SWAN AND CANNING RIVERS MANAGEMENT BILL 2005

Committee

Resumed from 31 August. The Chairman of Committees (Hon George Cash) in the chair; Hon Ljiljanna Ravlich (Minister for Education and Training) in charge of the bill.

Clause 136: Regulations -

Progress was reported after Hon Norman Moore had moved the following amendments -

Page 106, line 27 - To delete the line.

Page 107, lines 29 to 32 - To delete the lines.

Hon NORMAN MOORE: As it has been a while since the bill was discussed, I would like to reassert the reasons for moving these two amendments to clause 136, so that members know exactly what I am seeking to achieve. By explaining what the opposition is seeking to do, I hope the government might be prepared to accept this amendment, because it is a matter of fundamental principle in the way in which legislation is drafted.

There is sometimes included in legislation a clause called a Henry VIII clause, which basically allows that legislation can be amended by regulation. I believe that it is a fundamental principle of the Westminster system that acts of Parliament should be amended only by other acts of Parliament. The opposition has sought to resist the notion that by inserting a clause into an act, an act can somehow be amended by a regulation, because we do not believe that fits in with the fundamental view that Parliament is the only vehicle for amending an act of Parliament in a proactive way. Clause 136(2) states -

> Without limiting subsection (1) regulations may -
>
> (a) amend Schedules 1, 2, 3, 4, 5, 7 or 8;

Clause 136(3) states -

> A regulation amending Schedule 8 by inserting a regulation must not be made except with the concurrence of the Minister to whom the administration of the Act under which the regulation is made is committed by the Governor.

Again, that relates to the capacity provided in this bill for the schedules to be amended by regulation. I could waste a lot of time today by seeking to encourage the government to the view that this is a very blatant and obvious Henry VIII clause. I also want to indicate to the chamber that on a previous occasion, the chamber in its first go, so to speak, amended a Mining Act amendment bill to remove a Henry VIII clause. The chamber made the decision that the Henry VIII clause was unacceptable in that bill. The bill went back to the Assembly, and about a year later the government came back to Parliament expressing the view that it could not implement a particular scheme in respect of some transitional arrangements relating to mining tenements unless it had some form of Henry VIII clause to deal with unintended or unexpected circumstances. It was put to me as the shadow minister in those days that really there was no other way around this. I was inclined to accept that argument but only because ultimately the scheme of arrangement had a finite time. It was a two-year scheme of arrangement, so we knew that the government would use the Henry VIII clause if necessary during the two-year period and it would then expire. I was prepared to accept that proposition on that occasion, having had an in-depth discussion with officers and draftsmen that convinced me that this time frame would ensure that the clause would not remain in the act for ever.

In my view, that was a fairly rare occasion, but the circumstances were such that we took that particular point of view. I am looking forward to the minister's response to my comments, but there is nothing vaguely subtle about this clause at all. It just says that the schedules can be amended by regulation. The schedules are indeed part of the bill, which will become an act. It says that the government intends to do what we have always argued in the past we should not be able to do. When one looks at schedules 1 to 5 and 7 and 8, one sees they relate to important elements of the bill: schedule 1 deals with the land that is the catchment area; schedule 2 relates to the Swan Canning Riverpark; schedule 3 deals with the development control area; and schedule 4 relates to the river reserve. All those areas of land are very important in the context of this bill because they delineate where the effects of the bill will be applied. If the government can change the schedules by regulation, it can simply change the boundaries of those areas of land that we have already decided are very important in the context of the reasons for this bill being brought here.

The government will say, as governments have said in the past, that regulations can be disallowed. Yes, they can be disallowed, we all know that; but regulations take effect from the moment of gazettal and tabling in the Parliament until such time as they are disallowed. There can often be several months between the gazettal and coming into effect of a regulation and the opportunity for Parliament to disallow it. The effect of the regulation

can apply for many months in some cases. It is also possible after a regulation is disallowed for a government, if it is so disposed, to revisit the regulation the next day and keep doing so until such time as Parliament gets sick of knocking back the regulation. Indeed, as I explained to the chamber on a previous occasion, I have seen that happen in this very place. A government of any persuasion that seeks to do that because it is adamant about its position can do so. It is not an acceptable course of action, for the reasons that I have outlined.

More importantly, if the government wants to change the schedules, it can do so in a proactive way by bringing forward an amendment to the act. It is just as easy to bring in a bill to amend schedule 1 of an act as it is to draft a regulation to do it. The only difference is that the latter must be gazetted and the former must be brought to Parliament. It has always been my view that if an amendment to an act is of an uncontroversial nature and is essentially an administrative action for which there is a good reason, Parliament can deal with it very quickly. It has done things quickly in the past when the circumstances demanded. On the other hand, if the government wants to change schedule 1, which relates to the catchment area, it could be a significant issue as the amendment may be to reduce rather than increase the size of the catchment area. That would upset one side of the argument. Therefore, it is far better that that be done by a proactive process of bringing a bill to the Parliament and having it debated.

I think the issue is pretty clear. I will be very disappointed if the government does not accept this amendment because it will mean that it is going back on the view it expressed when in opposition, and indeed in government on the odd occasion, that, like us, it is very wary of Henry VIII clauses and believes in the majority of cases that they should not be used. I cannot find a reason on this occasion that this Henry VIII clause should be agreed to, but I am subject to being persuaded as I was with the Mining Act amendment. This clause is very blatant. There is no time frame, and that means that as long as the act remains in force, the government can amend the schedules by way of regulation. That is an unacceptable process. I seriously and strongly urge the government to agree to this amendment.

I conclude by saying that it has nothing to do with party politics. This is not a political issue, this is a parliamentary issue. It relates to the drafting of legislation and what we as a house of Parliament regard as appropriate law. It has nothing to do with the Liberal Party versus the Labor Party; nothing to do with the opposition versus the government; and nothing to do with the government versus the Greens. None of that is involved at all. It is all about a fundamental principle of the way in which we draft legislation and create law in this chamber. I say to the minister: please accept the amendment in that spirit, because it is not an attempt to embarrass the government or to make life difficult for it in any way. It means that in future if the government wants to change important parts of this act, as it will then be, it must bring it back to Parliament like everybody else must do.

Hon PAUL LLEWELLYN: I have spent quite a lot of time looking at the proposition that we should delete the lines relating to the powers to change the proposed act by regulation. I would like to get some clarification about the circumstances under which those powers will be used. For example, I noticed when I read the previous debates that the minister mentioned that clause 13 places certain obligations on the minister to undertake consultation. Also, clause 25 of the bill contains other obligations relating to consultation. Will the minister please explain how those obligations will impact on the way in which the regulations will be implemented?

Hon LJILJANNA RAVLICH: The government will not accept the amendment moved by the Leader of the Opposition. The honourable member is correct in saying that the regulations can be disallowed but they cannot be amended by stealth because clause 25 requires the trust to consult, as does clause 13(2), with anyone affected in any material way by the performance of its functions, including its administration of the act. Therefore, the trust will be obliged to consult concerning any proposal to change any of the schedules. Clause 13(2) clearly states -

> Before regulations are made for the purposes of subsection (1) -

That is the enabling provision -

> the Minister must consult with -
>
> (a) the Minister for Planning;
>
> (b) any other Minister of the Crown that the Minister considers has a relevant interest in the regulations;
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> (c) the local government -
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> (i) of the district in which any proposed new boundary is located; and
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> (ii) of the district in which the existing boundary that would be amended is located;

and

(d) any other public authority that has the care, control or management of land likely to be added to, excised from, or substituted for, land in the catchment area, development control area, Riverpark or River reserve.

That is pretty extensive. With all those people being consulted on any change to the regulations, it would be highly unlikely that a regulation could be introduced by stealth into this place and go unnoticed. Quite frankly, the requirements to consult under those two specific provisions of the bill would ensure that just about anybody who has any material or other interest would be made aware of this. These arrangements, together with the requirement to table the regulations in Parliament, would ensure that any change to the schedules results in open and transparent processes and is the subject of parliamentary scrutiny. Certainly, the ability to amend boundaries by regulations is commonplace so this is not new. In fact, the same provision is in the Swan River Trust Act 1988. The same mechanism is also included in the Armadale Redevelopment Act 2001, the Botanic Gardens and Parks Authority Act 1988, the East Perth Redevelopment Act 1991, the Perry Lakes Redevelopment Act 2005 and the Swan Valley Planning Act 1995. This provision is not new. It does not set a precedent. The opposition may not accept the government's position, but, at the end of the day, that is the prerogative of the Leader of the Opposition. He has moved an amendment to the respective clause. The government has clearly put its position on the amendment; it will not be accepting the amendment moved by the Leader of the Opposition.

Hon RAY HALLIGAN: I support the amendment moved by the Leader of the Opposition for exactly the reasons he mentioned. I agree with him when he said that this is not political; it is far from it. A number of members, particularly those who have been in this place for any length of time and have been involved with committees, especially the Delegated Legislation Committee, would be in agreement with Henry VIII clauses. As the Leader of the Opposition mentioned, these clauses have a place but they are the exception rather than the rule. The minister is suggesting that what we have before us is nothing new. It may not be new but that does not make it right. The minister's argument suggests that two or more wrongs make a right. Everything has to be taken in context.

The minister mentioned clause 25 and the term "consult". I ask members about the legal definition of "consult". Of course there is none. I suggest that members are thinking to themselves, "What do I think the word "consult" means?" They may very well go to a dictionary. What is the obligation on the government or a minister to consult? Some of the newer members in this chamber will not be aware - I certainly was not there at the time but I am often reminded of the situation - that a Premier of the day was told that he had to consult. What did that Premier do? He walked across the chamber, spoke to the Leader of the Opposition and said, "This is what I'm going to do; I have now consulted with you," and walked back to his seat. If that is accepted as a definition of the word "consult", what the minister is suggesting to us is not the best solution. There is nothing in this bill - clause 25 mentions the word "consult" - that will provide the protection that we as elected members and, more importantly, those electors who placed us in this house, expect. If we are going to give a blank cheque to executive government and say, "You have a majority; you are now the government; you can do what you wish," it is time we went back to our electors and said, "You need to find somebody else to take this argument to the government."

The minister also said that any regulation, any instrument, particularly in this bill, because it does not say otherwise, is disallowable. There is no guarantee of that. If there is a clause in the bill that says it is not disallowable and this Parliament agrees with it, it is no longer disallowable. We are talking about this specific bill and clauses within this bill. It is not in the interests of the government or anyone else to place a clause in a bill making regulations disallowable. As the Leader of the Opposition rightly said, as soon as the regulation is gazetted, it becomes law; it can be gazetted in the first week in December. The moving of a disallowance motion revolves around sitting days, not calendar days. If a regulation is gazetted in early December and the Parliament comes back in March the following year, it could be April or May, depending on the number of sitting days, before we can even debate the disallowance motion, in which case it would have been law for six months. Is that what members want? When we vote on this, that is what they will be saying to not only other members of this chamber, but also everyone in Western Australia. Even though they may eventually disagree with this regulation, members opposite will impose it on people for six months.

I also suggest that, having been involved with the Joint Standing Committee on Delegated Legislation for some years, members of this place and members on that committee are totally reliant on the staff and that the staff do an absolutely marvellous job. However, they cannot get inside our heads and, therefore, they do not know what we are looking for. I will tell members what they look for: they look for what is in the act. They would ask whether the regulation is in accordance with the act; in other words, whether it is valid. If we allow these clauses to go through as they currently stand, the staff would tell the members of that committee that it is valid. When,

therefore, will there be an opportunity for this chamber to debate the issue? Members who are not on the committee are unlikely to be made aware of it even though the gazettal must be tabled six sitting days after it has been published in the *Government Gazette*. It will mean that, yet again, members who have an interest - which includes the two Greens, who have an enormous workload anyway - will be expected to have eyes in the back of their heads to be able to identify that this has gone through. It is an impossible imposition. I agree with the Leader of the Opposition: at times the government has brought amendments to acts into the Parliament and they have gone through very, very quickly. It has been only a matter of explaining what is intended and what is required and, if agreement is found, the amendment goes through very quickly.

It is most unfortunate that the government wishes to go down this path on this occasion. It is particularly important that we do not create this precedent. Members should be assured that when future bills come to this place, the government will say that the chamber allowed this item to go through and therefore a principle is involved - a convention. The government will also say that there is openness and accountability and that that bill should also go through this chamber. It is important that members remember the conventions of this place. They have been around for 100 years and they exist for a very good reason; that is, they work and they provide the protection that the electors expect from this place and, more importantly, from the government of this state. It is important that, as elected members, we try to ensure that the people who placed us in this chamber have the protection that they deserve. Therefore, we should support the amendment moved by the Leader of the Opposition.

Hon NORMAN MOORE: I listened with some interest to the minister's explanation of why the government will not support the amendment. I have some questions to ask of her because she did not provide the sorts of answers that I had anticipated. She talked about stealth! Regulations do not operate through stealth! Everybody knows what regulations are. They are laid on the table of the house. Nobody is suggesting to the minister that she is trying to do something by stealth. What we are suggesting to her is that she needs to concur with parliamentary practice and do something in a proper way. I would like to know why the minister will not agree to get rid of the Henry VIII clause when in the past the government has agreed to that; it has accepted it as a fundamental principle. I acknowledge that many acts of Parliament have a Henry VIII clause. I also acknowledge that before the Joint Standing Committee on Delegated Legislation was established, there was a very limited oversight of delegated legislation. A very limited time was spent by parliamentarians looking at fundamental principles such as this. Indeed, the minister may be very interested to know that, prior to the establishment of the Joint Standing Committee on Delegated Legislation, the government-controlled and appointed committee that looked at delegated legislation reported to Parliament once a year. That was an appalling state of affairs, and I have to say that I was part of the government that allowed that to happen. Subsequently, we elected a Joint Standing Committee on Delegated Legislation so that members of Parliament could look at delegated legislation. As a result of the work done by that committee, we have had brought to our attention the significance of Henry VIII clauses and the capacity that governments have given themselves through parliamentary approval to amend acts of Parliament by regulation. We have already argued why that is not a good thing. Hon Ray Halligan has given a classic example of the time frame involved.

I put to the minister and perhaps to Hon Paul Llewellyn a scenario that could apply under the proposition being put to us by the government. Part 5 of the bill refers to development control areas. It describes what can and cannot be done in a development control area. The bills sets up development control areas because they are areas that need particular protection. They are areas of significance in the context of the Swan and Canning Rivers Management Bill and the environmental issues surrounding this part of Western Australia. Therefore, the whole of part 5 states what can and cannot be done in a development control area. Schedule 3 refers to where development control areas are located. The scenario I put to members is this: the government may do some sort of a deal with a developer who wants to build a project in what is the development control area itemised in schedule 3. For that development to take place without the developer having to go through all the rules relating to a development control area, all the government would need to do is bring in a regulation in December that says that the development control area no longer contains that bit of land on which the development is going to take place. The developer could have the development half built by the time the regulation came to Parliament in May. It would then be too late for us to reject it; we could reject it, but it would be too late because the development would have gone ahead. It would be a far better process if the government asked Parliament for its support in allowing Joe Blow who wants to do a development in the development control area to do that development unconstrained by any development controls, and to show that support by amending schedule 3 of the act to remove that area from the development control area. However, under the minister's proposition, the minister who wants this development to take place must go to the minister with whom she has to talk, the Minister for Planning and Infrastructure, and consult with other people. Consultation simply means, as Hon Ray Halligan has quite clearly pointed out, just telling someone what we are doing, in the most brutal consultation process that we might choose to utilise.

That has happened on many occasions in the past. Consultation does not mean getting approval. Consultation does not mean getting consensus. Consultation simply means telling someone what we intend to do. We may ask other people for their views, but we do not need to take any notice of that. What the minister is really saying is that she should be able to talk to a few people around the place to find out what they think - although she does not need to take any notice of what they think - and she can then make the changes and amend the schedules. We believe the minister should be telling the Parliament what she intends to do by way of regulation. The minister should be consulting with the Parliament. The Parliament is the place in which laws are made. If the Parliament agrees that the minister can amend the schedules, then so be it. I believe, Hon Paul Llewellyn, that these schedules are so important that they should be protected by an act of Parliament and be able to be changed only by an act of Parliament, not by way of regulation. The reason we are opposed to clause 136 is that it will provide a range of opportunities for the government to make significant changes to this legislation once passed, without the need to get approval from anyone. Those changes may be changes that Hon Paul Llewellyn would regret and that the Parliament would probably not approve.

Why has the government now taken the view that a Henry VIII clause is okay? Why is the minister so adamant that this bill should contain a Henry VIII clause? What does the government want to achieve by way of regulation that it cannot achieve by way of an act of Parliament? I am always very suspicious about these sorts of things. We are not talking about stealth. We are talking about the process. If a bill is brought to the Parliament, everyone knows the changes that are proposed, and they can be passed only by a vote of the Parliament. A regulation is very different. A regulation becomes effective the moment it is gazetted, and it applies until such time as it is rejected by the Parliament some time down the track. However, as I said, even if it is rejected by the Parliament some time down the track, the government can simply have it gazetted again the following day. Why is it so important to amend these schedules by way of regulation that the minister is prepared to go against a fundamental principle of her party and support a Henry VIII clause? I am interested to know the answer to that question. I again say to Hon Paul Llewellyn: this is a very serious matter. This clause will allow the government to make significant changes to the areas that will be protected by this bill, and to perhaps cause irreparable damage, without the need to tell the member or anyone else, and without the need to get the approval of the Parliament. The member may think the current Labor government is a very green government, with very green credentials -

Hon Paul Llewellyn: No.

Hon NORMAN MOORE: That is right. We need look only at its performance on wetlands to know that is not the case. This act will last not just for the term of this government. It will last well into the future until it is changed by some future Parliament. In the meantime, it is not out of the question that some extreme redneck government -

Hon Ljiljanna Ravlich: The Liberal Party!

Hon NORMAN MOORE: That is not what we are at all. In fact, as has been explained by the Auditor General, our record on environmental matters is vastly better than the government's record.

As I was saying, it is not out of the question that some government in the future will seek to amend those protected areas by way of regulation and allow development in an area that we would rather was not developed. The government would have the right to do that. However, it should be required to go through the proper process. The proper process is to bring the proposal before the Parliament. The minister has said we should agree to this clause, because the minister will be consulting. However, the minister is not willing to ask the Parliament whether it agrees. That is an insult to the Parliament. Even if we put aside the question of principle in respect of Henry VIII clauses, this clause will give the government the power to do things that this Parliament may not agree with, and by the time the Parliament has the opportunity to do anything about it, it may be too late.

Hon PAUL LLEWELLYN: The minister has said that there are precedents for this kind of clause in other legislation, including the Swan River Trust Act 1988. This legislation will effectively supersede that legislation. Can the minister tell the chamber how many times since 1988 there has been a change in the boundaries of any of these scheduled areas?

Hon LJILJANNA RAVLICH: Before I do that, I want to respond to the comments of Hon Norman Moore. If the member had read the legislation he would know from clause 25 that I am not talking just about consulting. There is a requirement under the act to consult and to collaborate.

Hon Norman Moore: Are you telling me there is a difference?

Hon LJILJANNA RAVLICH: The member may not like it, but that is the case. I do not really care. I am not in the business of trying to please the member, because he is the sort of person who would never be pleased anyway, so it does not really matter.

Hon Norman Moore: We just expect you to do your job properly as a minister. You have sworn an oath as minister to do your job properly.

Hon LJILJANNA RAVLICH: I am doing my job properly. The fact that the Leader of the Opposition has moved an amendment and the government has not accepted his amendment is something he will need to live with, because this is the parliamentary process, and that is exactly what we are engaged in. Clause 25(1) reads -

> The Trust must, so far as is practicable and consistent with this Act -
>
> (a) consult and collaborate with persons that are affected in a material way by the performance of its functions; and
>
> (b) have regard, in the performance of its functions, to -
>
> (i) protection and enhancement of the ecological and community benefits and amenity of the development control area and the Riverpark;
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> (ii) the significance of the waters in the Riverpark to the Nyungah community;
>
> (iii) the requirements of public recreation;
>
> (iv) the need to preserve right of access for the public to waters in the Riverpark; and
>
> (v) the interests of navigation, fisheries, agriculture and water supply.

I will not go on to read subclause (2). I think I have made my point. It is a nonsense for the Leader of the Opposition to say that the government need consult only one person, and it can then say that it has technically consulted; therefore, this is an abuse of power. I need to make the point also that the parliamentary process is not exactly the fastest process in the world. If the government needs to come back to the Parliament every time there is a requirement to do something, it may take a very long time to get anything done.

To get back to the comments of Hon Paul Llewellyn, to the best of my knowledge the powers that exist under the current Swan River Trust Act 1988 have been used only once since 1988. I do not believe there will be a major abuse of power. The boundaries of a catchment area can now be defined with great precision using emerging technologies such as remote sensing, digital technology and geographical information systems. That means that the ability to amend schedule 1 by way of regulation will enable the boundary of the catchment area to be revised without unnecessary delay as more accurate information becomes available. The member is basically saying that every time we want to improve the quality of the information, we will need to put that process through the Parliament. That does not make any sense to me. It is a major inefficiency.

Hon Norman Moore: You are an absolute disgrace.

Hon LJILJANNA RAVLICH: The truth is that the member does not think I am a disgrace; he thinks I am a very nice person. Nor does he think I am incompetent; he thinks I am competent. However, because he cannot be nice and say those things -

Hon Norman Moore: You are being grossly incompetent.

Hon LJILJANNA RAVLICH: The member should try to be very positive. That is all we ask of him.

Hon Norman Moore: I do not have to be positive to your attitude.

Hon LJILJANNA RAVLICH: The member does not have to get negative and nasty, because we have not even voted on the amendment yet.

Hon Norman Moore: I am not being nasty; I am trying to draw the minister's attention to her incompetence.

Hon LJILJANNA RAVLICH: The member should not call me incompetent when I am just going about my business. The fact that the member might not like my answer does not mean that I am a disgrace. I do not know on what basis he says I am a disgrace. He might not like the answer or the government's position. I have just explained the government's position to the best of my ability.

Hon Norman Moore: It is an appalling explanation.

Hon LJILJANNA RAVLICH: The member might not like it, but I am under no obligation to read the member's mind and give him the response he would like me to give him. I do not want to get into his mind

because, quite frankly, there is no room in there for me. The member might not like the answer, but I am under no obligation to give him the answer he wants.

Hon Norman Moore: Your answer is pathetic.

Hon LJILJANNA RAVLICH: I am charged with giving the member a response. Whether or not he likes it is up to him. We could spend a lot of time going around in circles. I have been asked why we have adopted this position.

Hon Norman Moore: Because it is quick and it saves time.

Hon LJILJANNA RAVLICH: That is part of the answer. It will be very difficult to administer this act. This is not a new precedent; it has been done on many occasions. This is the government's preferred way to deal with these schedules. An amendment is before us and I have outlined the government's position very clearly. That is all I can do.

Hon SIMON O'BRIEN: I will offer a contribution. I am motivated to do so because of the discourse we have just suffered from the Minister for Education and Training. The minister has no concept of either her responsibilities or the responsibilities of this place regarding these provisions. The minister can sit there with a silly look on her face and think it is a joke, but this is a very serious matter. The minister is dead wrong when she offers the explanation that she has just offered. To add insult to injury, the minister has made that response in a way that is very disrespectful to the chamber and its functions when reviewing legislation. The minister has a hide as thick as that of a rhinoceros. Appeals to good form and decency will fall on deaf ears. However, I intend to focus on the substantial part of what this debate should be.

Point of Order

Hon LJILJANNA RAVLICH: In all due respect, a personal character assassination on me and my so-called lack of respect for the chamber, which I do not believe -

Hon Simon O'Brien: Which is manifest.

Hon LJILJANNA RAVLICH: I have not disrespected this place. The member is out of order because of his baseless personal attack.

Hon Simon O'Brien interjected.

Hon LJILJANNA RAVLICH: If the member has an issue with the legislation -

The CHAIRMAN: Hon Simon O'Brien and the minister will come to order! The minister raised a point of order related to the words being used by Hon Simon O'Brien. In that regard, the point of order is sustained. The other matters, which are debatable matters, are not sustained. I remind Hon Simon O'Brien that we are dealing with clause 136 on the regulations. The amendment is to delete certain lines, and members should be discussing the lines. The question of the minister's competence has been raised once or twice. In the Chair's view, that point has been registered.

Committee Resumed

Hon SIMON O'BRIEN: I will not canvass any more of those matters as this precocious, precious and stupid minister -

Withdrawal of Remark

Hon LJILJANNA RAVLICH: I ask the member to retract that statement.

The CHAIRMAN: Which statement?

Hon LJILJANNA RAVLICH: The word "stupid".

The CHAIRMAN: One of the problems we have is the interaction between the two members, which is encouraging the member. I want members to get on with the debate on the substance of the amendment before the Chair. The word "stupid" is not unparliamentary; rather, it depends on the context in which it is used. I again tell Hon Simon O'Brien that members are dealing with the substance of the matter. Just because members do not like what other members are saying is not in itself sufficient reason to disrupt the debate before the chamber. In due course members can express their views by the way they vote. That is something that we will get to shortly.

Committee Resumed

Hon SIMON O'BRIEN: Let us proceed to that then, Mr Chairman, because I know that some members are concerned about not being given a sensible response to the important questions that are before the Chair. The

important question before the Chair currently is whether this Parliament should entertain a Henry VIII clause. In particular, it concerns clause 136, line 27. The bottom line is that clause 136(2) allows substantial parts of the principal act to be amended by regulation. An act of Parliament should be changed only by another act of Parliament; that is, a further act of Parliament that either amends or repeals the principal act in whole or in part. Parliament should not delegate the power to someone else - in this case the government of the day - to change a principal act. A great deal has been written about this principle by our own committees over the past few years. Those reports are very enlightening and I am sure that members have taken on board what is contained in those reports. The government, as represented by the minister at the table, would have us believe that none of that matters and that it is some sort of a joke. The government wants us to believe that if we do not like it, we should get over it because that is what the government reckons we ought to do. I am sorry, but that is not the basis upon which we should consider this clause. It is a direct attack on the Parliament's ability to preserve for itself its own power to make and then amend its own legislation.

The part of the clause that is the subject of debate is a proposal by this government to the effect that the power to amend key parts of laws passed by this place can be done through subsidiary legislation by someone else and without reference to this Parliament. Time and again we have seen governments attempting to do this for their convenience. The minister, in a brief, lucid moment, offered the candid observation that the real reason the provision is needed is that it is quicker to bung out a regulation varying the schedules than to come back to the Parliament and go through the onerous task of asking it to consider an amendment to one of its own laws. The only reason that is given is the convenience of the government of the day.

Is there some extraordinary reason whereby a government of the day may need to have such an extraordinary power and should appeal to Parliament and ask Parliament to allow it to have, for very good reason, the ability to change Parliament's law without reference to it? One would think that in advancing such a proposition, the minister could offer some better argument than just saying that it will save a bit of time, that it is simple and that if members do not like it, they should get over it; and also expressing a regret that the Leader of the Opposition does not have the intelligence to comprehend that this is what the government wants, and other such terms apparently characterised to trivialise this very serious matter. If that is all the argument the government has to offer - I am speaking through you, Mr Chairman, to the crossbench in particular - for taking a legislative power out of the collective hands of this place, it has not made the case. We must go further and observe that when debate settles on such a provision as this and is considered in the way that we are considering the provision now, it is a very important precedent. I do not want any member subsequently coming into this place and asking us to look at the amendment we made to the Swan and Canning Rivers Management Bill 2005 and saying that this place quite happily acceded to the proposal that schedules of the legislation could be amended, varied and repealed simply on a government whim without referral back to this Parliament. If members want to give that away and set that precedent, they need to be sure of what they are doing. I do not know that every member is comfortable about this. Members supporting the government should not be comfortable about this. The minister is a lost cause, but no member of this place should be comfortable about what is contemplated.

We could now turn to those several schedules that are the subject of this line. If we were to do that, we would see some quite substantial matters that the government is contemplating changing by regulation in future. We would find matters that potentially impact very dramatically on people's lives in many ways in different circumstances, but we do not need to go to those schedules to observe all that because the principle itself is quite sufficient. It is a serious principle and one that should not be treated with scorn and dismissively. That is the reason for my irritation that I express towards my good friend the minister.

Hon Ljiljanna Ravlich: Abuse.

Hon SIMON O'BRIEN: One reaps what one sows.

Hon Kim Chance: Why do you shout only at women; why not shout at men?

Hon SIMON O'BRIEN: That is not true.

The CHAIRMAN: Order! The Leader of the House raises another debate. I am trying to deal with this matter at the moment.

Hon SIMON O'BRIEN: I am not sure why the Leader of the House wants to sidetrack me when I want to wind up my contribution, but his suggestion is false.

Hon Kim Chance: My recollection must be faulty.

Hon SIMON O'BRIEN: I would not be surprised if it was faulty, because he and I have had shouting matches from time to time.

The CHAIRMAN: Order! I indicate to members that two separate questions will need to be put. The first is on the deletion at page 106 of line 27.

Hon PAUL LLEWELLYN: I gave an undertaking when we were completing part of this debate that I could be persuaded by the logic and reason of the debate and that I would give every consideration to logic, reasoning and principle. Democracy is a fragile concept in many ways. It requires cooperation and respect to move forward. I heard explained the concept of the principle that we should not allow Henry VIII clauses because they compromise some of the integrity of parliamentary oversight. I am not persuaded either way because I want to hear high quality argument about why it is that in this instance with this bill there is good, sound logic in keeping the clause that provides for a regulation to amend the schedules. I want to be persuaded that there is some serious parliamentary and administrative logic for the whole proposition. We are dealing with a large bill. I took a lot of time to inquire into this issue and the principles of a Henry VIII clause. I spent time reading some of the parliamentary committee discussions on Henry VIII clauses, so I understand the first principle. However, we are dealing with the proposition to amend this bill because it would be offensive to the Parliament to have a schedule amendable by regulation. I want to deal with the substantive implications of that proposition rather than doctrinaire arguments about parties and personal attacks. I do not find that useful for the clarity of debate. I certainly do not find it useful for making a decision. I came to this place with an open mind and I remain open-minded about how we must make this decision. I appreciate that on one level it is a trivial, small decision in the scheme of things and on another level it involves a principle that the opposition wishes to assert.

I turn to the schedules that clause 136(2)(a) allows to be amended to examine them on their merits, because that is what we are talking about. For example, I understand that schedule 1 provides for a plotted boundary for a catchment area, which is effectively a landform feature. We can debate to a certain extent whether water is flowing one way or another, which is something of a technical question, and whether there is any merit in the schedule. However, I am not persuaded that not allowing this to be amended by regulation is rational. The schedule makes sense. It is unlikely to result in malicious or vexatious claims, because of the processes that are already in place, which we must trust because they are part of the parliamentary process and the democracy in which we live. I suspect it makes sense that we should be able to amend schedule 1 by regulation. Schedule 2, "Swan Canning Riverpark", states -

> All of the land and waters shown hatched in blue on Deposited Plan 47465.

I understand that the Swan Canning Riverpark boundaries comprise only crown land and that, from time to time, land can be acquired and added to the riverpark. That will involve an administrative procedure. When I read the bill, it occurred to me that from time to time the Parliament passes reserve bills and that a reserve bill could cover these types of changes to boundaries and reserve systems. From my experience of working in the Department of Conservation and Land Management managing very large-scale areas, sometimes defined by catchment areas and sometimes defined by cadastre, I am aware that management vacuums can occur; that is, periods in which practical day-to-day management becomes unclear. I am persuaded that it is perfectly acceptable to amend schedule 1 by regulation, because it is arguable on merit. We should deal with these issues on merit. I would like to be persuaded that it is appropriate to amend this by regulation.

Hon LJILJANNA RAVLICH: The honourable member is quite right. We need to make sure that we can more efficiently deal with the new technologies that emerge, and the ability to amend schedule 1 by regulation will enable the boundaries of that catchment area to be revised without unnecessary delays. Hon Ray Halligan mentioned the possibility of six months passing before a regulation is dealt with in this place. The same applies to legislation. Six months is probably quite a short period in which legislation can progress. In fact, some bills have been on the notice paper for up to two years or whatever. We are saying that every time we need to amend a catchment area boundary, it could take up to two years. Hon Paul Llewellyn has rightly discussed schedule 2 and the Swan Canning Riverpark. Clause 13(3) ensures that only crown land can be included in the Swan Canning Riverpark. Obviously, land along the rivers designated parks and reservation under the metropolitan region scheme is from time to time purchased by the Crown or ceded as a result of urban development. This is an ongoing process and generally involves small parcels of land. The ability to amend schedule 2 by regulation will enable this land to be included in the riverpark as it becomes available. The tenure of such land would remain unchanged if we did not have the ability to deal with this in an efficient and streamlined way.

Schedule 3, "Development control area", is the same as the provision in the Swan River Trust Act 1988. As we have already stated, the regulation has been used only once. Part 5 of the bill applies to the development control area instead of the provisions of the Planning and Development Act 2005. Changes are made from time to time to the parks and recreation reservation boundaries that might not be mirrored in the changes to the development control area, and that could result in uncertainty over which legislation applies to applications for development. In 2000, when this problem was realised, discrepancies that had arisen between the two boundaries as a result of the changes to the parks and recreation reservation were resolved by using the provisions of the Swan River

Trust Act. That enabled the boundary to be amended by regulation. This showed that a mechanism similar to that for changes in the parks and recreation reservation boundary is required to ensure consistency between the operations of the Planning and Development Act 2005 and the development controls in the bill. Without referring to schedule 4, which deals with land designated parks and recreation reserves under the metropolitan region scheme, those three examples illustrate that there is a need to be able to deal with these matters in a manner that is more efficient than a parliamentary process. Whether or not we like it, the parliamentary process can be lengthy and can lead to some inefficiencies. We are seeking to provide a more efficient process for dealing with these matters. I do not know whether the honourable member is convinced by that argument. However, the argument applies similarly to each of the first four schedules, and it is a valid argument. If it takes two years every time we want to include a small parcel of land under schedule 2 in the Swan Canning Riverpark, it is not a particularly efficient process.

Hon NORMAN MOORE: The minister's last comment was that we should not have to go through the parliamentary process to add some land to that reserve. However, she did not say that we should not have to go through the parliamentary process to take away some of that land. The minister cannot have it both ways; she cannot pretend the government will deliver everything the conservation movement might want when the government is implementing a process that will allow a government of any persuasion to take away land that will be protected under this legislation. The whole purpose of this bill is to protect the environment of the Swan and Canning river catchment. It is fundamental to this legislation that we know which land we are talking about. Schedule 1 provides a very arbitrary line. I acknowledge that catchments are catchments and we cannot say that the river goes somewhere else. The map that was not provided to Parliament for this debate until it was asked for covers a very significant part of Western Australia. If the line were moved by 20 or 30 kilometres in a number of different directions, it would not look any different on the map but it could make a huge difference to the protection of the catchment.

We are trying to preserve a situation in which this Parliament, which is agreeing to this legislation, has some control over how the legislation will operate. It is all very well for the minister to say that it is much easier to avoid the parliamentary process. We should not be giving the executive that power. Hon Paul Llewellyn raised a very pertinent point when he said at the beginning of his comments words to the effect that democracy is a very fragile system of government. We make democracy more fragile when we take away from Parliament its powers and give them to the executive, which is what this bill seeks to do. The more power we give the executive, the less power Parliament has and the more fragile democracy becomes. The government seems to have the notion that we should be pursuing a pragmatic approach that makes administration of government easy. However, the more pragmatic governments become, the more fragile we make democracy.

The minister argues for pragmatism on the basis that it is easier to administer. Of course, all governments like that because, as she has said, coming to Parliament is a pain in the neck because someone looks at what the government is doing. Hon Paul Llewellyn referred to the different schedules and I want to refer again to the first four. They all relate to parcels of land. That is absolutely vital to the effects of this legislation. The legislation relates to land within those boundaries, and if the government can change those boundaries by adding to or taking away from them, it can have a very significant impact on how important and how effective this legislation will be in relation to the environment of the Swan and Canning river catchment area. That is why, even putting aside the fundamental principle that legislation should not be amended by regulation, it definitely should not be possible to amend significant aspects of legislation by regulation. If the minister thinks the schedules are not significant, she completely misunderstands the legislation. The legislation is being introduced to apply to those areas of land. That is the most significant aspect of this legislation. I would even argue the principle of whether those areas are significant. The principle is the first aspect but, secondly, it is so vital that this legislation is effective that we must preserve the schedules and not let the government amend them by regulation.

I will give a silly example. Imagine the outcry if we put a clause in the electoral funding legislation that we will soon deal with that said that by regulation and after consultation with the Liberal Party the government could increase the number of dollars that would be received per vote. The principle is exactly the same. How much power should be given to the government, to the executive, and how much power should be retained by the Parliament? If that sort of proposition were introduced for the electoral legislation, I would vote against it because the Parliament should decide, not the Liberal Party and the Labor Party by consultation and collaboration. There would certainly be some consultation and collaboration if we said that by regulation we were going to double the number of dollars provided! The money would be in our bank balances before Parliament had a chance to knock out the regulation.

Let us be serious about this. It is not just a question of principle and drafting practice; it is a question of the complete integrity of this bill. If we allow the government to change the boundaries, we will be giving the government the capacity to make decisions about land that may not be included in the scope of the bill now, or

about land which is contained within the scope of the bill now but which may be taken out of it. That would have a significant impact on the effect of this legislation. This bill, when it is passed, and it will be passed, will become an act and will remain so until it is changed. It will run the gauntlet of future governments, which may have quite different views about the environment from those of this Parliament, and it may be to the significant detriment of the views of the Greens because a government may take away land rather than include it in the schedule.

Hon MURRAY CRIDDLE: There was some suggestion that all parties should have a view on this, and I certainly concur with the views of Hon Norman Moore about the two amendments he has moved. I do so on the basis of two or three matters. First, this bill has been around for some time and an enormous amount of work has gone into the plan for the catchment area that has been put in place. We had quite a substantial debate the last time this bill was dealt with about the impact on areas within that plan. The point was clearly made that there could be significant impacts on operations within the plan. The point I am making is that the minister mentioned that the Swan River Trust Act 1988 had been amended on one occasion. I put it to the chamber that this bill is very significant and an enormous amount of work has gone into it. If the Parliament, after the consideration it has given to the bill, cannot have the responsibility for those plans, we would be letting ourselves down with the way in which we handle bills, or acts when they are proclaimed. I will support the amendments. With the amount of consideration this bill has had, I think that is an entirely proper way to progress the legislation.

Hon PAUL LLEWELLYN: Clearly we are still split on first principles. I am still not persuaded that schedule 1 should not be capable of being amended by regulation, primarily because I think that, without being naive about governments, we have to trust some of the processes and procedures that are put in place. If on first principles I could live with schedule 1 being amended by regulation, I need to be persuaded for schedule 2 that although regulations would be quicker, they would not necessarily result in a bad outcome for either the environment or any member of the community. It is true that land could be either added to or removed from the schedule. I do not know who should be happier in that regard. The important thing is to get some level of expediency in the management of the land as well as to look after the principle of having adequate parliamentary oversight.

In the context of the Swan River Trust Act, which was very well constructed, which has seen a considerable amount of development and which has stood the test of time - it has been around since 1988, which is not a long time but is sufficient to suggest that there will not be any vexatious, malicious or mischievous claims in relation to the Swan Canning Riverpark - I cannot see why we should not accept for the sake of convenience and also to move forward in a timely way that these areas can be changed by regulation. I understand that we get threatened from time to time that as Greens and members of Parliament we should be very careful because somehow or other this land could be taken over or removed from the schedule and therefore there would be a loss of a conservation asset. However, I am not necessarily persuaded that it will take place in this case.

Schedule 5 contains a list of authorities, which will change from time to time, and I see no reason that this schedule should not be able to be changed by regulation because that would be almost a matter of machinery. The schedules that raise questions in my mind relate to the cadastral boundary in the Swan-Canning development control areas. A certain amount of management procedure is needed.

Debate interrupted, pursuant to sessional orders.

[Continued on page 6131.]