STANDING COMMITTEE ON UNIFORM LEGISLATION AND STATUTES REVIEW

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

TRANSCRIPT OF EVIDENCE TAKEN
AT PERTH
MONDAY, 15 FEBRUARY 2010

SESSION TWO

Members

Hon Adele Farina (Chairman)
Hon Nigel Hallett (Deputy Chairman)
Hon Helen Bullock
Hon Liz Behjat

Hearing commenced at 11.10 am

VERSTEGEN, MR PIERS
Director, Conservation Council (WA),
sworn and examined:

DUNLOP, DR J. NICHOLAS
Environmental Science and Policy Coordinator, Conservation Council (WA),
sworn and examined:

The CHAIRMAN: Good morning, gentlemen. I am sorry for keeping you waiting. On behalf of the committee, I would like to welcome you to the hearing today. Thank you for making yourselves available to the committee. There are some formal aspects that I need to go through at the beginning of the meeting, but then after that we will try to keep it as informal as we possibly can. Before we begin, I need you to take either the oath or the affirmation.

[Witnesses took the oath or affirmation.]

[11.12 am]

The CHAIRMAN: You will have signed a document entitled "Information for Witnesses". Have you read and understood the document?

The Witnesses: Yes.

The CHAIRMAN: These proceedings are being recorded by Hansard. A transcript of your evidence will be provided to you. To assist the committee and Hansard, would you please quote the full title of any document you refer to during the course of the hearing. Also, would you be aware of microphones; please speak into the microphones and try not to make too much noise near the microphones or cover them with papers. I remind you that your transcript will become a matter for the public record. If, for some reason, you wish to make a confidential statement during today's proceedings, you should request that the evidence be taken in closed session. If the committee grants your request, any public and media in attendance will be excluded from that section of the hearing. Please note that until such time as the transcript of your public evidence is finalised, it should not be made public. I advise you that publication or disclosure of the uncorrected transcript of evidence may constitute a contempt of Parliament and may mean that the material published or disclosed is not subject to parliamentary privilege. Do you have any questions on any of those things I have just run through?

The Witnesses: No.

The CHAIRMAN: If not, I will get straight into the questions.

Piers, in your submission on behalf of the Conservation Council you state that —

> Amendments proposed by the bill will have a negative impact on environmental accountability and public participation in the environmental assessment process.

Would you just like to expand on that briefly? We will go through more detailed questions later, but if you would just like to expand on that briefly.

Mr Verstegen: Sure, but before I do that, Chair, I would just like to point out that I am here representing the Conservation Council, which is an umbrella organisation which represents nearly 100 community-based environment groups. I am, effectively, the chief executive officer of the council, and Nic is another employee. We have with us, here, two members of the council itself:

Peter Robertson from the Wilderness Society; and Josie Walker, the principal solicitor from the Environmental Defender's Office. Given that the council is an umbrella group comprising these membership bodies, we would just like to request that they are able to also participate in this process.

The CHAIRMAN: The committee considered that request at the commencement of this hearing today, and because of time constraints we have decided just to proceed on basis of you making representation on behalf of the Conservation Council. I am sure that you are more than capable of doing that, Piers, and if there are any other issues, we can address those later, but we have time constraints and we simply cannot hear four people on each question that we need to get through today.

Mr Verstegen: That being the case, is it possible for us to make some broad introductory comments before we launch into questions?

The CHAIRMAN: Certainly.

Mr Verstegen: As I said, the Conservation Council is the state's peak environment group. We represent a number of groups who will be directly impacted by these bills, because many of the individuals and organisations who we represent are the sorts of individuals and organisations who are interested in environmental decision making and are interested in transparency and accountability in terms of that environmental decision making. They are often the sorts of organisations who are appealing decisions and making representations and submissions to the EPA and to the environment minister. So we consider that we do have some value to add in terms of the deliberations on this matter.

I would just like to raise a few issues in terms of the broader context before we go into the specific detail about the bill. I guess what we are dealing with here is a situation where we have had a government come into power and there have been some important election commitments made in respect of government process and accountability. There has been a commitment to transparent and open government; there has also been commitments made to best practice environmental legislation. I think that you will get the impression, as we provide our advice, that we do not believe that this bill meets any of those government election commitments.

We are dealing with a situation where the general public in Western Australia is becoming more interested and more involved in environmental decision making, and environmental issues are becoming more important on the public radar, so to speak. We have seen, in historical terms, amendments of environmental legislation, over time, to increase the transparency of decision making and allow increased participation by the community in environmental decisions. Under the Environmental Protection Act there was an Office of the Appeals Convener that was established some time ago, to allow community participation and representation in terms of decision making. It is those particular matters that this bill is concerned with, and I guess what we are saying is that this bill is going against the tide of development of environmental legislation both here in Western Australia and in other jurisdictions, where the trend has been to increase accountability and to increase the opportunities for community to have input into decision making. This bill, in our view, does the opposite.

We also have some serious issues in the mechanism by which this bill has come before the Parliament, certainly the consultation process that has been involved with the development of this bill has been severely lacking, in our view, and we would like to make some comments in respect of that, because we do not believe that the government has engaged in good faith consultation with the community.

Hon LIZ BEHJAT: I think that is outside the remit of what this committee is looking at, Chair.

The CHAIRMAN: Sorry, we are just allowing him to make an introductory statement, and I hope that you are drawing to a close very soon.

Mr Verstegen: Yes, I will do that, Chair.

The specific comments we would like to make about the bill, we can go into more detail about that, but, as I say, we believe that it will significantly reduce transparency and accountability in decision making. We do not believe there is a good policy framework that has preceded this bill in terms of what it is going to achieve, and particularly in our view, as participants in these processes, we do not believe that this bill will meet the government's stated objective of streamlining what it is calling an approvals process, but, in actual fact, in the legislation it is called an assessment process. We think there are some significant issues with respect to whether this bill will meet its stated objectives, in any case.

The other thing that I will just briefly mention is that this bill comes before the Parliament in the context of a broader reform agenda by this government. We do not really have any information about the majority of that reform agenda at this point in time, and so we believe that it is premature for this bill to be considered at this time because we do not know what the impact of that is going to be in the context of a broader reform agenda. Our strong advice to the committee is that this bill needs to be delayed until we see the full detail of the government's reform agenda.

The CHAIRMAN: Can I just make a comment at this point in time, and that is—I will put this on the record in case you are not aware of it—that the committee does not actually have a scope to consider the policy of the bill. Our scope and our function is merely to look at the practical effect of the amendments that are being proposed. I would ask that you focus your answers in relation to the practical effect of the amendments of the bill, rather than policy issues, because we simply do not have the authority to comment on the policy of the bill.

[11.20 am]

Mr Verstegen: I understand that, and we certainly will take that into consideration. However, we are dealing with a situation in which there is good and bad legislative process and practice, and we do not believe this meets good legislative practice.

The CHAIRMAN: I appreciate that, and you have made that point. You have also addressed a number of policy issues in your written submission to the committee, so the committee has that before it Again, I state that we are looking only at the practical effect of the bill and I would appreciate if you would limit your answers in that regard. As you can see, there are some members of the committee who are objecting to comment on the policy. I have given you a bit of leeway up until now because it was an introductory comment. I would really like us to get through this hearing, because I have a range of questions and I would like to hear your answers. I am concerned that if we stray into policy too frequently members of the committee may seek to bring the hearing to a close, and I would hate to see that happen.

Mr Verstegen: That being the case, can I ask Dr Dunlop to give a very brief overview on the specific impacts of the bill?

The CHAIRMAN: We might go straight to questions, and we can address those issues when you are answering questions.

In looking at the deletion of appeal against an EPA decision not to assess, when the recommendation is made that it should be assessed pursuant to part V, division 2, of the EP act, does part V, division 2, of the EP act, which deals with the issue of permits to clear native vegetation, provide for an assessment of all the environmental issues that might arise with a proposal?

Mr Verstegen: That is a very good question. We have some specific comments to make on that. One of the issues we are seeing is that the process being used at present to assess proposals that have an element associated with them of native vegetation clearing is that they are not being assessed by the EPA, notwithstanding the general requirement by the EPA to apply an environmental significance test. Instead of applying that environmental significance test in respect

of clearing, they seem to be referring all matters to be dealt with under regulations under part V of the act. In our view that is a mistake. The impact of removing the appeal right in relation to that means that a whole range of issues, which might have issues associated with them which are not land clearing, might be referred to part V under regulation and therefore are not assessed by the EPA. Land clearing might only be a component of the proposal. We are seeing things dealt with under part V regulations that ordinarily would trigger the environmental significance test and therefore be assessed by the EPA. In the case before us in relation to the removal of the appeal right, we are removing the ability for community to have any input in that decision-making when they are referred to part V clearing assessments.

The CHAIRMAN: Can you provide the committee with any examples of where that has occurred?

Mr Verstegen: Are you able to provide examples, Nick?

Dr Dunlop: Not recent ones.

Mr Verstegen: This illustrates the situation with our being the peak environment group, and our member groups are often dealing with the specific cases. We would be happy to bring forward at a later date some information on specific examples.

The CHAIRMAN: The committee will be happy to accommodate that. We will be happy to take that as a question on notice. In relation to all questions on notice that information will need to be provided to the committee by Monday of next week.

Mr Verstegen: Okay.

The CHAIRMAN: It has just been suggested to me that that information will need to be provided by Friday of this week in order meet our timelines for reporting to Parliament. That is, by close of business on Friday.

The minister and DEC are of the view that the process of assessment of clearing of native vegetation under part V, division 2, of the EP act, including the appeal rights found in part VII of the act are robust, transparent and duplicative of the appeal against the EPA's decision not to assess. Do you agree that we have a duplication happening and we do not need the two sets of appeal processes?

Mr Verstegen: The report that was presented to the minister recently by Gary Middle, who did a review of the native vegetation clearing regulations, would have pointed that out if, in fact, that was the case. That was not the finding of that review, as we understand it. We do not believe they are duplicative. Nick might be able to add further detail.

Dr Dunlop: An underlying principle with environmental assessment is that matters that are environmentally significant are assessed under part IV of the act. That is still our expectation. Appeals under part V of the act—certainly for us—are not leading in our view to a robust assessment of the impacts of clearing. The amount of work that is done in terms of vegetation assessment in the context of part V is in no way equivalent to what we would normally expect to be done under a proper EPA part IV assessment. We are very disappointed with the outcomes of clearing regulations. Once things enter a regulation or a part V framework, there is an assumption that the thing is permissible, subject to certain boundaries or conditions; whereas under part IV there is no such assumption. We think that we made a major error when we decided to deal with clearing under part V; it is just not appropriate.

The CHAIRMAN: Piers, you referred to a report in your answer. Could you restate the title and author of that report and would you be able to provide the committee with it?

Mr Verstegen: It was the "Regulation Review: Clearing of Native Vegetation Report" undertaken by Garry Middle, who chaired a committee to do that. We can provide a copy of that report to make sure you have it.

The CHAIRMAN: It is okay; we have it.

Mr Verstegen: If I can also refer the committee to another report that was done by the Auditor General about 18 months ago, I think, into the issue of native vegetation clearing. The Auditor General pointed to a suite of issues on management of clearing and I suppose the regulatory environment in general, but specifically in relation to the assessment of clearing under part V of the Environmental Protection Act. A whole suite of issues was raised by the Auditor General, and to this day there has been no adequate response from government in respect of that.

The CHAIRMAN: Do you agree that the creation of administrative opportunities to comment on a referral is an adequate substitute for the right to appeal against a decision not to assess where there has been a recommendation that the proposal be assessed under part V, division 2?

Mr Verstegen: I think that in general and not just in relation to clearing and part V, the commitment by the minister to put in place administrative procedures by the EPA that allow consultation on decisions about derived proposals and levels of assessment and clearing regulations is an important step that goes some way to mitigating the negative impact of this bill, but it does not fully mitigate it. We have a situation whereby the administrative procedures are not in legislation, so the community does not have the certainty that those procedures will be maintained. It is very easy for a government to change those procedures at any time if they are not put into legislation. What we would say on that is, if there is this commitment to have the administrative procedures mitigate some of the negative impacts of this bill, that should be put into the act itself; it should be an amendment. I think that section 48 provides for the type of community consultation that the EPA is expected to undertake as part of the assessment process. That should be put into legislation.

The CHAIRMAN: Have you been consulted by the EPA on those administrative procedures that you are currently compiling?

Mr Verstegen: Not in specific detail, but, if I may say, the reason they are compiling those administrative procedures is because we requested that the minister put in place some other mechanism, if this bill was going to come forward, that would allow for the maintenance of transparency and accountability. We have been told that those procedures are being developed. But one of the issues that has been raised about that—I guess it goes to the point of consultation as well, because I do not think that people from, for example, the Chamber of Commerce and Industry or the Chamber of Minerals and Energy were previously consulted about that decision—is the extent to which those new administrative procedures will, in effect, create just as many time delays or perceived time delays as there are at present under the appeals convenor. In our view, we have a situation in which there is less rigour, less accountability and less transparency but not necessarily any speeding up of the process.

[11.30 am]

Specifically, in relation to less transparency and accountability, at the present time with every matter we raise as a point of appeal, the Appeals Convener is required to go away and compile some evidence and a response in relation to that, and go through that in great detail. That gets provided to the minister and the minister provides that back to appellants. There is a great level of detail and rigour in the involvement of the minister in that decision-making process. We do not know what level of detail or rigour the EPA is likely to apply in relation to this. Given the EPA is in somewhat of a funding crisis at the moment, its request at the moment to do a whole lot of —

Hon LIZ BEHJAT: I must object, Madam Chair, it is not for him to decide whether there is a funding crisis with the EPA or not. I think some of these statements are getting quite political, and I am making an objection to some of the statements being made.

The CHAIRMAN: I ask that the committee meet in closed session and I ask that the people in the gallery be excused for a few minutes to give the committee an opportunity to consider the matters that are being raised. I will call you back as soon as we finish this discussion.

Proceedings suspended from 11.32 to 11.38 am

The CHAIRMAN: For the record, we are now reconvening. On behalf of the committee I again express the committee's concern that you need to refrain from making statements on policy issues. The committee does not have the capacity or the authority to assess policy; it is outside our purview. We cannot make any comment to the Parliament on policy. We can make comment to the Parliament only about the practical effect of the legislation. It would help the committee if you focussed on answering the questions as they are asked and not on making any comment on policy because, as I said, we cannot provide that information to the Parliament, and it is not really going to helps us get to the bottom of the information we are trying to seek from witnesses during the course of this hearing. In any event, a lot of those policy comments are in your submission so we have them. I will wait until Mark comes back before I ask any questions in the hope that we can locate Hon Giz Watson.

Mr Verstegen: Can you provide any further guidance on where the boundary lies between a matter of policy and direct impact of the legislation?

The CHAIRMAN: That is always a grey area. As you can see, this committee is representative of the various political parties in the Parliament. I think it appears that you can understand what might be a politically inflammatory comment that might upset some members of the committee and I am sure that you can be guided by making your comment on the practical effect of the bill without making any derogatory comment. For example, on your comment that the minister has not consulted with the Chamber of Minerals and Energy, for a start, you cannot be certain that the minister has not consulted the Chamber of Minerals and Energy. In any event, it is hearsay evidence, so it is not evidence we can use. If we want to know whether the minister has consulted the Chamber of Minerals and Energy, we will ask the chamber, so perhaps you can refrain from making those sorts of comments.

[11.40 am]

Dr Dunlop: Can I just rephrase that answer perhaps a little bit and say that one of the implications of the removal of an appeal process and replacing it with an administrative procedure is that the work that needs to be done shifts from the Appeals Convenor to the Department of Environmental Protection.

Mr Verstegen: And the office of the EPA.

Dr Dunlop: Yes, and the Office of the EPA, as it now is. We need to be aware of whether or not there are the resources there to do that.

The CHAIRMAN: The Office of the EPA is of the view that this appeal amendment—that is, the amendment that says that a project is not assessed but will be assessed under part V division 2—does not tamper with the critical appeal points, which would be the appeal on whether to assess or not assess. Their view is that if you remove that, it is not critical because you still get an opportunity to appeal at the point at which it is processed through the native vegetation clearing permit. Do you agree with that view?

Mr Verstegen: We do not agree with that view for the reason Nic has already expressed, which is that the level of rigour associated with the assessment clearing applications under part V is nowhere near the level of rigour that would be applied by the EPA. Given that that is the case, it is more difficult for members of the community and third parties to apply the same sort of analysis in respect to that decision making. If I can move the committee on to what we believe are the more important impacts of this bill, which are the removal of the appeal rights on derived proposals after a strategic assessment has occurred and the removal of appeal rights on the levels of assessment. Certainly the removal of the appeal right on clearing —

The CHAIRMAN: I indicate that we will come to questions on those matters but that there are other matters that the committee wants to ask you about and provide you with an opportunity to comment on. I appreciate that you have not addressed a number of these issues in your written

submission, which is why you are here before us today. They are matters that have come up in the consideration of the bill and we are providing you with the opportunity to put the Conservation Council's views on the record because we do not already have them in respect of these matters.

Mr Verstegen: Thank you for that.

Dr Dunlop: Can I enhance that answer and say that as someone who has to look at clearing applications, the information that we get, using the part V process, is often simply a rough aerial photograph and a diagram and something telling us what the generic nature of the vegetation type is. Something that was handled through the environmental assessment would have much more detail about the quality, value and function of the vegetation than we will get under part V. As a mechanism it is vastly inferior for us in coming to a conclusion about a clearing proposal.

The CHAIRMAN: Do you see that if the EPA implements its proposed new administrative procedures, there will be more consultation ahead of the decision of whether to assess or not assess and whether to assess under the clearing vegetation permit procedures, and that you could actually address your concerns during that consultation period before the EPA makes a decision?

Mr Verstegen: That is yet to be seen. There is the potential to mitigate some but not all of our concerns about that. The degree to whether that potential is borne out depends significantly on the availability of resources provided to the EPA. If I can make a further comment, if an issue is referred to be dealt with under part V as a clearing issue and other environmental impacts are associated with that proposal, what happens under part V is that you cannot appeal or make comment on those associated impacts because all they are dealing with is the clearing proposal. What may happen—we are happy to provide evidence from our member groups of this happening in the past—is the EPA is referring an issue to the clearing regulations, which has a whole suite of environmental impacts associated with it, and therefore the appeal point under part V constrains the ability of the community to comment only on the clearing impact and not any of the other impacts.

Hon LIZ BEHJAT: Do you have an example of when that has happened recently? You do not have to give detailed evidence, but you say that there are quite a number of these examples so you must know something that you can draw our attention to that we might know about.

Mr Verstegen: I do not have a specific example that I can refer to right now but we are routinely advised by our member groups, who routinely appeal these things and are involved in those processes, that these processes are occurring. I can go back to them and, by the time that you have indicated, we can provide you with some specific examples.

Hon LIZ BEHJAT: It is interesting that nothing springs to mind readily, given that you are so across these issues, that you could perhaps have brought to the table today knowing that we would be discussing these issues. That is just a comment I would make.

Hon HELEN BULLOCK: Chair, I suggest that we move on to ask questions and I also advise that your answers should stick to the questions, please.

The CHAIRMAN: I will to move on now to the area of the deletion of the appeal against the level of assessment set by the EPA. The minister and the Office of the Environmental Protection Authority have advised that the new administrative procedures are being prepared to require the EPA to consult with stakeholder groups before the setting of the level of assessment. The minister and the Office of the EPA are of the view that it is much better to consult ahead of setting the level of assessment and that this administrative process adequately replaces the appeal on the level of assessment. Do you agree with that statement?

Dr Dunlop: First of all, at the moment it is hard to comment because the administrative process does not exist and we have not seen it. I think that the conservation sector has generally supported the process to reduce the number of levels of assessments because we believe that that is more efficient. Part of that process is to have management plans included in all assessed environmental assessment documents, which in the past has been moved off to subsidiary approvals, which is one

of the things that has been slowing down the process quite significantly. Our biggest concern about the loss of appeal right against the level of assessment is not the question of in-house assessment versus external assessment; it is about the time respondents have to deal with a particular proposal. You can imagine the practicalities from our side of things. We see an environmental assessment document that a proponent may have taken months or years to put together. We then have a period of weeks, perhaps, in which to get across that document and to check it, try to get independent advice sometimes on contentious things about whether the material presented is likely to be accurate, and sometimes we even have to do surveys and studies of our own. Those things take a considerable amount of time. If we are unable, as is often the case, to get the amount of time increased for us to deal with it, the likely consequence of that is that the information will never see the light of day in the assessment process. It may first appear only during the appeals process. I think that would be a fairly undesirable outcome in terms of both the quality of assessments and also the stated objective of making this process more efficient.

[11.50 AM]

The CHAIRMAN: Just to clarify: you are saying that if you do away with the appeal on level of assessment in favour of the consultation ahead of setting that level of assessment, your concern is that it removes the check and balance on whether that assessment has been correctly made because if you do not agree with it there is no capacity to have it reviewed?

Dr Dunlop: That is correct.

The CHAIRMAN: And the ability to be able to have some input into the length of time that the community has to assess the proposal?

Dr Dunlop: Yes

The CHAIRMAN: You consider those to be the two critical issues?

Dr Dunlop: In most cases usually the fundamental concern that we have is whether, as representing respondents to a particular issue, they are actually going to have enough time to do what they have to do to get across something. Most appeals are more about that than anything else.

The CHAIRMAN: And the appeal process provides an opportunity for another party to have input?

Dr Dunlop: We frequently extended the length of time through the appeal process.

The CHAIRMAN: But what I am saying is the appeal process actually triggers the referral of that matter to the Office of the Appeal Convenor, so you have got a separate body reviewing it and having a look at whether that assessment was made correctly —

Dr Dunlop: Yes.

The CHAIRMAN: — which is not available if you do away with that appeal process and allow for the consultation ahead of the decision being made?

Mr Verstegen: There is the matter of the separate body but then there is also the matter of how that assessment is undertaken. I refer to my previous comments where, at present, the Appeals Convenor is required to report or respond to each matter that is relevant to the appeal. It is very difficult for us to have confidence in the administrative procedures that are planned at the moment because we do not know how they are going to operate and we do not know how they are going to be resourced. In this case what we would say is that if the minister has confidence that the administrative procedures that she is going to put in place will remove the need for the appeals and supplant the appeals, then we should simply put in place those administrative procedures as planned and leave the appeals as they are and perhaps review it after a period of time to see if that impact has been met. If it has not been met, we have clearly still got a situation where we have a case for the appeals to stay in place.

Hon LIZ BEHJAT: Do you not agree that in your opening statements today you said that people are becoming a lot more environmentally aware and a lot more environmentally active in issues that

are happening; that with this new process that the minister is putting in place, it is all going to be upfront when there is a proposal in front of them for consideration? If a body such as yours was to say, "There is this new environmental thing that is happening," and you were to look at that on the surface and say, "Wow—this is huge. There are going to be a lot of matters that need to be discussed before the EPA looks at the scoping of this thing"—then through public awareness and comments that you make publicly anyway, surely the department itself is going to say, "Okay, that is what we need to have. We need to sit down and look at this and we will talk about it." There will be no time frames on it from the departmental point of view if they think it is going to be such a large issue. It is giving you that opportunity upfront to have more involvement—do you not agree with that comment?

Mr Verstegen: The principle of giving the community increased involvement earlier on in the process is a good one and is one that is supported by the conservation sector, and I think will lead to less appeals at the end of the process where the minister is then faced with making tough decisions on issues. As I say, at the moment we do not have confidence that what has been proposed is going to replace the appeal provisions for the reasons that I have outlined. The outcome that is likely to happen, in our view—not knowing what the actual impact of these administrative procedures is likely to be—is that community groups and members of the public will focus their effort on the appeal at the end of the EPA reporting process and their ability to comment then because they will not feel like they have got a statutory ability and a statutory process to comment earlier on in the process. We are taking the process away from being a statutory process, we are embedding it into the bureaucracy of an agency which is subject to the whims of government in terms of its resourcing—I apologise if I am straying into a policy area here but I think that is a material impact—so it is very difficult for members of the public to have any certainty that that accountability is going to be maintained in respect of that. The current appeals process requires the minister to actually make a decision. The Appeals Convenor writes a report, reports on every element that is raised which is relevant to the appeal, and the minister then makes the decision and the minister is accountable for that decision. With these administrative procedures we may see a case where we put in our submission and we never see that again; we never see any response to that. We do not know whether there is going to be a response mechanism. Certainly there will be the case where the minister will not be accountable for the decisions that are being made. In our view it is a great reduction in accountability in terms of the decision-making process.

Hon GIZ WATSON: I wanted to clarify a comment that Dr Dunlop made in terms of that time frame with people responding on a particular issue. It would be my understanding—correct me if I am wrong—that a lot of those people who are providing that input may be suitably qualified, capable and experienced but they are usually unpaid and doing it in their spare time. It is not as though the community has a capacity in that regard. It is not just the time frame but also all that input is being done in people's spare time—is that accurate?

Dr Dunlop: If a proposal was actually highly controversial, it usually means not only is it the time of volunteers, often for years going through a process like this, but it is also community resources. Sometimes they have to pay people or experts to provide them with advice. I can remember the campaign that has just finished—to get a consultant's report on a particular project it took us basically beyond the time that we had available to make submissions. That is a common problem. There is another related factor, that is both in the community and with us, if we have administrative procedures that require consultation on just about everything in terms of upfront consultation, we might not have the resources or the people to actually meet our obligations in that process; whereas at least with the appeals process it tends to be limited to those things which are raising significant concerns rather than having to deal with absolutely everything, which, quite frankly, we cannot do. Our community groups are also hard pressed, with people who have got day jobs, to keep up with those sorts of things as well. It all sounds great in principle but whether we can service those demands ourselves in practice is a matter of ongoing concern.

The CHAIRMAN: The minister and also the office of the EPA have indicated that the appeal on the level of assessment is not really needed because those issues that you would raise at that point you can raise at the point of the appeal on the EPA report. Do you agree with that statement?

Mr Verstegen: I have a serious issue with that statement being made because the whole nature of the review of the EPA that has already been undertaken, and some consultative processes that have been employed to seek input in respect of those issues, have all pointed towards the need to increase the level of accountability and input from the community at the early stages in the decision-making process. We know that by the time a project gets to the end and by the time the EPA has done its final report, yes, we can appeal; but we know that if fundamental issues have been overlooked in respect of that, a project is virtually locked in by then. Then it relies on a minister making a tough decision often between whether this project is going to go ahead or not, when in actual fact if there was an accountable process to raise those issues earlier on, you might have had a situation where there could have been a project which could have been defined and implemented which was much more environmentally acceptable. I can give you a whole range of cases where serious issues have been raised at the final appeal stage. What inevitably happens is that the minister is stuck with this decision as to whether to overturn the EPA advice or override the EPA advice, if it is a proposal that the EPA has said is unacceptable, and allow the proposal to go ahead. That is the course of action that this government has chosen to take on every occasion that the EPA has made that sort of advice. There is very little ability to implement anything at that point that can mitigate those environmental impacts. I really take exception to a view that you can replace a consultation stage early in a process with a consultation stage late in the process and still have as good, if not better, environmental outcomes.

[12.00 noon]

The CHAIRMAN: You seemed to indicate that there were situations—I am not sure whether it was at the point of level of assessment or at the point of the EPA bulletin report—where the EPA recommended that a project was not acceptable to proceed with, and that was then overturned by the minister. Can you just firstly clarify for me whether it was at the level of assessment or whether it was at the EPA bulletin report stage, and could you give us an example of a project where that has happened?

Mr Verstegen: A community group might appeal at the stage of level of assessment and say, "This project requires the highest level of assessment because, in our view, it's extremely unlikely that it's going to be environmentally acceptable." The EPA may then go through the most rigorous level of assessment that is available to it in respect of that project, and consultation will occur as a result of that. The EPA may then provide a report at the end of the process to say, "In our view, this project is unacceptable; it shouldn't go ahead." There are numerous examples of that; I could cite a very high profile one in Barrow Island. This is a good case in point. If we were to go back to the very early stages of that project, community groups and the conservation sector were saying, "There's no reason why this gas can't be processed on the mainland. There's no reason to develop huge industrial infrastructure on one of Australia's most important A-class nature reserves. The project should go to the mainland." That option was then foreclosed by the proponent referring the proposal to the EPA, which then meant that the EPA was constrained to look only at the merits of that particular proposal; it could not choose whether it was the best way to do it or not. Then, at the end of the appeal stage, when one can appeal on the EPA report, one might raise those issues and say, "There's actually a much better way to do this, with much less environmental impact." The minister cannot, at that point in time, implement any changes to that, because the minister and the EPA can only respond to the project that has been referred. What we have seen after the fact, after the approval was given for Barrow Island, the same company—Chevron—is now pursuing the development of the Wheatstone gas field, slightly north of Barrow Island, with an onshore gas processing facility. The pipe running from that gas field to the mainland will cross the pipe from Barrow Island to the Gorgon gas field. There has been absolutely no planning in respect of this, and

it gets us back to a whole range of issues in respect of the need for better strategic assessment and better environmental planning for resource use. If we do not have those processes upfront and early in the process, which is where the EPA is going in terms of its EPA review, which is the direction to increase the level of strategic assessment, then we get locked into a situation where proponents can refer a project—it does not matter whether it is not in the public interest to do it in that particular way—and the EPA is constrained to consider only that project on its merits, and appellants can appeal only in relation to that project.

The CHAIRMAN: I understand the point you make, but it really goes a bit outside the question that I asked in that that is a constraint in the legislation that is not proposed to be changed by the bill currently before the committee or the Parliament. The reality is, in both our planning and our environmental processes, unless you are looking at strategic planning ahead of that stage, a proposal is put up and considered on its merits. It is not normal for government agencies to then say, "Well, it's a great proposal, but not in that location." Once a proposal has been referred, it has to be assessed at the location at which it is being proposed. That is the way the process works. The point of my question was really just looking at those two points of the ability to lodge appeals under the Environmental Protection Act; that is, on the level of assessment and at the EPA bulletin report stage. The EPA and the minister are saying that they believe that retaining the right to lodge an appeal at the EPA bulletin report stage will pick up any issues that there might have been at the level of assessment point, so removing the appeal right at that level of assessment point is of no great consequence, because it can be picked up at the later appeal point. I just wanted the Conservation Council's view on whether that is a fair and accurate statement.

Dr Dunlop: The sorts of issues that are very difficult to pick up at that point are the areas of omission—what we do not know. When we get to the Appeals Convener, we still do not know, because we will not get a definitive answer from the Appeals Convener and in the absence of information we will be back in the loop, going round in the same circle again.

The CHAIRMAN: Is it possible, then, that at the appeal point of the EPA bulletin report, it would actually take the Appeals Convener perhaps longer to assess appeals at that point because he is having to go back and do work or investigation that could have been done during the environmental assessment of the project, but which has been omitted because the first ability to appeal on the level of assessment has been removed?

Dr Dunlop: We are actually more likely to get a scenario where the minister will eventually just send the whole project back to the start, which is effectively what has just happened with the Straits Salt project. He will never answer these questions, will not make a decision, and the process has to start again. That is the potential loop we get into if we do not cover the ground properly at the start.

The CHAIRMAN: So that actually adds more uncertainty to the process for proponents rather than add certainty, particularly in the example you have just given.

Dr Dunlop: The other concern is that if we really want to streamline the process, we need a system that avoids the need for appeals, particularly near the end of the process, as much as possible.

Mr Verstegen: That is the whole point.

Dr Dunlop: If we do not get it right at the beginning, the probability that there will be a protracted period with the Appeals Convener or, in the absence of an Appeals Convener, a court, will increase. If we really want to speed things up, we need to push everything up the front and get it right to start with.

The CHAIRMAN: My next question is in relation to the reduction of the number of levels of assessment from five to two. Is that of concern to you, and do you think that by reducing the level of assessments from five to two, we actually reduce the time it takes for the approval process?

Dr Dunlop: No, we were actually very supportive of that; we do not believe that some of those levels of assessment actually added anything to the process, and we were very supportive of moving

to the PERMP process, because for a decade or more, we have had a situation where details about how a proponent was going to manage a project were often delayed and left to ministerial conditions, the preparation of management plans and all sorts of other things after approval—a process that we were largely not able to engage with, because decisions were made inside government agencies and without much public involvement. We believe that if it is a publicly accessed document, it should have a management plan and obviously, depending on how complex it is, it can be big or small; that is not the issue. The other levels of assessment that we were familiar with that had some public component really added nothing to what we were getting.

The CHAIRMAN: Is it your view that by reducing the number of levels of assessment from five to two will actually have any impact on the overall time it takes for an approval to get through?

Dr Dunlop: No, I do not think it will make any difference to that.

The CHAIRMAN: The EPA indicated to us that, as part of its new administrative procedures, it would be establishing a system whereby once a project is referred to the EPA, there is a notice of that referral, and that it would be able to gauge who the relevant stakeholders are and consult with the relevant stakeholders ahead of making a decision on whether to assess or not assess a project, and that that would be a far better process to go through than the current appeal at the level of assessment. It was also of the view that, in the event that an error was made at that point, the minister would be able to exercise section 43 of the Environmental Protection Act to require it to be reviewed, or to direct the EPA to have a higher level of assessment, for example. I suppose I really want your comment on a couple of aspects in that process. First of all, do you share the EPA's confidence that it will be able to identify the relevant stakeholders on all projects, and therefore be able to undertake that informal consultation with those groups?

Dr Dunlop: There are two points about that. One is that we are talking about all the stakeholders here, and we are likely to not get agreement between different stakeholders. There is no transparency here, so how it is going to deal with the different points of view is something that is not clear to us at all. The proponent is in this mix. The proponent is likely to have a very different view about what the content of an environmental assessment should be than some public interest groups may have.

[12.10 pm]

How that conflict resolution process can occur in an environment which is not going to be transparent is a matter of concern. The other one is the one I mentioned before. We may wish to consult on absolutely everything, but we do not have the resources, the people, the volunteers or the experts to necessarily do a good job of that in the current environment.

Mr Verstegen: Just to maybe summarise that, certainly the advertisement of proposals as they are referred is a good thing; make no question about that. That is going to increase the level of community awareness of these sorts of things, notwithstanding the fact that you are often dealing with Aboriginal communities in remote areas that do not have internet access and do not have newspapers and those sorts of things. If you lay that aside for a minute, yes, you potentially, in theory, increase the ability to get a better project for having better community involvement early and up-front. But it does not replace the appeal process, because the appeal process is a transparent and accountable process where the community and the public know what the response is of the EPA and of the minister. We are replacing that with a process where we do not know what the procedure is going to be. There is a concern, in relation to the requirement for a proponent to undertake community consultation, that some of that requirement actually gets transferred to the EPA and then has to be supported by the taxpayer, so we have to consider these things as well.

Dr Dunlop: Also, some referrals which are subject to the act are delegated authorities to other agencies. It is by no means clear to us how, for example, all the referrals that are going to the

Department of Mines and Petroleum, which do not actually finish up going to the EPA but which we need to know about, are going to be managed.

Mr Verstegen: That is a good point.

The CHAIRMAN: Can you just expand on that a bit?

Mr Verstegen: Under part IV of the EP act, the EPA can delegate the authority to assess proposals to other parties. The Department of Mines and Petroleum has a delegated authority to assess some projects themselves.

The CHAIRMAN: Do you mean undertake an environmental assessment?

Dr Dunlop: Yes. They have a memorandum of understanding between the agencies.

Mr Verstegen: When that situation takes place, I guess the question is open as to what procedure is going to be used to employ the same level of consultation that we are talking about in terms of the administrative procedures for the EPA when those assessments are being undertaken as a delegated authority. We have got some serious concerns about that and the way that that has been operating at the moment, let alone taking away the ability of having a transparent and accountable appeal right related to that.

The CHAIRMAN: Do you think that the section 43 power for the minister to actually ask the EPA to review its level of assessment is a sufficient substitute for the appeal on the level of assessment?

Mr Verstegen: I do not think it is. It relies on —

Dr Dunlop: Convincing the minister.

Mr Verstegen: — third parties bringing evidence to bear that—exactly—convinces the minister in a way that does not have the public scrutiny applied to it that an appeals process has. We may write to the minister with the same sort of appeal grounds that we would write to the Appeals Convenor, but there is no requirement for the minister to respond to each appeal ground and then put that response on the public record. I think it still does take away that transparency and accountability, and I think it is extremely unlikely that you are going to have a situation where the minister requires the EPA to increase their level of assessment without having gone through a public process to determine why that should be the case.

The CHAIRMAN: The office of the EPA has advised that it takes, on average, between 120 and 160 days to resolve an appeal on a level of assessment. Is that your experience? First of all, are you able to comment on that; and, if you are, would you agree with that?

Mr Verstegen: You have got advice from the office of the EPA, did you say?

The CHAIRMAN: Yes.

Mr Verstegen: The Appeals Convenor is the agency where that happens. I think that you have to look at those sorts of figures with the situation in mind that a lot of these processes might happen very quickly, but then you get the odd one that takes literally years. So if you are looking at averages, maybe that is a pretty skewed representation of the reality. In many cases when we appeal levels of assessment, those appeals are upheld and/or the minister often just extends the time frame in terms of the consultation at the present level of assessment that the EPA has set. The fact that many of those appeals are upheld within a relatively short time frame indicates to us that it is a useful process—that it does have merit. We are not clear that the process that is proposed to be employed now will have that same ability to actually make those changes.

Dr Dunlop: I have seen appeals on assessment for small projects turned over in days, much to our chagrin I might add.

Hon LIZ BEHJAT: Do you have an example of that?

Dr Dunlop: The *Saxon Ranger* dive wreck in the Shoalwater Islands Marine Park.

The CHAIRMAN: Just going back to the exercise of the section 43 power by the minister, the committee has heard representation from different groups in relation to whether that adds certainty to the process or actually adds uncertainty to the process. You have already made some comment on that, but did you want to make a comment as to your view as to whether the exercise of the section 43 power by the minister, instead of the levels of appeal that are in place at the moment, would add more certainty to the process or less certainty to the process?

Dr Dunlop: From our perspective, if you were going to convince a minister to utilise those powers, it would be generally the result of an active public campaign. Do active public campaigns increase certainty or uncertainty? I would think the latter.

Mr Verstegen: The other point to raise there is that if we appeal a level of assessment, the Appeals Convenor then often goes back to the proponent and the proponent is given an opportunity to provide additional material and answer those appeals. But if we have got a situation where we simply have to lobby the minister and the minister then makes a decision as to whether she or he will exercise those powers that you referred to, you have not got a situation where there is a third party going back to the proponent and saying, "Here's some additional information that has been raised by appellants. Can this be dealt with easily? If it can, maybe it is still okay to have a low-level assessment." You are going to do away with that process. I would say that that significantly erodes the level of certainty for proponents.

Dr Dunlop: It will be more overtly political.

The CHAIRMAN: I think I have already touched on this previously, but what level of consultation has the office of the EPA had with the Conservation Council in relation to the new administrative procedures? I think that you said that they have had some general discussion with you. What level of detail has that consultation undertaken to date?

Dr Dunlop: We sit on the EPA stakeholder advisory group. We are kept up to date with most things that are happening inside the Environmental Protection Authority at the moment. To my recollection, so far we have only been told that these administrative things are being drafted and considered at the moment, but none of us has had any detail at this point.

The CHAIRMAN: At the top of page 4 of your submission, you state that the ability to have the response time extended to reflect the scale and complexity of the proposal will be lost if this appeal provision is removed. You have touched on that already. Can you just give us some indication of what the scope is to extend that comment period? How much success have you had, and what sort of changes are we looking at? Are they large changes?

Dr Dunlop: With formal levels of assessment like PERs, the span is normally from four to about 12 weeks. It can potentially be shorter than that, but I have not really seen any PERs recently of less than about four. The Straits Salt major project, for example, was dealt with in four weeks, I think. That is going back a bit now. We were not offered much more than that, if that. I think we successfully got some time, which was very important time in terms of getting scientific advice and things in that process. It is that sort of range from one month to three months.

[12.20 pm]

Mr Verstegen: If I can refer to a project that is rather more recent, it is the uranium mine proposal for Yeelirrie, which we appealed, at the level of assessment stage, to the minister, seeking the minister to implement the highest level assessment, which is actually a public inquiry undertaken under the powers of the —

The CHAIRMAN: The royal commission.

Mr Verstegen: The Royal Commissions Act; that is right. She declined to invoke that, but she increased the time frame of the public submission period from, I think, six weeks to 12 weeks. The was in recognition of the fact that we are dealing with remote communities and people who simply

do not have access to the same sort of resources that other people may do, and because of the level of intense public interest in this project.

The CHAIRMAN: Would the minister be able to effect that change by invoking section 43 of the act?

Mr Verstegen: She may be able to request that the EPA extend their public consultation process in relation to a project, but I do not think there would be any particular transparency associated with that, or it may not even be binding in nature; I am not sure.

Dr Dunlop: My understanding is that the minister can direct the EPA on almost any matter in terms of how it is going to do things, such as what sort of advice she wants and over what sort of time span.

The CHAIRMAN: Are the real issues about the appeal right versus the use of section 43 the issues of a proper check and balance and transparency and accountability?

Mr Verstegen: That is right.

The CHAIRMAN: And that of reporting back to the community on the reasons for the decision?

Mr Verstegen: Yes.

The CHAIRMAN: Does the Conservation Council want to make any comment on the deletion of the appeal right in relation to assessment of schemes?

Mr Verstegen: You are talking in relation to the appeal right on derived proposals after strategic assessment has taken place?

The CHAIRMAN: No; in relation to the scope and content of an environmental review of the scheme.

Mr Verstegen: No, we would refer to the Environmental Defender's Office for its advice, if it was able to comment.

The CHAIRMAN: Let us move on to derived proposals, which you were very keen to comment on earlier. Do you want to make a general comment in relation to your concerns, and then we might ask some specific questions?

Mr Verstegen: I think the general comments are that we believe that strategic assessments are a positive step forward in relation to how governments and proponents are discharging their environmental assessment processes under the Environmental Protection Act, and also under the EPBC Act federally. We have seen, as a result of the recent Hawke review of the EPBC Act, that the present, sort of, thought at that level is that we should be moving more towards a case where strategic assessments are employed, rather than a situation of case-by-case assessments. What we have seen, over time, is that case-by-case assessments have completely failed to take into account what we call the cumulative impact of proposals. We do have these provisions under the Environmental Protection Act that deal with strategic assessments, and I think it is the right thing to do, to encourage proponents into using that process. I think that for an individual proponent it may not provide increased certainty in relation to their particular project, but generally for the market, and for proponents in general, it certainly does increase certainty, because it gives them a platform of information and previous decision making and planning on which they can come and bring a proposal to see whether that fits into the decisions that have already been made. We do see that as a positive step forward. However, the removal of the appeal right in relation to that makes us extremely wary of that being used as an assessment process, because, basically, that may create a situation where there may be a sort of backdoor approach where a proponent with a very significant proposal may come along and, subject to a previous strategic assessment, not have any public consultation associated with that proposal at all. We are quite concerned about that, and it leads us to reconsider whether we, in fact, as public interest stakeholders, support the use of strategic assessment proposals.

One of the issues associated with this is that a strategic assessment could happen and lay on the table for a very long period of time, and you could have a situation where up to five years later, or even 10 years later, a proponent comes with a very significant project, and things have dramatically changed in terms of the way the community perceives these issues and even the way the environment is capable of receiving these types of impacts. So you have got a situation where it is very important that new evidence can be brought to bear in relation to the EPA decision making in relation to these things. We really do not see any reason why you would remove that appeal on a derived proposal, and we certainly think that it erodes accountability and transparency, just like the other appeal rights that we have been talking about.

The CHAIRMAN: If there was a provision in the act setting out criteria against which to assess whether a proposal was derived or not, would that give you any comfort?

Dr Dunlop: I think there is already something in the act along those lines.

The CHAIRMAN: Yes, but perhaps more fleshed out.

Dr Dunlop: It may need to be looked at much more carefully. The other thing is that you could possibly add a time limit to the amendment that states that you cannot appeal within three years or five years. After that time has elapsed, one can assume that circumstances may have changed to an extent where it might not be appropriate to do a derived proposal, and people should be able to at least comment on whether it is appropriate or not. I would do both those things with that particular amendment—add a time limit; and have another look at the guidance actually in the legislation about what constitutes a derived proposal.

The CHAIRMAN: If both of those things were in place, would that be enough to alleviate your concerns in relation to the removal of the right of appeal on whether a project is a derived project or not?

Mr Verstegen: I think, again, it depends on how these things are implemented. If there is a proper and open process by which the matters can be addressed in the public domain, which preferably then brings the minister to bear in terms of the decision-making authority so that there is a level of political accountability there, then perhaps that could be the case, but we are not seeing any proposal in relation to that at this point in time. I guess the other comment to make is that if the intention of the government is to encourage proponents to use the strategic assessment provisions, then it is rather strange to be taking the line of saying, "Well, the reason why you should use the strategic assessment provisions is because there is less accountability and less transparency associated with this track towards project approvals, so this is the way you should be progressing." I think the community groups who would be appealing these sorts of decisions would take offence to that as a general rationale. If the rationale is that we are going to see more of these assessments in the future, I question that as well, because, at the moment under the act, it is up to the proponent to volunteer their proposal as a strategic assessment. We are not seeing proponents flocking to use that assessment process at moment, so it is unlikely that we are going to see a dramatic reduction in time frames for decisions to be made based on the removal of this appeal right. I do not think it is going to meet the government's objective, and all of those issues that we have raised in terms of the lack of accountability and transparency still stand.

The CHAIRMAN: I am interested in your comments about derived projects using a backdoor approach through the strategic assessments, because I would have thought that, in undertaking that strategic assessment, all the relevant environmental issues would have been covered as part of that. I am having difficulty trying to conceptualise a situation where there would be a strategic assessment done and a proposal would then come forward within that area that would not fit in with the scope of that strategic assessment.

Mr Verstegen: Often, the level of environmental impact and community impact that is associated with these sorts of proposals depends to a great deal on the fine detail of the way the proposal is

actually undertaken. There might be a strategic assessment, for example, of a town planning scheme or a broad land use planning scheme that says it is okay to have industrial land use in this zone, and it is okay to have commercial and residential in this zone, and that would be undertaken as a strategic assessment. But it is not until the community sees the detail of the actual proposal that it will know whether that is acceptable in terms of the impact on that particular environment, and, more importantly, that the broader community can reach a view on whether they are the sorts of activity that it would like to see in that particular area. Do you want to comment more on that, Nic?

[12.30 pm]

Dr Dunlop: I think the strategy of the Department of State Development with the Burrup, for example, was to do a strategic assessment saying that this area is industrial so leave us alone after that, regardless. I think if it is being managed in the right hands it should be fine. Unfortunately, we do not live in a perfect world. From a community perspective, we know that strategic assessment could work very well, but in the wrong hands—that is, people who are interested just in promoting development or attracting development to an area—it may be used in a different way. That is why we have to have ways whereby we can get back into the game if we have to.

The CHAIRMAN: Could some of the other concerns that you have with the specific proposals be addressed through other ways in the act such as works approval and other licences needed under the EPA act?

Mr Verstegen: No. It is extremely unlikely that those provisions are an avenue to meet some of the overriding concerns of the community, because by the time we get to a licence approval, the scope and nature of the project has already been determined and also the type of technology that will be employed. For example, if it is a bauxite mine or alumina refinery, the proponent has already determined where it is going to go and what sort of technology is going to be employed, so it is impossible for the community to comment or to make an appeal in relation to a works approval and to get substantive changes made. I would like to raise the point that regardless of whether a strategic assessment is done, if a local community or the broader public interest community have a major issue with a certain type of proposal, they are going to have a major issue with the proposal whether there has been a strategic assessment or not. If they are not provided an opportunity for a formal channel of transparent and accountable input into decision making, it is much more likely we will see campaigns being formed that will bring to bear pressure in the political arena. Again, as Nick has said, that sort of situation is not the desired situation for community and environment groups to be operating in. But if and when those sorts of tactics are employed, it does add an extreme level of uncertainty for the proponent. It is far better for the proponent to have an up-front process in which there is a transparent assessment of this and a transparent way to deal with community comments, rather than having a situation in which a political campaign has to be formed and there is lobbying and all those other mechanisms to try to bring to bear community input into decisions.

The CHAIRMAN: You made a comment about the technology that would be used by that industry. I do not know that we have enough evidence of strategic assessments being done to make any comment about whether they go into that level of detail, but based on what has been done, do they?

Mr Verstegen: That is the point. They potentially could go into that level of detail, but there is also scope for them not to. The way that we are envisaging that they go—this has been the case with the first major strategic assessment that has been done for the Kimberley LNG hub—is that it is not going into that level of detail. We have a whole suite of major concerns about how that strategic assessment is being undertaken. That is not to mention the fact that the appeal right of the community will be removed when it becomes a derived proposal associated with that.

Dr Dunlop: The EPA is also keen to move to outcomes-based condition setting. That approach means they will not be prescriptive about technology.

The CHAIRMAN: Could you explain that outcomes-based approach?

Dr Dunlop: Historically, there is a tendency for ministerial conditions to be in the form of instructing a proponents to do something in a particular way. Now, because of the compliance issues with that sort of the thing, the EPA is hoping to move towards conditions that are written in a way that say, "You will deliver a particular outcome." It will not be the business of government to tell them how to do it, but if they do not do it, then it becomes much easier, for example, to prosecute or whatever, because you have a measured outcome that is written into the conditions. I would argue that the thing so far in the impact assessment review which is going to increase efficiency is a combination of outcomes-based condition setting so that we do not have large numbers of people in government sitting around deciding whether the management plans of various companies are acceptable or not. That process will not need to occur. I think at one stage the EPA had something like 400 management plans prescribed by conditions that had to be researched and ticked off by officers of the department. If we can get rid of that sort of thing, in my view, that is the biggest innovation so far in terms of meeting the government's objectives.

The CHAIRMAN: It is probably a bit outside the purview of this committee, although you have certainly spiked my curiosity about how that will work, because I have seen a lot of really appalling management plans. Not having someone check that there are management plans is of great concern.

Dr Dunlop: This will be checking the outcomes, not the plans.

The CHAIRMAN: Does the Conservation Council make any comment on the removal of third party appeals against refusal, revocation and suspension of clearing permits, work approvals and licences?

Dr Dunlop: Which one is that?

The CHAIRMAN: The bill reduces the time for lodging certain appeals from 28 days to 21 days, and also third party rights of appeal against refusal, revocation and suspension of clearing permits, works approvals and licences. Our advice is that they have not been used by third parties because it is not a matter that interests third parties. However, I want to get on the record whether the Conservation Council has any concerns with those amendments.

Mr Verstegen: In the latter case it would be unlikely that we would. Essentially, we would be appealing on behalf of a proponent, if we were to do that, which is relatively unlikely. With respect to the first issue, my advice is that is bringing it into accord with some of the other time frames that are prescribed in the act. Certainly, it does reduce the amount of time that we have to comment on these things. As Nick has outlined, that is a substantial issue. In our view, ideally, these things should be extended rather than shortened, but I do not think that is the most important or impactful part of this amendment bill.

The CHAIRMAN: Is the Conservation Council in a position to comment on what third party rights of appeal exist in other jurisdictions for environmental impact assessments of proposals and schemes, particularly as we have a pretty unique system in which there are appeals to the minister and in other states they have appeals to tribunals or courts?

Dr Dunlop: Or land and environment courts, and things like that. Of course, the commonwealth has nothing until after the minister's decision. That is in the Federal Court; it is only on procedural grounds and not on matters of substance. Our system has been held up in the past as one of the better systems globally. However, we deal with the ones we deal with, which basically is the state and commonwealth. What the commonwealth is going to do with the changes in the state in bilaterals is something that has not been resolved yet.

Mr Verstegen: I make the point that I think our system—the way it is now—has the potential to lead to better decision making by the minister because community groups that would appeal things will express those things before the decision is made, and there is a process as well whereby the minister can take that input into account. However, once the decision is made, there is no recourse for the community to appeal that decision. The other sorts of systems that you are referring to, and

Nick is referring to in the case of the commonwealth, have an opportunity to appeal the decision after it has been made. What we would say is, if there is going to be a significant erosion in the ability to input before a decision is made, then there should be a commensurate increase in the ability to challenge that decision after it has been made. Otherwise, it is simply removing transparency and accountability and the ability of the community to have input into decision making. If we are going to go down that road and make decisions very quickly and not to have a high degree of community input and rigour in relation to dealing with that community input, then we can certainly construct an assessment process that delivers that outcome. But we definitely then need a review process after the decision because that will create a situation in which it is much more likely that mistakes will be made in that decision-making process.

[12.40 pm]

It is sort of half a dozen of one and six of the other. We might say that we can speed up the decision making process now under the EP act by removing appeals, but, as I say, we are much more likely to lead to a situation in which community groups are wanting to challenge decisions before the courts. If we have that sort of situation, again, that will reduce the level of certainty industry has in relation to its projects.

Dr Dunlop: I suspect the people who designed our environmental legislation did so with a view to trying to avoid judicial processes. In most of the other states and the commonwealth judicial processes are much more part of the process than they are in Western Australia.

Mr Verstegen: That is not a bad thing.

The CHAIRMAN: Do you feel there is anything in the EP act as it is currently drafted that would prevent courts reviewing substantive matters? I note in your submission you make the comment that if we erode the ability to appeal through these amendments, it is likely to result in more legal action through the courts. You make the comment that it would be on both procedural and substantive grounds. I am curious as to the capacity to make appeals to the courts on substantive matters.

Dr Dunlop: The current act is underpinned by strong principles of natural justice. If you take those away you increase the ability to argue that it needs to go somewhere else to be resolved. The mere removing of those elements of natural justice will mean that things are much more likely to be heard somewhere else.

Hon GIZ WATSON: I want to pick up on something that Dr Dunlop said about the bilateral agreements because I think that is the trigger for this committee to look at this legislation. I wonder whether there is any indication that the commonwealth has responded to this bill.

Dr Dunlop: Our advice at the last EPA stakeholder meeting—I think it is all public advice; it is supposed go out to our stakeholders—is that the commonwealth has now come back to the state after its legal people have looked at the proposed changes, and suggested there is some reason they have to renegotiate the bilateral. No-one in the state department currently understands what that rationale is. I think they are still seeking further advice from the commonwealth about what the sticking points are. But the current attitude of the commonwealth is that it wants to renegotiate the bilateral.

The CHAIRMAN: In relation to minor and preliminary works, your submission did not address the amendments proposed by clauses 13 to 17 of the bill that seek to amend various provisions that allow decisions to be made that would result in the implementation of minor or preliminary works in respect of a proposal. Does the Conservation Council have any comment to make on those aspects of the bill?

Dr Dunlop: It does not make much material difference as far as we are concerned. Minor works seem to occur anyway.

The CHAIRMAN: You have an opportunity to make some concluding comments.

Mr Verstegen: Our advice from the EPA is that those changes simply formalise an existing process; in which case, there may be no material difference. In closing, we draw attention to the recommendations we have put before the committee, in particular our recommendation that this bill should be delayed. We do not believe that it will meet the government's objectives in accelerating or improving the decision-making process. We certainly believe there would be significant removal of transparency and accountability and procedural justice if this bill were to be passed. I suppose, more importantly, it is very important that in considering this bill the Parliament and the community have the ability to look more generally at the whole approvals package that the government is pursuing, and to look at this in the context of what other legislative changes are planned, not just in relation to the Environmental Protection Act, but other acts that interact with the Environmental Protection Act. There is really no urgency in relation to this act. There is no documentary evidence to say that this will improve the decision-making process. It is inconsistent with advice given to the minister, not just by the conservation sector but also other stakeholders in the form of the stakeholder advisory group that was formed for that purpose. We simply submit that there is no reason to rush this bill through. We need to wait to see the context of what we are dealing with, and to see some evidence that this will actually meet the government's objectives. In the absence of that evidence, the bill should simply lay on the table.

The CHAIRMAN: On behalf of the committee, I thank you for coming and giving evidence to the committee. There are a couple of issues we have asked be put on notice in providing some examples to the committee of where you see problems occurring. It would be good if you could get that information to the committee by close of business on Friday. Thank you very much.

Hearing concluded at 12.45 pm