ENVIRONMENTAL PROTECTION AMENDMENT (VALIDATION) BILL 2014

Consideration in Detail

Resumed from 16 September.

Clause 3: Act amended —

Debate was adjourned after clause 2 had been agreed to.

Mr C.J. TALLENTIRE: I have a question about terminology. Clause 3 states that this legislation amends the Environmental Protection Act. Would it not be more accurate to state that it inserts into the Environmental Protection Act proposed new sections. I do not really see it amending the act; it is inserting proposed new part X.

Mr A.P. JACOB: The word "amend" is the language that parliamentary counsel in parliamentary drafting has been using for a very long time and that is exactly what this Environmental Protection Amendment (Validation) Bill is doing by inserting those proposed sections into the end of the act. It is, in effect, amending the act as it currently stands.

Mr C.J. TALLENTIRE: Last night the minister mentioned the need for clarity and to use up-to-date language. I would have thought it was simply a matter of inserting in the act slabs of parliamentary counsel's drafting. It is not changing other parts of the act. The minister will acknowledge that that would be a different matter. If we were changing other sections and moving consequential amendments and what have you to other parts of the act, there would be good justification for the term "amend". In this case, there is no change to any other provisions; it is simply an insertion, so why not go for the more precise language?

Mr A.P. JACOB: This bill amends the act, and this clause outlines that quite clearly. That is the language and the common application and has been the standard application used by parliamentary counsel for many years now.

Clause put and passed.

Clause 4: Part X inserted —

Mr C.J. TALLENTIRE: I acknowledge that this is a rather large clause and we will do our best to approach it in a logical manner.

[Quorum formed.]

Mr C.J. TALLENTIRE: I just had a brief interchange with the minister about how we will treat this clause, which extends over at least four pages. It is the real meat in this amendment bill and it all relates to conflict of interest. There is a suggestion that we could perhaps try to break up clause 4. I am reluctant to do that because obviously parliamentary counsel has decided not to do that. Parliamentary counsel has seen fit to bundle the whole new part X of the act into clause 4. Taking the lead from parliamentary counsel, that is perhaps the way we should proceed. I understand that will give us scope to then move back and forth as we look at the various elements of clause 4, switching from proposed sections 134, 135, 136 and 137. By treating clause 4 as a whole, we will be able to ensure that we do not move on too quickly when further reference might need to be made to a previously discussed part of the clause. I am very happy to take the lead from parliamentary counsel on this and treat the clause as a whole. In so doing that will ensure we can move back and forth as we see fit when various elements arise.

The SPEAKER: Member for Gosnells, you can move back and forth but if you move an amendment that starts on page 5, line 6, you cannot go backwards and move an amendment that starts on page 3, but you can move an amendment after page 5, line 6. You can talk on the whole clause at any time.

Mr C.J. TALLENTIRE: I think that is clear; thank you, Mr Speaker. At this stage we will leave moving the amendments for the time being because we want to first of all tease out some other issues. I am not in any way suggesting that we will not move those amendments. We absolutely will. This whole issue of conflict of interest is something we need to tease out further. Last night, the minister committed to telling me today the nature of the conflict of interest that Dr Chris Whitaker had on the Roe 8 project. I am waiting for the minister to confirm that. He said, "Wait until we get to clause 4." We have done that; here is the opportunity. Given the previous ministerial statement by the minister about new appointments or the reappointment of certain people to the Environmental Protection Authority, further discussion around the composition of that board is particularly germane to the rest of our discussions. I look forward to hearing from the minister on that very single point. Of course, it relates directly to the amendment I am foreshadowing concerning Roe 8.

Mr A.P. JACOB: That was, essentially, the question of the conflict of interest around the Roe 8 assessment that was declared in that instance. I indicated to the house that I would be happy to disclose that, and I will. I make the point first that the declaration of the interest, indeed, holding the interest, is not the issue at hand here. The interest was declared but what has brought us to this point was a ruling of the chair of the EPA at the time that

post that interest being declared, participation in discussion—indeed, in this instance participation in decisions—could have existed. It involves that procedural conduct of the EPA. The chair's ruling that that participation in discussion and/or decisions could take place is the material issue that brings this bill before us, not the interests of the individual concerned. In this case, it is an individual who is no longer part of that board. In the instance of the Roe 8 proposal, Dr Whitaker was engaged with or employed by James Point Pty Ltd at that time, so he declared an interest in and around that JPPL proposal. That was the extent of his interest.

Mr C.J. TALLENTIRE: Thank you for that explanation, minister. It has been a long time coming; I appreciate it nevertheless. It relates to the issue of the minister's claim last night that, if anything, he feels he has erred on the side of appointing people of an academic rather than an industry background to the EPA. I felt it was important to put on the record to alert the minister, if he is not aware of it, that often people who hold positions at universities, especially in the bioscience, geophysical science and environmental science areas, depend on the issue of contracts and research projects that are related to resources projects. I want to clarify for the minister that often someone may be able to say they are a professor at a university but that does not mean that they are not directly dependent on a resources company or an environmental consultancy for a large portion of their income. Very often, their research is directed by the nature of all sorts of scientific research commissioned by the resources sector and other sectors. Please do not get the idea that just because someone happens to have a university email account and perhaps an office at a university, they are not part of this problem of being too strongly connected to industry and, therefore, vulnerable to the sorts of conflicts of interest that have led to this amendment bill coming before the Parliament. It is very important that the minister understand that point.

To get to a particular part of our questioning—we will try to proceed line by line through the clause—the decision was made on 19 August 2013. Obviously, the significance of that date is that it precedes a number of the projects that have since been deemed to be vulnerable to the problem of conflict of interest. Could the minister please clarify how many projects have received an Environmental Protection Authority report and recommendations after the issue of the judgement, but prior to the minister—and, I imagine, cabinet—making the decision that this bill should come to the Parliament?

Mr A.P. JACOB: I will get the information on how many EPA reports have come out post-19 August 2013, and quickly address a couple of the member's earlier comments. This issue was raised during the second reading debate, if memory serves me correctly, by the member for Cannington, in and around Dr Whitaker having an interest. Obviously, Dr Whitaker was no longer on the board when the final recommendation came out for the Roe 8 proposal. That participation by Dr Whitaker was within the decision to approve the scoping of the environmental review only, so it was the very first of the discussions or decisions that the EPA would undertake. Following that, there was the approval of the key environmental factors, in which there was no conflicted involvement; consideration of issues for assessment—again, no conflicted involvement; consideration of the draft assessment report; and approval of the assessment report, and all of those processes then followed on. It was only the very first decision, which was the approval of the scoping of the environmental review.

I said in the closing remarks of my reply to the second reading debate, I have said consistently through this debate, and I say again now, that I consider the question of who appointed whom to be immaterial to the matter before us. I continue to respond on the matter only because members opposite continue to raise it. I do not see it as material, but if members opposite want to keep going down that line, it needs to be pointed out that the vast majority of the board—in fact, virtually all of this board—are members appointed by Labor governments. It is not a question of who appointed whom. Indeed, anybody can have a conflict of interest, pecuniary or non-pecuniary; the question and the entire point here is how that conflict is dealt with. In these matters, some EPA members have not dealt with conflicts appropriately. However, everyone agrees that the potential consequences are so serious as to justify this validating legislation. It is also important to state on that matter that other members of this board have dealt appropriately with conflicts. In fact, a board member who has been continually smeared, Ms Elizabeth Carr, is an appointee who has continually dealt with conflicts appropriately. This targeting of individual members of the board and aspersions being cast about who appointed whom are immaterial to the point before us. If we are going to keep debating this, I am happy to, but obviously it will reflect on members opposite. It is immaterial and it is not particularly the point. I will sit down and collect that information for the member's detailed question.

Mr C.J. TALLENTIRE: I can imagine the minister feels as though we are continually going over the ground of who appointed whom, but it is the minister who is missing the point. He is missing the point that it does not actually matter who the individuals are; it is about the composition of the EPA. If there are a couple of members from the community sector, they can act as a counterbalance to members who are industry through and through. The minister is failing to ensure that he has community sector people on the EPA. That is the security in the system; appointing those people is the safety valve so that we have the composition right. The minister might attack us and say, "Oh, yes, but Chris Whitaker was one of your appointments", but the fact is that when we put Chris Whitaker on the board, there were people from the community conservation sector there as well, so we had

that balance. It was not all industry or all community; we had the balance, and that is where the integrity comes in. The minister is continually missing that point, and it is disappointing.

He has had an opportunity today to announce new appointments to the EPA, and he has announced the reappointment of Elizabeth Carr and the new appointment of Dr Tom Hatton. I have a feeling that Dr Hatton was on the EPA many years ago; perhaps in the 1990s. No? He is certainly a man of great repute; I can well recall his work on dryland salinity and the outstanding work he did in bringing to the attention of the Western Australian community the impacts of rising groundwater tables moving up through the soil profile and lifting salt to the surface. He came up with various estimates on the extent to which the Western Australian wheatbelt could turn saline, and produced some very startling and dramatic research. To a very large extent his projections have been consistent with what is actually occurring.

The minister has had the opportunity to make some new appointments, but he has not appointed a community person to the board. The minister has failed; he does not get the composition issue, which is at the core of the problem. If the minister wants an EPA that can maintain quorum, he should not appoint someone such as Elizabeth Carr who, the very first moment she was appointed, had to declare that she could not be involved in the assessment of the biggest project that the EPA was looking at at the time. If ever there were an example of a poor appointment, that is it. I do not want to pry into people's personal arrangements, but I think this is germane to our discussion: does Elizabeth Carr now reside in Western Australia? The minister needs to answer that. I also raised the point about the scheduling of EPA meetings. Can the minister please tell me whether it is true that the scheduling of meetings switched from being fortnightly to monthly around the time that Elizabeth Carr was appointed to the EPA?

Mr A.P. JACOB: In the first instance, we have collected the information and I will address the question that was put to me two questions ago: how many assessment reports have there been post the decision date of 19 August? The answer is 40 assessment reports.

We ended up again in a discussion around the composition of members of the board. I am glad that the member welcomes the appointment of Dr Tom Hatton; I think his is a particularly good appointment for the board. Indeed, I noted when looking at Dr Hatton's CV and past experience that when the former Rudd–Gillard federal Labor government cast its eye around Australia to find the best minds it could to chair its state of the environment report process, Dr Hatton from Western Australia was the man they chose as chair. He has done great work on dryland salinity and has worked with CSIRO for around 25 years. I think he is exactly the sort of person we would want on the Environmental Protection Authority board. It is a decision that I am very happy about and, indeed, a little proud to be able to make, and I thank him for putting his name forward for that particular role.

There is perhaps a point of difference between members opposite and members on this side, and I do not for a second apologise for the view that I take in my reading of the Environmental Protection Act and my reading of why we have an Environmental Protection Authority. What is always lost in this debate is that it is the Minister for Environment who makes the final decision; the EPA makes recommendations only. The EPA, in arriving at its recommendations, considers only the environmental factors. If we think of the three prisms through which decisions can be viewed—environmental, social and economic—the EPA exists to consider only the environmental factors, and I want the highest level of advice that I can get in that space. I point to two of the recent appointments to that board, being Mr Glen McLeod, one of the most well regarded environmental lawyers in this country, and Dr Tom Hatton, one of the most well regarded environmental scientists in this country. I want the highest level of advice that I can get as Minister for Environment.

The consideration of the social side rests with the minister. Let us not forget that it is the minister who is accountable to the community; the minister is the one who stands for election. I have no intention of turning the EPA into a focus group and I am happy to disagree with the member for Gosnells on this point. I am also happy to keep debating it, if that is how he wants to spend his time, but, as I said, the question of who appointed whom is not really material to this legislation.

Ms R. Saffioti: That is a bit insulting!

Mr A.P. JACOB: No. I am saying that the social element or the social consideration is not what the board is set up to consider. If members want to turn the board into that, in my view that would be what it would turn into. The board exists to give the highest level of environmental advice to the Minister for Environment, with that legal backing through the Environmental Protection Act and, obviously, that scientific background. The appointments that I will be looking at will be based on that advice if I am taking names forward under the Environmental Protection Act.

Mr C.J. TALLENTIRE: I acknowledge the remarks from my colleagues on this side. The minister is now making some ludicrous comments regarding the quality of scientific knowledge that resides within people from the community conservation sector, suggesting that they would provide only some sort of social input. I do not

think that is the case at all. When I hear the media, for example, approach people from the Conservation Council of Western Australia, the Wilderness Society, the World Wildlife Fund or any of those organisations, they want to hear good scientific information on whatever might be the issue of the day. The minister is suggesting that those organisations can bring to the table only knowledge that is somehow social. The minister is completely wrong on that, and I do not think I need to dwell on it any further, as it is so obviously the case.

The minister still has not responded to my questions about Elizabeth Carr, so I will repeat them: Is she now resident in Western Australia? When did she move back to Western Australia? What was the situation with the scheduling of meetings prior to her original appointment? Did the EPA have a roster of fortnightly meetings? After her appointment, was there a switch to monthly meetings? Can the minister please advise me on those questions?

Mr A.P. JACOB: I will address again the aspects that I look at when I see a nomination come through from the Environmental Protection Authority board. The aspect that is not considered is a person's community involvement. That does not mean that the person does not have it. Many individuals might have extensive community involvement. In fact, I would encourage it because it would add value to their role. But that is not a relevant consideration for appointment as a member of the board. I simply consider their knowledge of and interests in matters of the environment and their experience in that space. My appointments to the board have clearly shown that those are the parameters looked at. The member for Gosnells seems to be suggesting that I should be taking social aspects into consideration. I quite strongly disagree with him, and I do not believe that the act seeks to set that up.

I will address the matter of Ms Elizabeth Carr. I have been advised that she has a place of residence within Western Australia; however, she splits her time between New South Wales and Western Australia. I understand that the decision on the frequency of board meetings was taken among the members of the EPA for the efficient operation of the board.

Mr C.J. TALLENTIRE: I thank the minister for confirming that there was a change in the frequency of EPA meetings. Can the minister please give me the date on which that change occurred?

Mr A.P. Jacob: I will have to find that out for you.

Mr C.J. TALLENTIRE: I foreshadowed this question last night.

Mr A.P. Jacob: No, you didn't.

Mr C.J. TALLENTIRE: It was one of the reasons that we said we could not rush the bill through Parliament last night. We need an extended discussion on this matter so that we can get to the facts. This is a key issue about the validity of the minister's appointment. The minister says that he is appointing people with all sorts of scientific knowledge, yet I do not believe that this person we are talking about, Elizabeth Carr, has scientific environmental knowledge. What is her experience as an environmental scientist? Does she have some other scientific background? What was it that enabled the minister to feel so confident about her initial appointment?

Mr A.P. JACOB: These matters are not matters for the bill before us. I do not recall the member asking that question yesterday about the change to the date of meetings.

Mr C.J. Tallentire: Yes, I did.

Mr A.P. JACOB: A range of questions were thrown around. I will endeavour to find that information, but that information is completely irrelevant to the bill before us. The member continues to pursue an individual on the EPA who has not been involved in any of these conflict-of-interest matters. How is it therefore material to the bill before us? The member for Gosnells has a personal aversion to this person. I have no idea why and, frankly, I do not care. I do not know whether it is because she has been a successful woman in her own right or another reason, but the member continues to pursue an individual —

Dr A.D. Buti: That is disgraceful!

The SPEAKER: Member for Armadale!

Mr A.P. JACOB: The member continues to pursue an individual who has not been found to be conflicted in a single one of these matters, so it is entirely irrelevant.

Point of Order

Dr A.D. BUTI: My point of order is on a member making a negative imputation or a reflection on another member. To stand up and say that he may have something against someone because she is a successful woman is derogatory to any member. If that is not derogatory, what is?

The SPEAKER: There is no point of order. Carry on, please.

Debate Resumed

Mr A.P. JACOB: Irrespective, these matters raised by the member for Gosnells are completely immaterial to the bill before us. It is entirely up to the member for Gosnells if he wants to use his time pursuing these side issues. I have given a response and I can keep on giving a response, but these side issues do not deal with the issues in clause 4 of the bill before us.

Mr C.J. TALLENTIRE: We are debating an issue of conflict of interest, and that because of a conflict of interest in this person, Elizabeth Carr, she was unable to participate in discussions about the Browse project, which led to the EPA having one fewer person to deliberate on the proposal before it. That is why it was such a bad appointment. That is another reason perhaps—certainly a reason—why it was such a poor appointment. The minister has undertaken to get me information on the date the minister switched from the fortnightly meeting —

Mr A.P. Jacob: Not me; the board.

Mr C.J. TALLENTIRE: Yes. The minister has undertaken to get me information on when the board switched from fortnightly to monthly meetings.

I turn now to other matters relating to the conflict-of-interest issue and the timing of the chairman of the EPA receiving advice on the handling of conflict-of-interest matters. We again foreshadowed with the minister that there were problems about the way in which the chairman of the EPA was provided with information. He was desperate for information on how to treat this problem that arose from section 12 of the Environmental Protection Act, yet the minister is being a little guarded when telling us who gave him information. From information that we received, we see that he quite clearly wrote down that he was able to get information from the Public Sector Commission. However, can the minister advise us on the date that he made that initial contact with the Public Sector Commission and the time at which he contacted the Public Sector Commissioner? We know that there is a log of conversations between the chairman and the Public Sector Commissioner. We are therefore looking for and want to hear about some time lines from the minister.

Mr A.P. JACOB: The first instance of contact that I can find of the Environmental Protection Authority seeking advice from the then Department of the Premier and Cabinet is in late 2007 or early 2008. The Department of the Premier and Cabinet then sought advice from the Corruption and Crime Commission, which advised the EPA that although the Corruption and Crime Commission had developed materials on identifying and managing conflicts of interest, it was unable to comment on specific conflicts of interest because such a comment might be regarded as an endorsement of a position in a matter on which the commission had incomplete knowledge.

Going to post the previous government's time and into this government's time—members opposite referred to it—the first minuted example we have of a change in the processes of the EPA being ultra vires section 12 of the Environmental Protection Act occurred at the meeting of 2 October 2008, which was 10 days after this government had come into office. However, the Environmental Protection Authority has been shown to have sought advice a further 18 months after this practice had commenced. In March 2010 it wrote to the then Office of the Public Sector Standards Commissioner seeking advice. It received general advice at that time advising that its code of conduct must comply, and be consistent, with the legislation that it operates under, being the Environmental Protection Act.

Mr M. McGOWAN: The minister's second reading speech refers to the internal governance practices of the Environmental Protection Authority from late 2008 to 2012. That is the first time I have heard those dates. Obviously, as the minister just said, in October 2008 the internal practices in the EPA were changed, contrary to the 2003 act. As I said during the second reading debate, the minister indicated in his press release issued on 10 September 2014 that it was "an error of judgement made by the EPA chairman and board members at the time". It is very important that we get to the bottom of how that happened because that is the crux of this whole issue. How did this happen? How did the EPA make this decision? On whose advice did it make this decision? What knowledge was there of this decision amongst other bodies or people, apart from the chair of the EPA? What advice was sought by the EPA in making this decision? It is very coincidental that 10 days after a change of government this change suddenly happens. Anyone looking at this would have to say, "Wow, that's a coincidence. There's a change of government, and a change in the internal governance practices of the EPA suddenly happens 10 days afterwards." I suppose the question is: is it more than coincidental? The minister's second reading speech states that the ministers at the time were not advised, but I want to know how broadly there was knowledge of this change and what inquiries the minister made to determine what happened to create this problem.

Mr A.P. JACOB: "No" is the simple answer to the majority of that question. The government of the day was not advised. This was a decision taken by the chair, ultimately, of the EPA and amongst board members of the EPA at that time. Members can continue to ask the same question again and again, but I have been incredibly forthcoming in this matter. The chair has also been very quick to say that this was a decision of the chair. This is how the act sets up the board of the EPA—it is an independent board. It is not subject to the direction of the minister or the government, nor would the government seek to direct it in these matters.

As to how the decision to go down this path was arrived at, it was not particularly a question directed to me because, ultimately, it was a decision of the chair. However, if I were to try to paraphrase my understanding essentially of the chair's view at that time, it was that the chair held the view that section 13 of the Environmental Protection Act gave a certain degree of latitude to the chair in deciding on matters of conflict of interest. The chair said that subsequent to the matter. Post the James Price Point decision, or the Browse decision, the court has found that that was not the case and that the latitude that the chair thought that section 13 of the act afforded him was not the latitude that the act actually afforded him. The chair has now accepted that. I have obviously expressed my disappointment that this has happened; hence why we have this bill before us.

Mr M. McGOWAN: The minister said that the government did not do it; the chair made the decision. When the minister says "the government", he is saying the minister did not do it. My question is again: What advice did the chair of the EPA take from anyone else who was not a minister? What advice did he take within government in making this decision? What knowledge was there in ministerial offices, as opposed to knowledge of ministers, in making this decision? What inquiries has the minister made to get to the bottom of how this happened? Has the minister spoken only to the chair of the EPA? Has he spoken more broadly? Has he asked those questions? They are relevant questions. The minister's approach to this is to say that this government did not know. The Minister for Environment says that a former minister said the government did not know. I ask: How broadly was advice taken? Who else inside government knew? What inquiries have been made inside government—not of ministers—to get to the bottom of that?

Mr A.P. JACOB: This question has been put to me again and again. It was put to me in question time last week and it was put to me yesterday during debate on the second reading. Every time my answer remains the same—it was not known. It was not known within ministerial offices —

Mr P. Papalia interjected.

Mr A.P. JACOB: There were two parts to the question. The member can get up and ask a question if he wants, but let me answer it in two parts. I cannot make this any more clear. Members opposite can pursue their conspiracy theories as much as they want —

Mr M. McGowan: Just make it very clear. I want to hear what the explanation is because you did not actually answer it.

Mr A.P. JACOB: Yes, I did.

Mr M. McGowan: You just said it was not known in ministerial offices.

Mr A.P. JACOB: No.

Mr M. McGowan: What about more broadly inside government?

Mr A.P. JACOB: No. This was a decision of the Environmental Protection Authority.

Mr M. McGowan: So no-one else knew.

The SPEAKER: Hansard cannot follow this. Can you just answer the question? The Leader of the Opposition can ask another question.

Mr A.P. JACOB: The very first question on this matter from the Leader of the Opposition in question time was whose decision was it to undertake this matter, and my answer was the Environmental Protection Authority. It was a very simple, concise answer. That remains my answer.

Mr M. McGowan: On any advice?

Mr A.P. JACOB: No; not on any advice. That remains the reality of this situation. Attempts to muddy the water by continuing to ask the same question are not really achieving anything in particular.

I guess the salient point is: what have I done, as Minister for Environment, since becoming aware of this issue? A range of work has been done. Obviously, the decision was handed down on 19 August 2013. As minister, I took two immediate actions. The first of those was that I wrote to the Environmental Protection Authority chair and asked for a complete overhaul of its code of conduct and procedure. That has happened. The second action I took was to write to the State Solicitor's Office, requesting a review of any other at-risk decisions.

Mr W.J. Johnston interjected.

Mr A.P. JACOB: I contacted the State Solicitor's Office and asked it to review any other at-risk decisions. We have received a range of interim legal advice. We have been going through that. We have also queried other former members of the board—Mr Whitaker and Mr Glennon—who have assisted us in those inquiries. We have asked them as well as others who would have been involved at that time. A significant body of work has gone into this. In considering the advice, government has reached the conclusion that the safest way forward to protect the investment in the significant projects is to introduce this validation bill. They are significant projects in not

only the sheer investment involved in them, but also the thousands and thousands of Western Australians who have jobs right now on these projects. In many cases these projects are live and in production.

Mr W.J. JOHNSTON: I was very interested in those answers. I cannot see how either of the answers the minister just gave to the Leader of the Opposition can possibly be true. Is the minister aware that the matter that led to this bill, The Wilderness Society of WA (Inc) v Minister for Environment, was heard in the Supreme Court on 4 June 2013? Is the minister aware that he was a respondent to that case? Is he aware that the Western Australian State Solicitor's Office represented the minister in that case? Is the minister aware that the State Solicitor's Office also represented the Environmental Protection Authority? Is the minister aware that his solicitor and barrister placed before the court documents that included the minutes of the meeting of the EPA of 3 September 2009? How is it that the minister's solicitor placed before the court the minutes of 3 September 2009 but the minister says that he was not aware of those minutes? That is an impossibility. The minister's solicitors cannot place before a court any matter that he has not instructed them to do. It is simply not possible for the minister to have placed matters before the court that he was unaware of. If the minister says, "That was placed before the court by the Environmental Protection Authority", that is not true. His Honour's judgement states that those documents were established by admissions made by the first and second respondents. Those documents were submitted by the minister. How can the minister submit documents to the court but not be aware of those documents? That is a physical impossibility. The minister was aware on 4 June 2013—it is a fact—of the decision of the EPA. In fact, the minister was aware of every submission made to the court. Remember, minister—the minister is the one who defended this action in the court. The minister went to court and argued that the allegation of an apprehended conflict of interest was wrong. That was the minister's submission to the court. The minister is the one who did that. Now the minister says, "Oh, well, I was not aware at the time, but I am aware now, and now I am fixing it." The minister submitted to the court that the process that the EPA undertook in respect of conflicts of interest on 3 September 2009 was valid. That was the minister's submission to the court.

It is impossible for the minister not to be aware of his own submission. The minister cannot go to court and make a submission while, at the same time, not be aware of that submission. Does the minister understand that it is impossible for him to tell the court something that he does not know? Is that something that the minister understands? Does the minister understand that he cannot speak unless he knows what he is speaking about? I will put it in a different way. Does the minister understand that it is impossible for him to say something in court that he does not know about? That is because the minister is the one who is saying it. Is the minister aware of that? The minister's silence demonstrates the problem that he has. That is why the minister is not interjecting to answer my questions. The reason that the minister is ashamed here is that he knows that that point is 100 per cent incontrovertible. It is impossible for the minister to go to court, submit the minutes of the meeting of the EPA of 3 September 2009, and not know about that. I remind the minister that those minutes state in part —

> Request the EPA Chairman and the EPA Executive Officer to discuss the management of EPA Members' potential and direct conflicts of interest at the EPA meetings with the Office of Public Sector Management, and advise the EPA of the outcome.

The minister knew about that, if not before that time, on 4 June 2013 when he told that to the court. That is what happened, minister. Why can the minister not just admit the truth? Why can the minister not tell the truth in this chamber? Why can the minister not be honest and act with integrity and tell us why he did not know about it on 4 September 2014?

Mr A.P. JACOB: I do not know whether the member for Cannington is being deliberately mischievous, or does not know how these matters work. But the minister is represented by his legal team, which acts on his behalf and takes instructions from relevant officers, and they are the people who agree on facts and present arguments. That is how it is conducted.

Mr W.J. JOHNSTON: The minister cannot be that stupid. Nobody can get to be a minister and be paid $273 000 a year and be that stupid. Minister, solicitors are permitted to act for a respondent only when they are instructed to do so. A solicitor cannot present an argument in court without an instruction. The minister was jointly represented. He was joined at the knee with the EPA. As the minister said himself, the way the system works is that the solicitors present matters on his behalf. That is exactly right. That is why I know the minister knew about it. The only reason that the minister could not have known about it is that he did not do any work in the lead-up to 4 June 2013. The minister is drawing a quarter of a million dollars, and he is not doing any work! Minister, what a deep, deep embarrassment! Minister, how about answering these questions? When the minister was appointed Minister for Environment, what briefing did he receive from the EPA in respect of the James Price Point matters? Was the minister advised about potential legal action? What was the date on which the minister met with the State Solicitor to provide instructions for their submissions to the court case; and what was the last date on which the minister met with the State Solicitor prior to the hearing on 4 June to provide

instructions? I make it clear: I am not asking for the advice that was given, and I am not asking for the instructions that were given. I will go back and outline it again. Firstly, what advice was the minister given from the EPA about legal matters and potential legal matters at the time he was appointed Minister for Environment? Secondly, when did the minister give instructions to the State Solicitor's Office regarding the matters prior to the submission of documents in that regard; and what was the date on which he met with the State Solicitor to provide instructions prior to the hearing on 4 June 2013?

Mr A.P. JACOB: The reality is that the people who are sitting around this table are very well qualified and indeed well regarded in their ability to run these matters in the courts. The State Solicitor's Office is given broad authority as to how a case is to be run, and obviously I have confidence in its ability to do so. There is no expectation on ministers to automatically become experts in every matter within not only their own portfolio, but also the legal system more generally. When I became the minister, the case had by no means been decided. The salient point to the bill before us is the actions that I took immediately after the decision, because, remember, an approval is held to be valid until such time as it is found to be invalid. The question that is relevant to the matter before us is: what action was taken immediately following that decision on the invalidity? I have already been through a quick time line of some of the actions that have been taken, and a significant body of work has gone into that. However, of course, this was an ongoing matter when I came into the role, and, indeed, in my first discussions with the EPA, it was the first matter that I asked questions on at that time. But the decision that was to follow on 19 August was not known at that time. So it was a matter that was up for challenge; however the decision had not yet been made on it.

Dr A.D. BUTI: Firstly, was the minister given the chance to see the submissions that were filed in this case before they were filed by the State Solicitor? Secondly, were any affidavits with the minister's name on them filed in this case? In other words, did the minister see the submissions that were filed on his behalf; and were any affidavits with the minister's name on them filed in this case?

Mr A.P. JACOB: This matter was more than 18 months ago, so I am just going to check so that I can be certain when I tell the member whether those documents were provided to my office at that time; I am happy to get back to the member on that one. But I am advised that my name was not attached to any affidavits, and my recollection would be the same in that instance.

While I am on my feet—I will endeavour to get back to questions if I do not have an immediate answer—the first monthly meeting, I believe, member for Gosnells, was held on 20 January 2013.

Mr W.J. JOHNSTON: The minister said that when he came to office, he was advised by the Environmental Protection Authority. As he says, the matter was not decided, so he could not know the decision in the matter, but he was advised of the matter when he became minister. That is what the minister said, is it not?

Mr A.P. Jacob: Yes.

Mr W.J. JOHNSTON: Yes, okay. In that advice was the minister told by the EPA about the fundamental issue in dispute raised by the plaintiffs in this matter—that is, the issue of apprehended conflict of interest? Was that part of the advice that he received in that briefing on this matter from the EPA in what was probably April 2013?

Mr A.P. JACOB: My advice is that the legal advice is privileged, but I will just go back to the grounds. Again, if the member goes back to the ruling and the case in particular, there were actually 12 grounds on which this matter was challenged, and they were relatively broad, general grounds. What is really relevant to the matter before us is that those grounds were ultimately upheld and our action to address those grounds. We have accepted the ruling on those grounds, and later in this clause we exclude the Browse decision. Regarding the grounds that were upheld—really three grounds, but ultimately going back to actions under sections 11 and 12 of the act—we accept that ruling on those grounds, and with those grounds having been successfully challenged, we have then taken action accordingly.

Mr W.J. JOHNSTON: It is very nice of the minister to decide what is important and what is not, but we are explaining to him that we know he is not telling the truth and we are trying to work out whether he is lying; that is what we are trying to get at. We know the minister has not told the truth, but now we have to work out whether when he said those things in this chamber, he knew he was not telling the truth. Is the minister saying that when he got that advice in April 2013—April or May, the minister has not said, but about then—he was advised of all 12 grounds? I am not asking about legal advice. I have already asked the minister about when he gave instructions and he has not answered, but that is a separate issue. I am not asking for legal advice, I am asking for the briefing from the EPA. If the minister got the briefing from the EPA on the 12 grounds related to this matter, guess what? He knew about the question of the meeting of September 2009 because that is what the EPA was arguing gave it the out from section 12. Its argument was about those matters that in the end His Honour found were actually most important. The EPA's advice to the minister must have been that, despite the act, it had made that decision and that is why it was safe. That is not legal advice; that is advice from the EPA,

and it must have given the minister that advice; otherwise, the minister would have sought better information from the EPA as its argument would have been clearly wrong, as it was wrong in the end at law. I make the point again, minister, that I have read the decision. I wonder whether the minister has read His Honour's decision.

Mr A.P. Jacob: Several times.

Mr W.J. JOHNSTON: Therefore, the minister understands that His Honour repeated the minister's arguments in his decision and then dismissed them on the grounds that he found in favour of the plaintiff. Is the minister aware of that?

Mr A.P. Jacob: I don't know what you're talking about.

Mr W.J. JOHNSTON: Does the minister understand that in his decision, His Honour, as in all judgements, outlined the arguments on both sides, and then explained why he preferred one set of arguments against another and, therefore, when His Honour ruled against the minister on the grounds that he did, he summarised the minister's arguments before he made that comment? The minister would understand that as he has read the decision so many times. Does the minister understand that or not?

Mr A.P. Jacob: Carry on; I will respond when you've finished.

Mr W.J. JOHNSTON: I want to know: do you understand that is what His Honour did?

Mr A.P. Jacob: Is that your question? If so, I will respond.

Mr W.J. JOHNSTON: That is part of the question, and if the minister answers that bit, I will get onto the next bit.

Mr A.P. Jacob: Stop being patronising. Ask a question; you're wasting time.

Mr W.J. JOHNSTON: Minister —

The ACTING SPEAKER (Mr P. Abetz): Member for Cannington, you are entitled to ask a question, but then you need to resume your seat so that the minister can answer if he wishes to; however, he is not under any obligation to answer a question.

Mr A.P. JACOB: I am well aware of that and I have read Chief Justice Martin's ruling a number of times coming into this place. I will just address the issue at hand, because the member for Cannington will chase it down all sorts of rabbit holes and, I suspect, maybe even some conspiracy theories. On the briefings that the incoming minister receives from the office of the EPA, this is only my recollection, but irrespective of that, the chairman of the EPA's understanding until 19 August 2013—this is what the chairman of the EPA said and it was his decision—was that section 13 of the act gave him the latitude to decide on matters of conflicts of interest and levels of whether it would allow somebody to participate in discussions. That was a ruling of the chairman and his understanding of section 13 of the act, and it was not found to be an invalid understanding until 19 August 2013.

Mr W.J. JOHNSTON: That is an excellent answer from the minister. I am very pleased he gave it, because he says now for the first time that on coming to office, he was advised by the chairman of the EPA about issues related to conflicts of interest. This is the first time he has admitted the truth and that is the problem. The minister knew about these issues, and that is why he went to court and argued in favour of the chairman's position. The minister knew on coming to office that this was a live issue. According to the minister's comments to the Parliament right now, the chairman personally told him that when he came into office as a minister. The minister did not find out about those matters in September 2014; it was April 2013. Yes, the minister was not aware that that advice was wrong until His Honour made his decision, but that is separate to the minister's knowledge of the issue. I do not understand why the minister has been hiding the truth up until now. Why has the minister not been prepared to tell the truth to the people of Western Australia before right now? Somehow or other the fact is that the minister understands the judge's decision and that he has outlined why the minister was wrong in his submission to the court, and I do not understand why the minister considers that patronising. I do not understand how the minister can go to court and tell it of matters that he knows about, but then answer a question in the upper house by saying that he did not know about them until 3 September 2014. I am not allowed to call a member of Parliament a liar in this chamber, and I will not because I am not allowed to, but clearly what the minister told the upper house of Parliament last week was not right; it was wrong. The minister now has some obligations to the Parliament, the first of those being to correct the record, and I expect him to do that. If the minister understands that his arguments were summarised in the judgement and rejected, he must know that they were his arguments, which means that he knows that they were his knowledge at the time, and the only way they would get presented to the court is because the minister asked for them to be presented. I ask again: when was the first time the minister had a meeting with the State Solicitor's Office regarding these matters after he became minister; and on what date did the minister give instructions for the conduct of the case for 4 June 2013? I am not asking what advice the SSO gave the minister, because that would be privileged; and

I am not asking for the minister's instructions to the SSO, because, again, I accept that that information would be privileged. I am simply asking for the dates of the meetings. There is nothing privileged about those dates and I would appreciate it if the minister could provide those two very simple answers.

Mr A.P. JACOB: I am getting a bit tired of the member for Cannington continuing to cast aspersions suggesting that I have been anything other than completely honest in this matter. In fact, the member for Cannington is being deliberately misrepresentative on the answer to the question in the other place. I know what that answer was and I know what the question was, and the member continues to reword it to suit his narrative, which is not the case.

Mr W.J. Johnston interjected.

Mr A.P. JACOB: That is exactly what the member for Cannington is doing and, frankly, I would much rather debate clause 4 of the bill.

Mr W.J. JOHNSTON: Is the minister saying that he did not have the whole of the minutes—he had an extract of the minutes of 3 September 2009—but he knew about the decision of the conflict-of-interest matter? Okay, if the minister wants to play that game—the splitting-hairs approach instead of being open and honest and complying with the standing orders—what was the first date on which he was aware of the decision of 3 September 2009, as repeated by His Honour at paragraph 58 on page 21? What was the first date that the minister was aware of that resolution?

Mr A.P. JACOB: I am happy to provide the member with the advice of when I was first made aware of that particular document, but I am going to have to get the exact date for him and I do not have that information to hand right now.

Mr W.J. JOHNSTON: Is the minister going to adjourn the Environmental Protection Amendment (Validation) Bill 2014 until we have that information?

Mr A.P. Jacob: No; I will provide the information.

Mr W.J. JOHNSTON: When will the information be provided to us?

Mr A.P. Jacob: It is immaterial to the bill.

Mr W.J. JOHNSTON: Of course it is material! Does the minister not get this?

Mr A.P. Jacob: I said I will provide the information.

Mr W.J. JOHNSTON: With respect, I am on my feet; I will sit if the minister wants to speak and answer a question, but if he is just going to obfuscate again, what is the point?

The minister took 13 months to do anything about this problem. The Victorian Government Solicitor gave advice in October 2013, but the minister waited until September 2014 to take action. Then the minister tells us that he is acting as quickly as he can. If the minister was advised of the matters regarding the request for the Environmental Protection Authority chairman and the EPA executive officer to discuss these issues with the office of public sector management, we need to further explore that issue. We all know to be true that the minister was aware of these matters by at least 4 June 2013, and almost certainly before that. We know he knew it by that date because that is when the court hearing was. The minister cannot have not known after his solicitor talked about it, so we know he knew by 4 June 2013. The decision was handed down by 19 August 2013, yet the minister was drawing $273 000 and did nothing for a year. He has put, according to him, 23 commercial projects in jeopardy, any of which could have been overturned, according to the minister's suggestion to the chamber. Twenty-three multibillion-dollar projects were at risk because the minister was doing nothing. The minister said, in answer to a question in the other place, that he did not know about it until the briefing of 3 September 2014, but actually the minister knew about it on at least 4 June 2013.

Let me make it clear why that is important. Given that the minister knew what was happening inside the EPA at the time of the court case and he knew what the problem was—conflicts of interest—on 19 August, when the Chief Justice handed down the decision, the minister knew the game was up. He knew that all those decisions that we are now being asked to validate were invalid. The minister might have needed someone to go away and find out which other decisions had been made as a matter of conflict, but he knew that the conflict procedures inside the EPA did not work. He then had a couple of obligations to the taxpayers of Western Australia who pay his salary, the first of which was to tell people about it, and the second of which was to do something about it instead of sitting on his hands for 13 months doing nothing. Does the minister not get this? He has a job to do. His job is not cutting ribbons; it is doing work. He knew the problem existed, he knew that the procedures that had been used because he had been told about them and he told the court about them, and he knew they did not stack up because the court told him they did not. The minister did not find that out on 3 September 2014; he found it out on 19 August 2013. Any reasonable person would have expected a competent minister to act; to do something, to talk to people and to get things sorted out. What did this minister do? Nothing. When he is put

under pressure, he holds a briefing for the media and does not tell them about his personal involvement in these issues; he tells the media that somehow or another it was related to things that happened under the former Labor government, and that is just completely and utterly wrong. Then the minister comes to this place and demands action on a decision that he still has not explained because there is a decision pending, which is Roe Highway stage 8. The minister cannot have it both ways; he is either going to do his job and get his pay or he is going to continue to behave like this. Why did it take the minister 13 months to act when he knew there was a problem on 19 August 2013?

Mr A.P. JACOB: I answered that question for the Leader of the Opposition; I do not believe the member for Cannington was in the chamber at that point.

Mr C.J. TALLENTIRE: I want to go through issue of conflict of interest—that is what clause 4 is all about—but I will relate it to the duties of the chair of the EPA to keep the minister informed of events and issues that the authority might be dealing with. I direct the minister to section 16 of the Environmental Protection Act, especially paragraph (da). A function of the authority is —

> to advise the Minister on the making or amendment of regulations when requested by the Minister to do so or on its own initiative;

Paragraph (e) reads —

> 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;

I am particularly interested in that last phrase, minister, because "the evaluation of information relating thereto" gets us to the extent to which the minister and his predecessors were kept informed of the burgeoning conflict-of-interest problem. I want to refer the minister to a time line of events that we have managed to piece together about the interaction that the chair of the EPA had with the Public Sector Commissioner. We know that there were various occasions when there were communications between the two gentlemen. I have a list of the times here, and I want to know the extent to which the minister and his predecessors were advised of those communications.

Mr A.P. JACOB: Generally addressing the issue, just going back to that clause, the code of conduct of the EPA is not a regulation; it is not subsidiary legislation, just in case that is where the member for Gosnells was going on that particular matter. As I have continually said, we were not informed of the change to the EPA's practices at the time, and we would like to have been.

Mr W.J. JOHNSTON: Could I just clarify that answer? The minister said "at the time", so it was not on 3 September 2009. What was the date?

Mr A.P. JACOB: I already said I would provide that advice to the member for Cannington.

Mr C.J. TALLENTIRE: The minister is overlooking the requirement of the Environmental Protection Authority to keep the minister and his predecessors apprised of the evaluation of information relating thereto, which is the assessment. Surely the minister and his predecessors would have been getting those updates on how the evaluation was going. Obviously, one of the key things would be that there was an issue around conflict of interest. I want the minister to present me with a time line and then we can crosscheck to see whether his time line of those meetings between the chair of the EPA and the Public Sector Commissioner matches mine.

Mr A.P. JACOB: Essentially, yes, the EPA could have told us but it did not. That is the point. Obviously, it is incumbent on us to address this.

As to the broader line of questioning that members are pursuing, they are clearly looking for a political scalp in this matter or pursuing me as an individual in this matter. I understand that that is part of how it goes, and I am not making any complaints about that whatsoever. I make the point that Parliament will afford them all the opportunities in the world from now until March 2017 to continue to do that should they wish. These matters are largely immaterial to the bill before us.

These are significant projects for the state. The significance of this bill is to give surety to not only those large investments and the companies involved, but also the thousands of Western Australians employed on these projects. Members opposite are filibustering on this matter to pursue the minister when the minister has given very clear, concise answers at every single point. I know that they might not like the answers or they may think there is more to it, and they can continue to pursue that.

Mr W.J. JOHNSTON: I refer to the minister's tabled paper on the 25 projects that he says are covered by this provision. I see that on 22 August 2013 he gave approval for the Turee Syncline iron ore project, which was three days after the Chief Justice delivered his decision. In making that decision, did the minister ask the EPA whether any conflict-of-interest issues arose under that recommendation that it made to him, given that it was

three days after the Chief Justice knocked off one of the largest projects in the state's history, a project that the Premier had taken to the 2013 election as one of the highlights of his state development agenda? Given the importance of this matter, as it must have been in the minister's mind on 19 August—so three days later, he is making this decision—did he ask the EPA whether any of the matters that His Honour found were invalidly dealt with in respect of the James Price Point matter also had implications arising from His Honour's decision?

Mr A.P. JACOB: Obviously, shortly after that decision, we were already casting our minds to the ways in which we could best address whether there were any issues previously. Within two weeks of Chief Justice Martin's decision, we subsequently got the ball rolling on that process. It has been a lengthy process. A lot of work has gone into this.

Mr W.J. Johnston interjected.

Mr A.P. JACOB: I will get to the question. There is 10 years' worth of approval projects here largely covering that entire boom period, if we want to use that term, although I know the Premier does not like that term. The colloquial boom period of the Western Australian resource industry development has sat over this time period. I took the view—I will continue to stand by that view—that the matters that were found in the Browse case related to procedural conduct of the board of the EPA. They did not relate to the science and environmental rigour that has gone into these projects. Nobody has successfully challenged that at any point. The environmental rigour that has gone into these projects still stands. On the basis of that rigour and in viewing that report on Turee Syncline and the process that it had gone through in consultation with other decision-making authorities, I was happy to issue a statement on that matter. It is important to also remember that all these matters are considered valid until such time as they are found to be invalid.

Mr W.J. JOHNSTON: Let me get this right. His Honour has found as a matter of fact that the EPA had not done an assessment of the James Price Point matter because the purported assessment had not complied with the law. The minister understands that the government of Western Australia has to comply with the law. That is fundamental to what we are doing here. Does the minister understand that we are talking about the law of Western Australia? On 19 August, His Honour said that the procedures purported to be used by the EPA were not technically invalid; they did not comply with the law. No procedure was used by the EPA to make the decision in the James Price Point matter. Three days later, the minister says that he made a decision and never asked the EPA about any of the matters that had led His Honour to decide that there had never been an EPA assessment of the James Price Point decision. The minister never thought to ask the EPA whether any of those matters were related to this one. Three days later, the minister was working hard, drawing down his quarter of a million, and he never even asked the EPA whether it was a valid recommendation.

He never even turned his mind to think that maybe there had been a problem. He knew the problem; the problem was the decision of the EPA of 3 September 2009 that sought to circumvent the laws of Western Australia and that His Honour found could not be done. The minister knew that the conflict-of-interest provisions that the chairman had adopted had ceased to exist and he was dealing with another matter that the same person had given to him three days after the court case. Is he honestly telling me that it did not enter his mind to ask whether any of the issues that came up under James Price Point were going to come up under this one? Is that what he is saying?

Mr A.P. JACOB: It is very difficult to follow the member for Cannington because he continues to slightly tweak the wording and paint things in a different way from what they are or found to have been. As I have consistently said, at no point has the science or the environmental rigour into any of these assessments been brought into question. A significant body of work has gone in over the preceding three months from where we are now back to 19 August. I took the view that we would do that work properly, and I believe that we have done so. Accordingly, we have come up with that list of around 25 projects. The member for Cannington seems to be suggesting that I should have ceased all activity within the environmental approval space awaiting that outcome. I am happy if that is his position; that was not my position at the time. These reports have not been found to be invalid. This is again a case of the member for Cannington twisting the language, I suspect sometimes a little deliberately, and trying to paint things not as they are. As we currently stand, these assessment reports are all considered to have been valid until such time as they are found to be invalid. Standing as a minister with a report that was considered at that time to be valid and considering the issues put to me, I issued a ministerial statement on that matter.

Mr W.J. JOHNSTON: The problem is that the minister does not want to answer questions. I asked a very simple question: in making the decision on 22 August 2013, did the minister ask the Environmental Protection Authority whether matters related to the management of conflicts of interest at the EPA raised in the decision of His Honour Chief Justice Martin were an issue for that decision? I did not say: "Do not make the decision" or "You should hold things up." I asked a completely separate question: did the minister ask the EPA, in making his

decision on 22 August 2013 on the Turee Syncline iron ore project, whether any conflict of interest issues had arisen from the decision made three days earlier by His Honour Chief Justice Martin?

Mr A.P. JACOB: I clearly made inquiries as to that matter, because it sits on the list of 25; indeed, I clearly made that inquiry of all 25 of those projects because they are on the list of 25. Clearly that work has been done. Those queries have been undertaken and we have arrived at this point. That work has taken some 13 months and a lot of time and effort has gone into that work. I took the view at the time, and I stand by that view, that until a proposal or an assessment report is found to be invalid, it is considered valid. The critical point for me in considering that project is that Chief Justice Martin's ruling related to procedural technicalities and was not an adverse finding on the environmental assessments or the science that went into those reports. I felt comfortable signing off on that ministerial statement at that time while those inquiries were ongoing. Clearly I made inquiries because it is sitting on that list of 25.

Mr W.J. JOHNSTON: On 22 August 2013 was the minister satisfied that the EPA advice to him was valid?

Mr A.P. JACOB: I was satisfied at that point in time. I had a valid report and I was satisfied with the work that had gone into the science and the environmental rigour around that assessment. That stands for all those projects. Members opposite may wish to muddy the waters, but that is not what was questioned.

Mr W.J. JOHNSTON: On 22 August 2013, was the minister satisfied, because of inquiries he made, that he was lawfully exercising his authority as minister in approving that particular project?

Mr A.P. Jacob: I have answered that three times now.

Mr C.J. TALLENTIRE: At this point, I would like to move an amendment. I move —

Page 5, after line 6 — To insert —

(4A) (1) The Minister must cause a report to be laid before each House of Parliament on any project that has received validation under this section.

(2) The report is to include —

(a) the name of the project;

(b) the Authority's report and recommendations; and

(c) an explanation as to why the validation is required, including the names of any Authority members who have a conflict of interest and the nature of that conflict.

(3) If, when a copy of a report mentioned in subsection (1) is to be laid before each House of Parliament and a House of Parliament is not sitting, the Minister must transmit a copy of the report to the Clerk of that House.

(4) A copy of a report transmitted to the Clerk of a House is to be regarded as having been laid before that House.

(5) The laying of a copy of a report that is regarded as having occurred under subsection (4) is to be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after the Clerk received the copy.

Division

Amendment put and a division taken, the Acting Speaker (Mr P. Abetz) casting his vote with the noes, with the following result —

Ayes (19)

Ms L.L. Baker	Mr W.J. Johnston	Mr M.P. Murray	Mr C.J. Tallentire
Dr A.D. Buti	Mr D.J. Kelly	Mr P. Papalia	Mr P.B. Watson
Mr R.H. Cook	Mr F.M. Logan	Ms M.M. Quirk	Mr B.S. Wyatt
Ms J. Farrer	Mr M. McGowan	Mrs M.H. Roberts	Mr D.A. Templeman *(Teller)*
Ms J.M. Freeman	Ms S.F. McGurk	Ms R. Saffioti	

Noes (33)

Mr P. Abetz	Mr J.H.D. Day	Mr R.F. Johnson	Mr J. Norberger
Mr F.A. Alban	Ms W.M. Duncan	Mr S.K. L'Estrange	Mr D.T. Redman
Mr C.J. Barnett	Ms E. Evangel	Mr R.S. Love	Mr A.J. Simpson
Mr I.C. Blayney	Mr J.M. Francis	Mr W.R. Marmion	Mr M.H. Taylor
Mr I.M. Britza	Mrs G.J. Godfrey	Mr J.E. McGrath	Mr T.K. Waldron
Mr G.M. Castrilli	Dr K.D. Hames	Mr P.T. Miles	Mr A. Krsticevic *(Teller)*
Mr V.A. Catania	Mr C.D. Hatton	Mr N.W. Morton	
Mr M.J. Cowper	Mr A.P. Jacob	Dr M.D. Nahan	
Ms M.J. Davies	Dr G.G. Jacobs	Mr D.C. Nalder	

Pairs

Mr J.R. Quigley	Mrs L.M. Harvey
Mr P.C. Tinley	Ms A.R. Mitchell

Amendment thus negatived.

Dr A.D. BUTI: In regard to the question that I asked about submissions, did the State Solicitor give the minister the submissions prior to them being submitted in court or did the minister receive those submissions at some stage during that hearing? If the minister received the submissions, when did that occur?

Mr A.P. JACOB: I am seeking that information and I will provide it once I receive it.

Mr C.J. TALLENTIRE: I think what we just saw with that division was remarkable. An amendment was designed to rectify a problem of this government's making—the conflict of interest that potentially rules proposals invalid—and this legislation's validation of those proposals could apply to projects that this house will never know about. We have spoken about the list of 25 projects, and there is some, although not total, transparency. We do not clearly know which EPA board members were involved in conflicts of interest or the nature of those conflicts of interest. That is totally unacceptable. At least we know that those 25 projects have been identified as having conflict-of-interest problems and that information is out there. But in the future, other projects could come up or it could be found that projects that have already been through the system might be deemed to have a conflict-of-interest problem, yet the government sees fit to avoid a very gentle means by which we could have exposed those problems. The amendment would not have given the Parliament a right of veto; it would have been, I think, almost a matter or courtesy for Parliament to be informed when there was a question of a conflict of interest, but not in a particularly cumbersome way. The amendment we just voted on states —

> The Minister must cause a report to be laid before each House of Parliament on any project that has received validation under this section.

That is a totally reasonable thing to do. The minister had this amendment before him. He saw today's notice paper and knew about this amendment. I foreshadowed it with him, and there is another amendment coming up, yet the minister decided not to agree with what is really a simple administrative arrangement that would ensure that we have the type of transparency that is so essential for things such as conflict of interest. I think that is extremely sad. The minister stands judged on his decision to oppose a sensible amendment to the Environmental Protection Amendment (Validation) Bill 2014. The minister decided to advise members on the government side of the house to oppose transparency when there is an issue of conflict of interest. That is very sad, but I suppose the minister has another chance to accept this very sensible amendment as the bill transitions from this place to the Legislative Council. Surely, the minister will see that for the sake of good governance in Western Australia the inclusion of the administrative clause in this amendment makes perfect sense. I hope that the minister has due time to properly consider the implications of the negative vote on the amendment that he just participated in and that he will also have time to take advice from his advisers on the wisdom of that amendment. Surely, secrecy around conflict-of-interest problems is unacceptable. As things stand, there is no question that further cases with a conflict of interest could come up that would be deemed to be covered by these sections of the legislation; they would just sneak through. I think that that is totally wrong. I do not think that is the intention of the minister or this legislation. I think the minister realises that some serious mistakes have been made and he is looking to rectify them. The minister and the parliamentary drafters overlooked the potential for

the legislation to be used as a bit of a carryall that would have sweeping impacts on other projects, which would just sweep through without the conflict of interest being exposed.

Mr A.P. JACOB: I do not think we should comment on that point because I do not believe we should be debating the amendment after we just voted on it. I do not wish to comment on the first amendment—not the second amendment—any further. Given that no members opposite spoke on the amendment and we went straight to a vote, I will quickly address the information that the amendment seeks. The names of the projects and the authority's reports and recommendations are all available on the website. The validating legislation does not seek to validate the list of 25 projects that are potentially at risk of a challenge, which I have freely and openly provided. However, the way that this validating legislation is written validates those actions and decisions prior to 19 August 2013. That list is the entire compilation of EPA assessments, assessment reports and decisions prior to that date. That is what the legislation does and that information is publicly available.

Mr C.J. TALLENTIRE: The minister referred to the EPA website that lists all the reports. Is the minister proposing that the formatting of the presentation of the reports and recommendations on that website —

Several members interjected.

The ACTING SPEAKER: Members, can you please keep your voices down if you are having conversations.

Mr C.J. TALLENTIRE: Is the minister proposing that there will be some indication that a project has been checked for any potential conflict of interest? Is the minister proposing that a case not on the list of 25 projects that is found to have a conflict of interest would in the future be exposed publicly? At the moment I do not think there is an opportunity to record that information on the EPA website. Certainly in the reports and recommendations there is no such opportunity. One would have to go back and re-edit reports that have already been published. The minister's suggestion is that this could be done via the website, but I do not understand the mechanism for that. I am pleased that the minister acknowledges that something such as that is necessary, but in practical terms how does he plan to do it?

Mr A.P. JACOB: I have chosen to provide that information; I have done that to this house. I did so immediately at the end of my second reading speech. As I indicated earlier, we have voted on the amendment and I do not seek to debate it any further.

Mr C.J. TALLENTIRE: I want to turn to another issue I have with clause 4 relating to the reasonable apprehension of bias, which is on page 3 of the bill. I am concerned that the minister may be seeking to expand the notion of bias beyond the current understanding in the Environmental Protection Act that bias relates to pecuniary interest. I look to the minister to provide me with a clear definition of "a reasonable apprehension of bias" and an explanation of why it is in the legislation. I think the minister has done quite well with the language about pecuniary interest. I know the minister has reservations about people who act for the environment because they care about it without having a pecuniary interest, but this is the minister's opportunity to prove that that is not a serious concern and that he understands that somebody with a pecuniary interest who acts because of the monetary value that they might get out of a particular decision is entirely different from someone who acts to protect the environment because they care about it. I am looking to the minister to clarify that and for his clear definition of "a reasonable apprehension of bias".

Mr A.P. JACOB: Section 12 of the Environmental Protection Act operates, in addition to rules and common law principles, around a reasonable apprehension of bias. A conflicted decision may be invalid for a failure to comply with section 12 of the act—that is largely the matters we are dealing with here today—but it also may give rise to a reasonable apprehension of bias. In order for this bill to be effective, upon receiving advice, I have taken the view that this bill must deal with both grounds of invalidity.

Debate interrupted, pursuant to standing orders.

[Continued on page 6474.]