it was not relevant. We are talking about some changes to the environmental approvals process. There is no change to the environmental impact assessment process. This legislation is about appeals. We believe that in certain areas, which we have delineated in the discussion tonight, including some of the levels of assessment, this is not a weakening of the environmental impact assessment processes; nor does it weaken the community's input into these processes. The agency for which the member for Mandurah had guidance for some time would be a tad offended if it believed that some of these changes were giving up totally on environmental rigour and the transparency and accountability processes. They are still there. The agencies do very good work and take their work very seriously. To suggest that this legislation will lead to a situation similar to that which occurred in the Gulf of Mexico would be a tad offensive to those agencies.

I say to the member for Nollamara that this bill has nothing to do with the Environmental Protection Authority. The issue of water contamination is dealt with under the contaminated sites legislation under the Department of Environment and Conservation; there is legislation that deals with that. The Ecological Sustainability Advisory Group made some general comments, but I do not believe that any of its recommendations or its deliberations suggests that these amendments to the legislation are inconsistent.

I support the bill and commend it to the house.

Extract from *Hansard*
[ASSEMBLY - Tuesday, 12 October 2010]
p7447a-7453a
Mr David Templeman; Ms Janine Freeman; Dr Graham Jacobs

Question put and a division taken with the following result —

Ayes (27)

Mr P. Abetz	Mr M.J. Cowper	Dr G.G. Jacobs	Mr C.C. Porter
Mr C.J. Barnett	Mr J.H.D. Day	Mr R.F. Johnson	Mr D.T. Redman
Mr I.C. Blayney	Mr J.M. Francis	Mr A. Krsticevic	Mr A.J. Simpson
Mr T.R. Buswell	Mr B.J. Grylls	Mr W.R. Marmion	Mr M.W. Sutherland
Mr G.M. Castrilli	Dr K.D. Hames	Mr P.T. Miles	Mr T.K. Waldron
Mr V.A. Catania	Mrs L.M. Harvey	Ms A.R. Mitchell	Mr J.E. McGrath (<i>Teller</i>)
Dr E. Constable	Mr A.P. Jacob	Dr M.D. Nahan	

Noes (25)

Ms L.L. Baker	Mr J.C. Kobelke	Mr E.S. Ripper	Mr M.P. Whitely
Dr. A.D. Buti	Mr F.M. Logan	Mrs M.H. Roberts	Dr J.M. Woollard
Ms A.S. Carles	Mr M. McGowan	Ms R. Saffioti	Mr B.S. Wyatt
Mr R.H. Cook	Mr M.P. Murray	Mr T.G. Stephens	Mr D.A. Templeman (<i>Teller</i>)
Ms J.M. Freeman	Mr A.P. O’Gorman	Mr C.J. Tallentire	
Mr J.N. Hyde	Mr P. Papalia	Mr A.J. Waddell	
Mr W.J. Johnston	Ms M.M. Quirk	Mr P.B. Watson	

Pairs

Mr F.A. Alban	Mrs C.A. Martin
Mr I.M. Britza	Mr P.C. Tinley

Question thus passed.

Bill read a second time.

Leave denied to proceed forthwith to third reading.