ENVIRONMENTAL PROTECTION AMENDMENT (VALIDATION) BILL 2014

Consideration in Detail

Resumed from 17 September.

Clause 4: Part X inserted —

Debate was adjourned after the clause had been partly considered.

Mr C.J. TALLENTIRE: As I recall, before debate was adjourned yesterday, we were considering an amendment that I put forward for an exemption from the validation process for the Roe 8 proposal. Then I believe we looked at the issue of the meaning of "a reasonable apprehension of bias" in the context of this legislation. Does the minister intend to broaden the potential bias of any kind, beyond pecuniary interest bias, to include bias that may be associated with someone's personal values—someone's background and professional training? Does this inclusion in proposed section 135, "Grounds of invalidity", broaden the act from what was previously our concern with pecuniary interest–type bias to an area that is much broader? I know that the minister has had time overnight to reflect on advice on this. I think it is an important point. We need absolute clarity about the nature of this amendment, and whether we are going beyond the scope of the original act. If the act needs amending because of the validation, we are prepared to agree with the minister on that, but the minister here is not looking only at validating the proposals. The title is the Environmental Protection Amendment (Validation) Bill 2014. That is why we have agreed to bring this bill on urgently. It is all about the validation process, but I think the minister may, perhaps unwittingly, be straying into the area of broadening the nature of bias to include other things that could perhaps relate to the true meaning of "apprehension of bias". I look forward to the minister's explanation of what he actually means by "a reasonable apprehension of bias", and to him telling me how that relates to the mentions of conflict of interest already in the act that, to my understanding, relate only to pecuniary interest–type conflicts of interest. I hope that is clear to the minister, and I look forward to his explanation.

Mr A.P. JACOB: I answered that question yesterday, but the member for Gosnells might not have picked up on it. The short answer is no, there is no change to the scope. Section 12 operates in addition to the common law principle rules about a reasonable apprehension of bias. A conflicted decision may be invalid for both a failure to comply with section 12 of the Environmental Protection Act and because it gives rise to a reasonable apprehension of bias, according to the common law principle more generally. To be effective, the Environmental Protection Amendment (Validation) Bill 2014 must simply deal with both grounds of invalidity. This bill does not in any way affect the operation of section 12 of the act after 19 August 2013. I am happy to put that firmly on the record. There is no impact on section 12 of the act beyond the decision date. Obviously, it applies only before the decision date and it does not expand the scope in that way.

Mr C.J. TALLENTIRE: If there is no intention to amend section 12, it is really important to put on the record what section 12 of the act actually states —

> **12. Disclosure of interests by Authority members**
>
> (1) An Authority member who has a direct or indirect pecuniary interest in a matter that is before a meeting of the Authority

I would understand "direct or indirect" to mean, perhaps, shareholdings that are held directly or through a self-managed superannuation fund, or perhaps through a family connection. That is where the "direct or indirect" applies. There is no question that "pecuniary" refers to financial interests. I am still not happy, from the explanation given by the minister, that he is really clear on what he means by "a reasonable apprehension of bias". I take from what he has said that he does not intend the bill to amend section 12 at all, but if section 12 stands as it is, does this new section 135 that refers to a reasonable apprehension of bias not introduce into the act something that could be quite different from the issues of pecuniary interest referred to in section 12?

Mr A.P. JACOB: Again, the answer is no. A reasonable apprehension of bias would not be established unless a fair-minded lay observer might have reasonably apprehended that an Environmental Protection Authority member might not bring an impartial mind to the assessment of the matter. That is a common law principle and, as I stated in my earlier answer, a conflicted decision may be invalid for the failure to comply with section 12, but it also may equally be invalid because it gives rise to a reasonable apprehension of bias as that is held to be a common law principle. That is why it is expressed in these words.

Dr A.D. BUTI: I do not know whether that is actually correct. I am glad that the minister has such an able legal adviser sitting next to him, because he can correct me if I am wrong on this. The way I read section 12, if a person has a pecuniary interest, that is enough. We do not have to go further and show that it has influenced the decision. Chief Justice Martin's decision states, at paragraph 159 —

> It was accepted by all parties during the course of argument that, at least in cases in which a member or members of the EPA had a direct or indirect pecuniary interest, the provisions of the Act precluding participation by members with such an interest have a potentially broader ambit of operation than the common law principles of procedural fairness, in that the statutory provisions do not involve any requirement of an apprehension of bias on the part of a fair-minded lay observer …

There he is agreeing with what we have just asserted—that it does not need to be shown that there is an apprehension of bias. If there is a pecuniary interest, that is enough to disqualify. I understand that. That is repeated in paragraph 206, which states —

> It is also significant that s 12 provides, in effect, a statutory code for the disqualification of members of the EPA as a consequence of pecuniary interest. To that extent, the provision supplants the common law —

The minister has just been saying that it is the same as common law. The decision continues —

> principles of procedural fairness, and in particular the component of those principles relating to bias. It has long been accepted that, in the absence of explicit statutory language to the contrary, legislation will be construed on the basis that compliance with the principles of procedural fairness is a condition of the valid exercise of the powers conferred …

My understanding is that if we are looking at non-pecuniary interests, that goes to the reasonable apprehension of bias. That is my understanding of the common law position. I cannot find the authority for that right at this moment, but I have been reading this, and if it is pecuniary interest under the statutes, that is fine, and that is the end of the story. However, if it is non-pecuniary interest, and we want to look at that as maybe affecting the person's ability to have an impartial mindset, we must look at the reasonable apprehension of bias. We now have this in the amending bill, and we are sure this relates only to the retrospective cases. That is fine, it will not have any effect for the future, because this does not affect section 12. I understand that, but it does have an effect on us validating the previous acts that the minister is seeking to validate. Surely a reasonable apprehension of bias must be different from the pecuniary interest, because that is dealt with under proposed section 135(a)(i). Then there is this reasonable apprehension of bias. We are not saying "and reasonable apprehension of bias"; we are saying "or reasonable apprehension of bias". Therefore, that has to be wider than just a pecuniary interest. Is the minister looking at saying that if someone on the Environmental Protection Authority was, for instance, an environmental activist, there could be an argument that that person comes to the position with a biased view and the minister is now trying to validate their decision? I think that is good, but that surely has to have a different effect from the pecuniary interest. It must be something else, otherwise why would it be there?

Mr A.P. JACOB: In short, yes, it does validate a non-pecuniary interest. The hypothetical put to me by the member is not an example picked up in the cases, but, yes, it also seeks to validate in the event of a non-pecuniary interest.

Dr A.D. BUTI: Thank you, minister. The addition of "a reasonable apprehension of bias" is the way to go regarding validating. It would be dangerous to try to change the act to include that, because to do so would restrict the pool even further. To make it clear, with respect to the acts that we seek to validate with this bill, this provision will look at whether a member had a direct or indirect pecuniary interest, and also whether they had a non-pecuniary interest, and whether, as a result of whatever that connection or interest was, there could be a reasonable apprehension of bias.

Mr A.P. Jacob: Yes.

Mr W.J. JOHNSTON: The fourth paragraph of the explanatory memorandum states, in part —

> The Bill will not prevent a court from setting aside an approval if it finds that the Authority's assessment was actually influenced by the interest of one or more of its members.

I am interested in that advice because proposed section 135(a)(i) that we propose to insert into the act—the first of the grounds that is no longer a ground for invalidity—states —

> their direct or indirect pecuniary interest in a matter, whether or not that interest was disclosed in accordance with —

It then outlines the sections that it is required to be in accordance with under the act. When it says that the assessment was influenced by the interests of one of the members, is it not saying that the court cannot consider that? If a person has an actual pecuniary interest, it is an excluded ground under the legislation. Is that not what it says? How is it that the courts will still be able to set matters aside? Does the minister see what I am saying? The minister's argument may be that the court still has all of its powers. Let us say that the court decides that a decision was actually influenced by somebody's pecuniary interest, if we go back to the act, the court cannot

base the decision on the pecuniary interest because that is now excluded as a ground of invalidity. If I am wrong, I would appreciate the minister explaining how I should be reading that provision.

Mr A.P. JACOB: My understanding is that if a person is found to have been acting on the grounds of their own interest, that would be caught beyond the provisions within section 12 of the act, and those provisions that are the grounds for invalidity are laid out in proposed section 135. Indeed, proposed section 136 is quite explicit that this amendment bill deals with only those actions that are invalidated by a ground of invalidity that is specifically spelt out within proposed section 135. If there were shown to be motivations beyond those powers, that could still be picked up.

Mr W.J. JOHNSTON: That does not answer my question. I guessed that that would be what the minister would argue, but how would the court know that there was a pecuniary interest that was the motivation for the decision because the minister had excluded the pecuniary interest as a ground that founds invalidity. Does the minister see what I am getting at? My understanding of proposed section 136 is that it is limiting things that have already been done. Basically, we are not allowing the authority to break the law in the future, but given that it broke the law in the past, we are excusing it, and that is fine because we do not want to set aside these billions and billions of dollars of investment. Let us assume that I support the project continuing, but there may be another person out there who does not support the project. That person could bring action and say that board member X was motivated because he had a pecuniary interest. However, when we get to court, that cannot be argued because the existence of the pecuniary interest is an excluded matter. How do we then found the decision that they were motivated by that pecuniary interest when the pecuniary interest cannot be brought to the court to found the invalidity? I am not questioning the bill; I am effectively questioning the explanatory memorandum because it does not appear to reflect what is proposed. I am satisfied that we do not want to set aside those approvals given before 19 August 2013—I have made that clear. I am happy with that, but I am not sure whether we are inviting a challenge about whether what is set out in the explanatory memorandum reflects what is to happen with the act. Can the minister explain how an applicant would prove that there was a pecuniary interest that then founds that the person was actually influenced by that interest?

Mr A.P. JACOB: I will first address the comment that the member for Cannington continues to make and is incorrect. It is important to again state and understand that all assessments and all approvals are valid and remain valid unless they are successfully challenged and put aside by a court. The only one that has been successfully dealt with in this manner and put aside by a court is the James Price Point matter, and accordingly that is excluded. Going secondly to the question, the mere fact that a person has a pecuniary interest does not automatically mean that the proceedings are invalid. However, actions to advance one's interest are not authorised actions, and that action to advance one's interest in the assessment would remain invalid even beyond this act. Anybody seeking to bring an action could still refer to the existence of a pecuniary interest in court in order to prove improper purpose, but they would need some evidence of motivation.

Mr W.J. JOHNSTON: I would like the minister to explain to me how the person would bring the allegation. If a person says that board member X was motivated by their pecuniary interest, the foundation of the allegation is the pecuniary interest. Therefore, when they go to court, we specify in proposed section 134(1) —

> **ground of invalidity** means a ground of invalidity set out in section 135;

Proposed section 135(a)(i) states —

> their direct or indirect pecuniary interest in a matter …

I understand how they could make the allegation of the impropriety, but how do they found that allegation if the actual pecuniary interest is an invalid ground for bringing court action? I am not questioning the terms of the bill or seeking the bill to be amended; I am seeking a clarification of the explanatory memorandum. If an action against a board member cannot be found on the basis of pecuniary interest, on what basis will the action referred to in the explanatory memorandum be found? It states —

> … if it finds that the Authority's assessment was actually influenced by the interest of one or more of its members.

How is the basis of that interest to be found in proposed section 135? Let us assume that board member X made the decision to approve a project because of their pecuniary interest. Let us assume they were agreed facts, which is highly unlikely. We arrive at court with the agreed fact that there was a pecuniary interest and that was the motivation for the decision but it cannot be a ground of invalidity because section 135 has excluded the foundation of the argument, not the motivation for the person's decision but the foundation of the motivation, if you like, which is the pecuniary interest because that is excluded at proposed section 135(a)(i). As I say, I am not asking for the provision to be changed; I am simply asking for an explanation of how the court would be empowered to make a decision, given that the foundation of the malfeasance was not capable of being a reason for invalidity?

Mr A.P. JACOB: That was a relatively convoluted question and raised a number of grounds that came back and forth a few times. I will go back to the initial point I made in answer to the earlier question. An action to advance one's own interests is not an action that is authorised by this bill. If it is shown that an action to advance one's interests is taken and evidence is produced of motivation, there is the potential for that decision to be declared invalid.

Mr C.J. TALLENTIRE: I refer to proposed section 135(b) regarding grounds of invalidity, which reads —

> the lack of a quorum at a meeting purportedly held by the Authority, where the lack of a quorum resulted from Authority members being disqualified from participation in the circumstances set out in paragraph (a)(i) or (ii);

My understanding is that that would be the case we faced with the Browse proposal when the chairman of the Environmental Protection Authority was, effectively, able to decide alone. He was the only person at the meeting, in fact, to make a decision about Browse. Is that the case? I will leave the minister to answer that and will come back with a follow-up question.

Mr A.P. Jacob: Can you ask it again?

Mr C.J. TALLENTIRE: I am asking if proposed section 135(b) relates specifically to the Browse project.

Mr A.P. Jacob: I got that. What was the question you asked then about the delegation to the chair?

Mr C.J. TALLENTIRE: That is the part that relates specifically to the Browse project. Is it the case that the chairman, Paul Vogel, was on his own making decisions related to Browse because other people had to disqualify themselves?

Mr A.P. JACOB: In the Browse example, the answer is yes. I think at the end, decisions were made by the chair under delegation of the authority and, ultimately, by the chair under delegation, as a single member of the board.

Mr C.J. TALLENTIRE: The government is putting this clause in the bill because I suppose it wants to cover other situations in which the chairman may have acted alone. As we see later in clause 4, this bill would not apply to Browse. The situation mentioned here has been brought about by the Browse case but the minister is saying that there are other cases in which the chairman acted alone. I think we need to know in which of the other cases the chairman acted alone. This gets to a fundamental point that we have raised throughout this debate. It is only reasonable that the minister declare to us all knowledge he has about any conflicts of interest—any doubt at all about any of the proposals that have gone through—that have arisen since the minister changed the laws in 2008 relating to the declarations process. We need to know which projects are involved. The minister has given us a list of 25 projects; let us say that that is the definitive list. It is only reasonable that we, as a Parliament, are advised of the nature of the conflict of interest or of the deficiency of the assessment process and the potential ground for a legal challenge in the future. It is only reasonable that the minister give us that advice because it seems that in some cases it is all about pecuniary conflict of interest, but that perhaps in another batch of cases the real problem was not just a conflict of interest that caused authority members to leave the room and not be involved in the final decision-making; the real problem was that there was no quorum. As the minister has told us before, the chairman thought he had powers under section 13 of the Environmental Protection Act to make decisions on his own. It is worth noting the content of section 13, "Decisions of persons presiding at meetings of Authority". In fact, this might apply to not only the chairman, but also someone who chairs the meeting through some other arrangement. The interpretation that was put on this provision was quite amazing. The act states —

> In any case of difficulty, dispute or doubt respecting or arising out of —
>
> (a) matters of order or procedure; or
>
> (b) the determination of an interest under section 12, the decision of the person presiding at the relevant meeting of the Authority shall be final and conclusive.

This view that the person presiding at a meeting of the authority had ultimate say over everything, including the right to make decisions on their own, was a total misinterpretation, obviously. We all acknowledge that now, especially the chairman of the EPA; he got it completely wrong. Whoever gave him that advice—if it was the Public Sector Commissioner—it was the worst advise that person has ever given, that is for sure. Wherever that advice came from is one issue, but at this point I want to know about any other project that could be in this category of final agreement for the release of that very important report and recommendations from the EPA. Perhaps it was at the document-scoping phase, the determination of the environmental factors phase, or during hearing advice from staff at the Office of the Environmental Protection Authority. Whatever stage the process was at, a single person was involved. The minister must know of those situations and I am sure a careful study of the full set of minutes—not a redacted version, of course—would give us an indication of what we are after. It is only reasonable that the minister should make us, as a Parliament, aware of all the cases in which decisions were

made by one person, which probably was the chair but not necessarily. I look forward to the minister presenting us with information about which proposals we are talking about were covered by proposed section 135(b).

Mr A.P. JACOB: We have been on this for several hours now and I encourage members opposite with long five-minute questions to simply raise an issue that can be responded to and raise the next one after that. A number of issues were raised in that question.

The first thing I wish to address is that ground 4 of the challenge in the Browse case, which was the delegation to the chairman of the EPA dated 5 July 2012, either did not provide him with the authority to issue a further final report on the proposal or is invalid if purported to do so. That ground was not successful. There was a ruling on that ground, and it was found to be unsuccessful. That whole point about the delegation, or the chair in that instance, is immaterial to what is before us because that was tested and found ultimately to be unsuccessful.

I will provide the simplest example I can think of about the reason we pick up these particular clauses. If four members were in a meeting and two members declared a conflict and participated to maintain the meeting quorum, ultimately, as we have seen, the act does not allow for the participation of those two members either in the decision or even in discussion; ergo, only two members in that meeting were unconflicted and therefore rightfully participating in that meeting. Therefore, under section 11 of the act, the meeting had slipped into an inquorate position. That is essentially what this amendment seeks to pick up. That is probably the best example: four members are in a meeting and two had declared interests yet still participated when they obviously should not have. I agree 100 per cent with the member's comments on section 13. I do not resile from that for a second. The member made some fair points about that. But that was the practice that we found had occurred—four members are in a meeting and two had declared a conflict but still participated. They ought not to have done that; therefore, the meeting, in a technical sense, was inquorate because only two members who were unconflicted were participating in that meeting.

Mr C.J. TALLENTIRE: I assure the minister that we are conscious of the time. We are focusing on Browse, but one part of my previous question was: can the minister please give us an indication of the other projects that could be in this category of decisions made by the Environmental Protection Authority being invalid because of the failure of the authority to have been quorate?

Mr A.P. JACOB: We will follow through the list and provide that. If the member wants to go on to another question, someone here at the table can get a specific list of those projects that that applies to.

Mr C.J. TALLENTIRE: I am happy to move on to another area. This also relates to section 13 of the Environmental Protection Act. Proposed section 135(c) refers to "the failure of the Authority to decide a question at a meeting purportedly held by the Authority where" there were failings under section 11 of the act. I am wondering why this validation bill does not seek to acknowledge that there was a misunderstanding by the chair about section 13. When the chair made a decision, using his misunderstanding of his powers under section 13, why was that not validated, rather than taking the approach in this legislation, which is to say that the ground of invalidity comes through a different way? It is important that I note that proposed paragraph (c) states —

> the failure of the Authority to decide a question at a meeting purportedly held by the Authority, where —
>
> (i) the failure resulted from non-compliance with the requirements of section 11(2)(e) for at least 3 Authority members to vote on the question or with any other requirement of section 11(2) with respect to voting; and
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> (ii) that non-compliance resulted from Authority members being disqualified from participation in the circumstances set out in paragraph (a)(i) or (ii);

To me, it would have been simpler to have said, "We know mistakes were made under section 13, but now we are validating those", instead of trying to get around things by making direct reference to section 11 of the act. I am curious to know the minister's thinking in how he approached this validation, using section 11 references rather than section 13.

Mr A.P. JACOB: I do not use legislation in this instance to run narrative on particular matters or seek to debate it. I would not be seeking to broaden section 13. It is well accepted, and my belief is—I think members opposite commented as well—that the latitude interpreted under section 13 ought not to have been interpreted that broadly. I would not seek, through this legislation, to enable that any further. That is why I have not sought to address those sections within the act.

Picking up on the earlier question, which referred to the issues that have been picked up relating to section 11: of those 25 projects, there is the Port Hedland outer harbour development; the CSBP ammonium nitrate production

expansion project phase 2; the James Point Pty Ltd stage 2 port development; the Cape Lambert Emu Siding rail duplication; and review of conditions, section 46, Cape Lambert port B.

Mr C.J. TALLENTIRE: The minister is quite right; I was not suggesting that we validate section 13 or change it in any way. I was saying that a neater way to undertake this validation process could be to say, "Yes, we know some fundamental errors were made under section 13 because the chairman misunderstood his powers under section 13", but I think it would have been neater to have said that this validation bill acknowledges that those mistakes were made and they are now validated. I wonder why the minister did not take that approach.

Mr A.P. JACOB: Ultimately, I am guided by the advice I receive. I took that advice on board. A lot of work has gone into this, not only by parliamentary counsel in taking this approach, but also, as I mentioned in my second reading speech, before embarking upon this approach I had the matter peer reviewed by a Senior Counsel and a Queen's Counsel. The advice I received was that this was the better way to approach it. Having considered that advice, I agreed that this is the better way to approach it. That is why the government has taken the decision to approach it through sections 11 and 12 of the Environmental Protection Act.

Mr C.J. TALLENTIRE: I am moving on slightly now to proposed section 136, "Certain proceedings of Environmental Protection Authority and other things validated". It strikes me that this proposed section does not refer to section 135. I am struggling to find a connection between proposed sections 135 and 136. It is surely important that we talk about the grounds of the invalidity. I suppose it could be said that in the new part X, people would be able to see that section 135 is followed by 136, but surely there needs to be a direct reference when we are talking about things such as —

> (1) This section applies to anything done, or purportedly done, by or on behalf of the Authority before the decision date that, if this section had not been enacted, is or may be invalid on a ground of invalidity.

I was particularly concerned when I realised that it does not pick up on the nature of what proposed section 135 is about. It gets back to the pecuniary interest issue, but no mention is made of the fact that there has been that problem of a failure to declare a conflict of interest. I see that proposed section 136 makes specific reference to proposed section 137, and we will come to that in a moment, but it does not connect, in my view, with proposed section 135, "Grounds of invalidity", yet we are talking about other things being validated. It is as though there could be a gap between the grounds of invalidity; that is, those are the things invalid, and these are the things validated. What about things that fall between the two? I am hoping the minister can clarify that situation.

Mr A.P. JACOB: Proposed section 136 repeatedly uses the term "ground of invalidity" and in proposed section 134(1), under "Terms used", there is a clear definition of that term which is "a ground of invalidity set out in section 135". The definition under "Terms used" refers to grounds of invalidity as defined in proposed section 135 and that terminology is used a number of times in proposed section 136.

Mr C.J. TALLENTIRE: Proposed section 136(4) states —

> Anything done, or purportedly done, before the *Environmental Protection Amendment (Validation) Act 2014* section 4 comes into operation as a result or consequence of, or in reliance on or in relation to, a thing to which this section applies (a ***validated thing***) is as valid and effective, and is to be taken to have always been as valid and effective, as it would have been if the validated thing had been valid at the time the other thing was done or purportedly done.

As I say, the grounds of invalidity are clearly spelt out and there is then an attempt to define the things that are valid. What about cases in which it may not have been clarified for certain; how are we dealing with those? They are, I suppose, the grey areas. The minister has given us some indication of the projects involved, but we do not have a definitive list and that is why we fear that other cases could fall between that interpretation of "valid" and "invalid", yet, the government has not anticipated that circumstance arising. Is there some scope in this proposed subsection to pick up on those cases that are in a grey area that may arise when we get a fuller picture of all the projects that could eventually be deemed to have been subject to some form of conflict of interest?

Mr A.P. JACOB: This legislation does not seek to validate the list. This is something I have provided freely in the interests of full information and it is obviously not referred to in this validation. This validation validates actions taken up to the decision date, being 19 August 2013. The member was referring to proposed section 136(4) and proposed section 136(1) specifically spells out that this legislation deals with those matters up to the decision date. Indeed, there are many, many projects beyond that list of 25 that were conducted in that period prior to that, but our review has not shown that they necessarily were picked up in in the way that that 25 projects on the list were—that is, those that, after a thorough investigation, I believe have the potential to be challenged on similar grounds to Browse. However, the legislation validates the time period.

Mr C.J. TALLENTIRE: I thank the minister for that response. I now move to proposed section 137 "Exclusions from validation". Obviously just one proposal is mentioned—the Browse project. The minister

made it quite plain that that is because there has been a legal judgement that the process used in delivering the report and recommendations have been found invalid, so it is not being sought to validate it, which is a decision that is good to see. I am concerned that the extent of the proposed clause is really only about report 1444—the report and recommendations. We all know that preceding the final compilation of an Environmental Protection Authority report, work was done for many months—in this case, many years—on things such as scoping documents and the consideration of environmental factors, which we have talked about. Often whole series of discussions are held with experts in different areas. I think with the Browse project there may well have been discussions with experts in modelling the movement of dredge plumes and on the impacts on the marine environment and quarantine issues. A whole host of different specialists would have been called in to speak to the EPA and I would imagine that the information presented would have been either accepted or disallowed by the authority. I do not think people would have just sat back and said it was interesting and that they would keep those things in mind as they go through the assessment process. I want to get to some very clear information from the minister about how far back this exclusion from validation for Browse really goes. If it is simply the case that the report and recommendations are being excluded from validation, I put it to the minister that this is not going back far enough—it is really about the whole process. Chief Justice Wayne Martin's judgement makes it clear that there were all those preceding meetings when members of the EPA board, for whatever reason, failed to declare their conflicts of interest in owning shares in Woodside, for example. That was happening for years before the actual publication of report 1444. I am very concerned that at the moment the way things are worded, the bill simply removes from validation report 1444, but no mention is provided of the preceding work that led to that compilation, that publication of the report and recommendations contained in report 1444. Could the minister please outline to me whether or not there will be any going back? I will spell out my fear very clearly. Although report 1444 has been removed from validation, the eventual use of all that preceding information will be allowed and we know from Chief Justice Wayne Martin's report that it was compromised. I want a clear response from the minister on this. Will he allow the new panel, which I know he has appointed, looking at the Browse situation to revisit any of the information gathered through the earlier assessment process? If so, I think the minister is breaking faith, I would say on shaky legal grounds, with the nature of the judgement by the Chief Justice. It would also be a complete betrayal of the understanding of the community about the outcome of the case The Wilderness Society of WA (Inc) v Minister for Environment.

Mr A.P. JACOB: In proposed section 137(b) there is essentially a catch-all that states —

> anything that is invalid as a consequence of the invalidity of the things listed in paragraph (a).

That is also therefore excluded from validation. That provision essentially picks that up. The reason is that there are, essentially, those three grounds listed in proposed section 137(a). Again, going back to Justice Martin's decision, there were a number of grounds on which the matters were challenged and not all those grounds were ultimately successful, but these are the three grounds on which the challenge was successful. Therefore, on those three grounds it has been invalidated and that is why they are listed in paragraph (a). Paragraph (b) picks up the flow-on effects of that.

Mr C.J. TALLENTIRE: Can the minister assure us that any further work on the Browse liquefied natural gas precinct would require a completely new assessment? That will require going back to the public consultation phase, making another determination of how long that public consultation phase will be and completely starting from the very beginning. We are after the minister's absolute commitment that any further assessment of the Browse liquefied natural gas precinct will require a commencement from the very, very beginning and that the materials that have been found by the Chief Justice to have been compromised will not be used.

Mr A.P. JACOB: A fresh assessment on this matter is being undertaken by the delegates. Given the entire incident that has brought us to this point, as minister I would not seek to direct those delegates on how they conduct that assessment. That is a matter for the delegates.

Mr C.J. TALLENTIRE: I can see the situation that the minister is in; nevertheless, there is huge community interest in this project. The minister would be well aware of that. He is saying that there will be a fresh assessment. I do not think it is unreasonable for him to assure the community that that fresh assessment will not just be a fresh assessment—it could have occurred at any stage of the previous assessment process—but a complete assessment with as extensive a round of public consultation as possible. The minister has those powers; he has the power to make or direct the EPA to do certain things under section 16 of the act. He is well aware of that. He does not need to be prudish about this. He does not need to say that he is hesitant to direct the assessment panel on what to do because he can do that. Given that we are debating a bill that has come about because of all that has gone wrong, it is very reasonable that he give that assurance. Just supposing that the recently-appointed assessment panel said it did not think it is necessary to carry out another round of public consultation, surely he would step in anyway and say, "No, we are going to do this properly. We know that we had all those cases in which either Dr Chris Whitaker or Mr Denis Glennon sat in meetings of previous deliberations and they forgot to declare or overlooked declaring their conflict of interest. We know that went on

but we will somehow absorb some of the information that came through, the level of assessment setting or some of the environmental factors." Surely we will not allow a situation to arise in which there could be any ambiguity about this. That is why I am asking the minister to make a declaration that he will require this to be not just a fresh assessment but something that starts from the very beginning, and that there will be the highest level of assessment on this project, as the minister is perfectly entitled to direct the EPA to undertake.

Mr A.P. JACOB: If this matter has taught this place anything, it should be that the functions of the EPA under the act ought to be followed. Indeed, section 8 of the act explicitly states —

> Subject to this Act, neither —
>
> (a) the Authority; nor
>
> (b) the Chairman, —

My reading of that also includes the delegates in this instance —

> shall be subject to the direction of the Minister.

That is my plain and simple reading of the matter. Indeed, it has always been my practice as Minister for Environment and will continue to be my practice as Minister for Environment. The Environmental Protection Authority is set up as an independent statutory authority. I believe that for it to function well in that place, I should not seek to interfere in its business. I stated what we are doing. The act lays it out fairly clearly. The concerns that the member for Gosnells is raising are really matters for those delegates and I will not seek to involve myself in that matter whatsoever.

Mr C.J. TALLENTIRE: This is really concerning because it suggests that the minister is not aware of his powers under section 16, "Functions of Authority", of the Environmental Protection Act. I will read it to him. It states —

> The functions of the Authority are —

I will not read the whole lot, just the relevant one —

> (e) to advise the Minister on environmental matters generally and on any matter which he may refer to it for advice, including the environmental protection aspects of any proposal or scheme, and on the evaluation of information relating thereto;

Other paragraphs of section 16 elaborate further on this issue. The minister does have the power to direct that a formal assessment be undertaken, that that assessment commence at the very beginning and that there be a complete setting aside of all previous information that we found through Chief Justice Martin's judgement to have been compromised. We know that is compromised. Why can the minister not direct his newly-formed panel to set all that information aside and start at the very beginning?

Mr A.P. JACOB: The reassessment of Browse by delegates is not a section 16 assessment. It does not relate to the Minister for Environment seeking advice on a matter. It falls better under section 16(a) and, as I said, is governed by the principle of section 8 of the act, which is the absolute independence of the authority and its chairman and they shall not be subject to the direction of the minister. Even picking up on the theme of the member's remarks, having said that it is not advice under section 16(e), in that matter it is up to the Minister for Environment to seek that advice from the EPA, and in this case the delegates—and that is the assessment in this instance. It is the assessment that I am seeking from them. That is right and proper in the act and that is what I will ultimately be seeking. The minister of the day does not direct them as to how to conduct that assessment. The act is very clear on that matter. I will not be seeking to direct them as to how they ought to conduct their assessment. That would be incredibly improper and not something that I would entertain.

Mr C.J. TALLENTIRE: I think we will have to agree to disagree to this. The minister is completely wrong; I think he does have the power to ensure that an assessment is conducted in a certain way. He referred to "an advice" as though it is a thing whereas, in fact, section 16(e) refers to his capacity to ensure that he is advised by the Environmental Protection Authority. I do not think he can hide behind any suggestion that the panel that he formed is somehow separate from the authority itself. I hope he is not doing that because that would be completely wrong. Can he perhaps clarify that point for me? I would have thought the panel is a committee formed with the same powers as the authority, I imagine, but restricted to the Browse basin proposal; therefore, the minister may, as section 16(e) states, "refer to it for advice". He can get general advice from this body and he can insist that he receives advice based on the environmental protection aspects of any proposal or scheme and on the evaluation of information relating thereto. He can guide his panel to ensure that the very best information comes forward. Again, I ask the minister why he is not going to do that. Just allay all the community concern. We should not be debating this bill about conflict of interest. This situation should never have occurred. It is completely wrong that it came up but it did because people did not do their job properly. They failed to declare a conflict of interest. Why can the minister not allay the community concern that is out there and say, "Don't

worry; on Browse, there will be a complete start from the very beginning on this project." He has the power to do it under section 16(e). It is what the community expects of the minister. Why can he not do it?

Mr A.P. JACOB: With respect, the member for Gosnells has misunderstood the act as it relates to this matter. As per section 16(e), advice does exist and I receive it from time to time, but that is not what is happening in the Browse case at all. It is an assessment under section 16(a). Section 16(e) advice is entirely different and an action that happens from time to time under the EP act. The Browse assessment is not section 16 advice.

Also, if I have not made it very clear, I am not suggesting that I view the delegation as somehow separate from the EPA. For all intents and purposes, I view the delegation that is assessing that matter—as it now turns out, the soon-to-be two new members of the EPA board and also another well-regarded person in that space—as the EPA in its conduct of an assessment on the Browse proposal.

Mr C.J. TALLENTIRE: Finally, where does this clause provide that we cannot combine a section 16(a) requirement to conduct environmental impact assessments with a section 16(e) requirement that something be done in a certain way and to the minister's liking? Nothing there provides that this is a section 16(a) requirement, so we cannot possibly refer to section 16(e) as well. I do not think anything in the act states that.

Mr A.P. JACOB: Essentially, that is not the way it is conducted. It is not the way that it is done under the Environmental Protection Act.

Mr W.J. Johnston interjected.

Mr A.P. JACOB: No, member. With respect, the member for Cannington does not know how it works. That is not how it is done. I receive section 16(e) advice from time to time, generally on broader and more strategic matters. When it relates to specific projects, the authority undertakes an assessment, which is happening with Browse. Browse was subject to section 16(e) advice far earlier in the piece, but, as I said, section 16(e) advice takes a broader and more strategic approach to matters more generally.

Clause put and passed.

Title put and passed.

Third Reading

MR A.P. JACOB (Ocean Reef — Minister for Environment) [11.51 am]: I move —

That the bill be now read a third time.

MR C.J. TALLENTIRE (Gosnells) [11.51 am]: I rise to speak on the Environmental Protection Amendment (Validation) Bill 2014. As I was just saying, it is most disappointing that we are in this Parliament having to correct mistakes, errors of judgement and a failure to reveal a conflict of interest held by members of the Environmental Protection Authority on a project that was of such note in our community. The Environmental Protection Authority deals with many projects that the broader community never knows about. It is not to say that those projects are not of enormous environmental significance, but they are often, by merit of their location, a bit out of sight and out of mind. The EPA does a good job of assessing those projects. I think Western Australians like to know that mine sites far from the urban population and regional centres are given the same level of consideration that a project right in the midst of the urban environment would receive. That is the community expectation. However, with the Browse assessment we found that members of the EPA board were oblivious to their requirement to reveal a conflict of interest. At meetings, such as council meetings or school board meetings, which many of us are on, one of the first agenda items is to make a declaration of a conflict of interest. It is astounding that we are in this situation at all, but we are seeking to correct things as best we can without jeopardising the economic development of the state. That is a reasonable approach for us to be taking as a Parliament.

In the course of this debate, some other issues became very apparent. To me, the most concerning of all is the incapacity of the Environmental Protection Authority to do broader strategic assessment and surveillance of what is going on in our Western Australian environment. It has become apparent that the EPA is confining itself to doing the assessments that it does each year and it is not getting into the broader policy work. It is not doing its very important state of the environment reporting. What is more, it is seeking to manage its workload by, whenever possible, referring out or outsourcing, if you like, the regulatory responsibility to another agency or body, such as a local government. That is why during the course of this debate I presented evidence that shows the number of assessments conducted each year has barely changed, yet we know that over the past 10 or so years there has been a huge growth in project activity of all kinds, especially in the resources sector. That growth should have required an increase in the number of assessments done each year because those projects are often of the nature that they will have a significant impact on the environment. We need to revisit this issue of what projects have a significant impact on the environment, because it has not been properly understood. There is

some fudging around the edges of it so that the workload management of the EPA is done, and workload management is not what the EPA should be about.

The community of Western Australia entrusts the EPA with the responsibility of looking after our environment, whether it is looking at how a major resources project can be allowed to go ahead without having a significant impact on the environment and by setting conditions on that project, or—this is where the EPA is failing to deliver at the moment—resolving the problem of a death by a thousand cuts. Often we hear of problems around the state where there is a bit of bushland pollution here and a bit of groundwater contamination there. All sorts of things are going wrong. There are invasive species. There is a threat to a wetland or a river system. There is some over-exploitation of a river system through it being used for irrigation. There is excessive drawdown on a groundwater aquifer somewhere else. All those things come under the purview of the Environmental Protection Authority. The authority should be across all those things and constantly monitoring them. Unfortunately, the EPA is flat out doing its assessment work, and it is not even expanding that workload. That is why we are being so badly let down. What do we see? Despite the EPA's enormous workload and more assessments being necessary than ever before, and its failure to do things such as the state environmental protection policies and the state of the environment reports—no evidence has been submitted in the course of this debate that work is going on in that area at all—we see that the EPA now meets only once a month. This is a symbol of how the government is not resourcing the office of the EPA to do its job properly.

When economic activity and project development in the state was not as high as it has been in more recent years, the EPA board was required to meet fortnightly. I can recall when Dr Bernard Bowen was chairman of the Environmental Protection Authority. I think he was succeeded by Mr Barry Carbon who was there briefly and who had been in the position before. Then Dr Wally Cox was chairman. Back then the authority needed to meet on a fortnightly basis because the volume of work was so high. Information has been presented to us during the course of this debate that since 20 January 2013 the authority decided to meet only once a month. It has more work than ever before, yet the authority is meeting only once a month. That is an indication of what is going wrong with environmental protection in Western Australia.

We also heard from the minister during the course of the debate that it does not matter if someone does not live in WA; they can still be on the EPA. The minister told us that Elizabeth Carr has a place of residence in WA, but he conceded that she shares her time between WA and New South Wales. I suspect that if we were to check the electoral roll in New South Wales, we would find that that is where her principal residence is.

The Environmental Protection Authority needs the very best of expertise. It needs people with a real commitment to and passion for the environment of Western Australia. It requires a composition—I do not think the minister fully understood this during the course of the debate—that is not about just the single members and where they are from; it is about the body as a whole. The reality is that the range of issues that will be presented to the EPA for any given proposal will be so diverse that even if there are five people with excellent expertise in five different areas, or even if each of them has excellent expertise in two or three different areas, it will never be able to cover the range of requirements and the need for expertise that would be ideal. That is why we need a well-resourced agency to underpin the work. We need an EPA that has the people who can work well together to pull together in gathering the information. That is why we need people from various sectors with experience and knowledge that is not just the knowledge of those who have worked in industry, or those who have worked as academics, who are naturally going to be very focused on the area of academic research, or from the other more traditional areas from which the minister seeks to draw people to be members of the Environmental Protection Authority board. I am concerned that the minister does not understand the significance of that, and we heard as well during the course of the debate a most offensive slur on people who may have outstanding environmental expertise but whose workplace or organisation of attachment is perhaps a campaign group, an organisation such as a wetland conservation group or a body focused on an interest in wildlife in general. Why would people with those sorts of credentials be ruled out? It was perhaps an error on the part of the minister, but it was an offensive slur to suggest that such people would bring only a social dimension to the authority's table. That seems offensive in the extreme, and is at odds with the justification originally given for the appointment of Elizabeth Carr, when it was pointed out that she does not actually have real environmental expertise, but she is a Harvard graduate and was a key participant in the inaugural corporate social responsibility initiative at Harvard. This issue reflects the minister's poor understanding of the sorts of people he needs on the EPA board.

I want to say a little about how we have responded to this finding of conflict of interest. When I met with the minister and the chair of the EPA, it was put to me that really these are good chaps; we should not be too worried, as they would not wittingly involve themselves in some form of conflict of interest. I do not think we can allow governments in Western Australia to be run on the basis of people being good. We need strict governance structures in place and we need to correct things when we see that they are going wrong. That is what we are endeavouring to do with the passage of this bill.

I will conclude my remarks there and express the hope that the commitments the minister gave to ensure that projects such as the Browse basin project will be reassessed in the most thorough sense of the term will be honoured. Although we were unsuccessful in moving our amendment to the bill regarding the presentation to the Parliament of any further projects that might be validated even though they might be found to be in breach of this situation, we hope that that presentation would be made. Amazingly, the government did not allow that amendment. I hope, however, that some means will be found for a degree of transparency. Any shrouding of projects in secrecy about conflict-of-interest matters puts us on a very slippery slope to a state in which a degree of corruption is an inevitable outcome. This is a very serious matter. It is fortunate that the Parliament has been able to go some way towards correcting it, but we need further assurances from the government that the highest levels of transparency will be given to us when any further changes are made.

MS S.F. McGURK (Fremantle) [12.05 pm]: I am pleased to take this opportunity to emphasise a few points during this third reading debate on the Environmental Protection Amendment (Validation) Bill 2014. I commend the member for Gosnells, who soldiered on admirably through this issue that I know he cares very much about—that is, independent and rigorous environmental assessments of any development proposals put before the state and that, when this Parliament is asked to set aside those processes set out in the Environmental Protection Act, we consider those matters very seriously. I commend the member for Gosnells, as our shadow Minister for Environment, who I know is a bit under the weather.

We are being asked to take away the rigorous process set out in the Environmental Protection Act in relation to 25 proposals in this validation bill. We will never know, once this bill is passed, whether the outcome of those proposals would have been different save for the validation that we are being asked to agree to through this bill. It is a real shame, and it detracts from the rigour we would usually expect from the Environmental Protection Act and the processes that we have in this state.

The fault, we know, resulted from a change of procedure that we are told occurred at the behest of the EPA itself, and its own chairman. He has taken responsibility for that decision; he has been the fall guy, if you like, in this decision. However, it was strange that the change in policy occurred just a matter of months after the election of the Barnett government in 2008. I think most observers consider that that coincidence needs much closer examination into how that change of procedure occurred than we have really been able to be satisfied with. This is particularly because the change of procedure in relation to how conflict of interest is dealt with by EPA members was in specific contravention of provisions that were put into the act in 2003, which we have heard discussed at length and in quite some detail, particularly in the consideration in detail of the bill before the house. Despite the responsibility that has been taken for the change in procedures relating to conflict of interest that we know about thanks to the Supreme Court appeal against the Browse project and the reasons for decision given by Chief Justice Martin, we now know that those changes in procedure were not acceptable and were in contravention of the act. They have now been set aside, but we have 25 decisions that we are being asked to validate. As I said, the public is not satisfied that there was not some involvement by the government in that change in procedure, and is not entirely satisfied that a number of the 25 proposals we are asked to validate—I will go on to speak about these—would not have been better served to have a more independent assessment of what happened during this whole procedure.

If this were not bad enough, we are being asked to validate one proposal in particular that is very controversial in the community—the Roe 8 proposal to extend Roe Highway through the Beeliar wetlands. We know that that decision was made a month after the Supreme Court consideration of the Browse gas hub proposal, and we also know, through the member for Cannington's questions in consideration in detail and the report in today's *The West Australian*, that amongst the decisions we are being asked to validate is a Rio Tinto iron ore mine approval in the Pilbara—a decision that was made after the Supreme Court appeal on Browse that was handed down in August 2013. The decision on Rio Tinto's Turee Syncline project came down after the Supreme Court decision. The minister has admitted that he was aware—as we would hope—of the issues raised by Chief Justice Martin in the Supreme Court. Therefore, he looked back at the process involved in the lead-up to the Rio Tinto proposal, but despite doubt being cast on that decision and a range of other decisions, he elected to proceed with the approval of that decision. Similarly, a full month later, the Environmental Protection Authority made a recommendation on Roe 8, and there was not a murmur from the minister or his office asking for the EPA to reconsider how that decision or how any of its decisions had been arrived at in light of the Supreme Court judgement.

Most people who look at that course of events or that time frame find that it beggars belief that the minister did not ask the EPA to reconsider how it was dealing with these issues if he was, in fact, concerned about the utmost rigour being applied to environmental assessments. We have doubts over the time frame and the EPA process by which the Roe 8 determination was made. Notwithstanding that a very clear light had been shone on the possible problems with that process by Chief Justice Martin, the Roe 8 recommendation went ahead. It is a real

indictment on the way that this government through this minister has managed the environmental assessments of key and, in this case, controversial decisions before the EPA.

The minister said in his second reading speech that we need to consider this Environmental Protection Amendment (Validation) Bill 2014 as an urgent bill and to rush it through. It did not lay on the table for three weeks, and such requirements. This was to set aside any possible doubts about the process that the EPA had worked through with the 25 proposals. The Minister for Environment stated —

> In the interests of promoting certainty in investment in Western Australia, particularly in the resources sector to which most of the doubtful approvals have been given …

That was the minister's reason for expediting this legislation. However, none of that applies to Roe 8, which is a government proposal, not a commercial proposal. No commercial contracts have been let. In fact, the final design of that proposal is not known—so much so that the EPA had to work around the lack of certainty about that proposal and say that it depended on the design considered in how the bushlands and the wetlands will be impacted by Roe 8, and how it can try to offset some of those considerations. The reason given for expediting this validation legislation does not apply to Roe 8, which is another key reason, amongst many, for Roe 8 to be excluded from this validation legislation.

The third key reason for excluding Roe 8 is that it is a hugely controversial decision. It was previously considered by the EPA, which came to a different conclusion from its most recent decision that we are asked to validate today. There is an enormous amount of public concern over this proposal, and very diligent appearances in the gallery have been made by a number of people who care very deeply about the bushlands threatened to be affected by this Roe 8 proposal. In my contribution to the second reading debate, I spoke about how the Roe 8 proposal will clear nearly 100 hectares of native vegetation, which includes 5.4 hectares of Beeliar Regional Park and seven hectares of Bush Forever site 244. We will lose 78 hectares of habitat and 2.5 hectares of potential nesting habitat for Carnaby's black-cockatoo and forest red-tailed black cockatoo—both recognised as threatened species and which the minister spoke about in Parliament this week. We must be mindful of these species so that we do not preside over their extinction. However, the Roe 8 proposal threatens to annihilate some very significant foraging and nesting habitats for those bird species. The Roe 8 proposal will clear 6.8 hectares of wetlands that include Roe swamp and a portion of Bibra Lake. Those wetlands are protected under the Swan coastal plain lakes environmental protection policy, and conservation category wetlands. Finally, there will be a fragmentation of the wetlands and fauna habitat. These are important areas in their environmental values. There was a lot of public concern, certainly in my electorate, but also amongst the community generally, when the EPA differed from its previous decision and approved this most recent proposal. But we are still being asked to validate a proposal and we will never know whether it was compromised and whether all sections of the act were applied in relation to Roe 8.

Finally, I will echo the concerns about this Environmental Protection Amendment (Validation) Bill 2014 before us and the entire process that it represents—a process that has cast doubt over the management of the EPA under this government. We must ensure the utmost independence, that the best possible science informs that decision and that a range of opinions are brought to the table when the EPA deliberates whether developments should go ahead or not. We must also ensure that a balance is struck between protecting our environment and recognising that certain developments must go ahead for various reasons. However, when members on this side of the house raised concerns about the appointments made to the EPA under this government—that is, that there had been a bias to industry appointments and a lack of consideration of people who had worked previously in the environmental movement or who had broadly represented the community—that was fobbed off by the minister. I refer to what the minister said during consideration in detail of the bill, that he had no intention of turning the EPA into a focus group when the opposition said that the EPA needs to make sure that it has amongst its members people who represent the broader community, whether they are residents who live in areas that might be affected or people with environmental credentials who have been active in community groups. It is insulting in the extreme for the minister to fob off any of those possible nominees or people to contribute to the EPA. In fact, those sorts of people have contributed quite significantly in the past and I hope that they will contribute again when we seek to re-establish the EPA's reputation after the debacle of the management of change and procedure and the need to rush through legislation and validate a range of suspect and very controversial proposals presided over by this government.

DR A.D. BUTI (Armadale) [12.21 pm]: I will make an incredibly short contribution, which I am sure the minister will be happy about. I wonder whether the minister now has an answer to the question I asked during the consideration in detail stage of the Environmental Protection Amendment (Validation) Bill 2014 about when and if he saw the submissions. If he does, he might like to provide that in his closing statement.

We have really come to a dire situation; we have had to bring into Parliament retrospective legislation to validate decisions that may or may not be clouded by bias. We are really unclear which projects, if any, were influenced by a biased decision; and, as we now know, with the change, we are also looking at reasonable apprehension of

bias. This needs to be made clear, because some of the minister's media statements were disconcerting, because I think he said—I may not be quoting him correctly, so he has a chance to correct me in his reply to the third reading debate—that it did not matter because there was no actual bias et cetera and that under the legislation, as determined under section 12, pecuniary interest was a pecuniary interest, end of story, and that we did not need to go further to determine whether bias was involved.

As members know, the chair of the Environmental Protection Authority did not think that there was a problem with its members engaging in deliberations and sometimes decisions on the Browse project even though they had shareholdings directly or indirectly in Woodside. The question that I would like the minister to answer, which is not directly relevant to the bill, is: will the minister ensure that all board members have proper training? I imagine that they must have some training in their responsibilities as board members and particularly in conflict-of-interest responsibilities. I know that local government councillors often have training in their duties and obligations when they sit as a council. From my involvement on numerous school boards, I know that training is now provided by the Department of Education on the obligations and duties of school board members. I think it would be imperative now there is this legislation not to find ourselves again in a situation in which the minister has to come back to Parliament to seek to retrospectively validate decisions as a result of bias. It is imperative that the minister ensures that anyone who sits on the EPA undertakes proper training. It is also incredibly important that the EPA is made up of a broad spectrum of people and that reasonable apprehension of bias relates to the retrospective aspect of this bill and it has no effect on the further operation of the EPA, and that it is only in regard to the retrospective decision. I think the minister made that clear but he might want to clarify it again.

This bill has been on a long trip through this house and we are finally there. I would like to commend the member for Gosnells for labouring through a very significant flu—we men would call it a flu; certain females may not call it a flu, but it was quite bad. I would also like to commend the member for Cannington for his forensic examination. Although I do not accept that the minister gave the answers that the opposition was always looking for or that he thoroughly answered all the questions, I think overall he has handled himself well.

MR W.J. JOHNSTON (Cannington) [12.26 pm]: I rise to make my brief contribution to the third reading of the Environmental Protection Amendment (Validation) Bill 2014. The debate on the bill reminds me of the 1982 Academy Award–winning comedy *Tootsie*. An important aspect of that movie was the relationship between Dustin Hoffman's character and the characters played by Jessica Lange and Teri Garr. If members remember the movie, they will know that the character played by Teri Garr was in love with the character played by Dustin Hoffman, but Dustin Hoffman's character was in fact in love with the character played by Jessica Lange. The problem was that Dustin Hoffman's character was not telling the truth to either Jessica Lange or Teri Garr. The question is: if a person does not tell the truth, are they telling a lie? Sometimes a person is not telling a lie because that person is not telling the whole story. That is the Minister for Environment's defence in this legislation: "I have not been lying", the minister says, "I have simply not told everybody the truth." That is fundamentally the problem and the only reason that it took us some time to get this bill through the consideration in detail stage.

The minister provided smart alec answers to two questions in the other chamber about when he was aware of the issues that were raised by the Environmental Protection Authority's decision on 3 September 2009 to grant itself an exemption from the provisions of the legislation in Western Australia, which of course it had no power to do. That directly led to the decision of the Supreme Court. The answer that the minister gave in the other place was that he did not know about these things until 3 September 2014. Then he came into this place, and when it was pointed out to him that he actually submitted that information to the court as part of the process that he went through to defend the application by the Wilderness Society and Mr Hunter that led to the overturning of the decision, he said, "Oh well, the reason I didn't tell the media when I gave them a briefing and the reason I didn't tell the chamber when I was asked the question and the reason I didn't tell them in the other chamber, is that you're asking the wrong question." According to the minister, it did not matter that he had an obligation to tell the truth to the people of Western Australia that he was aware of the issues of the 3 September 2009 decision that led to the crisis that we are now fixing from almost the day he became minister; certainly, he was aware from the moment that the EPA gave him his first briefing on becoming a minister in either April or May—it could not have been any later than that. We certainly know that by 4 June he was fully aware of these issues.

We know also that on 19 August 2013 the minister had a complete understanding of the crisis with the environmental protection process in Western Australia. He told us that on 22 August when he was making a decision about a matter for Rio Tinto, he turned his mind to the impact of the 19 August decision. If we did not have a dilettante as a minister, we would probably not be in the mess we are in today. It is interesting when we look at the questions asked by the member for Gosnells in consideration in detail about the process of exclusion under this bill. The bill will validate things but exclude certain things. Excluded from the validation is not the decision about James Price Point but only specific parts of the decision about James Price Point. The minister

said that nobody had ever gone to the question of the science underlying the decision about the James Price Point matter. That is because, in making his decision, the Chief Justice made it clear that he did not turn his mind to that. In paragraph 223 he said in part —

> Put another way, the length and extent of the non-compliance with ss 11 and 12 of the Act in this case is so great as to obviate the need for detailed analysis of the effect of non-compliance upon the process of assessment.

Indeed at paragraph 224 His Honour also says in part —

> The actions purportedly taken by the EPA prior to 1 March 2012 in relation to the assessment of the Browse LNG Precinct Proposal did not constitute the valid discharge of the duty of assessment imposed upon the EPA by s 40 of the Act

His Honour never turned his mind to whether those matters were properly constituted because he said they were so invalid that he did not need to. The minister then came in here and said that because His Honour never worried about those matters and the science that underpins them, the science is valid, yet that is not the court's conclusion; in fact, that is expressly contrary to His Honour's decision. His Honour decided that those matters were so tainted that he never even had to think about that, yet the minister is going to protect all those tainted decisions with this bill. We have seen totally inadequate behaviour from this dilettante minister and that is why we are debating this. I have been going through the minister's media releases. What was the first date the minister released anything about the decision of 19 August 2013 that has led us to this debate? We know the answer; it was 3 September 2014. There were no media releases at all on this matter until last week. No wonder we need to deal with this legislation as urgent and truncate the processes of Parliament to deal with this legislation. The minister then complained about the opposition filibustering when he has failed to answer any of the simple questions put to him by members on this side of the chamber. As I have said to other ministers, the Minister for Environment should take a leaf out of the former member for Vasse's approach and look at the way he handled consideration in detail. He treated Parliament with respect. I had a lot of criticism of him on other issues but in the way he handled legislation in consideration in detail he was a model for the Liberal Party. On other things he was not but on that one issue he was. If the minister had treated Parliament, the people and the media of Western Australia with honesty and respect from the start of this process, we would not be debating this today. We had plenty of opportunity to deal with these matters last year when they should have been dealt with. A competent minister would have been back here dealing with matters.

As I said, the Victorian Government Solicitor's Office provided advice to the Victorian public service on October 2013 about the implications of this decision, yet the first time the minister was prepared to talk to the people of this state regarding the implications was 3 September 2014. The reason is clear: the incompetence of this minister; he is simply not up to the job. He demonstrated that very clearly during the Swan and Canning Rivers legislation that we dealt with recently and he has proved it again on this issue. A developer interested in investing billions of dollars in this state should go to the government and ask for a competent minister. They will get into trouble if this minister continues to behave the way he does.

I have not mentioned Roe Highway stage 8, because I know we want to pass this legislation so I will not speak for too long. A decision about Roe Highway stage 8 is not like the other decisions of the EPA and the minister. It is not in progress; it is not about the investment of billions of dollars of private proponents. I was not here for the whole debate but I have read all the debate in the *Hansard* blue daily. I am still not clear from the minister what led to a conflict. I do not understand why we are including Roe Highway.

Mr A.P. Jacob interjected.

Mr W.J. JOHNSTON: I have read all the blues.

Mr A.P. Jacob interjected.

Mr W.J. JOHNSTON: That is right; I have had parliamentary duties. I have many duties to the people of this state. Unlike the minister, I apply my shoulder to the wheel on all those duties in this chamber as well as outside. The minister should take a leaf out of my book and do some work. Rather than being a dilettante and coming in here and refusing to answer questions or to do any work and taking 13 months to respond to a crisis in his portfolio—that alone should lead to his termination as a minister—he should do some work. I have read all the discussion in this chamber and it is still not clear from any of his comments what led to a conflict of interest in a project that has no commercial proponent and for which no contracts have been let. In fact, the only contract that has been let for Roe Highway stage 8 is a public relations contract. That is the only thing the government has done. It has spent millions of dollars on public relations for a project that does not exist. We have not fully investigated that because we have not tried to hold up the processes of this house unnecessarily. A number of us who have a particular interest in Roe Highway stage 8 have made sure our position is on the record on that matter but we have not sought to unnecessarily delay the debate.

If the minister wants to know what has caused the problems getting this legislation through Parliament, he need only look in a mirror. There is only one reason and it is his incapacity. In 13 months he was not able to respond to His Honour's decision. The minister made a decision three days after he said he had taken into account the issues but he proceeded to approve the project in any case, suspecting, as he said to us, that the advice to him was invalid. That is outrageous. We heard the other day the Minister for Mines and Petroleum explain why he had ignored the law of the state. If we speed, we get a fine if we are caught, yet the government said, "Well, no court has overturned the decision so it doesn't matter that it has improperly founded decision-making." The minister cannot have it both ways. If all the decisions he outlined are valid, he does not need this legislation. This legislation was brought in because the minister knows they are not valid, and that is the advice he has received.

I remind the minister that he said he would provide not only the specific date he first heard advice about the matters in paragraph 58 on page 21 of His Honour's decision, but also the date he first met with the State Solicitor's Office about the matter and the date he gave instructions to the SSO prior to the 4 June hearing.

MR A.P. JACOB (Ocean Reef — Minister for Environment) [2.38 pm] — in reply: If members will indulge me for a moment, there is something about the member for Cannington's remarks that always brings Margaret Thatcher to mind. The member for Cannington might be appalled to hear me say that, but every time I hear him, for some reason I think about the late Margaret Thatcher. That is because I remember a fantastic quote of hers, which I will paraphrase, "I always cheer up immensely when they attack one personally because it means they have not a single political argument left."

Mr W.J. Johnston interjected.

Mr A.P. JACOB: It is entirely apt in relation to the contributions of the member for Cannington on not only this matter, but also many others.

I will address the outstanding question, which was addressed by the members for Armadale and Cannington. I did not receive those submissions that were filed on my behalf on the way into the case. That is not unusual; in fact, that is relatively standard practice. The very capable minds at the State Solicitor's Office represent the minister. However, I am advised that those submissions did not refer to the minutes in any event. Similarly, the member for Cannington has not once been able to —

Mr W.J. Johnston interjected.

Mr A.P. JACOB: I am advised that they did not. The member for Cannington has not once —

Mr W.J. Johnston interjected.

Mr A.P. JACOB: Margaret Thatcher again! I am advised that they did not. I became aware of that clause upon reading Chief Justice Martin's judgement. I think the actions that I have taken since have been well canvassed in this house and well understood in that we addressed, obviously to the chair of the EPA, actions in and around ensuring the code of conduct was tightened. Further investigations have also been undertaken to this point.

This legislation is an unfortunate necessity as a consequence of failures in the governance of the EPA board. I do not resile from that for a second. In its conduct, the EPA board is a fully independent statutory authority. It is necessary to remove any perception of risk to the environmental approvals of projects that in many cases involve significant investment in this state and indeed employ many thousands of people. It is also important to recognise that the science and research involved in the assessment of these projects, and in the compilation of the assessment reports, is neither compromised nor addressed through this validation bill. Despite the narrative, particularly that the member for Cannington continues to run, it is important to note that all approvals and assessments are valid until such time as the court determines them to be invalid. While acknowledging that the risk to environmental approvals is not absolute, this legislation is a precautionary measure but one that is essential in order to remove doubt around the validity of environmental approvals for projects that are already making a significant contribution to this state's economy. I commend the bill to the house.

Question put and passed.

Bill read a third time and transmitted to the Council.