ENVIRONMENTAL PROTECTION AMENDMENT (VALIDATION) BILL 2014

Remaining Stages — Standing Orders Suspension — Motion

MR J.H.D. DAY (Kalamunda — Leader of the House) [4.09 pm]: I move —

> That standing orders be suspended so far as to enable the Environmental Protection Amendment (Validation) Bill 2014 to proceed through all remaining stages without delay between the stages.

By way of brief explanation, the Environmental Protection Amendment (Validation) Bill was introduced and second read last week. Support for this motion will enable it to be debated today, obviously within the normal three-week period in which bills lay on the table before being debated. It is the government's view that there is a significant degree of urgency about the passage of this bill to ensure certainty for a number of projects in Western Australia, some of which are major resource projects in relation to Environmental Protection Authority decisions that go back to 2002. There is a degree of uncertainty at the moment and it is important in the government's view—hopefully, the opposition will share its view—that the Parliament provide certainty and clear up any doubt in relation to the EPA approvals. That was all explained in the Minister for Environment's second reading speech. No doubt it will be somewhat elaborated on during debate.

Our preference is for the bill to pass through all stages in this house by the end of tonight. In fact, we prefer that it is passed by 9.30 pm if possible. That will enable the bill to be introduced into the Legislative Council tonight so that after a week, which is the usual waiting time, it will enable a full week—next week—for debate in the Legislative Council. However, we certainly understand if the bill is not passed by 9.30 tonight and if we hear reasonable arguments, we will certainly be reasonable and will not unduly force the bill through. It is absolutely essential it is passed in this house this week at the very latest, but we would like cooperation as much as possible to ensure the bill passes this house in a timely manner, preferably by the end of tonight. For those reasons, I urge support for this motion.

MR C.J. TALLENTIRE (Gosnells) [4.11 pm]: It is very important that there be no unseemly haste with the way we deal with this bill given after all that, at its core, it is about an issue that is of grave importance to the confidence people might have in government operations in our society. It is about conflict of interest. There is a real fear in the community that a serious conflict of interest has occurred. I am pleased to hear from the Leader of the House that he is prepared to accommodate extended discussion if good quality argument is put. I can assure the Leader of the House and the Minister for Environment that good argument will be put and it is important we have a reasonable amount of time for debate. We are prepared to accommodate the government's need to move this bill through with some degree of haste but not by 9.30 this evening. I do not think that time frame is reasonable. Many issues will arise. It comes back, after all, to how our Environmental Protection Authority functions. It is also about conflict of interest.

I want to acknowledge in the public gallery many people who, for the most part, are from the volunteer conservation sector. We cannot accuse any of these people of having a pecuniary conflict of interest. These people give their heart and soul to their environmental campaigning because they believe in what they are doing and they know it is the right thing to do. It would be tragic if we were to rush legislation through this place without proper analysis and without—I need to foreshadow—some degree of amendment. Those people who work in the environmental area but are the recipients of enormous remuneration packages are the ones who, after all, have required this legislation to come into this place. On the one hand there is the volunteer sector, which is concerned about what is going on, and on the other hand the people who receive very handsome pay packets and who work for companies that make huge profits out of the environment. We should not be rushing through legislation just to please those people who are already earning masses of money and who seem to be motivated solely by money in many cases. That is one reason that we need to give this bill a full airing when it comes on.

I trust the minister has received a copy of the two opposition amendments. Many questions need to be answered about the findings of Chief Justice Wayne Martin and his excellent judgement on the Wilderness Society versus the Browse LNG project. We need to know the detail of the conflicts of interest that Chief Justice Wayne Martin identified and we need to know how the government will be sure that such conflicts of interest will not arise in the future. If the Leader of the House and the Minister for Environment can assure that ample time will be given to debate on this bill, I am prepared to not prolong debate on this motion but to sit down and recommence my second reading speech on the bill.

Question put and passed.

Second Reading

Resumed from 10 September.

MR C.J. TALLENTIRE (Gosnells) [4.16 pm]: Before proceeding, I wish to apologise to the house for the poor timbre of my voice. I am dealing with some ill-effects at the moment, but, hopefully, with medication, I will be able to last the extent of time. I appreciate that the sound of my voice must be somewhat irritating for members to endure.

This is a very serious issue. Before us is the Environmental Protection Amendment (Validation) Bill, which seeks to validate certain approvals that could otherwise be potentially subject to a challenge of conflict of interest. That is a very serious issue. If the motive of a member of the Environmental Protection Authority were in some way to look after the value of their shares while they were deliberating on information on a proposal, that would be completely wrong. I know the chair of the Environmental Protection Authority and I think I have said before in this place that he was my boss when I was at the Department of Environmental Protection in the late 1990s. Dr Paul Vogel is a fine and very intelligent man. He has a great ability to get to the detail of an environmentally difficult project and he has a wide range of knowledge in all sorts of areas. I recall that he was the director of a division that looked after things as diverse as air quality and the marine and terrestrial environments in the environmental systems division of the Department of Environmental Protection. His information was sought constantly by the EPA in the late 90s. I know Dr Vogel and I believe him to be a man of integrity but it does seem that he has made some errors of judgement in advising the members of his Environmental Protection Authority of the nature of their conflict of interest. He fell foul of sections 11 and 12 of the Environmental Protection Act 1986—he misinterpreted them. It seems that that misinterpretation became particularly pronounced in 2008 when there was a change in the regulations and after a discussion he had with the Public Sector Commissioner, Mr Mal Wauchope. We understand that he took advice, if not from the Public Sector Commissioner himself, then from the office of the Public Sector Commissioner, and that he was dealing with conflicts of interest in a reasonable manner. Last week we saw Dr Vogel in the media taking responsibility for poor judgement and the misinterpretation of sections 11 and 12 of the Environmental Protection Act, and I think he was perhaps being used as a scapegoat, because in reality he was acting on advice. I think there will be some speakers on this side who will prove the point that Dr Vogel was guided in his judgement by written advice.

Before I get to the more contemporary issues, I want to talk about the issue of people managing their personal affairs in such a way that they cannot be in the situation of having a conflict of interest. When I entered this place I decided to not have any shares, just for the sake of simplicity. I know that previous chairs of the Environmental Protection Authority have also made that decision. I know that the current chair of the Environmental Protection Authority is paid some $460 000 a year; it is a very handsomely paid position. No doubt it is a challenging position and one that requires a skills set that is hard to find, which perhaps justifies that level of remuneration, but if one is earning that amount of money, I think it is reasonable for one to make certain sacrifices. To leave oneself exposed to share ownership of companies that are so much a part of the activities of the Western Australian resources sector is really asking for trouble. The deputy chair and the members of the Environmental Protection Authority do not receive $460 000 a year, but they are still reasonably well remunerated and they hold other positions. In fact, that is one of the details that we need to get to the bottom of, because media reporting has been focused on the fact that members may have held shares or been involved in self-managed superannuation funds. I think there may also be some EPA members who had conflicts in respect of their other work—their day jobs, if you like—in environmental consultancy that put them in the situation of having a conflict of interest. That is also an unacceptable situation. If someone is out there touting for work in a particular field and is then attending meetings of the EPA, they might be able to present advice with great authority because they are well skilled in a particular area, but part of the reason for their being well skilled in that area is that they happen to get paid to work in that area, and on the very projects that are coming through the EPA assessment process. That really is a major problem. This issue is indeed a vexed one.

I want to turn now to the published list of 25 proposals that are deemed to be potentially subject to some form of challenge because of this conflict-of-interest issue. If we follow the logic of the challenge to the Browse decision, there are other projects that could emerge as possible contenders for similar treatment. The minister published a list of them and tabled it in this house, but as far as I can see—I am happy for the minister to advise me on this; indeed, I think it is the sort of thing we will need to do in consideration in detail and the minister will need his advisers here for that, and I think that is the very reason why we will need to go into a second and possibly a third —

[Quorum formed.]

Mr C.J. TALLENTIRE: For the benefit of those in the public gallery, sometimes we lose a quorum because members leave the chamber for afternoon tea!

Several members interjected.

Mr C.J. TALLENTIRE: It is important parliamentary business! I think it says something, though, that when it comes to environmental legislation, there is a poor presence on the government benches. I do not think there is a strong enough interest in environmental legislation from those opposite, and that is disappointing.

I was talking about the Environmental Protection Authority and the problems we have had with the board and its conflicts of interest. It is important to note that there does not seem to be a direct link between the bill before us and the minister's list of 25 projects. That is why I foreshadow to the minister that I will move an amendment to the legislation to ensure that there is some connection. Indeed, if projects emerge that are not on that list of 25 but that are also found to have some conflict-of-interest issue, this Parliament should be advised of the nature of the conflict of interest, the member of the Environmental Protection Authority board who is responsible for the conflict of interest, and any other relevant details of the conflict of interest. Of course, that would include the name of the project, the authority's report and recommendations and an explanation as to why the validation is required, so that we would not have a situation in which this legislation provides a shield to a whole host of assessments in which there may be a conflict of interest but which may emerge only later on. We will not have it go through secretly that that conflict has somehow found out; we have to make sure that it is a transparent and publicly understood thing.

It is apparent from the list of 25 proposals that one of them, the Roe Highway stage 8 extension project, which was the subject of the Environmental Protection Authority's report 1489, published just a year ago, is unique in that it is a government-backed project. We have already heard from the government an admission that the Browse project assessment needs to go right back to the beginning, although I will test the minister on that because when we read the wording of the bill, I am not sure that it really is the government's intention to take that assessment right back to the beginning. When we look at the list of 25, the Roe 8 project is the one that really stands out as one that could not be said to have been partially implemented or begun; it is still with the Appeals Convener. I gather that it is subject to ongoing discussion between the Appeals Convener and various appellants; that is how the appeals process works. However, now we have had this admission that there was a conflict of interest, and I understand that it was the former deputy chair of the Environmental Protection Authority, Dr Chris Whitaker, who had a conflict of interest with Roe 8. I would really appreciate hearing from the minister what the nature of that conflict was, because I do not believe it can be a shareholding in Main Roads; obviously, it cannot be. I suspect in that case it must be something along the lines of Dr Chris Whitaker having consultancy work related to the proposal, but I will leave the minister to advise us of that. We can do that during consideration in detail. That project, given that it has not commenced in anyway, is one that clearly could be the subject of a removal from this validation process. I believe that project definitely needs to be treated in the same way as we are treating the Browse project.

I mentioned earlier that it would be very sinister if there was an unseemly haste in the way this legislation was treated. There are so many questions relating to so many different projects on that list, as well as projects that are not on that list, that we have to be very careful about. If we are not careful, we will lose community confidence in our environmental impact assessment process. By way of illustration, I point the Minister for Environment to the situation with shale gas fracking. There is huge community concern about the environmental impacts of shale gas fracking. The government thought it was doing Buru Energy and Australian Worldwide Exploration Ltd—the shale gas frackers—a big favour by saying to them, "Don't worry; you can have your proof-of-concept projects run through the regulations and processes of the Department of Mines and Petroleum." That has not instilled community confidence at all. Had the Minister for Mines and Petroleum and the Minister for Environment ensured there was a full–scale environmental impact assessment, it would have actually done a great service to those companies because it is the best process that we have to ensure all possible information is presented. It is better than any stakeholder consultancy round. It is actually a credible process in which people who have concerns can put those to government and get well thought through responses. There is also an appeals process. Prior to all that, a level-of-assessment process can be appealed. It is a good, solid process. There are times when I am unhappy with the outcome. Sometimes the ministerial decisions on the reports and recommendations, in my view, are wrong and they leave much to be desired but, as far as process goes, it is a valuable one. That is why the favour the government thought it was giving to the shale gas frackers in enabling them to run through with the DMP regulations was a huge mistake. That is an example of when we can get it wrong by rushing things through. That is why I propose to methodically go through some of the cases we have before us either in this second reading stage or during consideration in detail.

The Pluto LNG conditions amendment is one of the 25 projects listed. I want to know a little more about that. What was the conflict? Which member was conflicted? What was the actual amendment? I think it was to do with some dredging, but I am also curious to know whether there has been a change in the environmental conditions about greenhouse gas emissions associated with Pluto. That is a very reasonable question. I am thinking particularly of Chevron's Wheatstone project when I say the original ministerial conditions very clearly

stated that that project's greenhouse gas emissions would be covered by the federal government's emissions trading scheme. We know, of course, that with the coming to power of the Abbott government, that no longer exists. There is no longer a carbon pricing mechanism at a federal level. All along, the EPA identified greenhouse gas emissions as a significant environmental factor with the Wheatstone project, and I presume with Pluto LNG as well. We have to find an alternative mechanism to deal with the emissions involved. We have to find something else because we have lost what the federal legislation was to provide us with. That is just one further example of the answers that we need.

I am concerned about the nature of this validation for not only the conflicts of interest around the EPA's reports and recommendations, but also the all-important early onstage of level-of-assessment setting. There may be an understanding that a level of assessment is done by the EPA chairman—that he signs off when projects are referred and he determines what the level of assessment might be—but I am sure that on some projects there is consultation with the EPA board members. Surely when something is in the public environmental review phase, there would be some level of consultation about the number of weeks it will be out for public comment. There might be some degree of comment about whether the project can go ahead at a lower level of assessment. There must be further consideration beyond just the headspace of the chairman of the EPA. Surely he consults. I know the chairman consults with the Office of the Environmental Protection Authority. Of course, that is where the staff of the EPA reside. His staff are there to provide him with advice. I am sure there are times when he needs the benefit of the wisdom that sits around the board table. That brings up this issue of a potential conflict of interest that might arise when members with shareholdings do environmental consultancy work for projects and are involved in setting the level of assessment. Obviously that makes a huge difference to the time in which a project can be sped through the system. That is very much dependent on the level of assessment and the number of weeks for which a project is subject to public comment. That is a major issue and we need to have a clear resolution on that.

There are some other issues around the choices that are made about the appointment of members to the EPA. The Minister for Environment has said in the media that he believes it is a good thing that people from industry are on the EPA board. I do not dispute that there is a benefit in having people from industry on the board, but I would put it to the minister that he also needs people from the community conservation sector—indeed, the sorts of people who are here in the public gallery. Some of them would make excellent candidates for future EPA positions. As I have already said, they come at things with such a high degree of impartiality that the minister would not have to worry about the EPA no longer being at the core of it. Its members have all had to declare a conflict of interest and cannot sit around the table to deliberate on a project. An EPA that is correctly constituted would have at least a couple of members from the community conservation sector. Their knowledge and expertise is just as good as any of those highly paid environmental consultants—those people from industry—that the minister might like to have on the EPA. We need impartial people on the board. The last person on the EPA board with that degree of impartiality was a lady called Joan Payne. Joan was president of the Conservation Council of Western Australia—my old organisation—before I was there. I believe that in the 10 or so years that she was on the EPA, she was widely respected by industry people, her fellow colleagues and, very importantly, by the staff in the Office of the Environmental Protection Authority. She was able to bring wisdom to deliberations and a balance to discussions that was lost once the decision was made to no longer have people from the community conservation sector on the board of the EPA.

That leads me to the appointment of the replacement for Joan Payne. I understand that that was Elizabeth Carr, who was the former executive director, Browse, in the Department of State Development. Her appointment to the EPA on 4 October 2011 came at the very time that there was a growing awareness of the conflict of interest situation. I think by then members were just beginning to reveal that they had shareholdings or that they had some other form of interest in the Browse project. All this is very well documented in Chief Justice Wayne Martin's judgement. He points out that for a number of years people with clear conflicts of interest were sitting around the table. He first of all goes through each member and says that the person's shareholding was "not insignificant". He does not actually quantify it, but he states that, given Woodside's share price and the number of shares involved, they had significant shareholdings. That point is out there; it is public knowledge. It is in Chief Justice Martin's judgement. Let us look at Elizabeth Carr's situation. To appoint someone who immediately had to disqualify herself from deliberating on the Browse project just seems crazy. I know that the present Minister for Environment was not the minister at the time, but he must be listening to a lot of this and thinking, "What were my predecessors thinking? What were my predecessors doing?" I think the minister does have to ask those questions.

It comes down to Liberal Party philosophy as well. This is where I implore Liberal members to really do some soul-searching. They should not assume that good quality information comes only from industry people. What

a mistake! Excellent information, excellent quality service, and the highest possible contribution of public service also comes from people who are not in the industry sector. Indeed, it could be said that industry sector people are inevitably always driven by profit. That is their driving motive. That is understandable, and it delivers many positive results for our society. However, when a body such as the Environmental Protection Authority is tasked with protecting the environment—I do not need to turn to the first sections of the Environmental Protection Act to remind members that that is the duty of the EPA—it is a public service function in the very broadest sense. It is an environmental service function—to protect the environment; to prevent it from being polluted; and to prevent it from being degraded; and to stop native vegetation loss. These things are all listed as the responsibilities of the Environmental Protection Authority. It is a wide range of duties, but they will not gain anyone a huge pay packet if they are just doing it as a community service. A person fortunate enough to get on to the EPA board might score $45 000 a year. For some, however, it is an extension of their industry activity, and that is where we are going wrong. I implore Liberal and National members opposite to really question the nature of their current EPA appointments, and to look much further and ensure that people are appointed with the expertise but not the pecuniary interest problem that has plagued us and has caused this bill to be debated in this place today.

I raised the issue of Elizabeth Carr, who was conflicted even before her appointment. I am also curious to hear from the minister whether it is true that her appointment was based on the fact that she was a Sydney resident, although she had been living in Perth while she was working on Browse, but then moved back to Sydney. She was commuting to Perth for EPA meetings. I think she is also on the board of a local school. No doubt she is combining meetings in Perth. For years, EPA meetings took place fortnightly. It is my understanding that once Elizabeth Carr came on board, the frequency of meetings was switched to monthly, at a time when the chair of the EPA was saying that there was so much work on that he needed to have the expertise around the table of these people who may or may not have conflicts of interest. Everyone was needed on board. The authority did not have the staff, but had so many proposals coming forward that it needed all hands on deck. Why would the frequency of meetings be suddenly switched to monthly? That seems odd, but it corresponds with the time of Elizabeth Carr's appointment.

We have seen a general slipping of standards. We have also seen an increasing tendency for the Environmental Protection Authority to say that it does not need to assess a particular proposal. This is another facet of the problem of the EPA's workload management. I will turn to a table that I have prepared that lists the number of assessments carried out by the EPA over the past few years. The number of assessments has been amazingly static. It is so static that we have to wonder, when we are hearing all this talk about the resources boom, with all the explanation work that is going on and the number of proposals referred, why the number of formal assessments being done each year is pretty consistent. It is around the 35 to 45 mark each and every year. I would be pleased to table this compilation from EPA reports. It shows that in 2008–09, there were 38 assessments.

The ACTING SPEAKER (**Mr N.W. Morton**): Member, do you wish to lay that on the table for the rest of today's sitting?

Mr C.J. TALLENTIRE: Yes, thank you, Mr Acting Speaker. I will just relate a few more of the details for *Hansard*. In 2008–09, there were 38 assessments; and in 2013–14, the financial year just completed, there were 35 assessments. In the intervening years, the figures were 26, 45, 37 and 38.

[The paper was tabled for the information of members.]

Mr C.J. TALLENTIRE: We have seen that the EPA has been managing its workload. It could be said that that is understandable, but would it not have been better to have resourced the EPA to deal with that increased demand? What is the cut-off point? Is it really about a significant impact on the environment or is it that the EPA looks each year and declares that some proposals are really big ones, and decides to skim off the top 35 really big assessment proposals and do those? In some years, there will be some really big projects that do not get into that group of 35, so they do not get formally assessed. That is no way to be doing environmental assessment. That means we are missing out, yet the community expects the EPA to be responsible for the environment. The community feels betrayed when it hears this talk about conflict of interest. That is why it is important that we resolve this matter with reasonable haste, so that we can re-establish confidence in our environmental impact system. At the same time, if the truth is that the EPA is more concerned about workload management than about actually doing good quality environmental assessment, we have a serious problem. I put it to the house that, based on this table, there is clear evidence that the EPA is not keeping up with the number of proposals. What is more, it is using every mechanism possible to avoid assessing things. It says that one particular issue can be dealt with by local government, and another can be dealt with by the Department of Mines and Petroleum—going back to my earlier fracking example. Another project can be managed by the Department of Water. The

Environmental Protection Authority seems to be able to come up with any number of alternatives. I would ask the minister whether there could be some degree of conflict of interest with those other agencies involved. I use again the example of the Department of Mines and Petroleum: that agency is tasked with the job of promoting oil and gas—of course it is; that is its job and it makes perfect sense—but are we not placing it into a conflict-of-interest situation as an agency if we are also asking it to be the ultimate regulator of the activity?

I also say that this problem of workload management gets worse, because we know there are many small projects around the place because we have them in our electorates—cases of urban bushland for which there will be a development proposal and the local community will be dismayed that suddenly a developer or someone has decided to convert a beautiful piece of local bushland, which perhaps has even been managed by a local "friends of" group, into housing or it will be lost in some way. That leads to the situation of a death by a thousand cuts. Surely we need the EPA to be on top of those sorts of cases as well. Is it feasible that the EPA look at every single urban bushland proposal or every bit of rural land clearing as well? No, it is not; that is why separate mechanisms are in place there. But I put it that those separate mechanisms are not dealing with this situation properly, and, what is more, the government is avoiding having the adequate monitoring in place.

The best evidence of that is the failure of this government to ensure that the EPA undertakes one of its most important tasks. I was talking about the workload management issue. The EPA cannot even keep up with its assessment work. Traditionally in Western Australia, the EPA had a far broader suite of tasks, and one of the most important jobs was the publication of the "State of the Environment Report". That report is an overview of how a whole host of environmental indicators are either declining or improving. The last report was produced in 2007. The previous chair of the Environmental Protection Authority, Dr Wally Cox, put enormous energy into producing the "State of the Environment Report 2007". He knew that was the best way of giving this overview of the state of the Western Australian environment, and that from there we could make the necessary policy decisions to check that we were not losing things forever and contaminating areas beyond the possibility of rehabilitation. That report is so important to us that it is one of the main duties of the EPA, yet I have never heard this Minister for Environment or his predecessors talk about the Liberal-National government's commitment to producing a new "State of the Environment Report".

One of the key things with that report, as well, was that it depended on strong linkages with agencies such as the Department of Fisheries, the Department of Water, the predecessors to the Department of Parks and Wildlife and other agencies responsible for aspects of the built environment, such as people involved in air quality monitoring. We only have to look at the 2007 report to see the whole suite of people involved in providing information for its compilation. That network was extremely valuable. It took some nurturing, effort and funding through the public service to make sure it worked, but it was essential.

That is not now going on. It seems to me that the Barnett government loves this situation of not monitoring the environment of Western Australia, because then no-one can come at it and say that things are declining and ask it why it is not doing something about it. The attitude is that ignorance is bliss, pretending that we do not know. To use an example, one of my particular interests is native vegetation protection. When I have asked the minister whether he can please tell me how much native vegetation we have lost through clearing that has been allowed because it is under an exemption, he cannot tell me because he does not know. No monitoring is taking place, so it would be impossible to give a decent answer. That is an appalling situation. A commitment to a "State of the Environment Report" could go some way to remedying that. Who knows the air quality situation of the Perth airshed? People in Perth have been hospitalised because of various respiratory conditions—I am not suffering from one. I think my problem is viral, but I assure those in the chamber that I am past the contagious stage! It sounds a lot worse than it is, so if members do get it, that is a consolation!

The fact is that we do not know where we are going with all sorts of indicators. There were certain indicators the last time the air quality management plan was properly reviewed. I think the benzene in the air was a serious issue, and there were a couple of other indicators of note, such as people who live under flight paths and things who were suffering in different ways. The issue of a "State of the Environment Report"—a major task for the EPA—is one that it should be working on but is not.

I have another area I want to touch on. The Environmental Protection Act makes it very clear that the EPA is responsible for environmental protection policies. When we look at the environmental protection policies, we see that the EPA website has been changed in quite a crafty way to make it look as though they have all been enacted. There is a goldfields residential areas sulfur dioxide environmental protection policy, a Kwinana atmospheric waste EPP, a south west agriculture zone wetlands EPP, and a Swan coastal plain lakes EPP. I understand the Swan coastal plain policy expired in, I think, 1992. These things are supposed to be reviewed every five years, but nothing is happening. That is another example of the EPA not doing its job. We have not

only these defective assessments with these absurd conflicts of interest, but also other areas where the EPA is failing to do its job. It is outrageous, but somehow the minister is getting away with it. He is not copping the opprobrium he deserves for failing to make sure that the EPA does its job. Nothing is going on in the space of the environmental protection policies in this state, which is an absolute failure.

In keeping with the Environmental Protection Amendment (Validation) Bill 2014 before us, we need some clarification of the extent of other projects that might be involved in this validation process. I draw the attention of members to a letter of 6 September 2012 that the previous environment minister, the member for Nedlands, sent to Hon Robin Chapple. In that letter, Hon Robin Chapple asked basically the same question about conflicts of interest, and he was given a fairly comprehensive list of 43 proposals. Why is there a difference between the 25 proposals in the list the minister put out last week and the 43? That is another issue that we need to talk to the minister about during the consideration in detail phase.

Just as a matter of process, Mr Acting Speaker, I want to check that I can leave the presentation of my amendments until the consideration in detail stage. I trust that the minister does have the amendments before him.

The ACTING SPEAKER: Yes, that is correct.

Mr C.J. TALLENTIRE: Thank you, Mr Acting Speaker. I want to look a little more at some of the conflicts of interest that occurred around the Browse Basin project and some of the responses to that issue. I have copies of letters dated 30 September 2011 from Dr Vogel to the Wilderness Society. In this letter, the chairman of the EPA seeks to reassure the Wilderness Society about the EPA's declaration of interests with the Browse LNG precinct assessment. I will quote from the letter, which states —

> Potential conflicts of interest, in relation to the Browse LNG Precinct proposal, declared by other EPA Members on the basis of either direct or indirect shareholdings in possible foundation proponents, have similarly been determined by the EPA Chairman to represent no potential or actual conflict of interest and the Members participated fully in the meeting.

This gets to the heart of the failure to understand section 12 of the act, which states that in no way should someone stay in the discussion of a project when there is some degree of conflict of interest. I will quote from section 12 of the act, "Disclosure of interests by Authority members", which states —

> (1) An Authority member who has a direct or indirect pecuniary interest in a matter that is before a meeting of the Authority shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest to Authority members who are at that meeting, and that disclosure shall be recorded in the minutes of the proceedings of that meeting.

Subsection (3) states —

> If an Authority member has, in the opinion of the person presiding at a meeting of the Authority, a direct or indirect pecuniary interest in a matter before that meeting, the person so presiding may call on the Authority member to disclose the nature of that interest and, in default of any such disclosure, may determine that the Authority member has that interest.

Subsection (4) states —

> A determination under subsection (3) —

The one I just read —

> that an Authority member is interested in a matter shall be recorded in the minutes of the proceedings of the meeting concerned.

Subsection (5) states —

> If an Authority member discloses an interest in a matter under subsection (1) or is determined under subsection (3) to have an interest in a matter, the Authority member shall not —
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> (a) take part, as an Authority member, in the consideration or discussion of the matter; or
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> (b) vote on the matter.

It is so clear. Section 12 of the Environmental Protection Act 1986 lays it out for the chairman of the EPA that those members should not have been present at those meetings and that those members who had a pecuniary conflict of interest should not have stayed at those meetings. However, this letter sent by the chairman of the EPA states that he sees no potential or actual conflict even though the members referred to in the letter own shares. According to Chief Justice Wayne Martin, they are not insignificant shareholdings, yet those members

participated fully in the meeting. Something is seriously wrong here. I do not think that the chairman of the EPA would have acted alone; he would have checked. It is so blatant. I am sure Dr Vogel knows his act inside out; all good bureaucrats know their acts inside out. He would have gone to the Public Sector Commissioner and sought advice; that is when this whole problem for Browse came about.

I will turn now to a letter from the then minister, the member for Nedlands, who also wrote to the Wilderness Society and spoke about the conflict-of-interest issues. He also touched on the appointment of Elizabeth Carr, whom I spoke of earlier. According to the minister at the time —

> Full consideration was given to the independence and integrity of the EPA in appointing Ms Carr to the Authority.
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> Ms Carr has previously expressed an interest in serving on Government Boards and provided her CV for consideration by Government.
>
> In considering her appointment, I noted that the existing Board members had considerable technical knowledge and experience in a range of environmental areas. I recommended Ms Carr after careful consideration of the skills sets that would complement the credentials of the existing EPA Board members. Ms Carr's appointment was then approved by Cabinet.

It does not seem to ring true that a good cohesive EPA board was created that had the necessary skill sets. In saying that, we need to acknowledge that it is pretty well impossible for the five members of the EPA to have environmental expertise in all the areas of the proposals that are likely to come before them. That is why they need to have a well-resourced office of the EPA, and that is why I maintain we have a serious problem because we do not have a well-resourced office of the EPA. The staff there are overstretched and, in some cases, are operating outside their areas of competency. That means we are not getting the appropriate quality of work done, which is another reason why the chairman tries to limit the number of formal assessments that are done. The workload management issue that I mentioned earlier represents a very serious problem with the EPA.

In the time remaining to me, I want to touch on some other matters relating to the list of 25 proposals. I note that the very famous Underwood Avenue bushland is one of those projects. The University of Western Australia has an interest in that. I turn to a letter that the Premier sent to the Carpenter government's environment minister, Hon David Templeman. This letter from the Premier, the member for Cottesloe, is dated 3 June 2008 and is to his friend and colleague, the member for Mandurah. It states —

> … In particular, I draw your attention to the extent and quality of the Jarrah, Banksia and Tuart woodland, which is without comparison on the Swan Coastal plain.
>
> The point may be made that the area is in need of new residential land. While there is always strong demand for land in the western suburbs, it should be noted that there are substantial new developments in the nearby Perry Lakes, Swanbourne High School and Lakeway Drive-In sites.

The Premier also states —

> … UWA does have a legitimate and significant interest in the final outcome as owner of the site. It is relevant to note that UWA did not purchase the site, it was granted to the Trustees of the University Endowment by the State Government in the early 1900's.

The member for Cottesloe concluded —

> If you agree with me that the bushland does have a significant environmental status and should be preserved, then may I suggest that the government negotiate with UWA, with a view to acquiring the site and paying reasonable compensation.

Clearly, in 2008 the Premier had a great enthusiasm for the Underwood Avenue bushland project and we now see that it is on this list of 25 proposals that are suffering from a degree of conflict of interest in their assessment. I think the Premier needs to reacquaint himself with the content of this letter and obviously his commitment, which I presume was one that he also would have made to his constituents. The Premier began the letter by saying that he was the local member and he also acknowledged that Hon Judy Edwards, as the former environment minister, made it clear that she was not interested in seeing the site developed. It is ironic that this conflict-of-interest issue gives the Premier an opportunity to revisit the Underwood Avenue proposal and allow him to take up the point he made in 2008 to get some compensation for the bushland. I am sure that something could be negotiated with the University of Western Australia. I understand its university endowment fund would be quite substantial, so there might be room for negotiation.

Mr C.J. Barnett: I think the more recent proposals preserve more of the bushland than at that time. It has gone to higher density and more bushland is preserved.

Mr C.J. TALLENTIRE: In the public gallery are people expert in the Underwood Avenue bushland and they are certainly across the detail of the latest proposals. I am sure that they would put it to the government that there is only one way to proceed with this, and it is exactly as the Premier said in 2008: the way forward is to pay reasonable compensation. We are calling on the Premier to stand by his word. An opportunity has arisen for us because of this conflict of interest matter, so perhaps something positive will come from this legislation coming to this place under these less-than-reputable circumstances. There is nothing nice about accusations of conflicts of interest.

In the moments remaining to me I want to return to the project that we definitely believe should be sent back to the drawing board—that is, the Roe 8 proposal. It was very weird when the Environmental Protection Authority report and recommendation came out this time last year and it was acknowledged that the two previous reports had stated that from an environmental perspective there was no way that the Roe 8 extension should go ahead. We all know that it would also be a disaster from a transport planning perspective; it would simply shift the traffic to Stock Road. What would that achieve? After all, it is a hugely expensive operation and in years to come it will be superfluous because there is every likelihood that the bulk of Fremantle port activity will be at an outer harbour location. I note that James Point, one of the Fremantle outer harbour options, is also on the list of 25.

All these projects are live, but the Environmental Protection Authority proposal, with its weird wording, states that it could tolerate clearing of 97.8 hectares of native vegetation, and acknowledges that it would result in the loss of 78 hectares of foraging habitat and nesting habitat for the Carnaby's black cockatoo and the forest red-tailed cockatoo species protected under the Wildlife Conservation Act. It really goes beyond the pale. The EPA acknowledges in its reports that land acquisition would be an acceptable mitigating factor, but there would be a lot of vegetation if the proponents, presumably Main Roads, were to buy land somewhere else but still destroy the vegetation on 97.8 hectares. That is not a net increase; it is still a net loss, and in a very important strategic location. Clearly, this project needs to be reassessed. The conflict of interest that surrounds report 1489 makes it untenable. We cannot accept this kind of recommendation. The matter is with the Office of the Appeals Convenor. Under the act, the minister can write to the EPA and tell it that he does not want it assessed but he wants it to recommence the assessment process. It is in the minister's powers to do that, and I believe that that is what he should be doing. There is no disputing the Roe 8 proposal.

It is interesting that we are treating this legislation in this way and that it has come into this place so quickly. It seems odd to me that legislation in connection with the resources sector—I know the resources sector is vital to our economy—always gets express treatment. Compare that with, say, the biodiversity conservation act, which we have been waiting for the government to introduce for years, and some of the social welfare legislation that impacts on my constituents in the electorate of Gosnells. There are endless rounds of consultation and submission periods and then analysis of submissions. Then there are regulatory impact statements and submissions on those statements. It goes on and on. However, legislation related to the resources sector, perhaps with good justification, seems to be given express treatment. In all likelihood this bill will be through this place in less than a week. To me, that suggests that as a Parliament we need to reassess our priorities. We need to be sure that we do not favour one sector over another, even if the resource sector is vital to the quality of life of Western Australians. We need to make sure that we do not disadvantage or overlook other very important legislation that concern other values that we all hold dear.

In concluding, we look to the minister to accept our amendments and we hope that he will have adequate time to reflect and talk with his advisers, his chief of staff and principal policy advisers, people in the Premier's office, senior departmental officials and all those important people. On some of the points that I have raised, perhaps he needs to also talk to the chairman of the EPA. We cannot rush that through here tonight. We need to allow the minister time to deliberate on these matters. I look forward to hearing my colleague's contributions to the second reading debate. I trust that we will give this bill adequate time and an adequate hearing.

MR M. McGOWAN (Rockingham — Leader of the Opposition) [5.16 pm]: I rise to follow the member for Gosnells to speak on the Environmental Protection Amendment (Validation) Bill 2014. The opening point that needs to be made is that some proper consideration in detail is needed to tease out what is going on here. Today I asked in question time whether the government would at least allow some sort of inquiry into these events. If the government will not permit an inquiry into this very serious set of events that came to light recently, I think we need a proper consideration in detail stage and debate of the bill to hear answers from the minister about what has gone on. We do not need glib statements or for the minister to ignore the issues or brush over it—what normally happens in this place with this government. I want to hear answers to important questions and it is important that we deal with this legislation properly.

I know a number of my colleagues want to make speeches about this bill and I expect and hope that the government will give this bill proper consideration time this week. I do not object to this bill going through this house this week. I do not object to it being dealt with relatively expeditiously, but there is a difference between taking a rubber-stamp approach and having some proper consideration and inquiry. We need some proper consideration and inquiry into these matters and what has gone on here.

A lot of people feel very deeply about the role of the Environmental Protection Authority; it is an important role in our community. It was created back in the early 1970s by Premier John Tonkin, and the idea was for it to give the government proper independent advice on plans, propositions and proposals with the potential to have an adverse impact on the environment. Each state has one, or has a similar model. The idea is to get proper advice and consideration so that there is not some of the shocking decision-making that went on historically that so badly damaged so many aspects of our state's environment. There are many examples of poor decision-making that allowed for environmental degradation. The idea was to have an independent body comprising people who would provide independent advice to government. That is why what emerged last week was very disappointing and, I think, very unnerving for people in both the environmental movement and industry; that is, approvals were potentially subject to challenge due to conflict of interest.

I want to deal with people from the environmental movement first. They took a case to court. We know that the acquisition of James Price Point has been shockingly managed for the last few years. There have been two or three court cases in which the government has had to take the acquisition process for James Price Point back to the beginning. The principal tenant of James Price Point has since said that it does not want to build its project there. We were seeking to acquire land on which the proposed original principal occupant no longer has any intention of proceeding with development. Along the way, the issue surrounding the Land Administration Act was mishandled and the process had to go back to the beginning. Then there were the conflicts of interest in the environmental approval process. There were at least two and there might be another one that has slipped my mind, but the process was messed up and thereby cost the taxpayers of Western Australia a lot of money.

People had a look at these issues surrounding the acquisition of James Price Point and I think the Wilderness Society took it to the Supreme Court to determine whether the Environmental Protection Authority's decision-making had been conflicted. According to Chief Justice Wayne Martin, it turned out that the EPA had been conflicted and, therefore, its decision was void. It is a pretty damning indictment on decision-making in Western Australia in this day and age that one of the principal bodies providing approval for multibillion-dollar projects was conflicted according to the Supreme Court of Western Australia, and approvals were therefore invalid ab initio, I think the expression is. That was the genesis of this situation. Then, no doubt, the government looked at it and said, "Uh oh! If we go back to our decision-making of late 2008 in particular"—I want to talk about the period before that—"we will find that there were conflicts of interest on at least 20 separate occasions thereby potentially rendering void those decisions involving billions of dollars of investment." Again from the point of view of the environmental movement, they were decisions that could very well have been different had the conflicted members not participated in deliberation, but that remains to be seen. The government says that the decisions would not have been different had the conflicted members not participated in deliberations, but that is something we need to tease out. If environmental recommendations have actually been compromised, as opposed to perceived to have been compromised, that is something we need to tease out and that is why a proper period of consideration in detail would be a good thing.

The first point is that the environmental movement of Western Australia has been let down by this issue, make no mistake. It has been let down by lots of things, particularly a conflicted decision-making process in relation to the Environmental Protection Authority. The EPA makes recommendations to the government; it does not make the final decisions. I note that there was some confusion about that last week. The EPA makes recommendations to the government; it is not as though the government appeals its decisions. It makes recommendations to the government and the minister makes a decision. After hearing from the EPA, and after an appeals process by the general community about the EPA decision, the minister then makes a decision based upon a range of recommendations. That is the process in Western Australia, although some people do not understand that. From the environmental movement's point of view, it is very important that the EPA, which makes recommendations to government, is untainted by conflict. Of course, the EPA's recommendations are published so that people can see them, so it is quite a transparent process.

The investment community, if you like—I note that more than 20 of the decisions that were subject to this legislation at present were for mining companies—wants certainty. In my experience, mining companies are generally pretty keen to go through these processes quickly. The larger mining companies that I note are involved have fairly extensive teams of people working on rehabilitation and environmental management programs and the like. They want certainty. These mistakes have led to absolute and complete uncertainty, which

is why the Environmental Protection Amendment (Validation) Bill 2014 is now before the house. In effect, had court action been brought in relation to these 25 decisions, there would have been huge uncertainty for investors in Western Australia. The environmental movement and the investment community have both been let down by this. It is, therefore, not unreasonable to ask why this was allowed to happen. We found two things; first of all, last Wednesday when this matter emerged, the Minister for Environment gave a briefing to some journalists, who were keen to pursue these issues. He provided a document to the journalists that did not contain the essential paragraph at the bottom of page 2 of the minister's second reading speech.

Mr A.P. Jacob: It was in my second reading speech.

Mr M. McGOWAN: In all the minister's briefings to the state press he did not mention the key point. When I was being questioned by the press, they did not know what I was talking about when I talked about the key point. I will read it out because the minister was caught out with his little bit of subterfuge. It states —

> Having considered this legal advice, the government has identified 25 cases where there is a risk that state environmental approvals for projects other than the Browse LNG precinct proposal could be held to be invalid. Broadly, those cases involved members of the authority who held shares in companies with a commercial interest in the outcome of the authority's assessment participating in the assessment.
>
> The review of EPA assessments undertaken to inform the SSO advice identified a change in the internal governance practices of the authority from late 2008 to 2012, whereby conflicted members were allowed to participate in the assessment process, in spite of the 2003 act amendment disallowing the practice. The ministers at the time were not advised of this change to the authority's internal governance practices.

There it is; it is not in the press briefing pack. In late 2008, there were changes to the internal processes of the EPA that were contrary to the law. That is the point; they were contrary to the law as contained in the 2003 amendment to the Environmental Protection Act. How did that happen? In the minister's press release that he issued on the day, he attributed blame, and I will read it to the house. The final paragraph of the press release reads —

> "This failure of governance was an error of judgement made by the EPA chairman and board members at the time and this is disappointing.

In the final paragraph of his press release he apportioned all the blame to the then EPA chairman and board. Therefore, apparently, under this government's watch, the EPA board is to blame for what went on; a decision that, but for this Environmental Protection Amendment (Validation) Bill 2014, could potentially jeopardise investment in Western Australia and make it subject to challenge. My question to the government is: How did this happen? How did the chair of the board of the EPA—an experienced and well-remunerated administrator, having served in a different role within the EPA for some time beforehand—with the support of other board members, make a decision to change the internal rules, what one would probably call delegated legislation or subsidiary rules, contrary to the act? The first thing we do when creating a regulation or a rule is to check whether it complies with the head act, otherwise it is invalid. The legislation of Parliament has primacy, and therefore anything we do has to comply with it. How did that happen? I do not think we have got to the bottom of this. I know that the minister in his press release said it was the chairman's fault; I know he has said that other ministers did not know about it. However, we have had ministers Faragher and Marmion over that time; what did they know? The minister says they did not know, but if the government was somehow trying to implement some sort of policy or notion about cutting through red tape and getting rid of problems, and people in those ministers' offices knew that the government was acting contrary to the law, we need to know and the public should know; otherwise it could happen again. The minister says they did not know, but I think those staffers and former ministers should appear and answer the questions, and all the documents associated with this should be tabled. We need to know.

Were there other people, apart from then ministers Faragher and Marmion's officers, inside government who knew? I refer to the Supreme Court case of The Wilderness Society of WA (Inc) v Minister for Environment 2013, which identified the conflict in relation to the Browse case. Chief Justice Martin had this to say on page 21 of the judgement —

> At a meeting held on 3 September 2009, the EPA resolved that conflicts of interest in relation to particular agenda items would be managed as follows:
>
> …

3. 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.

That is in Chief Justice Martin's judgement. Further along in the judgement, he says, at page 29 —

On 14 December 2011 this document —

A document that referred to Browse —

was annotated with the following note:

> Advice on the above strategy was sought from the Public Sector Commissioner. His office believed it to be reasonable given the circumstances but suggested some minor changes to EPA's Code of Conduct to ensure consistency with the strategy, which has been done.

[Member's time extended.]

Mr M. McGOWAN: Chief Justice Martin in his judgement said that the head of the EPA went to the Public Sector Commissioner for advice in relation to conflicts of interest. I asked the Premier earlier today, because I would like to know: What did the Public Sector Commissioner know? Did he provide Dr Vogel with advice that it was okay? Did he say it was okay? Dr Vogel, according to the minister's press release, is taking all the blame here, but from whom did he seek his advice? I think the minister needs to answer those questions on his behalf or else there needs to be a proper inquiry into how all this happened. The Chief Justice is saying that at various points Dr Vogel sought advice from the then Office of Public Sector Management, and then from the Public Sector Commissioner in 2011. What advice did the Public Sector Commissioner and the Office of Public Sector Management provide to Dr Vogel? That is a fair question and it deserves an answer, but today the Premier would not answer it. He said that he cannot remember all his conversations with Mr Wauchope going back to 2008, and I do not blame him for that—but I do think his office should research the question and answer it, rather than brushing it off as irrelevant because the government is passing validation legislation. That is not good enough. That is not accountability, and that is not transparency.

I turn now to other freedom of information applications. We have FOI applications here concerning conflicts of interest, which include Mr Wauchope's handwritten notes going back to 2011. Dr Vogel sought advice from Mr Wauchope along the way, predominantly in relation to Browse, going back to October 2011, and there are records of other various meetings and so forth. We do not have anything prior to 2011, but we have a record in Mr Wauchope's handwritten notes that advice was being sought in relation to all these issues. Was advice being sought beforehand, and who inside government was giving the advice? Was it Mr Wauchope, or was it other staff? If advice was provided, was Dr Vogel advised that it was okay to change the rules? What I am saying is that the public has a right to know and that there should be transparency. I do not want to see Dr Vogel taking all the blame if others were involved and others were responsible, because that is not fair. We saw him take the blame last week in what must have been fairly unpleasant press conference with the minister and Dr Vogel, in which Dr Vogel appeared to be monstered. I do not want a situation in which one person cops all the opprobrium and blame if others were to a degree responsible for this debacle in environmental management in Western Australia.

I also note that the member for Gosnells has foreshadowed two very reasonable amendments to the legislation, and I ask the government to consider them. I do not think it is good enough if it is to be the case that this bill will just validate anything at any point in time without Parliament being informed. If this is both a retrospective and prospective validation bill, the government needs to answer questions in relation to that. That matter is covered in one of the amendments foreshadowed by the member for Gosnells.

I also note that the minister said to the press and to the house, by way of explanation, that he had to pass these laws to validate three projects—two in 2005 and one in 2002. We would like to know what they were, and I will explain why. If the government had to validate projects in 2005, the 2003 act would have applied then. The regulatory or rule change by the EPA in late 2008 had not yet come into effect, and the law as at 2003, which said that conflicts could not be deliberated on, was in place.

If people on the Environmental Protection Authority were acting in a conflicted manner, they were doing it without even a fig leaf of a rule change put in place in 2008. I would like to know what those projects were, what the exact alleged conflict was and how significant it was, or whether it was so slight and so insignificant that the Minister for Environment put it into the list to imply that this is a problem that also occurred when the former government was in power. We will investigate that.

I would also like to know what the 2002 conflict was. If there was a conflict, allegedly, in 2002, that was before the 2003 act that put in place a requirement that a person could not participate in deliberations on a proposal in which they had an interest. According to the law of 2002, if I read the minister's speech correctly, there could not have been a conflict because the 2002 law that applied at that time stated that a person could participate in deliberations. That was obviously before we had the chance to change it. I think that a person should not be able to participate in deliberations on issues about which they have a conflict. I do not think it is right; they should not do it. It calls into question the whole practice. If the law in 2002 allowed it, how has the minister included a 2002 issue in his list of things that needed to be validated? How is that possible?

Anyway, the Minister for Environment has a bit of explaining to do. I look forward to the consideration in detail stage of the debate. As I said today during debate on the matter of public interest, it is just another day of ongoing, rolling mess-ups, catastrophes, calamities and debacles by the government. This was one of last week's mess-ups and catastrophes by the government. I must say, it is a big one. It calls into question 25 projects and billions of dollars' investment in the state. It shows that the state's Environmental Protection Authority was conflicted in its decision-making deliberations. That is a pretty big mistake, and it is a mistake of this government's making.

MR W.J. JOHNSTON (Cannington) [5.42 pm]: The Environmental Protection Amendment (Validation) Bill 2014 is a bill that we are going to pass because of the incompetence of the Liberal government. The only reason we are being asked to deal with this legislation is that the government of Western Australia is incompetent. The Minister for Environment takes objection to the idea that he is supposed to tell the truth to journalists. I make the point that the code of conduct for members of the Legislative Assembly states —

> Members of the Legislative Assembly accordingly acknowledge their responsibility to maintain the public trust placed in them by performing their duties with honesty and integrity …

Last week, when the Minister for Environment went upstairs, or wherever he went, to brief journalists, he left out the critical fact that these problems we are dealing with in this legislation is a result of decisions made by this government. He was not telling journalists the truth. He giggled, as he usually does, when the Leader of the Opposition made his comments. The minister said, "Oh well, I included it in the second reading speech." What the minister does not tell the Parliament is that that second reading speech was made hours and hours after he had briefed the media. This practice was deliberate. It was a deliberate effort to mislead, and it succeeded.

Withdrawal of Remark

The ACTING SPEAKER (Mr P. Abetz): You cannot impute motives, member for Cannington. Please withdraw.

Mr W.J. JOHNSTON: I withdraw.

This action appears to be a deliberate campaign to mislead. It appears to be —

The ACTING SPEAKER: That is not acceptable, member for Cannington. Please withdraw.

Mr W.J. JOHNSTON: I withdraw.

Debate Resumed

Mr W.J. JOHNSTON: What I say is this: the Minister for Environment's incompetence is immeasurable. He is a pathetic minister who cannot do his job. He earns $273 000 a year; he is taking money on false pretences. I would like to point out to the house that on 11 September 2014, the minister answered a question in the other house. He was asked —

> (1) Is there a requirement that these minutes be provided to the Minister for Environment?
>
> …
>
> (3) If no to (1) —
>
> (a) have these minutes been provided to the minister regardless; and
>
> (b) has the minister requested these minutes?

The minister's response was —

> (3) Copies of the minutes of the meetings of 2 October 2008, 3 September 2009 and 29 April 2010 were provided on 3 September 2014 as part of a briefing from the Office of the Environmental Protection Authority in relation to the review of environmental approvals undertaken following the Supreme Court decision on the Browse liquefied natural gas precinct.

In a separate question, he was asked —

(1) On what date did the Minister for Environment, or his office, first receive a copy of the 3 September 2009 minutes of the Environmental Protection Authority?

He answered —

(1) It was received on 3 September 2014.

There are a couple of points in that. The first is that the judgement of the Supreme Court was delivered on 19 August 2013. It was a decision that overturned a multibillion-dollar approval. What did the minister do? Remember, the minister was a respondent to the decision; in other words, he was a participant in the case. What did he do following that decision on 19 August 2013? Nothing. He did nothing for over a year! It was 13 months before the minister was given a briefing on these matters. There was 13 months of inaction. Billions and billions of dollars of investment in Western Australia, and the minister is rushing out to get on top of the matter 13 months later! Can members believe that? That is inconceivable. According to the minister, there were nine days between him receiving advice and the bill being introduced to Parliament. He is first advised of the minutes of the EPA and the problem that has occurred on 3 September 2014, and seven days later he has introduced legislation into Parliament. That is pretty rapid work. It is a pity he had not done anything for 13 months.

I do not see how the answer can even be truthful because the minister was a respondent to the matter. It is interesting to read Chief Justice Martin's decision. At paragraph 22, under the heading "The facts", he states —

> The facts giving rise to the applicant's claims are not contentious. They were established by admissions made by the first and second respondents in a response to the originating motion, a formal admission of facts by Woodside, and the tender by consent of a statement of agreed facts, a bundle of documents, and a number of affidavits. None of the deponents of those affidavits was required for cross-examination.

In other words, the issue of those minutes of September 2009, when the rules of the EPA were changed, were submitted to the court by the Minister for Environment. It is completely inconsistent for the minister to say in the upper house, by way of written answer to question C1019, that the first time he was aware of these matters was 3 September 2014. On the facts, that cannot possibly be true. The minister will have to explain why he was aware of them during the court case but was not aware of them until 3 September 2014 for the purposes of answering a question in Parliament. That is an impossibility. It will be interesting to find out from the minister how he could agree to these facts in the court but disagree to these facts in Parliament. This goes to the very heart of the disaster that we have here—the total and utter incompetence of this minister and probably his predecessors. But we know about his incompetence. This is not acceptable. Whether a tree-hugging greenie or a bulldozer driver, this minister is incompetent. He is not helping the development sector of this state because he has brought into question billions and billions of dollars worth of projects because of his incompetence. We still need to find out the exact extent of that incompetence. How is it that the minister can say, in answer to a question, that he was not aware of the minutes of 3 September 2009? That is an important date because, as His Honour found, that is when the EPA changed its procedures. The minister knew about the change in procedures when he was responding to the case in the court, but he did not know about it when he was asked a question in Parliament. It will be interesting to see the minister explain how he can have knowledge on one day and not on another.

I also want to ask about the Roe Highway stage 8 approval. I understand—although I could easily be wrong on these things—that the EPA gave approval to that project in September 2013, after the court date. The court made a decision to point out to the EPA that its practices were invalid. Let us understand that it is not that the EPA made a mistake; it is that the work was not done. My good friend the Leader of the Opposition is a lawyer, and he used the proper title, but I do not know it, but it wipes the slate clean and takes it to the start. Given that the EPA knew that as a fact, how was it that there was a conflicted decision a month later? How did that decision get made? The member for Gosnells asked what the conflict is, but there is a separate question: how could it possibly have occurred that the decision was made after His Honour's decision, when the EPA knew that the decision that it purported to make in 2009 had never in fact been made? The rules that the EPA thought it had developed on 3 September 2009 were never made. That was the decision of His Honour—they were conflicted with the powers in the act and therefore they could not be made and therefore they were not made. In September 2013, which, as I understand was when the decision on Roe 8 was made, the EPA already knew that, so how could Roe 8 be added to the list of projects to be approved? What is the conflict, and how did it come about, given that the EPA already knew about the problem?

The minister rushes in now with this legislation, just a week after he had been briefed by the EPA about it. It is a commendable effort, although we know that he has been sitting on his hands for 13 months. He has already told us that he did not do anything to ask for any of the information that he needed. As I am a layperson, I did a couple of Google searches—not exactly complex research. I do not have the teams of people on high salaries

available to the minister. One of the interesting things I found was a client newsletter provided by the Victorian Government Solicitor's Office entitled "Administrative Decisions and Conflicts of Interest", dated November 2013. In quite a detailed little briefing note a number of things are pointed out. A summary box states —

> This Newsletter has particular relevance for statutory bodies (including boards and authorities) which have statutory powers and functions, including decision making powers.
>
> The decision of *The Wilderness Society of WA (Inc) v Minister for Environment* [2013] WASC 307 highlights the risks of failing to comply with statutory requirements in relation to the declaration of pecuniary interests when exercising statutory powers and functions.

The note concludes —

> If you have any concerns about conflicts of interest or potential bias in decision making, getting legal advice before a decision is made can avoid problems (and expenses) later on.

In November 2013, the Victorian Government Solicitor's Office was able to respond to the decision in a case in the Supreme Court of Western Australia in which the Minister for Environment was a participant , but the minister cannot respond to that same decision. A prominent law firm, Lavan Legal, on 20 August 2013, just a day after the filing of the decision, advised its clients of the effect. Its advice states —

> In summary, any person aggrieved by a decision of an environmental agency should review the process underpinning how that decision was arrived at from start to finish in order to identify any procedural irregularities or shortcomings that may lead to judicial review rights.

There they are, touting for business, suggesting that their clients go out and look for potential problems. That is the day after the decision, but what is the minister doing? He is still sitting on his hands, waiting till 3 September 2014 to take action. Jackson McDonald, another prominent legal firm, in an advice to its clients of October 2013, states —

- The Supreme Court found that the environmental approvals issued by the Minister in relation to the Browse LNG Precinct were invalid because of the members' pecuniary interests.
- The disclosure requirements of members of the board or management committee of an Incorporated Association.

The last point refers to whom they are saying this advice relates to. There is a tip at the end of the document that reads —

> Keep "disclosures of interest" as a standard item on your meeting agenda. Often there will be nothing to note, but it serves as a reminder to members of the need to remain aware of conflicts of interest and "normalises" the disclosure process.

Again, Jackson McDonald does not have a problem making a response to the judgement. It is interesting that when I attend, on a regular basis, board meetings of the independent public schools of which I am a member, we have a disclosure of interest at the start of those meetings. When I attend William Langford Community House Inc board meetings, we have a disclosure of interest at the start of those meetings. It is not exactly a surprise that these things are done, yet what is the minister's response? Silence—that was the minister's response. It is not as if Parliament did not consider these issues. A matter of public interest was debated in September 2012. It is interesting to note that the Premier did not understand what had happened, which is not exactly a surprise to me. As indicated in *Hansard* of 11 September 2012, he stated —

> What happened with the EPA was extraordinary. People did not have genuine conflicts of interest, but they were aware, because of the contentious nature of the project and lobbies against it … that any decision was likely to be challenged. If there was any whisper or sense that a challenge could be mounted, members of the EPA stood aside for quite paltry reasons, such as having a superannuation fund that might own Woodside shares. For those reasons—small shareholdings hidden in the sense that they were in a broader multimember superannuation fund—members stood aside because they might be a ground for a challenge.

That conflicts with His Honour's decision, which makes the point that they were substantial holdings, and not in multimember superannuation funds but in self-managed superannuation funds. The member for Gosnells made the point that he chooses, as I do, not to own shares in his own name because that way there are no conflicts of interest. I have two superannuation funds, but I have absolutely no control over the management of those funds, and that is why I cannot be conflicted with the operations of those two superannuation funds. If I had a self-managed fund, that would potentially lead to a conflict of interest. That is something that is well understood

in the community and in these issues of matters of conflict. In that debate on 11 September 2012—I notice that we are about to run out of time—the former Minister for Environment, the member for Nedlands, said —

> In February 2012 the EPA advised me as Minister for Environment that it expected to release the assessment report and recommendations on the Browse LNG precinct in April.

He then goes on about what happened, and then he said —

> The EPA forwarded a copy of its draft report and recommendations to me on 27 June 2012. On 16 July 2012 the EPA released its report and recommendations on the proposed Browse LNG precinct at James Price Point.

Later on he said about conflicts —

> The potential for EPA members to have conflicts of interest in relation to this project was first raised by the EPA chairman to me as Minister for Environment in February 2012. The chairman also sought legal advice on this matter.

He then went through what the potential conflicts were, and the fact that members owned shares.

[Member's time extended.]

Mr W.J. JOHNSTON: The then minister went on about the various board members and their potential conflicts, and explained how it was handled. To quote again —

> The interests were tendered, minuted and recorded in accordance with the Environmental Protection Authority's meeting procedures.

It is interesting that the then Minister for Environment obviously knew some of the behaviour in the EPA, because he reported on it. I wonder whether the current minister understands that the Minister for Environment is an office, not a person.

Sitting suspended from 6.00 to 7.00 pm

Mr W.J. JOHNSTON: Before I was so rudely interrupted, I was going through the time line provided by the member for Nedlands in the debate on 11 September 2012 regarding the James Price Point decisions. As I explained, the Leader of the Opposition had moved a matter of public interest regarding these issues on 11 September 2012. It would be interesting to know whether, when the minister came in for his briefing from each of the agencies, the decision of Chief Justice Martin in The Wilderness Society of WA (Inc) v Minister for Environment [2013] WASC 307 was included.

Mr A.P. Jacob: It had not happened.

Mr W.J. JOHNSTON: The member for Ocean Reef became minister after the —

Mr A.P. Jacob: No; you have your time line wrong, but that's all right.

Ms M.M. Quirk: He became minister in February, and the decision was in August.

Mr W.J. JOHNSTON: Okay.

That even makes it easier for me; the minister did not need a briefing because he was an applicant and, as I explained earlier, he made admissions. As the Chief Justice stated —

> They were established by admissions made by the first and second respondents …

The minister's admissions were that the provisions and procedures of the Environmental Protection Authority changed on 3 September 2009. The minister's admissions set out a copy of the words used in the EPA minutes. Paragraph 58 of His Honour's decision reads —

> At a meeting held on 3 September 2009, the EPA resolved that conflicts of interest in relation to particular agenda items would be managed as follows:

His Honour then set out the terms of the decision of the EPA. The last point, of course, is —

> 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.

Why did the minister make that statement to His Honour if he is saying that he was not aware of what was in the minutes of the September 2009 meeting until 3 September 2014? I find that strange. What did the minister think he was saying to the court in the admissions he made to it? What was in the minister's mind?

I also want to draw the chamber's attention to this issue of the subterfuge regarding the period of the problem. The minister has said in the media, as I understand the reporting, that after the 2013 judgement, the EPA reviewed decisions from 2002 to 2013. I will not go again to the questions that the Leader of the Opposition asked about how could the minister raise issues regarding 2002, when 2003 was the date of the changes to the act. I also would like to know how matters prior to 3 September 2009 relate to the practices of the EPA contained in those minutes that the minister submitted to the court I just read and are reported at paragraph 58 of His Honour's decision. How do things that happened before 3 September 2009 relate to that court case? Clearly, that court case sets out that it was that decision that led to the error.

I note that the minister provided an answer in the other house. He was asked —

> What was the date approval was given to each project?

I can see only two projects on this tabled paper from the other chamber that predate 3 September 2009. It has the BHP Billiton Wheelarra Hill iron ore mine extension on 16 August 2005, and the Marillana Creek, Yandi, life-of-mine proposal on 6 July 2005. We know those two decisions cannot relate, because that would not make any sense. It is impossible for those two projects to relate to the decision of 3 September 2009 because they are four years prior to it. Given that it cannot be about EPA board members participating in the decision process under the procedure of 3 September 2009, it must relate to some other matter. For example, was it a member of the EPA board failing to make a declaration? The minister's media comments would suggest that there has been a conflagration of the two issues of undeclared conflict of interest, and the later issue of declared conflicts of interest not being properly attended to by the board. Could the minister clarify for the benefit of the Parliament what the questions of conflict were in respect of those two specific decisions; and, if they do not relate to the issues raised in The Wilderness Society of WA (Inc) v Minister for Environment [2013] WASC 307, what do they relate to? The minister has included them in a list of proposals that he is asking us to agree to, but has not actually explained how they relate to the decision of the judge. I think the minister is obliged to provide that information to us.

I also point out, just for the benefit of people who want to have a look at how hard the minister worked on this issue—this multibillion-dollar problem that had arisen because of the decisions of the Liberal government in Western Australia—that in October 2013 the law firm Mallesons also made comments about these matters and highlighted the decisions; it also referred to a decision relating to a matter in Tasmania. The law firm listed what should be done. The document reads —

- Be proactive … Ensure that all relevant information is available to the decision maker.

Again I say that the minister really rushed here; he has taken 13 months to make sure he has the information in front of him! Mallesons recommends —

- Keep an eye out … Satisfy yourself that proper procedural processes have been followed.

Again, the minister rushed into this; I give him credit for only taking 13 months to follow that advice! Mallesons continues —

- Evaluate … Consider whether these recent cases may affect your current approvals and a "legal health check" always comes handy.

I must again congratulate the minister on it only taking him 13 months to follow those suggestions. It is extraordinary that the minister bothered to collect his pay even though he was doing no work. For 13 months the minister sat on his hands and did nothing at all.

I would like to know two things: what was the date of approval to draft the legislation; and what was the date of approval for the bill to be introduced? If the minister was able to do all that in seven days, that is fabulous, and I congratulate the public servants involved in being able to respond so quickly. However, I am interested to know whether what we have been told relates to what actually happened.

I again draw the minister's attention to his second reading speech, in which he states —

> The review of EPA assessments undertaken to inform the SSO advice identified a change in the internal governance practices of the authority from late 2008 to 2012, …

However, nobody knows what the decisions were that occurred in 2008, because, from what I have read, and as I have been advised by others, that is not related to the decision of Chief Justice Martin. I note also that the minister said in answer to question C1019 that he got a copy of the minutes of the 2 October 2008 meeting. It would be great if we could have an understanding of the issues that relate to the decision of 2 October 2008.

I am sure this is deeply embarrassing to the minister, because it demonstrates a complete and utter absence of capacity. It shows that the minister has done nothing to earn his very, very large salary. The minister has done nothing to protect the interests of the environment; but, equally, he has done nothing to protect the interests of investors in this state. This is a major embarrassment for the state government of Western Australia, and the minister is responsible for it. It is very nice of the minister to drop out a public servant to take the blame. But this is a Westminster system, and a minister is responsible for what happens in the bureaucracy. We have heard all this nonsense about how the Environmental Protection Authority is an independent body. That is not to say that the minister does not have responsibilities in collecting his salary. So far, the answers that the minister has given to this Parliament demonstrate a pathetic and appalling incapacity to do his job. It will be really interesting to have the minister try to answer some of those questions. The most fundamental question is: how can the minister say that he was not aware of the 3 September 2009 minutes until 3 September 2014, when the minister submitted them to the court as part of the agreed statement of facts?

DR A.D. BUTI (Armadale) [7.12 pm]: I also rise to make a contribution to the Environmental Protection Amendment (Validation) Bill 2014. As stated in the explanatory memorandum, this bill has been brought to Parliament as a result of a decision of the Supreme Court of 19 August 2013. That decision was made over a year ago, and this legislation is now being rushed through Parliament. One has to wonder what the government has been doing for the last year that it now needs to have this legislation go through Parliament as soon as possible. If this legislation is so important, one would have thought that it would have been brought to the house a lot earlier than today. The third paragraph of the explanatory memorandum states —

> The purpose of this Bill is to amend the *Environmental Protection Act 1986* to effectively provide that the rights, obligations and liabilities of all persons shall be the same as if each relevant action of the Authority and subsequent environmental approval had been validly done. The relevant actions to which the validating legislation will apply will be those actions which are invalid by reason of:
>
> - a failure to comply with section 11 and/or 12 of the Act; —

That, of course, was the determining factor in the Supreme Court decision —

> - the existence of a reasonable apprehension of bias by Authority members; or
> - the response to a perceived conflict of interest being to rely on a delegation where no delegation was in fact available.

The second point refers to a reasonable apprehension of bias by Environmental Protection Authority members. That, to me, appears to be a weakening of the conflict of interest test that is currently in the act. I will go to Chief Justice Martin's decision on that. I wonder whether the minister is deliberately trying to water down the conflict of interest test, but I will leave that to further along into my contribution.

There is no doubt that this is yet another reflection on the shambolic state of the Barnett government, which, particularly since it was re-elected last year, has lurched from one disaster to another. I do have some sympathy for the minister, because part of this was due to his two predecessors in the role of Minister for Environment. But the minister also has some culpability because of the length of time it has taken for him to bring this bill before the house.

It is amazing that the EPA, which is an incredibly important organisation, particularly with regard to protection of the environment of Western Australia, has found itself in this predicament. The issue of conflict of interest is paramount for all boards and committees. I sit currently on a number of school committees and boards. Conflict of interest is something that arises at the beginning of each meeting. As we know, local government authorities also have conflict of interest guidelines that they have to comply with. The "Model Code of Conduct for Council Members, Committee Members & Staff", put out by the Western Australian Local Government Association, deals in section 2 with conflict and disclosure of interest. It section 2.1, "Conflict of Interest", it states that council members, committee members and staff will ensure there is no actual, or perceived, conflict of interest between their personal interests and the impartial fulfilment of their professional duties. It then states that staff will not engage in private work et cetera. In section 2.2, "Financial Interest", it states that council members, committee members and staff will adopt the principles of disclosure of financial interest as contained in the Local Government Act. There is an obligation to disclose any conflict of interest and to not participate in the decision-making process in respect of conflict of interest.

In the introduction to the "Local Government Operational Guidelines: Number 20 — July 2011", which comes from the Western Australian Department of Local Government and Communities, it states —

> The *Local Government Act 1995* … places specific obligations on elected members of council, local government employees and other persons involved in making decisions or giving advice on Council matters to act honestly and responsibly in carrying out their functions.

Further on it states —

> Given the importance of probity, accountability and transparency, persons affected by the financial interest provisions of the Act are advised to err on the side of caution and disclose an interest in any matter before council or council committee where they may, or may appear to have, an interest. When in doubt about a financial interest, persons affected should consider obtaining their own legal advice on the matters before proceeding.

That is for local government. One would think that the EPA would hold the same stature with regard to the environmental regulations in Western Australia.

In the Supreme Court judgement, Chief Justice Martin lays out the factual scenario in a very precise chronological order. At meeting after meeting, there were EPA members who definitely had a pecuniary interest in Woodside or companies associated with the Browse project, but they did not declare that interest. It was extraordinary that they did not do so, and when they did declare a conflict of interest, the chair still allowed them to be involved in deliberations. That is quite extraordinary behaviour by Environmental Protection Authority members. It is mystifying that the government did not do anything about this when it was made aware of the potential conflicts of interest and what that might mean and that, until now, the Minister for Environment has done very little about that.

I want to go to Australian common law on this issue and also what the act says. I wonder whether, under this bill, the minister is seeking to water down the current conflict-of-interest provisions in the act. Declaring a conflict of interest, basically, is connected to the issue of trying to rule against bias; in other words, the people who make decisions will not be biased in their decisions because of some pecuniary interest. In Australian common law we had the situation in which someone who had a pecuniary interest was automatically disqualified from making a decision. The test for a judge is always higher than that for a decision-maker of a tribunal or a lesser body, but in many respects it is the same scenario. Australian common law used to apply an automatic disqualification rule when a judge had a pecuniary interest in a matter related to a party before them. That can be found in Dimes v Grand Junction Canal, but that was watered down to a situation of apprehension of bias: would a reasonable person believe that that pecuniary interest would result in a bias? The High Court case that watered down the automatic disqualification was Ebner v Official Trustee in Bankruptcy, in which it was stated —

> … the question whether there is a realistic possibility that the outcome of the litigation would affect the value of the shares will be a useful practical method of deciding whether a fair-minded observer might hold the relevant apprehension.

Would a fair-minded observer believe that the pecuniary interest held by a judge would affect their decision? Chief Justice Martin said something slightly different in his decision. He said that apprehension of bias is not the issue and that once someone has a pecuniary interest, they are disqualified from sitting in that position. The Environmental Protection Amendment (Validation) Bill 2014 may not state this, but the explanatory memorandum refers to the apprehension of bias, which is the common law provision. The statutory provision in the act at the moment is not the apprehension of bias; it is that someone who has a pecuniary interest is disqualified. I am interested in the minister's interpretation of that. I may be reading it wrongly and that may not be the intention of the bill, but the explanatory memorandum clearly states that the minister is seeking to validate acts in regard to the apprehension of bias, which is a lesser test than the automatic disqualification test, the original common law position—that is, if someone has a pecuniary interest of whatever degree, they are disqualified.

In this case, Chief Justice Martin stated on a number of occasions that the board members did not have insignificant shareholdings or pecuniary interests. Therefore, there was no need to determine a minimal test by which it could be considered a conflict of interest that could lead to a perception of bias because the interest was of such degree that there were quite substantial financial interests or pecuniary interests. This government should be extremely embarrassed about Chief Justice Martin's judgement. The Minister for Environment at the time was made aware of the problem of conflict of interest on a number of occasions but appeared to do very little about it. The Environmental Protection Authority wrote a letter to the minister seeking delegated authority for the chair to make decisions—so the minister was aware at that time of the conflict. The act has provision whereby power can be delegated to the chair of the EPA. However, I would have thought that that would be a red light to the minister. It is interesting that the former Minister for Environment Hon Bill Marmion is in the house now, because I agree with the current Minister for Environment that the former minister is culpable in this

scenario. To some degree, it is luck of the draw that this minister is carrying the can for the previous minister's inability to act. If it was not inability, former minister, then it was shabby work. The former Minister for Environment failed in his duty as a minister of the Crown to act when the conflict-of-interest issues were brought to him by the EPA. The former minister did nothing—or very little. The current minister can at least say that he has done something today, but his issue is that he did nothing for a long time. We are in dire straits when the Minister for Environment of the day, whoever it was in the last few years, sat on their hands throughout this conflict-of-interest issue.

[Member's time extended.]

Dr A.D. BUTI: The decision by Chief Justice Martin has generated a fair degree of commentary in the media and from people in the legal profession. It is interesting to refer to an article by Clayton Utz, which, of course, is the law firm in which the current foreign minister, Julie Bishop, was a partner—in fact, I think she was the managing partner in the Perth office. An article by Clayton Utz dated 23 August 2013 titled "James Price Point environmental approval knocked out—what does this mean for other proposals?" reads —

> Monday's WA Supreme Court decision overturning the environmental approvals for one of Western Australia's most controversial development proposals—the Browse LNG Precinct at James Price Point north of Broome—raises fundamental questions about Western Australia's environmental assessment process …

It then goes on to refer to the problem that that raises regarding previous EPA assessments, which, of course, this bill is trying to retrospectively validate. The point is: why has the minister waited so long for this to happen? Surely we should not have had to wait for a decision in the Supreme Court by Chief Justice Martin for this government to act. The government was aware of the conflict-of-interest problem prior to this matter even going to the Supreme Court. Former Minister for Environment Hon Bill Marmion stands condemned over this, and the current Minister for Environment stands condemned for waiting so long to do something about it. It may not have been the current minister's problem originally—he did not create the problem—but once he was made aware of it, he should have done something about it. I wonder whether, with the bill before us, the minister is seeking to water down the conflict of interest requirement. If I am wrong on that, that is fine. I invite the minister to correct me on that when we move into consideration in detail on the bill. Clayton Utz rightly refers to the uncertainty that this position has created. On the meaning of the decision, the article states —

- proposals currently before the Environmental Protection Authority could be delayed (as the EPA assesses the implications of the decision);
- a possible re-start for some proposals currently before the EPA (if they are found to suffer the same defect as the Browse approval);
- recently approved proposals might need to be re-assessed (again, if they suffer the same defect); and
- proponents will have to actively engage with the EPA to ensure proper conflict of interest procedures are maintained in any future assessments (including exploring the EPA's power to institute independent public inquiries).

> In short, proponents will need to assess the validity of the EPA assessment of existing, current and future proposals as a result of The Wilderness Society of WA (Inc) v Minister for Environment [2013] WASC 307.

That is what this bill seeks to do. The Clayton Utz article states that the problem was that —

> The Environmental Protection Act requires EPA members who have a "direct or indirect pecuniary interest in a matter that is before a meeting of the Authority" to disclose that interest, and consequently they **must not** take part in consideration of or voting on that matter.

That would be good governance 101. Anyone with any experience or knowledge of how decision-making is to take place would be aware that a person who will be involved in making a decision should not have any conflict of interest, particularly of a financial nature and especially with something as important as the environment and major economic projects. It is quite amazing that when the government was made aware of this a number of years ago, it did nothing about it. The previous Minister for Environment did nothing about it and the current Minister for Environment sat on his hands about it. The Clayton Utz article summarises the judgement —

> The Court (a single judge, the Chief Justice Wayne Martin) held that conflicts arose from the following indirect pecuniary interests:
>
> - shareholdings in Woodside by two members of the EPA (personally, by spouses and through self-managed superannuation funds); and
> - a third member being employed by a BP company (a subsidiary of BP Plc, which held, through another subsidiary, an interest in the Browse Joint Venture) and having shareholdings in BP Plc (through an employee share scheme).
>
> Given the magnitude of the proposal, the court found that the market price of Woodside and BP Plc shares were likely to be affected by the outcome of the assessment.

In his contribution to this debate, the member for Gosnells mentioned that it appears that it is the philosophy of the Liberal Party that has brought about this problem with conflict of interest because the Liberal Party has a narrow view, concept or philosophy on the environment, and it always seems to consider that only a certain narrow band of people can be selected to be on the Environmental Protection Authority board. As the member for Gosnells rightly remarked, many people have expertise in environmental matters who could be worthwhile EPA board members. Of course, there should be people on the EPA board with economic or business interests, but they are not the only type of people wanted on the board. It would be a real concern if people who have been on the EPA board for over 10 years decide to buy shares in Woodside knowing they will make a decision about a proposal in which Woodside is a major proponent. That happened in this case.

How the various Liberal Ministers for Environment did not see the problem presented by the make-up of the EPA board on the Browse project is very, very surprising and quite alarming. Conflict of interest is probably the most paramount issue any statutory or other board needs to consider when making its decision. Confidence is needed that in making their decision, board members are not affected by any personal interests and are considering the merits of the case before them. The primary responsibility of the EPA is the protection of the environment. That is mandated in the act under which it is created. The protection of the environment should be the EPA's only consideration. It should not be considering possible personal financial gain. One might say that these people are such outstanding citizens that they would not have considered their personal financial interests. That is not the point. The act makes it quite clear that if a board member has a pecuniary interest, that member is disqualified from deliberating in decision-making on that project. The chair of the EPA erred in allowing them to remain as part of the deliberation process and by stating that as long as they did not make a decision, they were not contravening the conflict-of-interest provision under section 12 of the act. Of course, as a result of being in contravention of section 12, the necessary quorum under section 11 of the act was not present to validate the decision. That comes back to what the member for Gosnells said: as the Liberal Party selects candidates for the EPA board from such a small, narrow band of people—the minister can shake his head and smile, but I would not be smiling because today we find ourselves in a shambolic situation —

Mr A.P. Jacob: The member is aware who appointed the two conflicted members in the Browse project.

Dr A.D. BUTI: That may be the case —

Ms S.F. McGurk: It has nothing to do with those; the conflicts are the issue.

Mr A.P. Jacob: It is exactly the issue. If you are going to go down the road of pursuing the appointment issue, as you were saying, they were appointments of your government.

Dr A.D. BUTI: Minister, when the previous government appointed people to the EPA board or its equivalent organisation, it also appointed community people to the board. I do not think that the minister is following that.

The main issue here is that there was a conflict, and the board members should not have contributed to deliberations on this very important economic project. At least one Minister for Environment before the current minister was made aware of this problem, and he did nothing about it. When the current minister came to the office of Minister for Environment, he did nothing about it. When the minister was given the red light—the danger signal—by Chief Justice Martin, he took a long time to bring this bill before the house—over a year. It is not an overly complicated bill; it is not a large bill.

Ms M.M. Quirk: It is six pages.

Dr A.D. BUTI: It is six pages! It has taken over a year for this legislation to come before the house. It would be interesting to know when the minister was first made aware of the problem and his explanation for why he has taken so long. I think it is important for the minister to explain why it has taken him so long to bring this bill before the house, because placing 20 to 25 projects in doubt is something that no government and no state wants

to deal with. This bill will retrospectively validate those assessments that are in doubt as a result of the conflict-of-interest requirements under the current act. I am unclear why the minister would take so long to bring this bill before the house, and I really wish the minister would explain. The minister's explanatory memorandum states —

> The relevant actions to which the validating legislation will apply will be those actions which are invalid by reason of:
>
> - a failure to comply with section 11 and/or 12 of the Act;
> - the existence of a reasonable apprehension of bias by Authority members;

That is the common law position rather than the current statutory position, unless I am interpreting it incorrectly. I may have it wrong and I am prepared to stand corrected when the minister has contact with his advisers, but that is just my reading of it. Chief Justice Malcolm —

Ms M.M. Quirk: Chief Justice Martin.

Dr A.D. BUTI: Sorry; Chief Justice Martin. I thank the member for Girrawheen for closely listening to my speech. She is very helpful.

Chief Justice Martin stated on a number of occasions that the position is not the reasonable apprehension of bias; the fact is whether there is a pecuniary interest. That is the determining factor. Before his conclusion, he states that the Minister for Environment has an incredibly important role to play in the administration of this act and in the approval process. That is why it is so damaging that previous ministers have been asleep at the wheel and this minister has been very slow at the wheel. At paragraph 229, the Chief Justice states —

> … the report which the Chairman sent to the Minister on 16 July 2012 was not a report of an assessment of the Browse LNG Precinct Proposal undertaken by the EPA in accordance with the Act. The actions of the EPA did not constitute the valid exercise of the duty of assessment imposed by pt IV of the Act. The Chairman did not, himself, undertake that process of assessment following the grant to him of the delegated powers of the EPA on 5 July 2012. It follows that there has been no assessment of the Browse LNG Precinct Proposal by the EPA in accordance with the provisions of pt IV of the Act, and the document purporting to report to the Minister on the outcome of such an assessment is not a report falling within s 44 of the Act. The applicants' challenge to the first impugned decision must be upheld.

When that report was made by the chairman and given to the minister on 16 July 2012, the minister should have done his own due diligence to ensure that, as the Treasurer would say, it was kosher. It definitely was not kosher. There has been an incredible failing by successive Ministers for Environment. The conflict-of-interest issue is very important in the proper governance and regulation of the environment in Western Australia. It is important that the minister understand that that is a failing that he has contributed to through the delay in bringing this bill to the house.

MS M.M. QUIRK (Girrawheen) [7.42 pm]: When I was considering the Environmental Protection Amendment (Validation) Bill 2014, I was reminded of one of the insults that the Premier, in his inimitable and grouchy fashion, sometimes hurls across the chamber when he says that the opposition is so process driven. The Premier sees that as an insult. This bill is ample evidence that the Barnett government is not process driven enough. It is ample evidence that the Barnett government is contemptuous of the process —

Mr C.J. Barnett: The Western Australian government or the state government is the correct term.

Ms M.M. QUIRK: The Western Australian government is not only contemptuous of the process, but also reckless with its consequences.

As we have heard already from a very learned exposition by the members for Gosnells and Armadale and others who have spoken, this bill seeks to ratify a series of decisions that were made following a decision of Chief Justice Martin in the case last year of The Wilderness Society of Western Australia (Inc) v Minister for Environment [2013] WASC 307. Although this decision dealt with the Kimberley gas hub, it is conceded and acknowledged—in fact, a rather humiliating concession had to be made by the minister—that a number of other projects will have been affected because decision-makers were potentially conflicted.

As we have heard already, the Browse decision is undergoing a separate assessment afresh. That will not occur for a number of other projects. This bill is about regularising what, as we have already heard, has been highly irregular. I put on the record that the projects include the Jimblebar iron ore project; the Jinidi iron ore mine; the Macedon gas development; the Marillana Creek Yandi life-of-mine proposal; the Orebody 24/25 upgrade project; the Port Hedland outer harbour development; the railway deviation though the Chichester Range; the

Wheelarra iron ore mine extension; the Wheelarra iron ore mine modification; the Roe Highway stage 8 extension, which I am not sure of the status of, but that certainly has been mooted; phase 2 of the ammonium nitrate production expansion project; the Solomon iron ore project; stage 2 of the James Point port development; phase 2B of the Brockman iron ore mine extension; the Cape Lambert–Emu Siding rail duplication; the Cape Lambert port B development; the Cape Lambert port B review of conditions; the Hamersley agriculture project; the Hope Downs iron ore statement 584; phase 2 of the Marandoo mine; the Nammuldi–Silvergrass expansion project; the Turee Syncline iron ore project; the Yandicoogina Junction South West and Oxbow iron ore project; the residential subdivision in Shenton Park; and the review of conditions of the Pluto LNG proposal.

I do not want to labour the point, but I think it is important that the minister understand the extent of the problem and the extent of what this bill is trying to remedy. The government needs to be mindful that the opposition has cooperated in allowing the bill to be declared urgent, but certainly the question has been asked, and I will ask it later on, about why this bill has taken so long to get to this house.

In the Wilderness Society case, the Wilderness Society joined with the Goolaraboolo traditional custodian, Richard Hunter, in taking both the Western Australian Environmental Protection Authority and the state's environment minister to the Supreme Court over their mishandling of conflicts of interest over the proposed Kimberley gas hub. The case concerned the invalidity of three administrative decisions made in relation to a proposal by the minister to establish an LNG precinct at James Price Point. Although the Wilderness Society put forward a number of grounds, a number of which were rejected, the court ultimately held that the decision-making process had been invalid in three of them. The court findings were that there was no valid assessment of the proposal and, in turn, the finding regarding the assessment was made on the basis that the assessment was agreed upon by individuals who had pecuniary interests in the proposals and thus should have been disqualified from the assessment-making process. As the assessment was invalid, all decisions that stemmed from the assessment, including the three at issue, were similarly invalid. The basis for the decision was a failure to have recognised or acted upon direct or indirect pecuniary interests held by three of the five members of the Environmental Protection Authority in relation to the proposal, and that fatally tainted the processes leading up to the minister's approval.

The Chief Justice noted that the magnitude of an interest will often be relevant when dealing with the common law rules relating to procedural fairness and bias, but under the Environmental Protection Act, those provisions were more robust and were not qualified by any reference to the extent or magnitude of a pecuniary interest. That was in fact a moot point, as the Chief Justice found that the shareholdings and interests of the EPA members could not be described as being of a trivial character, although he did not specify exactly the level of their interests. Having found that three of the five members of the Environmental Protection Authority clearly had either a direct or an indirect pecuniary interest in the Browse LNG precinct proposal, the more difficult question was whether the failure to recognise or act on those interests, as required by the Environmental Protection Act, invalidated the actions undertaken by the EPA. To answer that question the Chief Justice had regard to legal principles that were outlined in the case of Project Blue Sky Inc v Australian Broadcasting Authority [1998] … 194 CLR 319. He said the criteria included the language of the statute, the subject matter and objects of the statute, and the consequences of finding that acts done in breach of the requirements of a statute are void. He said that consideration of those principles included the imperative language of the Environmental Protection Act in dealing with the obligation to disclose pecuniary interest and not to participate in the consideration of matters to which the interest applies; the purpose of the provisions being to ensure the integrity of the operations and processes of the EPA in the public interest; and that the provisions of the Environmental Protection Act supplanted and replaced the common law principles that relate to apprehension of bias.

The Premier and the Minister for Environment are very keen to tell us that the impact of the Wilderness Society decision is merely a technical error and has nothing to do with the merits or the actual environmental impacts of proposals. As we see from the Chief Justice's decision, however, the requirements on conflicts under the Environmental Protection Act is stricter than under the common law.

Mr P.B. Watson interjected.

The ACTING SPEAKER (**Ms L.L. Baker**): Members!

Mr P.B. Watson interjected.

The ACTING SPEAKER: Excuse me, member!

Mr P.B. Watson interjected.

The ACTING SPEAKER: Member for Albany! There is an Acting Speaker on her feet.

Mr P.B. Watson interjected.

The ACTING SPEAKER: Do you wish to stand and say something about standing orders?

Mr P.B. Watson: No, but they are being very rude.

The ACTING SPEAKER: Member! You do not need to talk back to the Acting Speaker. Ask for the call if you are going to speak, all right?

Mr P.B. Watson: Thank you, Madam Acting Speaker.

Ms M.M. QUIRK: To pre-empt some sort of objection, I am quoting from the legal decision and, unlike the Premier, I care about getting things accurate.

Several members interjected.

Ms M.M. QUIRK: The provisions of the Environmental Protection Act supplanted and replaced the common law principles relating to the apprehension of bias. As I said, the Premier and the minister are very keen to say that this is a technical breach, a technical invalidity, and has nothing to do with the broader issue of protecting the environment, but as we see from the Chief Justice's decision, the requirements about conflicts of interest under the EP act are more robust under the common law and that is the way the legislature intended it to be. It should not be minimised. I think the attempt to minimise the whole process is quite risible. The government characterises these sorts of requirements as "constraints". As I said, I want to read this, because again I want to get it right. "The Liberal's Conservation and Biodiversity Policy" at page 18, under the heading "Our Record" reads —

> The Liberal Government has a strong record of making decisions when it comes to protecting and enhancing the Western Australian environment.

The Liberal Party might need to amend that. It continues —

> These achievements include:
>
> …
>
> - Reducing approval times while strengthening the independence of the Environmental Protection Authority; reducing number of levels of EPA assessment from five to two, clarified parallel processing and decision making; and removed constraints on decision makers in regard to minor or preliminary works
> - Since its election in 2008, the Liberal-led Government has determined more than 1,100 appeals against 328 proposals. These include the strategic Browse liquefied natural gas precinct; the $30billion Wheatstone project at Onslow; and a proposed uranium mine near Wiluna.

Members will recognise that some of those projects are in fact now subject to some doubt.

Mr C.J. Barnett: Wheatstone isn't.

Ms M.M. QUIRK: I said some of those projects, Premier, are subject to doubt.

Mr C.J. Barnett interjected.

Ms M.M. QUIRK: I am not receiving interjections from the Premier, who is bullying and rude as usual. He should go back to the wine-tasting, where he belongs.

Mr P. Papalia interjected.

The ACTING SPEAKER: Member for Warnbro!

A government member interjected.

Ms M.M. QUIRK: I was reading from the Liberal Party policy, which the member has no doubt memorised.

Several members interjected.

The ACTING SPEAKER: Members! This is not an occasion to debate what has been happening outside this chamber. I thank members to remember that. The member for Girrawheen has the call. Please do not interject on her; she has asked that members not interject on her.

Ms M.M. QUIRK: I want to make a final point, and for the purpose of accuracy, I will again read from the minister's second reading speech; thank you very much. As a number of my colleagues have said, there is no

credible explanation for why it has taken over a year to get a five-page bill into this house. The minister is quoted as saying that after Chief Justice Martin's decision he asked that all other EPA decisions within that relevant time frame involving those EPA members be reviewed. That is commendable and an appropriate response at the time of the court's decision. But there was nothing to stop the parallel process of taking to cabinet a submission requesting that the Minister for Environment be given approval to draft legislation that would remedy this issue. Instead, he has moved with glacial speed. As he states at the conclusion of his second reading speech —

> The reputation of the state as a secure place for substantial capital investment could also be compromised. The government has decided that validating legislation is necessary to avoid these outcomes.

In fact, over the last year, that reputation has suffered because the government has not acted as though this was a matter of some urgency involving a number of projects worth millions of dollars. It has been shrugged off as a mere technicality and not worthy of serious and urgent consideration.

MR B.S. WYATT (Victoria Park) [7.57 pm]: I rise to make some comments on this Environmental Protection Amendment (Validation) Bill that, to be frank, has been a debacle in which the government has had to rush in legislation to fix up its mistakes.

Mr C.J. Barnett: And yours.

Mr B.S. WYATT: The Premier has tacked in a couple of old projects there. What a debacle! The Premier has overseen this. He has had a bunch of inept environment ministers who have come and gone; no-one expects them to do anything, but they expect the Premier to do something. This judgement of the Chief Justice is not a mere technical finding, as the government would have us believe. This shows that just after the Liberal and National Parties were elected to government in 2008, a process as set out in the Environmental Protection Act changed, not because the Parliament considered a change and passed a change to the legislation but because a key issue of governance changed. This is not a matter of, "Well, we'll put it in this in-tray as opposed to that in-tray." It is a fundamental difference in how we treat conflicts of interest. The Minister for Environment and the Premier have said that it is technical and there is no suggestion that anyone benefited or behaved inappropriately.

Several members interjected.

Mr B.S. WYATT: If that is the case, what is the point of having any conflict-of-interest rule?

Mr C.J. Barnett: It's not a serious issue.

Mr B.S. WYATT: It is a deadly serious issue, Premier, to quote the interjection he just threw across the chamber. That is the problem. I remember Eric Ripper, the former member for Belmont, making the point that the Liberal Party has a blind spot to conflicts of interest, and he was bang-on. The Minister for Environment's response in question time last week to a question from the member for Gosnells highlights that point. He got to his feet and in a curious contribution he did a couple of things. The Minister for Environment said, "The members of the Environmental Protection Authority did nothing wrong but, guess what? They were all appointed under Labor." That is curious, because usually when a minister identifies that people were appointed under the previous government, it is not by way of compliment.

Mr A.P. Jacob: What was the question I asked?

Mr B.S. WYATT: Minister, sit and listen!

Then, without even any mention of the Public Sector Commissioner, the minister gets on his high horse and says, "How dare the opposition critique the Public Sector Commissioner?" who did not appear in the question. It was an interesting answer that I dare say the Minister for Environment had been told to give: "Whatever you do, protect the Public Sector Commissioner." I can tell members right now that it is quite right for members of the opposition and for the shadow minister in particular to ask questions flowing from the decision of the Chief Justice of the Supreme Court of Western Australia. That decision is not enormously complimentary of the role of the members of the EPA, the Public Sector Commissioner and, by extension, the government. I am talking about the government that presided over, for some curious reason, to quote the minister's second reading speech —

> The review of EPA assessments undertaken to inform the SSO advice identified a change in the internal governance practices of the authority from late 2008 …

I note that Mr Vogel has said, "Oh, it's because we were so busy, so we had to change the processes." As I said this was not simply a case of saying, "You know what? That in-tray's too full, stick it in that one." This is a change that completely ignores the legislation; and the minister has not asked the question. The minister can get

to his feet and say, "Well, it's an independent authority." But he is the minister. It is up to him to find out what is going on within that organisation. He has hardly been rushing; has he? The member for Cannington made the point that the minister rushed so much that it took him 13 months to even have a look at the minutes—13 months! Interestingly, his briefing note to the media did not refer to that 2008 change. I find that interesting. In the little surreptitious briefing the minister gave the journalists, he did not mention the 2008 internal governance change. That was ignored. That change was from a very strict approach to conflicts of interest to a very laissez-faire approach to conflicts of interest. I want to read the relevant section of the Environmental Protection Act.

Mr A.P. Jacob: It has been read a couple of times already.

Mr B.S. WYATT: I am reading it again because I do not think the minister understands it. I do not think he gets it; his answers in question time last week highlight that point. Section 12 reads —

> **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 shall as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest to Authority members who are at that meeting, and that disclosure shall be recorded in the minutes of the proceedings of that meeting.

Importantly—I will not read all the subsections—subsection (5) reads —

> (5) If an Authority member discloses an interest in a matter under subsection (1) or is determined under subsection (3) to have an interest in a matter, —

I make the point "direct or indirect" —

> the Authority member shall not —
>
> (a) take part, as an Authority member, in the consideration or discussion of the matter; or
>
> (b) vote on the matter.

It is beyond clear; it is obvious from this that there is no role for the chairman of the EPA to make decisions on which person with an interest can sit in, can sit out and can discuss but cannot decide. The act, as passed by Parliament, makes that clear, yet for some reason in late 2008, just after the change of government, that process changed; as I said, not because of any amendments made by Parliament to that section but because, for some reason, the chairman of the EPA decided, "You know what? I'm going to reinterpret what Parliament said about conflicts of interest", and he took on, as I have said, a very laissez-faire approach to the view on conflicts of interests.

Mr A.P. Jacob: You can read out the next section of the act if you like.

Mr B.S. WYATT: I will. Section 13 reads —

> **13. Decisions of persons presiding at meetings of Authority**
>
> 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.

There is certainly no doubt about what section 12 states. Section 13 does not give the chairman the right to reinterpret what the law stipulates in section 12. I understand that the Liberal Party has these blind spots in respect of conflicts of interest—I get that. The Minister for Environment's answer in that hapless performance last week highlighted that point.

Mr C.J. Barnett: Hapless! You were thrown out along with three of your members on the front bench.

Mr B.S. WYATT: That was the day before. Wake up, Premier! This is the problem: the Premier spends his whole life asleep in here and then he wakes up with a confused interjection, never knowing what is going on!

Mr C.J. Barnett: The worst performance by an opposition I've ever seen!

Mr B.S. WYATT: The Premier is asleep all night and wakes up with an interjection, "They were thrown out!"

The ACTING SPEAKER (Mr I.M. Britza): Okay, member!

Mr B.S. WYATT: He is like my doddering old uncle—and I have a few of those.

The ACTING SPEAKER: Member, thank you!

Mr B.S. WYATT: I have a few of them, and these interjections from the Premier highlight the point. I have not seen the Premier with a hook of late, but no doubt that is coming!

Then in *The Sunday Times* the minister says, "You know what? It should be all okay. We can't expect people to, you know, manage their conflicts. If they've got all these shareholdings, it should be all okay." He kind of gave us the idea that everybody has shareholdings through their superannuation fund but do not direct purchase those shares. Again, that is directly contradicted by the Chief Justice.

We will no doubt go through all those 25 decisions that were subject to doubt and find out exactly what the conflicts were; however, members Whitaker, Glennon and Lukatelich had various interests that the Chief Justice found could not be described as insignificant.

I accept that there was an error on the part of the chairman when he changed the internal governance processes of the EPA at a time when Mr Whitaker had various direct shareholdings in Woodside through himself, his wife and his son. However, it is interesting to note that this laissez-faire approach to the conflict of interest was quite dramatic because, as was pointed out in the Chief Justice's judgement, Mr Glennon made a decision to buy Woodside shares through his self-managed super fund after he had already sat in on about 10 meetings to consider the Browse proposal. He did not have a shareholding prior to this issue coming to the EPA. The Chief Justice states on page 15 of the judgement —

> … by letter dated 25 March 2008, the Minister for State Development (Proponent—a term which I will also use to describe the Proponent's Department) referred a proposal for a 'multi-user LNG hub to process the gas resources in the Browse Basin' (Browse LNG Precinct) to the EPA.

Then the EPA has a meeting on 3 April 2008, 17 April 2008, 1 May 2008, 12 June 2008, 26 June 2008, 10 July 2008, 24 July 2008, 7 August 2008, 21 August 2008 and 16 October 2008, and then on 29 October Mr Glennon buys some shares.

The reason that it is so important to take account of a conflict of interest is to ensure that these sorts of decisions are not made. That is the reason that Parliament passed section 12 of the Environmental Protection Act in all its clarity. Section 13 was to fix any doubt. There is no doubt about this issue. There is no role for the chairman to make a decision around the level of conflict or involvement that a conflicted member or a member with a direct or indirect interest may have. However, a member then purchased shares nearly a year into the assessment process. It is a problem when a laissez-faire approach is adopted towards a conflict of interest in direct contradiction of the provisions clearly set out in the act.

As the Chief Justice said, and as was accepted by the Minister for Environment in the agreed facts, Woodside's commercial interest was common ground. That was not an argued point. The Chief Justice notes on page 20 of the decision that it was not an argued point. Everybody accepts that the proponent may have been the Department of State Development or the Minister for State Development, but the agreed facts clearly state that Woodside had a commercial interest, yet, after 10 meetings, members were buying shareholdings in Woodside. That is the problem when those sorts of approaches are taken to conflicts of interest. I do not accept the argument the Minister for Environment made in *The Sunday Times* that it is all too hard in Perth's small gene pool to find people who are not conflicted. I do not accept that at all. That is not an answer from a government that has had to rush in legislation to correct up to 25, maybe more, projects. That is not the answer we need. These things cannot be dismissed as simply technical breaches or that there was no actual pecuniary gain. That is irrelevant. That is why we have conflicts of interest. As I said, the minister's response was to come in here and immediately leap to the defence of the Public Sector Commissioner—I understand that he wanted to leap to his defence—but his role is to ask questions now. His actual role, as the member for Cannington pointed out, was to ask these questions 15 months ago when the dynamite judgement was given by the Chief Justice. It is quite right to ask questions of the Public Sector Commissioner, because he was involved in this process, in the formulation of the conflict of interest practice within the EPA. I refer to two points in particular in the Chief Justice's judgement. Again, members may ignore me, as I know they do, but the Chief Justice of the Supreme Court has made these findings in his judgement at page 21, when he stated —

> At a meeting held on 3 September 2009, the EPA resolved that conflicts of interest in relation to particular agenda items would be managed as follows:

I will not read them out, but for the benefit of members, three points are found at page 21 of the judgement. The third point, when the process around the potential is set out—which was an incorrect interpretation of the act—states —

> 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.

That is one of the main jobs of the Public Sector Commissioner, and its website sets that out in great detail.

I want to quote His Honour's judgement at pages 28 and 29. Paragraph 98 states —

> On 25 October 2011 the Chairman prepared a document entitled 'State and Commonwealth Strategic Assessment of the Browse LNG Precinct—Managing Potential or Perceived Conflict of Interest Issues with EPA decision-making'.

It goes on to set out the process, which is, again, an incorrect interpretation of section 12. But I want to quote this from the judgement of His Honour —

> The document goes on to foreshadow the policy that would be adopted in the event that the strategic proposal was approved, and Woodside subsequently referred a derived proposal to the EPA for consideration. In that circumstance, the document recorded that members with shareholdings in Woodside, and members employed by companies that were joint venture partners in the Browse Joint Venture would be permitted to participate fully in discussions of the EPA —

By way of side note, it is beyond me how that decision can be made when reading section 12 —

> in relation to the derived proposal, but would not be allowed to participate in any decisions with respect to the Proposal. The document records that in that circumstance, the Chairman would make all relevant decisions pursuant to Instrument of Delegation No 22, being the only member of the board without a conflict.

Then paragraph 102 of the judgement goes on —

> On 14th December, this document —

That is, that conflict document —

> was annotated with the following note:
>
> > Advice on the above strategy was sought from the Public Sector Commissioner. His office believed it to be reasonable … but suggested some minor changes to EPA's Code of Conduct to ensure consistency with the strategy, which has been done.

[Member's time extended.]

Mr B.S. WYATT: The issue around conflict had been ongoing for a long time within the EPA. There had been lots of discussions around it. As members can see, the chairman Mr Vogel and the EPA were concerned enough that they sought specific advice from the Public Sector Commissioner, who said that that was reasonable but disturbingly suggested some minor changes to the EPA's code of conduct to ensure consistency with the strategy. I do not understand why the code of conduct would be changed to comply with the strategy, as opposed to correcting the strategy to comply with the code of conduct. That is where a fundamental mistake happened. The government distorted the act beyond belief to allow conflicted members to be involved in the process. Members know that it is not a good look for the chairman to be making all of those decisions on his own, because everyone else is conflicted. There is section 12 and then there are codes of conduct, which necessarily fall under the act as developed by the Public Sector Commissioner and the relevant government agencies, but what is going on when that agency, the EPA, says that this is going to be its strategy for Browse—the advice is go and change the code of conduct so your strategy conforms? No wonder the Chief Justice decimated the EPA's decision-making process in his judgement. He made the point again and again. I do not know what it was that Mr Vogel was doing at that particular meeting, but it certainly was not a meeting of the EPA, as the Chief Justice found on a number of occasions.

The Minister for Environment's response, firstly, is to come in here and answer a question that does not even mention the Public Sector Commissioner and individual members of the EPA, and to immediately at one level critique the members of the EPA because they were appointed under the former Labor government; and, secondly, say, "How dare you raise anything about the Public Sector Commissioner! How dare you!"

Mr A.P. Jacob: That is not what happened.

Mr B.S. WYATT: That is what the minister said. I will quote what the minister said, because he seems reluctant. He said —

> The member for Gosnells sought to smear the Public Sector Commissioner who was appointed as director general to the Department … under the previous Labor government.

Again, the minister kind of protected him and then gave him a whack for being appointed under the previous Labor government when he said —

> The issue here is that the member for Gosnells ran straight out and sought to besmirch and sought to smear the Public Sector Commissioner, who is one of the most respected senior public servants in this state.

Mr A.P. Jacob interjected.

Mr B.S. WYATT: Why does the Minister for Environment not ask him a few questions himself, rather than come in here treating —

Mr A.P. Jacob interjected.

Point of Order

Mr W.J. JOHNSTON: The member for Victoria Park has not asked for an interjection from the minister. It has been well said in this chamber on a number of occasions that just because a member refers to another member that does not give them licence to interject. I wonder if the minister could be called to order.

The ACTING SPEAKER (Mr I.M. Britza): There is no point of order. The member for Victoria Park took it back. If he had refused it, I would have protected him.

Several members interjected.

The ACTING SPEAKER: Keep quiet, members!

Debate Resumed

Mr B.S. WYATT: The Minister for Environment needs to ask the Public Sector Commissioner what he was up to. The minister's job is more than going to Crown casino and giving out environment awards, and then announcing that he is not going to do that.

Mr W.J. Johnston interjected.

Mr B.S. WYATT: That is a good point, member for Cannington.

It is woeful for the minister to come in here with the Young Liberal performance, "How dare you attack the Public Sector Commissioner!" There are legitimate questions, as raised by the Chief Justice of the Supreme Court, about what happened, why the advice from the Public Sector Commissioner was so wrong, and why Mr Vogel decided after the change in government that the new government would accept the laissez-faire approach of conflict of interest. Why were members of the EPA purchasing shares after they had been involved in the process for some 10 meetings? I think they are good questions. What do we get from the minister? The first time the minister saw the minutes of those relevant meetings was 3 September 2014. What a woeful performance! I do not know what the answers to these questions are. I do not know what happened with the Public Sector Commissioner. I saw in the media he disagreed with Mr Vogel and I never saw how that was resolved, but the minister should be asking these questions. Rather than the minister coming in here with those sorts of B-grade politics responses, he should do his job. We will help him. We will support the passage of this legislation and get him out of fix he has created. We see the importance of the passage of this legislation. There will be some questions asked, of course, particularly by the shadow minister, but, minister, treat those questions with respect and endeavour to answer them, rather than give that inane sort of commentary we saw in question time last week. The minister might actually get a more comprehensive debate and a quicker passage of his legislation than would otherwise occur.

This is a big deal. This is not, as the Premier and minister say, nothing more than a technical decision of the Chief Justice of the Supreme Court of Western Australia. This shows a fundamental change in the internal governance practices of the Environmental Protection Authority. We need to know why that occurred and why they could be so different from what the legislation stipulated, particularly section 12 of the EP act. Conflicts of interest are a real key point of governance. They are not there as a sideshow or as a discretionary part of good governance. A number of members have got to their feet who sit on the boards of independent public schools— conflict of interest is a key point in the general practices of governance. The members for Cannington and Armadale have read through a range of different law firms' analyses. Law firms of Perth, and Australia generally, were spitting out analyses of Chief Justice Martin's decision.

Mr W.J. Johnston: And the Victorian Solicitor-General.

Mr B.S. WYATT: The Victorian Solicitor-General was very quick on his feet to make commentary about what this decision meant. There is no surprise. In his contribution, the member for Armadale outlined the importance of conflict and the issue around apprehension of bias. It is not the issue of whether there was actually, in the end, real pecuniary benefit or detrimental behaviour. That is the whole point. If that is what the standard is, get rid of all conflict-of-interest rules and requirements. I do not accept for a minute this rubbish position of the government that this is all technical—there is nothing to be seen here; ask no questions of the Public Sector Commissioner, ask no questions of the EPA and, importantly, if we ask a question of the government, it will attack us for asking that question. Members will not learn a thing. If it is not the EPA, it will be something else, because ultimately the government's bad processes are well known. They have been discussed at length, in particular since the election of March 2013. Generally, there is the government creche, otherwise known as the cabinet, to fix that up. What got the minister into trouble this time was an independent legislated process that he could not use the creche to avoid—that is what got him into trouble in the end. I hope that as a result of this and the Chief Justice's decision, there is a return to better governance practices, because otherwise we will have more of this sort of legislation—maybe not under the EP act, but other pieces of legislation. It is embarrassing for the government and Western Australia when such legislation has to be rushed through Parliament in blind panic and when we get these sorts of answers from the Minister for Environment and the inane commentary we heard last week. Members of cabinet need to grow up and start treating their job with the seriousness that is due.

MS S.F. McGURK (Fremantle) [8.23 pm]: I, too, would like to speak on the Environmental Protection Amendment (Validation) Bill before us tonight. We know, according to the explanatory memorandum —

> The purpose of this Bill is to amend the *Environmental Protection Act 1986* to effectively provide that the rights, obligations and liabilities of all persons shall be the same as if each relevant action of the Authority and subsequent environmental approval had been validly done. The relevant actions to which the validating legislation will apply will be those actions which are invalid by reason of:
>
> - a failure to comply with section 11 and/or 12 of the Act;
> - the existence of a reasonable apprehension of bias by Authority members; or
> - the response to a perceived conflict of interest being to rely on a delegation where no delegation was in fact available.

In fact, as we know now, there has been a complete botch-up of the application of central questions of the EP act relating to bias and how perceived conflicts of interests are handled by the authority—so much so that there was a decision by the Supreme Court that we have heard many speakers refer to tonight, as have a number of commentators. The decision handed down a year ago in relation to the Browse act was critical of the EPA's policy in relation to members of the authority who may have had a conflict of interest and how that process was handled within the authority. Even worse is the government's handling of the authority's change in its own policy since 2008—so much so that we have a piece of legislation rushed through Parliament in these weeks before us relating to a number of decisions. We understand that this relates to possibly 10 years of decisions, from 2002 to 2012, but I do not know whether I have missed something, because I am not sure what the decision was in 2002 that required validation. I understand there was reference to a couple of decisions in 2005 made under the previous Labor government, but we know that the vast majority of those decisions apply from 2008 to 2012.

Mr P. Papalia interjected.

Ms S.F. McGURK: The member for Warnbro just talked about the minor matters from 2005, but be that as it may, I think we can say with some confidence that the lion's share of the 25 decisions that this bill will seek to validate apply since the change in the EPA's policy and how it relates to the application of the conflict-of-interest policy—that is, it allowed members who may have a conflict of interest, perceived conflict of interest or some sort of bias to continue to deliberate on decisions even though they might be excluded from the final decision. Anyone who has sat on a board, whether it is a school board or that of a company worth millions of dollars—I personally have sat on superannuation boards presiding over many millions of dollars' worth of investments—knows that conflict of interest relates to any stage of the process, not just when the final decision is made. That is why it is staggering that the government allowed the EPA to continue, really since 2008, under the policy of allowing people who had possible bias or conflict of interest to preside over matters, and then perhaps just excluding themselves from the actual meeting in which the decision was made.

There are a number of concerns about this bill. I know many other members on this side of the house have raised these issues, but I want to place my concerns on the record as well. Central to those concerns is that when this legislation is passed, there will still be a least 25 decisions made by the EPA in the period we have discussed that the government says may be suspect—that is, they will in fact effectively not have independent environmental

assessment in the same way now required for every other proposal in this state. We will never know whether those decisions would have been the same if their approval had gone through the process now expected to apply to decisions. We are told by the government not to worry about it and that the scientific evidence given to the EPA was not conflicted. In fact, the government says it is confident that people did not have pecuniary interests that we should worry too much about, but that the decisions may be compromised in a technical way. We will never know whether that is the case. We are just required, because of the Environmental Protection Amendment (Validation) Bill 2014 and because of the botched nature of this process, to take the government at its word. Unless the amendments from this side of the house are successful, we will never know whether proper assessment was made of 25 decisions.

We cannot underestimate the public expectation and assumption on this matter—that is, that independent expertise applied will be applied to environmental assessment. The change in the policy relating to assessment and the current debacle this government has presided over has seriously undermined public confidence in our state's environmental assessment process, and for that the government stands condemned.

The frustration is, of course, that most of the projects affected by this bill have proceeded, and so the opportunity for proper scrutiny is all but redundant. There are also many investment dollars at stake in relation to a number of those proposals, and for that reason we will not object to the bill as a whole. The other concern about this bill and the entire process that needs to be raised in relation to the damage to the EPA's reputation that occurred under this government's management is the appointments that have been made to the EPA. There is certainly a perceived bias towards industry appointments, and a disregard for appointments representative of the community or environmental concerns. One would hope that the EPA process would engender confidence in the public because of the processes it follows, the scientific advice it takes, and because of the range of interests represented on that body. I think it would be fair to say that the public perception is that the current appointments represent a skewing towards commercial interests or business rather than the broader community that has been represented the past. I think that loss of confidence has happened under this government.

The other concern is about the processes adopted by the EPA and how it has handled the situations of members having an interest, bias or pecuniary interest in a matter before it. That really is the nub of the debate this evening and the issue this bill seeks to rectify. We heard various members—the member for Rockingham; Leader of the Opposition, and the member for Victoria Park—speak on this issue earlier this evening, when they pointed out the omission made in the minister's second reading speech in that there was a change in practice and policy by the EPA in late 2008. In the early days of the 2008 Barnett government, members of the EPA were allowed to participate in the assessment process, despite provisions in the 2003 amendments to the Environmental Protection Act specifically disallowing that practice. The media was provided a briefing on the contents of this bill. The minister's second reading speech included, but he omitted to tell the media, that there had been a change in policy in 2008 that occurred under this government's watch.

Serious questions have also been raised about how this change in policy came about, the advice sought and the advice given. Up until now, the chair of the EPA has taken full blame for the decision; however, until an independent inquiry into the change of policy that is in direct conflict with a specific provision of the act that we referred to this evening occurs, questions will remain. If this minister was worth his salt and followed the traditions of our Parliament, he would take responsibility for the faulty decision of an agency in his portfolio. The Conservation Council is represented in the public gallery this evening, and it and others have called for an independent inquiry because serious questions remain on how this major change in policy came about, what the process was, whether the change was made after proper advice, and what the policy implications are. Until that independent inquiry or transparent examination takes place, serious questions about how this change in policy occurred remain. Until that takes place, I think the government needs to take responsibility. I do not think there is any doubt in the public's minds that this botched policy, the projects it has put at risk and the reputational damage the EPA has suffered under this government has occurred under the watch of a number of ministers, and they need to take responsibility. I do not believe the public is in any doubt about that, but the government should take responsibility for it; if it does not, it, and I think the Parliament and the EPA, will be lessened in the minds of the public.

The government is seeking to excise one particular decision from proper environmental examination through this validation bill—that is, the decision on Roe stage 8 outlined in report 1489 of the EPA referred to this evening. That consideration was not the first time the EPA considered the Roe 8 proposal, and other considerations have resulted in recommendations in favour of the environment and against the proposal. The Roe 8 proposal is sensitive and requires careful consideration and utmost scrutiny for many reasons. It is controversial not only because of the wetlands it traverses, but also because the hugely expensive proposal does nothing more than shift truck-based traffic from one community to another. Its current manifestation—the $1.6 billion Perth Freight

Link—proposes to feed trucks into a bottleneck at Stirling Bridge and Tydeman Road. It will be funded by tolls and is so expensive that it will actually compel the government to take business away from freight. Freight is already underutilised, and it will be in conflict with the freight network. The currently underutilised freight, as I said, will be utilised even less, and if that was not enough to make any right-minded person realise that Roe 8 and the Perth Freight Link is seriously flawed, by the time Perth Freight Link is concluded, Fremantle port will be at capacity.

Mr D.C. Nalder: That's not true.

Ms S.F. McGURK: That is true—the $1.6 billion road investment will be superfluous. We can argue about that at another time, minister, but any assessments of Fremantle port's capacity are that by the time the Perth Freight Link is concluded, Fremantle Port Authority —

Mr D.C. Nalder interjected.

Ms S.F. McGURK: I am not taking any interjections from the minister; he gets his share of time in this chamber, so he can take that.

Several members interjected.

The ACTING SPEAKER (Ian Britza): The member for Fremantle is taking no interjections.

Ms S.F. McGURK: The transport minister gets his fair share of time in this house.

Mr N.W. Morton interjected.

The ACTING SPEAKER: Member for Forrestfield! Excuse me, member for Fremantle. Member for Forrestfield, I call you for the second time.

Mr N.W. Morton: Cheers.

The ACTING SPEAKER: I beg your pardon?

Mr N.W. Morton: I was talking to the member for Bateman.

The ACTING SPEAKER: Thank you.

Ms S.F. McGURK: I was speaking about all the reasons from an economic, logistic and the freight movement point of view that Perth Freight Link, of which Roe 8 is the first component, is bad policy and an absurd waste of precious infrastructure dollars. The relevance of the proposed Roe 8 extension to the bill before us this evening is that it runs largely between North Lake and Bibra Lake, which are within the Beeliar Regional Park. The area's regional significant values have been recognised through its inclusion in system 6 area M93 and Bush Forever site 244. Other environmental values are also broadly set out in EPA reports. The EPA's previous consideration of the Roe 8 project is set out in report 1088. The EPA's most current decision on Roe 8 refers to the importance of that land, and reads —

> … the EPA notes that the residual impacts in relation to the environmental factors of Vegetation and Flora and Terrestrial Fauna are as follows:

[Member's time extended.]

Ms S.F. McGURK: The decision continues —

- clearing of 97.8 hectares (ha) of native vegetation which includes 5.4 ha of Beeliar Regional Park and 7 ha of Bush Forever site 244;

I referred to this before —

- loss of 78 ha foraging habitat and 2.5 ha potential nesting habitat for the Carnaby's Black Cockatoo and Forest Red-tailed Black-Cockatoo (species listed under the Wildlife Conservation Act 1950 and Commonwealth Environment Protection and Biodiversity Conservation Act 1999);
- clearing of 6.8 ha of wetlands (includes Roe Swamp and a small portion of Bibra Lake and Horse Paddock Swamp), including wetlands protected under the Environmental Protection (Swan Coastal Plain Lakes) Policy 1992 … and Conservation Category Wetlands …; and
- fragmentation of wetlands and fauna habitat.

I could speak at length about the environmental sensitivities of this particular proposal, but neither I nor other members on this side of the house can see why the Roe 8 proposal needs to be validated within this bill. There is time enough for consideration of the Roe 8 proposal to go back before the EPA and be dealt with properly in a process that involves members of the public, people who are concerned about the environmental considerations and want the utmost rigour attached to the assessment of Roe 8 under the current EPA proposals. In fact, the

current decision of the EPA is the subject of appeal. It is extraordinary that the original decision, which is the subject of an active appeal, is now being validated in a bill that is being rushed through this place. That is an extraordinary situation and if the government were rigorous in the application of testing anything controversial, it would take Roe 8 out of this validation legislation and give it back to the EPA for reconsideration. The release date for EPA assessment of Roe 8 was September 2013. We were told by the Minister for Environment that the controversial considerations finished in 2012. Perhaps one can assume from that that the EPA deliberated over the Roe 8 decision before 2012 under its flawed conflict-of-interest policy. I assume that is the case, but with no independent examination of how these decisions were made, we can never know. That is why the amendment the opposition proposes to the Roe 8 extension must be supported. This is a controversial decision that is in the midst of an appeal process and which this government is seeking to retrospectively authenticate. Roe 8 is not a commercial decision. No commercial contracts have been let that will be put at risk by giving the project back to the EPA for fresh consideration. The EPA still has plenty of time to reconsider the matter under a more rigorous application of the conflict-of-interest or bias policy. If the government is serious about independent environmental assessment of Roe 8 that is what it will do. I suspect it is not interested in that, and therein lies the community concern.

MR P.C. TINLEY (Willagee) [8.45 pm]: This government under this minister at this time has never made a greater contribution towards trashing two of the most important things that a good government from either side of politics should stand for: the environmental credentials of the government and the support that it gives to the commercial sector in Western Australia. No government in one single decision has so terribly crashed, thrashed and trashed its own environmental credentials more than this government under this minister; and no-one has crashed, trashed and scared the business community more than this government under this minister with what it has done here today. The government's leadership and handling of this issue is beyond belief. One thing that businesses always say to any politician, regardless of their hue, is: give us certainty; do not do things that we cannot predict or that are contrary to the interests of the economic advancement of this state through legislative adventurism or, more importantly, policy adventurism, or, in this case, policy incompetence. At the root of this issue is a complete absence of leadership. Quite frankly, this minister was sold a pup by his predecessors. We should not leave those former ministers out of this, because this poor junior minister has had to deal with their errors from 2008 onwards. Unfortunately, this minister has not dealt with them properly or in any meaningful way that would suggest he has the right to be called a minister of the Crown. He has no right to call himself that, because the first order of business for a minister of the Crown is to lead. It is not to be told what to do, not to be advised when to worry or not worry about things and not to be advised by PR people on how to spin this or that, but to look at the substance of the issue that is before him within the purview of his leadership authority and range of his command and to be proactive in informing himself that everything right and proper is going on under his leadership. This has been nothing short of the most irresponsible act of leadership that we have seen from this government since 2008.

What did we get in the absence of leadership? We got blame shift, which this government has made into an art form. We have seen everybody from the Premier onwards blame the public service when things are not right. They will blame anybody rather than take responsibility on the chin themselves. This is no different from any of those other opportunities in the past in which ministers have hidden behind the skirts of cabinet-in-confidence, commercial confidentiality or the Public Sector Commissioner, who seems to be the catcher for a lot of these issues, and walked away from the most basic obligation. The minister is on the record saying how incredibly disappointed he was that the mistake was made by Dr Vogel and by the board—by anybody but himself. The minister needs to take responsibility for this. A responsible position would not be to rush retrospective legislation through, which is never good and never reflects well on any government. His first order of priority should be to understand what happened and to be transparent. His first order should be to ensure that he is straight up and down with the people of Western Australia through this chamber of Parliament. The minister can say in his second reading speech in this place after the fact that he was completely open, but say something different in the last paragraph of his second reading speech, thus deliberately misleading the media and, through the media, the people of Western Australia. He cannot get away with it, and this Parliament cannot let him get away with it. Each and every member of the government parties in this house need to hang their heads in shame and look at what has gone on. The minister's complete absence of any ability to assert his authority over this agency and this portfolio has been demonstrated so many times, but this is the crowning glory. The minister should very carefully consider what he might do next. The proper investigation that ought to be undertaken to find out —

Mr C.J. Barnett: That is just a gross exaggeration. If you ever get into government, you'll realise what an exaggeration you have been engaging in.

The ACTING SPEAKER: Thank you, Premier.

Mr P.C. TINLEY: I thank the Premier for the interjection. I am more than happy to accept interjections from the Premier because he has been leading the way on how to misdirect; he says one thing one day and then recants it the next by saying, "I never said that. That does not mean that. That is not that." There are too many occasions when the Premier has been more than happy to blame the system instead of fixing the system. This case is a very good example in which a complete bandaid effort has been made.

One of the first things I referred to when I got to my feet was business certainty. This bill will not give those 25 projects any certainty. The minister's explanatory memorandum states that the proposed law will not prevent a court from setting aside an approval if it finds that the Environmental Protection Authority's assessment was actually influenced by the interests of one or more of its members. There is no certainty that this retrospective legislation will suddenly wave away all the contradictions that the Chief Justice said in his judgement were there. There is no certainty to say that no matter what the decisions were, they will be validated as though the conflicts of interest never existed. The bill will not provide any certainty, because each and every one of those 25 projects could easily be challenged in court. On the basis of precedence in using the Chief Justice's judgement—I defer to any lawyers in the house—there is nothing to say that that could not be used as a precedent to argue the same thing for each and every one of those 25 projects if there were a desire to do so.

I want the minister to give an answer in his contribution because this is the only investigation that we are going to get on this issue. The government will want to wave this away as though it is not the rort it is seeking, it is not to be seen, it is not for anybody to be worried about and it is all fixed. I want the minister to address this issue. What certainty can he give to Western Australian businesses and the people of Western Australia about the environmental protection values that we all hold for our natural environment and the amenity that it gives us? What guarantee can he give that, regardless of this legislation being passed in such great haste in this place, the decisions cannot be overturned should they be challenged? I earnestly hope that the minister can answer some of those questions.

Another question that I would like the minister to answer relates to something the member for Fremantle talked about—that is, the Roe Highway or Roe 8 extension. There was a very clear commercial interest in the other 24 projects by the parties, particularly the proponents of large projects. However, Roe 8 is not that; Roe 8 is on crown land. Roe 8 is a government project. The Roe 8 extension, or the Perth Freight Link, to give it its new name, is entirely within the purview of this government, yet we have it on good advice that one of the members, Dr Whitaker, was cited as the person with the conflict of interest in Roe 8. I want the minister to help us understand, in the only investigation that we are going to get in this entire sordid process, the nature of Dr Whitaker's conflict of interest in a government project. If nothing else, the minister has the opportunity to correct the record and put some transparency around this matter to ensure that the people of Western Australia have the opportunity to hear him give a true and proper account of what went wrong and why it went wrong.

This government has made a very good fist of dismissing all sorts of different people from various boards, instruments and governance structures—not the least of which was the dismissal this very day of a local government authority by the Minister for Local Government. Why would the Minister for Environment not start to take steps to dismiss the entire board? Why would he not take steps to dismiss Dr Vogel? This institution of Parliament wants to know what the minister is going to do about a serious error in judgement by the chairman of the Environmental Protection Authority. The minister has to answer that question. If he is going to blame Dr Vogel for what he has done and hold him accountable for the decision—the minister himself said that he was incredibly disappointed about the mistake—he has to be very clear to people about what he is going to do to remedy the issue. What will be his remedial action to ensure that the board and the confidence that the people of Western Australia have in that governance body is at least in some way remedied? I will be very interested to hear what the minister, as a leader, is going to do. He could do one of two things. He could say that there is nothing to see and that it was just a mistake by Dr Vogel and the board, he could wave it away and blame the Solicitor General's advice or he could wave it away to the Public Sector Commissioner, but there is an old axiom in leadership: the measure of a true leader is how strong he is in underwriting the mistakes of his subordinates. Will the minister underwrite this mistake and, in doing so, accept responsibility for what went wrong or will he act and remove them? Either he underwrites it and accepts the responsibility or he acts and makes them accountable and sacks them.

Mr C.J. Barnett: You are forgetting that Dr Vogel has accepted responsibility himself, quite properly.

Mr P.C. TINLEY: And that is fine.

Mr A.P. Jacob: And I accept full responsibility for the required actions to fix this, and that is exactly why this bill is here. It is my responsibility to fix this.

Mr P.C. TINLEY: Where was the minister when he took on his portfolio?

Mr A.P. Jacob: It is my responsibility to fix this and that is why the bill is here.

Mr P.C. TINLEY: When did the minister first learn about this? How long has he been sitting on this?

Mr C.J. Barnett: Not long.

Mr P.C. TINLEY: Not long?

Mr C.J. Barnett: No.

Mr P.C. TINLEY: Since when?

Mr C.J. Barnett: Not long.

Mr P.C. TINLEY: When the minister was informed of the Supreme Court decision, what actions did he immediately take that day?

Mr A.P. Jacob: It is in my second reading speech. Read it.

Mr C.J. Barnett: It is an extremely complex legal issue.

Mr P.C. TINLEY: No, it is not. The Premier knows it is not. He has been in this place for long enough and he has been a minister for long enough to know that when the government gets a red flag, it acts on it.

Mr C.J. Barnett: No.

Mr P.C. TINLEY: Do not wave this away as being some super complex thing that we on this side could not possibly understand.

Mr C.J. Barnett: No; what you need to understand is that the legal advice on this was extremely complex and took some time to receive. I am not critical, because it is a complex legal issue. It was very complex legal advice.

Mr P.C. TINLEY: That complex legal advice needs to be aired somewhere. A proper investigation into the process from 2008 would not have been a bad thing, and it would not even necessarily need to get in the way of this legislation. An agreement by the government to undertake a proper investigation under a proper independent arrangement would not have been such a bad thing.

I do not want to unduly delay the house but I will move on to an issue that the member for Fremantle and other members brought up. Of the 25 projects that were nominated, a project of particular interest is the one that is still on foot—that is, the Roe 8 extension or Environmental Protection Authority report 1489. We know that the decision is still with the Appeals Convenor and we cannot for the life of us understand why it would be included in this bill when there is still some doubt about what finding the Appeals Convenor might come up. Roe 8 has been a contentious issue and turning the Perth Freight Link into a $1.6 billion project has gone beyond the scope of just an extension to a highway; it has turned into a massive piece of state infrastructure that I believe needs wider consideration. The project's impact has been properly raised by people in conservation and environmental groups. I am very interested to hear from the Minister for Transport about the business case for this project. I am interested in any interjection he might want to give me. Nobody on the government side of the house has been able to comprehensively state the future port capacity of Fremantle port. There have been projections of as much as three million twenty-foot equivalent units by 2050.

Mr D.C. Nalder: Say that again.

Mr P.C. TINLEY: That is three million TEUs—boxes across the wharf.

Mr D.C. Nalder: The capacity at the port for containers is currently running at around 700 000 a year. The current capacity of Fremantle port is around 1.3 million to 1.4 million containers a year, and it has been growing at five per cent per annum over the last 10 years and is expected to continue to grow.

Mr P.C. TINLEY: Minister, in that calculation of capacity, particularly the future capacity —

Mr D.C. Nalder: That is just looking at containers.

Mr P.C. TINLEY: That is right, that is fair enough, and that is about all that needs to be looked at because that is by and large the greatest use of the port.

Mr D.C. Nalder: So it is not three or four years then?

Mr P.C. TINLEY: Sorry?

Mr D.C. Nalder: It is not the three or four years that has been suggested tonight for capacity at the port.

Mr P.C. TINLEY: Since the minister is engaging on this, can he tell me the plan for the duplication of Stirling Bridge?

[Member's time extended.]

Mr P.C. TINLEY: This is important because the objections about this project go beyond the environmental issues with Beeliar wetlands; this project is now going to drive a massive piece of road infrastructure through a significant amount of suburban Western Australia. I would contend that the land use in that area has significantly changed from the time when that port was blown open by C.Y. O'Connor.

Mr D.C. Nalder: What has been stuffed up is that one of the member's former colleagues sold off the reserved land for that to go through and Roe 9 for $8 million. That is disgraceful!

Mr P.C. TINLEY: Minister, we can have a retrospective conversation about who did what when, but the Minister for Environment does not want to have a retrospective conversation about what has happened in this government on this particular issue since 2008. My point is: what are we doing? The minister talks about the potential growth in the port but he will not talk about the total infrastructure growth. The minister is talking about port capacity. If he talked to the stevedoring companies at the port, he would know they are talking about two million TEUs being able to be held on the port side.

Mr D.C. Nalder interjected.

The ACTING SPEAKER (Ms J.M. Freeman): Member, can you just bring it back to the bill. I think you need to come back to the bill, member.

Mr P.C. TINLEY: Thank you, Madam Acting Speaker. This is essential to the bill because the social and environmental impacts of this project are very much within the purview of the EPA's failed decisions. How can it possibly be making a decision about the viability and environmental impacts—do not forget they go beyond just black cockatoos—of any particular project that is referred to it if it does not have all the information. The minister said that he is only talking about port capacity. The fact is that the Perth Freight Link is part of the entire port capacity and so is the rail line. Nobody is talking about future capacity for the port in relation to the choke points at Tydeman Road and Stirling Bridge. We are not talking about the ambitions of what freight can go from road to rail. We were moving towards 30 per cent of freight on rail when we left office in 2008; we are now down to 11 per cent of freight on rail. There is not yet a comprehensive case for the Perth Freight Network, but it is essential and I hope to see it. That is why EPA report 1489 on Roe 8 or the Perth Freight Network needs to be removed from this bill. There is no imperative to retrospectively validate a decision that has not yet been completed. I go back to my earlier point: there is an absence of leadership from the minister and this government and a complete lack of desire to have any transparency or any meaningful contribution to allow the people of Western Australia through this Parliament to know exactly what went on. The minister needs to answer some of these questions, and I hope he takes the time in the consideration in detail stage of this bill to take seriously the questions from this side of the chamber.

MS R. SAFFIOTI (West Swan) [9.05 pm]: I will not talk too much on the Environmental Protection Amendment (Validation) Bill 2014, because my colleagues have already outlined the key questions that we would like the minister to answer in his reply to the second reading debate. I want to point out the incredible chain of events that have occurred to have us today having to pass legislation because the government did not comply with its own legislation. Many community members have commented that the government did not comply with its own legislation and now we have to change legislation because the government did not comply with its own act; its own law. It is an extraordinary chain of events that the minister has to properly explain—not in his Enid Blyton–type approach—in a serious, proper discussion of how we have come to this situation.

I will go through what happened last week when this information was revealed. First of all, I will go through what I think transpired last Wednesday morning when the media was given a briefing about why this legislation needed to be brought into this place. It is interesting that throughout the entire media briefing there was no mention of a policy change in late 2008. In fact, the pre-2008 conflict-of-interest issues were thoroughly confused with the post-2008 conflict-of-interest issues. When the media left the briefing last Wednesday morning, nobody knew about the policy change that the minister highlighted in his second reading speech. It is a very, very significant change and something that the minister's special briefing to the media last Wednesday never sought to highlight even though it became a key part of his second reading speech. Therefore, I think the minister has an obligation to explain why that significant issue was excluded from the media briefing that morning. It is pretty clear from the minister's second reading speech what happened in late 2008, and I quote —

> The review of EPA assessments undertaken to inform the SSO advice identified a change in the internal governance practices of the authority from late 2008 to 2012, whereby conflicted members were

> allowed to participate in the assessment process, in spite of the 2003 act amendment disallowing the practice.

The minister's second reading speech outlines that there were other cases in which members failed to disclose an interest, but that is an entirely different situation from a change of policy. The minister tried to confuse those issues, but I think it is incumbent on him to provide a proper explanation of why there was an internal policy change in late 2008. After this happened on the Wednesday, the opposition sought copies of Environmental Protection Authority board meeting minutes, particularly the ones that had been referred to in relation to Chief Justice Martin's decision. I refer to the EPA board meeting minutes of 2 October 2008, which is what I think the minister was referring to. The minutes for that meeting reveal that the chairman determined in the cases of Denis Glennon and Chris Whitaker that no potential or actual conflict of interest existed, and he allowed them to fully participate in the EPA meeting.

This, apparently, was the total change in internal policy. If the EPA completely changed its policy on conflicts of interest at its first meeting after a change in government, it is incredible to think that that policy change could have had nothing to do with the change in government. That is simply not plausible. The process for dealing with conflicts of interest was changed at the EPA's first meeting after the change in government, and the minister expects us to believe that that had nothing to do with the change in government. It is simply not feasible or plausible. Something happened to trigger that change in approach.

There followed the September 2009 meeting in which the EPA agreed to a number of things, which I will now go through.

[Quorum formed.]

Ms R. SAFFIOTI: I am reading from the minutes of the EPA's September 2009 meeting, at which its change of policy on conflicts of interest was confirmed. The minutes read, at paragraph 7.4 —

> The EPA **agreed** to:
>
> 1. **Agree** where a Member has declared a potential conflict of interest in a particular agenda item because they hold shares in the proponent company via a superannuation fund, then the Member shall be invited to participate in discussions and share any relevant knowledge and expertise. The Member must leave the meeting and not participate in any decision-making on the relevant item.
> 2. **Agree** where a Member has a direct conflict of interest such as direct share holdings the Member will leave the meeting and not participate in any discussion or decision on the relevant item.
> 2. **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.

I will touch on that in a second.

As I said, at the first board meeting of the EPA after the change of government, there was a complete change in the way it dealt with conflicts of interest. Given the minister at that time, and the many different levels of connections around the industry, it is incredible to think that some internal discussions in the minister's office or the Premier's office did not lead to this change in policy. I think it is beyond comprehension to think that the change in government did not lead to this change of policy. Again, the minister has an opportunity to give an explanation for why this policy changed, and why this key part of the time line was not disclosed to the media in that briefing.

I want to again go through the roles of both Dr Vogel and the Public Sector Commissioner in this issue. On 10 October 2011, Wauchope organised a meeting with Vogel over conflicts of interest on the Browse LNG project. Notes by Wauchope show discussion of conflicts of interest in the board, including Woodside shares; BP; Elizabeth Carr, who worked on Browse for the Department of State Development and who abstained from Browse decision-making; four members who were conflicted; no quorum; and delegating decision-making to the un-conflicted member, Paul Vogel. On 25 October 2011 Vogel prepared a document on managing conflicts of interest within the EPA on decision-making on Browse, which noted conflicts of interest. No-one was excluded from participation because the proponent was the Minister for State Development and not Woodside. Chief Justice Wayne Martin found that this did not concord with the act.

I will not go through all the involvement of the Public Sector Commissioner, but it is clear that there was a series of discussions with the Public Sector Commissioner, both in person and on the telephone, about the handling of conflicts of interest. I am not sure why the minister came into this place last week with an over-the-top defence

of the Public Sector Commissioner; I still do not understand why he would do that and why he would not try to find out the key facts. As I said, we will get the Enid Blyton version of what happened when the minister responds, but these are critical issues.

Mr D.J. Kelly interjected.

Ms R. SAFFIOTI: *The Famous Five*—the member should watch it! He will look at some of his colleagues in a different way!

The minister went into an over-the-top defence of the Public Sector Commissioner, when it is clear that the Public Sector Commissioner was involved in providing advice on the matter of handling conflicts of interest on numerous occasions, and that has to be questioned. Did the Premier tell him, "Mal's a good bloke; don't do anything about him"? I do not know, but it has to be questioned.

Another colleague made a key point about when the minister first saw the relevant EPA board minutes. I think the answer was provided on 3 September in the minister's second reading speech, which reads —

> In light of the court's decision on 19 August 2013, I asked the authority in September last year to provide me with written advice regarding its treatment of perceived and actual conflicts of interest …

Last August the minister asked for written advice, yet he did not ask to see the minutes or try to get to the bottom of it. It has taken a year to bring this legislation to the house because this government's ministers are unable to take issues seriously. In this case, the minister did not even comply with his own act. There was a change in government policy in late 2008, and he did not comply with his own act. The minister might curl up his face, but that is in his second reading speech. There was a policy change in late 2008 and the judgement refers to a key EPA meeting on 2 October, of which we have now seen the minutes. These minutes become publicly available six months after the board meeting. Now the situation is that members of the public are more across it than the Minister for Environment is. Members of groups and members of the public took more of an interest in the stewardship of the environment portfolio in Western Australia than the Minister for Environment did. These are serious questions that the Minister for Environment's counterattack last week failed to address. The minister gave an over-the-top, unsolicited defence of the Public Sector Commissioner. He blamed the people who appointed these board members when in fact it was a change of policy that created this whole issue before us. It was about a change of policy, not about who appointed whom. That change of policy occurred in 2008.

As I said, these are serious issues. I hope that the minister takes them seriously and gives a considered response to this very significant issue in front of the state Parliament today.

MR F.M. LOGAN (Cockburn) [9.20 pm]: I want to go back to section 12 of the Environmental Protection Act 1986, headed "Disclosure of interests by Authority members". I want to refer to four subsections that are the key to not only the court decision, but also the reasons why we are discussing this bill tonight. Subsection (1) is fairly straightforward and states —

> An Authority member who has a direct or indirect pecuniary interest in a matter that is before a meeting of the Authority shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest to Authority members who are at that meeting, and that disclosure shall be recorded in the minutes of the proceedings of that meeting.

It therefore relates to a self-disclosure of the direct or indirect pecuniary interest in the decision that is to be made; and if that disclosure is undertaken by an individual board member, then, as per subsection (5) —

> … the … member shall not —
>
> (a) take part, as an Authority member, in the consideration or discussion of the matter; or
>
> (b) vote on the matter.

On my reading of subsection (1) and referring to subsection (5), which precludes the member from either consideration or discussion of the matter, or voting on a decision in the matter because of the member's self-disclosure, it is quite clear that no decision, policy change or influence can be made by whoever is chairing the EPA board at that time. The member has declared voluntarily a direct or indirect pecuniary interest under subsection (1) and therefore subsection (5)(a) and (b) comes into play, and that immediately precludes the member from consideration of or discussion or voting on the matter. Subsection (2) was repealed, so I go on to subsection (3), which states —

> If an Authority member has, in the opinion of the person presiding at a meeting of the Authority, a direct or indirect pecuniary interest in a matter before that meeting, the person so presiding may call

> on the Authority member to disclose the nature of that interest and, in default of any such disclosure, may determine that the Authority member has that interest.

Subsection (4) goes on —

> A determination under subsection (3) that an Authority member is interested in a matter shall be recorded in the minutes of the proceedings of the meeting concerned.

If it is determined that the person has an interest, subsection (5) comes into play and the member so concerned cannot take part in consideration of or discussion or voting on the matter.

I ask the minister whether subsection (3) is the subsection that Dr Paul Vogel believed he was correctly acting under by assuming in October 2008, as referred to by the member for West Swan, that it allowed him to determine that Dr Whitaker and Mr Glennon did not have a pecuniary interest in the matter before him at that time. Is that the subsection that he was relying on? I ask that because there is no other subsection that he could rely on in section 12, headed "Disclosure of interests by Authority members". Subsection (1) is quite clear: the person has voluntarily given a declaration to the board that they have a conflict of interest and therefore subsection (5) comes into play and the person is not allowed to take part in consideration of or discussion or voting on the matter. Subsection (3) refers to when the chairperson or the person presiding at the meeting of the authority believes, in their opinion, that a member may have a pecuniary interest in that matter, and therefore ultimately leads on to determining whether they have or have not; and, if they have, subsection (5) again comes into play. Is that what Dr Vogel was relying upon when he made what the member for West Swan referred to as a policy change on 2 October 2008? That is when interests in shareholdings were declared by Denis Glennon and Chris Whitaker but, as the member for West Swan has already quoted, the EPA chairman determined in both cases that there was no potential or actual conflict of interest and allowed both Denis Glennon and Chris Whitaker to fully participate in the meeting.

If we go back to what I have just read out, Dr Vogel did not have the capacity under the act to do that; he did not have the capacity under the act to make that call. Subsection (1) is quite clear about what should occur when a person has declared an interest. From the minutes of 2 October 2008, that is exactly what occurred. They state that interests were declared by Denis Glennon and Chris Whitaker for shareholdings in BHP in relation to agenda item 6.5. When a self-declaration has occurred, section 12(5) of the EP act automatically comes into play. The chairperson of the EPA cannot then override the act and say, "In my opinion there is no perceived conflict of interest", because the act is quite clear. Subsection (5) comes into play once there is a voluntary declaration and, as a result of that, the authority member —

> … shall not —
>
> (a) take part, as an Authority member, in the consideration or discussion of the matter; or
>
> (b) vote on the matter.

The only flexibility that the chairperson has—whether it is Dr Vogel or whoever is presiding at the meeting of the EPA at the time—in determining whether a conflict of interest occurs is under subsection (3); that is, if, in the opinion of the chairperson or the person presiding at that time, they perceive someone has a conflict of interest, they have to make that call. It is not when someone has voluntarily declared that they have a conflict of interest that the chairperson will therefore override that declaration and allow them to continue on in the meeting. I support the position put forward by the member for West Swan that there appears to have been a unilateral policy change that went beyond the capacity of Dr Vogel at the time to allow members of the EPA board to continue playing a role in meetings when they had clearly declared that they had a conflict of interest in continuing in those meetings and taking part in the consideration and discussion of those matters before them. Whether they voted on the matters, we do not know because we do not have those parts of the minutes of that particular meeting.

Given the plain reading of section 12, it is understandable that the court came down with its decision and that we find ourselves here today. What I find amazing is why Dr Vogel, or any of the board members at the time, did not acknowledge this was an issue and did not look at the decisions being made in light of the act. Dr Vogel is a very experienced public servant who knows the EP act backwards. He certainly would be well aware of section 12 of the act, "Disclosure of interests by Authority members", so why was this issue not brought to the attention of the ministers of the day? Maybe it was. If it was, the Minister for Environment can tell the house. If it was, what decision did the minister of the day make on that problem—or what became a problem—when there appeared to be a change of policy in the way in which disclosure of interests is dealt with by authority members? Why the did the minister of the day not read that policy change in light of the very simple and plain reading of section 12 of the Environmental Protection Act? Why did the EPA board members not take action themselves to

stop it from occurring, and why did the minister not demand that the board and the chair of the EPA comply with the written word of the act? That is my reading of section 12. I still struggle to understand why Hon Donna Faragher, as the minister of the day in the 2008 decision, did not raise this with Dr Vogel and why Dr Vogel did not raise it with the minister. Maybe he did raise it with the minister. The current minister can tell us. I also cannot understand why these decisions continued to be made when in the case of the 2008 decision, the interests were disclosed. The problem is not that the interests were not disclosed but that there was a failure by the ministers of the day and the EPA to ensure that the chair of the EPA and the board members complied with section 12, and in particular section 12(5), which restricts them completely from considering, discussing or voting on any matter when they have a conflict of interest.

Hon Giz Watson raised in the Legislative Council the appointment of Ms Elizabeth Carr to the board of the Environmental Protection Authority. In 2010, Ms Elizabeth Carr had worked for the WA Department of State Development as an executive director on the Browse LNG project and prior to that was a consultant in public–private partnerships, which raised the issue of a possible conflict of interest. The response to question (4) from the EPA and the Minister for Environment, through Hon Helen Morton at the time, on 1 November 2011, was —

> All EPA board members are bound by section 12 of the Environmental Protection Act 1986 regarding disclosure of conflicts of interest.

That says to me that the minister of the day, in that case it was Hon Bill Marmion, and the chairperson of the EPA, Dr Paul Vogel, were clearly aware of all the aspects of section 12 of the EP act and the disclosure of conflicts of interest. They were clearly aware of it; it is a pity that they did not comply with it. It is also obviously a pity—this is why we find ourselves here today—that subsequent ministers who held office as Minister for Environment did not pick up this issue and deal with it, which they should have done as the ministers of the day, by upholding these sections of the act.

I now turn briefly to the inclusion of Roe Highway stage 8 in this legislation and the reasons for the declaration of personal interests. Did the Minister for Environment respond on the matter of when the conflict of interest occurred for Dr Whitaker on Roe Highway extension stage 8 from Kwinana Freeway to Stock Road? That was identified in a response by Mr Marmion to Hon Robin Chapple, MLC, as the member declaring a personal interest. Do we understand what that conflict of interest was? Did it relate to consultancies? I cannot think of any shareholding.

Mr A.P. Jacob: I have not had a chance to respond.

Mr F.M. LOGAN: We will hear from the minister when he gets to his feet about why that declaration of interest was made by Dr Whitaker and why that declaration of interest has led to including that decision in this legislation.

Another point I put on the record—I think it has already been highlighted by previous members—is why the minister has included Roe Highway stage 8 in this legislation. It is beyond me why the Roe Highway stage 8 decision is in this legislation. That is questionable at law on the basis that the appeal of the EPA's decision, which has been made and which matter is now in this bill being put through Parliament, has not been concluded. If the result of this legislation is to finally determine how that EPA decision can possibly be upheld is beyond me when the appeals process has not been completed. How can the government justify the inclusion in this bill of one piece of new legislation, which attempts to override the provisions of the existing EP act, without it coming into conflict with the two pieces of legislation? I am sure that the minister has had that put to him by previous speakers and I will be waiting with bated breath to hear his explanation how these pieces of legislation will be dealt with by the house.

MR D.J. KELLY (Bassendean) [9.39 pm]: I rise to make a contribution to the Environmental Protection Amendment (Validation) Bill 2014. I suppose it is the sentiment that has been echoed by others on this side of the house that it is very disappointing that we have to deal with legislation to essentially clean up another mess this government has created—another mess in, quite frankly, a long line of public administration disasters we have seen from this government since it was elected in 2008.

Mr C.J. Barnett interjected.

Mr D.J. KELLY: Here we go, I have only been on my feet for 30 seconds and the Premier has already arced up.

Mr C.J. Barnett interjected.

The ACTING SPEAKER (Ms J.M. Freeman): Premier, let us move on.

Mr D.J. KELLY: Am I in my time or the Premier's time?

The ACTING SPEAKER: You are in your time, member for Bassendean; you have the floor.

Mr D.J. KELLY: Here we are to clean up yet another mess from this government. It is a mess that this government has created through its mismanagement of the Environmental Protection Authority. I say at the outset that the EPA is an agency that I consider to be extremely important in our community. It is not an agency that just gets on and does its work, and sometimes it is up to scratch, sometimes it is not—it does not really matter. The EPA is an extremely important agency because in our economy there is quite often tension between the need for our economy to operate, function and grow, and our need for us to protect the environment. If the economy was simply allowed to grow unchecked, we would soon end up on a planet that could quite possibly be uninhabitable. Conversely, if we do not allow our economy to grow and in some way alter the natural environment, we may not have enough jobs to provide meaningful employment and incomes for people in our community. Therefore, we need to be able to grow and manage the economy, but do so in a way that protects our environment. When as a community we have to make those decisions, it is quite often quite heated. The people who want to pursue a particular project, for example, feel very passionately that the economic activity it will generate is absolutely essential and should be allowed to take place. On the other hand, we have those in our community who value as their highest priority the protection of the environment, and they often feel very passionately about that. To manage these often very controversial and emotional conflicts we have the EPA. It is there so that these conflicts can be dealt with and decided upon in a cool, calm, rational and evidence-based way. If these proposals are simply left to business, the environmental community would often be suspicious. If we just left it to the government of the day, both sides could often be suspicious. Therefore, the EPA was created so we could manage these tensions in a way in which both sides feel as though they were listened to and had a chance to put their compelling propositions and a decision was made that balanced both the need for our economy to grow and the need to protect our environment. The EPA is crucial and to do its job it must be independent, but it also must be seen to be independent. If the EPA is not seen to be independent, no-one will be happy with its decisions. If the EPA is stacked with people who have, for example, bias in favour of either the environment or economic growth, no-one will be happy with the outcome and it will not be able to perform the function that it does—that is, to deal with and defuse the conflict that often arises between our economy and our environment. If the EPA is to be independent and seen to be independent, its processes must be squeaky clean. One of the things about being seen to be independent is that people have to know what the processes are and they have to be absolutely confident that those processes are squeaky clean. A range of things go to making the EPA processes seen as squeaky clean, but one of those aspects that must be in place is proper checks and balances to ensure that decisions are not made by people who have conflicts of interest. If people making a decision on a very important project—important for the environment; important for the economy—are seen to be conflicted or to have potentially some ulterior motive for making their decision, the EPA will not be able to function and people will not be able to trust it.

What is this legislation about? It has come to this Parliament precisely because this government has allowed the processes of the EPA to be compromised—not, as members of the government would like the public to believe, in a purely technical way. They have been compromised because persons on the EPA who have conflicts of interest have been allowed to make decisions on applications that have come before it. I have to say that I was quite shocked that the government would simply attempt to portray breaches of conflict-of-interest requirements as technical problems. It is not a technical problem if someone who has a conflict of interest makes a decision on an application before them. The government seeks to assure us that these people did not benefit from the conflicts of interest that arose. Firstly, we have to take the minister's word for it, because he has given us scarce information showing us that we can be confident that is the case. Secondly, I get back to the point I raised before: the EPA must be seen to be free of these sorts of conflicts. If board members have a conflict of interest, the government cannot simply say that those board members made no material impact on the decisions made, because people outside the EPA who are asked to trust the EPA and its decisions simply will not see the EPA as independent. We are here because this matter only came to light around one of the biggest resource projects that the state may ever see—that is, the Browse approval. It did not come about because someone in government looked at what was happening and saw that things were not appropriate; it came about because someone in the environment movement challenged the EPA's approval on the Browse project and took it to the Supreme Court, and Chief Justice Wayne Martin quite comprehensively criticised the EPA's approval process for the James Price Point project.

The minister can understand why, in the circumstances, many people are very concerned about this government's attitude to these issues and about what is going on through the Environmental Protection Amendment (Validation) Bill 2014. The minister would like to say that it is not a problem, and that the conflict of interest circumstances that arose in the Environmental Protection Authority were only technical. There were no actual conflicts of interest and no-one benefited; all approvals given were based on science; and really there is no problem here and we are just fixing up a technical problem. I have to say to the minister and the rest of the

government that it has a real problem, with many people in the broader community—not just what we might call the environmental community—feeling as though the government is not doing its job of protecting the environment with any degree of integrity. We have discovered that what arose out of the Supreme Court decision of Chief Justice Wayne Martin was not an isolated incident. The minister has revealed that the sole justification for this bill is that 25 other projects could be subject to legal challenge because of issues of conflict of interest. Minister, that is a monumental stuff-up created by this government—not a technical problem, but a monumental stuff-up. This issue involves millions or billions of dollars' worth of economic investment, very serious environmental issues and thousands of jobs, and this government has stuffed it up and created this problem. We understand that this problem was created by a deliberate decision of this government to change the way the EPA deals with conflict-of-interest issues. We understand now that in late 2008 there was a change in the way the EPA dealt with these issues that was to the effect that people with an apparent conflict of interest were allowed to continue to participate in and vote on applications before them. It was not, as we understood it, just some existing practice that everybody thought was legal and that had been in place for years that caused this problem; instead, it was created by a change in policy within the EPA that occurred in late 2008, very soon after the Liberal-National government took office. The minister would have us believe that the change in government had no relationship to the change in policy within the EPA; I have to say that many people struggle to accept that. I hope that when he responds, the minister will give a full, open and honest account of how that policy change within the EPA on this issue came about. Quite frankly, minister, people do not believe that the government is telling the truth in respect of this issue.

This problem that was created in 2008 has led to the minister identifying 25 major projects that are now in legal jeopardy. I have to say that my understanding is that the list of 25 projects is not exhaustive, so there could be other projects floating around out there that may be subject to some sort of conflict-of-interest issues that will also be covered by this legislation. As well as the minister asking Parliament to ensure that any problems with the approval of these 25 projects be remedied by this legislation, he has also structured this bill in such a way that other projects that we do not even know about might be picked up by the provisions of this bill.

A change of government, a change of policy within the EPA, at least 25 projects, billions of dollars' worth of investment, thousands of jobs and sensitive environmental issues are all rolled up in a mess of the minister's making, and what do we get? We get this legislation. The government has just adopted an attitude of coming into Parliament, introducing retrospective legislation and telling everybody that it is just technical and that they should trust the government that Parliament can remedy these problems retrospectively in an extremely short period. I, along with others, have a great deal of concern about this legislation.

[Member's time extended.]

Mr D.J. KELLY: Firstly, this legislation damages the reputation of the EPA. There is no way that the EPA comes out the other side of this bill anything other than diminished in the eyes of the public. That worries me greatly because, as I said at the beginning of my speech, the EPA performs a very important function. It is the umpire, if we like, in quite contentious environmental issues. If it is not seen to be an agency that can do its job without fear or favour in accordance with the law, its reputation is diminished, and what the government does in my view and in the view of many others is damaging the EPA's reputation. The minister did not respond to this problem by saying that if the EPA made a mistake, it should go back and subject all those applications to fresh environmental assessments. The public's confidence in those assessments will be diminished. The minister is damaging the reputation of the EPA.

Secondly, retrospective legislation is almost always a bad thing. There may be circumstances in which the government needs to do things to remedy unforeseen problems and therefore retrospective legislation is a good thing, but they are rare occasions. In response to this issue, the minister has used retrospective legislation to remedy a problem that he has caused. That is not, generally speaking, a good thing and it should be done in only very limited and special circumstances. I do not think remedying the mess that the minister has created is necessarily a good thing—certainly not with legislation as broad as he has brought before this house. The minister has provided us with a list of projects that will be covered by this legislation that is not exhaustive.

My third concern about this legislation is that the minister expects that the opposition will accept what he says and that the decisions made by the Environmental Protection Authority were good decisions, notwithstanding they were made by people who had a conflict of interest. The minister has said that conflicts of interest were technical and did not materially impact upon, if you like, the quality of those decisions. The minister has asked us to trust him on that point. Members on this side of the house are in no position to independently test that in the time we have been given. I am not sure, even if we had more time, that we would be able to review those decisions. In the absence of a full review the minister is asking us to trust him and the government that those

decisions were good decisions, notwithstanding the people who made them had a conflict of interest. That concerns me.

The fourth concern I have about the way the government has portrayed this bill is that the minister has led us to believe that the conflict of interest that the members of the EPA board had was in the nature of shareholdings. I think the minister even said that the shareholdings may have been in a superannuation fund. The minister has tried to minimise that issue. Can I say to the minister that I consider it a serious issue if people have shares in companies that have applications before the EPA. I also do not find particularly helpful the minister's comment about shares held in superannuation funds. The minister has not distinguished between, for example, someone who holds shares indirectly because their superannuation is invested in an industry superannuation fund, and someone who may hold shares in a self-managed superannuation fund, which is their own superannuation fund. It is common these days for high income earners to manage their own superannuation funds, which they administer on a day-to-day basis, and they directly decide which companies they will or will not invest in. If an EPA board member owns shares through their personal superannuation fund, I would find the minister's comment that the conflict of interest was just shares, possibly through a superannuation fund, disingenuous and possibly deliberately misleading. I consider the ownership of shares by board members to be a serious issue.

I also seek clarification from the minister on whether the conflicts of interest that EPA board members had extended beyond shares to such things as providing consultancy work to proponents who had applications before the board. I would find it a serious issue if someone was a consultant in that area and was potentially touting for work with people who then come before them with applications. I also understand there may be issues with people who do academic work. Members might wonder how being an academic could generate a conflict of interest in these circumstances. Academia is not what it used to be when academics had tenure, one employer and one income, and did their job within the safe boundaries of a tertiary institution. These days, people often do academic work in partnership with the private sector and academics often have their work funded by the private sector. The distinction between the worlds of commerce and academia is often blurred to an extent that serious conflicts of interest may arise. I am concerned that the nature of these conflicts of interest has not been fully disclosed by the minister. I am also concerned—the issue has been touched on by other speakers—about one project in particular that has been included in the minister's list of 25 projects to be affected by this bill. Of course, that is the Roe 8 extension. In his second reading speech the minister did not say anything about the Roe 8 project needing to be covered by this bill. The minister 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, it is proposed to enact legislation to validate approvals that may be invalid by reason of the failure by the authority to comply with statutory requirements relating to conflicts of interest.

That is the reasoning the minister gave for this legislation. None of that has any application to the Roe 8 extension. The Roe 8 project is not a private sector investment. It is certainly not in the resources sector. The government is undertaking that project and my understanding is that the approval process has not finished. The fact that the minister's second reading speech failed to address the issue of the Roe 8 extension causes me great concern. On this side of the house we accept and we support—that is why we will vote for this bill—that for those major resource projects it is simply not practical to go back to square one and redo the environmental assessment, because some of those projects are already up and running. However, no such time restrictions apply to Roe 8. It is a government project and the approval process has not even been completed. The government has not even allocated any money to it in the budget. Therefore, how can the minister say that that project needs to be dealt with under this bill? It looks to me as though the minister has a problem with the Environmental Protection Authority and that has generated the requirement that the minister validate the approval processes for a number of resource projects that are important to the state and, behind the smokescreen and in the cloud of dust that he has created to justify doing that, he has simply slipped in the Roe 8 project and he proposes to take that through at the same time. I think that is a thoroughly dishonest way to treat —

Withdrawal of Remark

The DEPUTY SPEAKER: Order! Please do not impugn improper motives from the minister. Withdraw that, please.

Mr D.J. KELLY: I withdraw that comment.

Debate Resumed

Mr D.J. KELLY: I think it is an entirely improper and disingenuous way for this minister and this government to deal with such a contentious environmental issue. This is not a project without controversy. Roe 8 is a highly

contentious project. If the government wanted to restore any semblance of confidence in its performance on environmental issues, it would pull out the Roe 8 project and send it back to the EPA, not a conflicted EPA, and ask for that assessment to be done again. If the minister does not do that, he will be forever accused of abusing the government's numbers in this house to push through a highly contentious project. If there is one thing that the minister can do to improve his performance on this issue, it is to show some spine and protect the environment.

MR A.P. JACOB (Ocean Reef — Minister for Environment) [10.09 pm] — in reply: Let me just say at the beginning that the Environmental Protection Amendment (Validation) Bill 2014 essentially seeks to validate what has already been taken to have happened. Essentially, through the bill before us today, we are saying that the projects that have been through extensive rounds of public consultation and, in most cases, have already been subject to the entire appeals process and have received ministerial approval and are operational are taken to have been validly issued and that the process is taken to have been validly followed. This matter is potentially material for those companies involved. I remind members of this house that those companies employ thousands of Western Australians and, indeed, help to underpin our state's economy. This government is committed to acting swiftly to remove any real or perceived risk to those companies and their investors. It is a concern to us that the longer this issue remains unresolved, the more possible it is that vexatious legal action potentially could be taken.

Several members interjected.

The DEPUTY SPEAKER: Order, members! Your side of the house was heard in silence, so you should listen to the minister.

An opposition member: It was not!

The DEPUTY SPEAKER: It has been while I have been in the chair.

Mr A.P. JACOB: I consider that there is an expectation on government to act swiftly to resolve the issue.

Mr D.J. Kelly interjected.

The DEPUTY SPEAKER: Member for Bassendean, you are already on two calls today. I ask you to allow the minister to speak.

Mr A.P. JACOB: I believe there is an expectation on government to act swiftly in this case, particularly given that this issue was not of industry's making in this circumstance. Indeed, all these proponents have acted in good faith in accordance with the state's environmental approvals process. They have invested heavily in the science that underpins the assessments of their environmental approvals. As I have said, all these projects have been through due process and, in many cases, have had several rounds of public comment or public input, as well as input from others. I believe it is incumbent on this government and, indeed, the Parliament to provide certainty to not only the companies, but also, even more importantly, the employees on these projects. There are many thousands of Western Australians whose livelihoods depend right now on these projects.

We have been debating this matter since about four o'clock this afternoon, so I assure the house that there is certainly no unseemly haste with which we are taking this bill through the house, although some members opposite said that we were doing it too quickly and some said that it was not quickly enough. It is going through due process. This is an incredibly important issue.

I want to address a couple of matters that were raised. By and large, many of the concerns raised were addressed in my second reading speech, but I will point out a few recurring themes, particularly the composition of the Environmental Protection Authority board. I have stated at every point through this debate that it does not matter much who appointed whom to the board. Indeed, those were the first questions that were fired at me. I do not think members opposite particularly liked the answers to those questions. Many members cast aspersions about certain appointees to the board; in fact, some were happy to say that I or the government had a biased industry representative, which is completely unsubstantiated and does not map out when we look at the appointments the government has made to the board. Section 7(2) of the Environmental Protection Act requires that appointments to the board of the Environmental Protection Authority be individuals who have experience of, and interest in, matters of the environment. If I were to say anything, it would be that we certainly have had a strong tendency to appoint those who have very strong academic or professional backgrounds in these areas. Certainly, as Minister for Environment, I believe that the Environmental Protection Authority is there to provide high-level advice to the Minister for Environment of the day. The Environmental Protection Authority exists to provide that high-level advice, which is the trigger for the ministerial decision, and the minister needs the highest level of input possible to make decisions. I will make a small point in response to some of the comments I have heard along the way. Members implied that a bias against a project would not be a conflict of interest. In my view

whether a purpose had a bias for or against a project, a bias against would equally be a conflict of interest and, indeed, be seen as an apprehension of bias in assessing a project.

I will address specifically what the chair of the EPA himself outlined in his interpretation of the act and how we have arrived at this point. Section 12 of the Environmental Protection Act was read out ad nauseam by members opposite, but for the benefit of the house I will read section 13 of the act, which immediately follows section 12. It reads —

> 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.

That was clearly the clause that the chair of the EPA used to decide that a certain amount of latitude was afforded him in these matters. In many instances, it would have been that a member who may have had an interest could participate in discussion but not the decision. Clearly, that was the wrong call and, clearly, the court found that. That is a disappointing outcome and it was indeed a large error and we will no doubt continue to go over that. However, the responsibility belongs to the Minister for Environment, while remembering that the EPA is an independent statutory authority. Indeed, I think every member opposite made the point that it is important that the EPA can operate independently. I agree with that. That is a robust part of our environmental approvals process. That means the EPA must have the independence to operate internally. Obviously, the expectation is that the EPA will comply with the act, but obviously a significant error was made. It is our job to fix it—my job first as Minister for Environment—and that is why I have brought this bill into the house.

To very quickly address a recurring theme mentioned by members opposite; yes, the list of 25 does not seek to be exhaustive; and the list of 25 is not part of the act. At every step of this process we have been forthcoming and I have sought to be as open as possible on this matter. There was no requirement for me to table the list of 25 projects that we believe could have been potentially at risk of challenge due to conflicts of interest; however, I have chosen to do so. The act is separate from that list; it clearly addresses and validates actions that happened over that time. I will highlight a point from my second reading speech, which states —

> 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. The validating legislation will not prevent decisions being challenged on grounds which do not concern conflicts of interest.

As I said in my second reading speech and I say again, even though this bill seeks only to provide that what has taken to have happened is taken to have validly happened in the past, it is not all-encompassing; it seeks only to address matters that in sections 11 or 12 of the act could have been found to be done ultra vires within the Environmental Protection Authority's internal governance. The question has been asked of the government again and again and the very first question I answered on this matter was that it was clearly a decision of the chair of the EPA. Members opposite have revealed that they have the EPA minutes of 2 October. They clearly show that the EPA took the decision independently to allow this practice to happen. The chair of the EPA has said that it was his decision to allow this process to happen. That was clearly wrong, and that is clearly disappointing. I have expressed that to the chair of the EPA, but it is now my responsibility to fix it. I do not see any point at this late hour in pursuing further fantasies or further conspiracy theories referred to by members opposite. This government respects the independence of the Environmental Protection Authority; it does not seek to direct it. I have said in this place and outside this place again and again that there was no direction whatsoever by the government of the day to the Environmental Protection Authority to change its internal processes nor —

Mr D.J. Kelly: Any discussion?

Mr A.P. JACOB: There was no discussion, nor were we even advised. There was no discussion; there was no direction. This was ultimately a decision of the Chair, and he has also come out and said that it was his decision. If members opposite repeatedly say they do not believe me, that is up to them; if they think others do not believe me, that is up to them; but I do not know how many times I can keep saying that.

I will quickly address Roe 8 as one particular project that is probably emblematic of all the projects in some ways. In common with every one of these 25 projects, there is no suggestion at all that members of the Environmental Protection Authority were influenced in their decision by the fact that they had conflicts. As I outlined in my second reading speech, were anybody to find that at a later date, it could then be challenged on those grounds. We do not seek to address that at all; this legislation seeks to address the areas where we have been procedurally let down by sections 11 and 12 of the act. We are simply seeking to validate what has already been taken to have happened. It is retrospective, I admit, but it is not prospective. Indeed, there is nothing to

indicate that the Environmental Protection Authority has done anything other than assess on their merits the environmental factors relating to all of these proposals. The science and research involved in the assessment of these projects and, indeed, in the compilation of assessment reports, is not compromised in these instances. Nobody has shown that; indeed, I do not think others have made that claim. This is entirely a technical aspect of the Environmental Protection Authority not complying with the requirements of the act that relate to its management of conflicts of interest. I commend the bill to the house.

Question put and passed.

Bill read a second time.

Leave denied to proceed forthwith to third reading.

Consideration in Detail

Clause 1: Short title —

Mr C.J. TALLENTIRE: Clause 1, the short title of the bill, makes it very clear that this bill is about validation, and I want to question the minister on the use of the term "validation". It implies that there is a validation of an approval—an approval that, in fact, these proposals have not necessarily been given, and I am thinking specifically of the Roe 8 example. Clearly, that proposal is before the Appeals Convener and is subject to appeals. Those appeals may, in fact, be upheld, such that the project does not proceed, so for this project to then be in some way associated with a "validation" bill could be problematic. I would like to know how the minister would see that treatment and indeed if there was ever at any stage contemplation of a different short title for the bill.

Mr A.P. JACOB: Using that particular instance that the member brought out, obviously that one has not yet had a ministerial statement on it. This bill does not address a ministerial statement, should that be the outcome of the appeal process. Indeed, it is still in the appeal process. The bill addresses —

Point of Order

Mr C.J. TALLENTIRE: I am having a lot of trouble hearing.

The DEPUTY SPEAKER: Yes, I am too, so thank you for raising that. Minister, could you speak up, thank you?

Debate Resumed

Mr A.P. JACOB: I hope that is better. This bill validates those actions of the Environmental Protection Authority in that particular instance. If we use the example of, say, Roe stage 8, it would be that EPA assessment process, not a hypothetical ministerial statement or otherwise post this matter.

Mr C.J. TALLENTIRE: The Roe 8 example is just one. We do realise that there may be other cases beyond the list of 25 that could be involved in some form of validation. During the course of the second reading debate, it was pointed out that the issue of the report and recommendations of the EPA for Roe 8 was post the handing down of Chief Justice Martin's judgement. It was something that I was expecting the minister to respond to in his response to the second reading contributions. Perhaps this would be a time for the minister to identify how it was allowed to happen. Clearly we were aware of the conflict of interest in this project, yet it was something that the minister was prepared to allow to proceed.

The DEPUTY SPEAKER: Member for Gosnells, I think you need to direct yourself to the short title.

Mr C.J. TALLENTIRE: This is about validation. The short title of the bill includes "validation". It seems to me that we are validating a proposal that has not only not received ministerial approval, but also been subject to an EPA report that was issued post the handing down of Chief Justice Martin's judgement. Is there a risk that we are validating a proposal that not only has not received ministerial approval, but also was actually never legitimate because of that sequencing of events? I will say again that the sequencing issue was that the Roe 8 report came out after the handing down of Chief Justice Martin's judgement.

Mr A.P. JACOB: This bill will validate those decisions before 19 August 2013; it does not seek to universally validate them either. Clause 4 of the bill gives a range of grounds of invalidity, and it seeks to validate decisions of the minister or of the EPA in going through its assessment processes up until that decision date that the bill lays out, being 19 August 2013.

Mr C.J. TALLENTIRE: I am wondering whether this term "validation" really is a serious flaw in the bill, simply because we are really looking to exempt certain approvals from a charge of conflict of interest. Perhaps that would have been a more precise and more accurate portrayal of what the bill is about. This term "validation"

really does have me concerned. The common usage of the term "validation" is that a proposal has received some form of validation. It suggests that it is a legitimate proposal that can go forth; whereas the reality is that the bill is about an exemption from this charge of conflict of interest. If we were to use that sort of title, we would not be insisting that the proposal received any form of positive report and recommendations from the Environmental Protection Authority or any form of ministerial approval. We would simply say that it is exempt from the charge of a conflict of interest. When we want to be more precise in this place, when we want to communicate our work more accurately with the public, surely this is a good example of where we could be getting it wrong. Using the term "validation" sends people off on the wrong track. Why are we doing that? Why are we not using the most precise and widely understood language?

Mr A.P. JACOB: In my opinion, what the member for Gosnells is suggesting would be far more wideranging than what we have before us. This bill quite specifically seeks to validate actions taken under a couple of sections of the act. It validates within a specific period. It does not validate projects as a whole. It only seeks to validate actions in and around those projects under sections 11 and 12 of the act and within that period. What the member for Gosnells is suggesting would actually be a far more wideranging validating or exclusion act. That is not what I sought to introduce to this place.

Mr C.J. TALLENTIRE: The minister is claiming it would be far more wideranging but he has not explained how it would be. I think it is very specific to say that this relates to an exemption from a conflict of interest charge. That is focused in very neatly, whereas "validation" can mean anything. It can mean validation from the Premier, validation from all sorts of bodies and entities, validation of something's worthiness on financial grounds and validation of its social benefits—all sorts of things. Specific language would surely be given by saying that this is about an exemption from a charge of conflict of interest.

Mr A.P. JACOB: I have said many times that that is not what this bill seeks to do. As I said in a summary of my second reading speech and in my initial second reading speech, were somebody to find a material matter post this issue, that could still potentially be brought forward. I have actually introduced a bill into this house that has a relatively narrow scope in that it only seeks to address those matters that I have highlighted up until this point. I am only seeking to address matters up until 19 August 2013 and, within that, validating only those matters that could be found to be decisions made under conflict of interest provisions or indeed delegation provisions under sections 11 and 12 of the act. It is actually far narrower in scope than what the member for Gosnells is suggesting.

Mr C.J. TALLENTIRE: The minister is really jumping way ahead there with an idea that somehow we want to preclude the issue that he raises; that is, an eventual legitimate challenge of conflict of interest, should it be found that one of the EPA members really did use their position to gain financially from a particular project. The minister indicated that that line of investigation would still be open and someone could still in fact be prosecuted if that were to be the case. To me, that is a separate issue. I am simply talking about the charge. The minister talked about the potential for frivolous claims of a conflict of interest. Perhaps there would be the need to insert the words "exemption from charges of a frivolous nature relating to conflict of interest". Perhaps that would be more precise language to use. I was not for a moment suggesting that we would be broadening it out to somehow capture all kinds of other conflicts of interest. The minister is saying that the act allows for those charges down the track to be made anyway.

Dr A.D. BUTI: In the minister's answer to one of the questions put to him by the member for Gosnells, he mentioned that it is being sought to validate certain decisions made prior to 19 August 2013 on the grounds outlined in proposed section 135. However, the problem there is that this is retrospective legislation, which Parliament should always be very careful in passing. The government is basically seeking to pass a piece of legislation that will retrospectively validate the decision that could be considered to be contrary to the Environmental Protection Authority as it stands now in respect to conflict of interest—that is what the government wants us to do. However, we are being asked to pass this legislation without knowing all of the decisions that the government wants to be validated. The minister says it is narrow and they have to pass certain criteria, which is fine, but we still do not know the total number. There are some exemptions like the Browse liquefied natural gas project; I understand that, but the minister wants us to validate decisions that we have not seen the list of. The minister should have been prepared when coming to Parliament. He can shake his head, but he must know what decisions were made by the EPA prior to 19 August 2013, and there should have been a forensic examination of what decisions we are validating. What decisions that may be contrary to the conflict-of-interest requirements are we validating under the legislation as it now stands?

Mr A.P. JACOB: I do not see how that relates to clause 1.

Dr A.D. BUTI: I am referring to the fact that the minister responded to a question. In respect to this clause, the minister said that decisions made before 19 August 2013 are to be validated. If the minister made that statement, I have a right to respond to it, and that is what I am doing. I am seeking clarification or further explanation about why this Parliament should agree to legislation that has retrospective effect when we do not even know of all the decisions that will be validated under this bill if it is passed. Surely, the minister should have provided a list of those decisions.

Mr A.P. JACOB: I am only too happy to address that. I think I will be addressing it at clause 4. The answer to the question earlier was specific to the member for Gosnells when he asked why we had used the term "validation" in the short title of the bill. The member for Armadale is seeking to expand that into the bill generally. Clause 4 is where we debate that and I am only too happy to answer the question at that point.

Mr C.J. TALLENTIRE: In focusing on this issue of the terminology "validation", we raised the issue of Roe 8, because, as the minister says, it is the anomaly in its timing and the fact that it has not received final approval, and therefore there is concern about it being validated because we are talking about this being a validation bill. The minister is aware of the amendment to clause 4 that is forthcoming. One question the minister did not address in his second reading speech—I think this may be a timely moment for him to do it—was the nature of the conflict of interest that Dr Whitaker had in relation to Roe 8. Would the minister like to take this opportunity to tell us what that conflict of interest was?

The DEPUTY SPEAKER: Order, member, I do not think that is relevant to the title of the bill.

Mr C.J. TALLENTIRE: It is about the validation of the Roe 8 project. We have established that the only project that has not received approval on the list in circulation is Roe 8. We need to know what the nature of the problem is with Roe 8. Why are we validating Roe 8? It is because there is a conflict of interest. Several members asked for information on the nature of that conflict of interest and I think, given that it relates so specifically to the validation of the project, it is perfectly reasonable for the minister to use this opportunity to tell us what the nature of that conflict of interest is. Why one would want to hide that, I really do not know. The minister has made all kinds of general statements about shares and saying that conflicts of interest are principally people's shareholdings. We know that with Roe 8 it cannot be about shares; shares cannot be held in Main Roads. Where is the conflict of interest that has caused the problem for Roe 8 on this list? The minister should have done this in his response to the second reading debate. The minister did not take that opportunity. I am giving it to the minister now. It is a central issue. It is a defining point when it comes to the use of the term "validation". We are being asked to validate a project that was not approved and that had a serious conflict of interest associated with it, and we are being held back from knowing what the nature of that conflict of interest is. That is grossly unfair. That is government acting with the worst type of secrecy. That is hiding things from the Parliament. There is no reason at all why we should not know. The minister failed to take this opportunity earlier in response to the second reading debate. Here is another opportunity for him to tell us. So, minister, please tell us why Dr Chris Whitaker had a conflict of interest on the Roe 8 assessment.

Mr A.P. JACOB: Madam Deputy Speaker, I am only too happy to discuss that point. That will be discussed ad nauseam when we get to clause 4, and, indeed, when we get to the member's amendment. But, again, that question does not relate to the short title of the bill.

Mr C.J. TALLENTIRE: As I have just pointed out, the minister had ample opportunity during the second reading debate to provide a response. But the minister did not take that opportunity. Why the minister did not take it, I do not know. But why should we wait any longer for the minister to respond? I think it is a disgrace. The people who are following this debate very closely, and who have been in the public gallery since four o'clock this afternoon, are giving up their own personal time. They are not being paid for being here, as the minister and I are.

The DEPUTY SPEAKER: Order, member! The minister has given an undertaking that he will cover this under clause 4. If the member has people who want to hear the outcome, perhaps we should move towards clause 4.

Mr C.J. TALLENTIRE: Thank you for that direction, Madam Deputy Speaker. But I will point out again that we have people in the public gallery who have been following this debate. Why should they be held back from knowing the nature of this conflict of interest for one more moment?

The DEPUTY SPEAKER: We are discussing the short title of the bill, and that is what I would like the member to restrict himself to.

Mr C.J. TALLENTIRE: Thank you for your guidance, Madam Deputy Speaker, but in all probability we will not get to clause 4 tonight—that will be tomorrow.

Mr A.P. Jacob: That is up to you. There is no reason to debate the other three clauses.

Mr C.J. TALLENTIRE: We do our job diligently and thoroughly. We are not going to rush ahead just to suit the minister's agenda. We want to make sure that we get to the bottom of this. I think that is very reasonable, given that the minister missed the opportunity to do that. That may have been an oversight on the minister's part. I know that it is difficult for ministers to take comprehensive notes as members make their second reading contributions, and often ministers overlook significant points and fail to respond to them. But here is an easy opportunity for the minister to do that. I think it is perfectly within the rules. We are talking about a validation bill. This bill is all about validating a project that has not been approved. Roe 8 has not been approved. So I ask the minister to clarify the situation for Roe 8 by telling us the nature of the conflict of interest that Dr Chris Whitaker had on Roe 8. Why should there be any more secrecy? Why delay for one more moment?

Mr A.P. JACOB: I am happy to give the member for Gosnells an undertaking that I will discuss that at the relevant point in the bill. It is only three clauses away. We have the short title, the commencement, and the act amended. We then get to clause 4. I am not seeking to play games here. But if we have a general debate on the short title, that is not the process. The member for Gosnells knows that. The time is largely in his hands at this point—in fact, the time is entirely in his hands. The only member from our side who has spoken has been me, and I am only too happy to get to clause 4.

Ms M.M. QUIRK: The short title does contain the word "validation". Down the track, a transaction might be litigated, and the court will need to determine whether that transaction is covered by this bill. It seems to me that the legislative intention needs to be evinced by the minister so that the court will know what transactions are and are not included in the bill. Therefore, that is terribly germane to the short title, because it gives meaning to what has been validated.

Mr W.J. JOHNSTON: Is the minister going to answer the question that has been put to him?

Mr A.P. Jacob: I was on that particular matter; I was just taking advice on it.

Mr W.J. JOHNSTON: The member has raised this important issue and the minister does not want to answer it. That is not the way the system works.

Mr A.P. Jacob: Sit down and I will respond to it.

Mr W.J. JOHNSTON: I am a bit confused now, because the Minister for Corrective Services is saying that the question had already been put, and the minister is saying he is going to respond. The minister can respond only if the question was not put. If the Minister for Corrective Services is trying to canvass the ruling of the Chair—because I thought I got the call—I will get this all clarified. But if the Minister for Corrective Services wants to continue to interrupt and delay things, that is entirely up to the minister; otherwise, I am happy to have this minister answer, if that is what he has going to do, because he did not answer the member for Girrawheen's question.

Mr A.P. JACOB: I do not wish to spend any longer on this clause than necessary. I am only too happy to get to the substantive clause that deals with all those matters that the member for Girrawheen raised.

Ms M.M. Quirk: I asked for validation, minister.

Mr A.P. JACOB: And my answer is that those matters are dealt with at clause 4. I am not seeking to surreptitiously pass clause 4 tonight; I am simply making the point that it is entirely not what I am doing, and I will happily put that on the record. But those are matters for clause 4, and I would like to get to clause 4 and discuss them there.

Mr W.J. JOHNSTON: I would like to know whether any decision covered by the provisions of this act is not in fact a validation. Could we have that clarified, because it is an important issue? Are there any matters covered by this bill that are not in fact a validation?

Mr A.P. JACOB: No.

Mr C.J. TALLENTIRE: The title of this bill—leaving aside the contention around the terminology and use of the word "validation"—is the Environmental Protection Amendment (Validation) Bill 2014. I ask the minister whether it is the case that this bill is about environmental assessment—the validation of assessment—and therefore whether "Environmental Assessment Amendment (Validation) Bill" would be a more appropriate title. Why was that title not chosen? It is not about just protection of the environment; in fact, on the contrary, these assessments are our Western Australian way of allowing the destruction of the environment. That is how we do it in Western Australia. Other regimes have other systems. Other jurisdictions use a licensing approach to their environmental management, but in WA when somebody wants to develop something and puts forward a project, they submit it for environmental assessment, and the assessment process allows a degree of environmental loss.

That is the way it is done. To describe this bill as being the Environmental Protection Amendment (Validation) Bill 2014 is very misleading. The eventual act will be called the Environmental Protection Amendment (Validation) Act 2014, and that is completely wrong. This is an environmental assessment amendment validation bill—eventually an act. Why has that mistake been made?

Mr A.P. JACOB: There is no mistake; this bill amends the Environmental Protection Act 2014, hence that wording.

Mr C.J. TALLENTIRE: The minister or his advisers perhaps need a little more time to reflect.

The DEPUTY SPEAKER: Order, members; there is too much audible conversation in the chamber. Can I have some silence?

Mr C.J. TALLENTIRE: The minister has just suggested to me that it needs to be a term or title that somehow mirrors the Environmental Protection Act 1986 because that is where the amendments end up. The reality is that the minister is calling this "environmental protection amendment validation", but it is not about environmental protection; it is about environmental assessment, yet there is no use of the word "assessment" in the legislation. That is, to me, a gross error. To just glibly say that the minister has chosen another title because he feels that connects with the principal act is not good enough. It does not; it is not the same wording as is in the principal act anyway. There are additional words in there—"amendment" and "validation". Why did the minister not take the opportunity to more accurately describe what this bill is about? It is not about environmental protection; it is about environmental assessment. There is a world of difference. This bill is about validating those projects that have been through the environmental assessment process, whether they be mining projects, the Roe 8 extension, James Price Point, the Browse project or any of the other projects on the list. It is about allowing a degree of environmental destruction. It is a complete misuse of the language to describe it as an environmental protection validation bill. Why did the minister not give the honest truth and say that this is an environmental assessment bill?

Clause put and passed.

Clause 2: Commencement —

Mr C.J. TALLENTIRE: Clause 2 relates to when the act will come into operation, stating —

> This Act comes into operation on the day on which it receives the Royal Assent.

I ask the minister to explain how it relates to the release of the Supreme Court judgment, given that it came out on 19 August 2013. That would perhaps be a key date in the timeline of events. Why would the minister not seek to ensure that this act comes into operation only for assessments that were made prior to the issue of the Chief Justice's judgment?

Mr A.P. JACOB: The act does do that, but it does it in proposed section 4.

Mr C.J. TALLENTIRE: I think there is another way of looking at the issue of this legislation coming into operation; that is, the issue of projects. We have already touched on this. I am referring to those projects that have some form of final approval pending over them. If they are in the appeals process, they would be subject to this. It also relates to the previous clause and the idea that the government is validating something when this legislation comes into effect. How can the government validate something from a given date—that is, the day on which the act receives royal assent—when so many other things are yet to be approved?

Mr A.P. JACOB: This act will validate those proceedings that occurred before 19 August 2013.

Mr C.J. TALLENTIRE: Much of the haste with which this legislation has come to this place has been due to the minister's fear. He has described them as frivolous charges of a conflict of interest on a particular project. He is fearful that court cases could arise tomorrow or over the next week or so as the bill transitions from this place to the Legislative Council. He is fearful that we could have a court case or two; maybe 25 could occur between now and the giving of royal assent to this bill. Can the minister outline to us what the risks are, how likely it is that they could occur and what time line we are talking about? If someone was of the mindset to refer one of these projects to the Supreme Court on the grounds of a conflict of interest, how many days do they have in which to do it? I think we need to know that.

Mr A.P. JACOB: I suspect that we are best advised to debate that at clause 4, which deals with the substantive matters of the bill that before us.

Mr C.J. TALLENTIRE: Ordinarily I would not pay too much heed to issues around the commencement of a bill, because generally there is not that degree of urgency about the legislation we deal with, although it is often very important and needs to come into effect sooner rather than later, of course. However, in this case, we have

heard a lot about how urgent the bill is because court cases could be mounted against particular proposals. That all relates to the commencement, so I would have thought this would be the perfect clause to answer my question. The clock is ticking. Where are we at with that ticking clock and the potential for someone to challenge one of those projects in which the minister has identified a conflict of interest? How many more days does someone have to lodge a conflict-of-interest case—I am not sure of the correct terminology—with the Supreme Court?

Mr A.P. JACOB: It is up to individuals or others to decide whether or not they will lodge a case. As I have said at other points in debate, nothing in this bill will preclude them from lodging a case at another point. As to the time line from where we are here to commencement of the act, it is when the bill passes both houses of Parliament, so it is really a question of how long is a piece of string. The bill clearly outlines that the commencement date of this act is the date it receives royal assent, which requires it to go through the two houses of this Parliament.

Mr D.J. KELLY: When somebody does in fact lodge an application challenging an approval before royal assent, the minister has referred to those applications a number of times—certainly in his response to the second reading debate—as vexatious litigation. Given that the litigation that gave rise to this legislation revealed serious conflict-of-interest issues around EPA approvals and exposed illegality, most people would agree that it has served the public good because it exposed illegal action by the state government. Why then has the minister referred on a number of occasions to similar applications as being vexatious litigation?

The DEPUTY SPEAKER: Member, I am having trouble seeing the relevance to this clause.

Mr D.J. KELLY: This bill deals with the time frame in which people will be able to litigate, so I am simply asking: if someone utilises the window that will be there before this bill becomes law, why would the minister refer to that litigation as being vexatious, given the history of this matter?

Mr A.P. JACOB: Again, that does not particularly relate to the clause. The clause will not validate things from the point at which this bill comes into force. It clearly gives a date, which is the decision date laid out in clause 4, and relates to those actions and processes that happened prior to that date.

Clause put and passed.

Debate adjourned, on motion by **Mr J.H.D. Day (Leader of the House)**.

House adjourned at 10.59 pm

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