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

Second Reading

Resumed from 19 November 2009.

HON SALLY TALBOT (South West) [2.01 pm]: I indicate from the outset that the Labor opposition will not support this bill, but I want to make some points about exactly why we have reached this decision, what that decision is based on and exactly what the substance of that decision to oppose comprises. Before I do that, I note that there has been a degree of difficulty about getting this bill brought on today. I thank the Leader of the House for having accommodated my reluctance to go ahead on Tuesday in the light of an evident misunderstanding between me and the Leader of the House about whether we were going to wait for the minister's response to the report of the Standing Committee on Uniform Legislation and Statutes Review. I therefore appreciate his accommodation of my wish to delay the start of debate on the bill until today. I also thank the minister, her ministerial staff and the staff at the Environmental Protection Authority for putting on a second briefing at very short notice yesterday for me and a couple of my colleagues. I appreciate the assistance that has been given to us in that regard.

I note that one of the reasons we wanted a second briefing was that the first briefing we had was back in, I think, February. I made the point at that stage that it is not always helpful to have briefings so far out from the second reading debate. I think even at that stage I was able to foreshadow that it would be many months before we got to this point. Although it was useful to have an overview of the bill at that stage, I appreciated being able to schedule that second briefing at short notice.

The other reason I wanted the second briefing was to get some indication of the terms in which the minister and the government might frame the response to the Standing Committee on Uniform Legislation and Statutes Review report. That is a report of considerable substance, about which I will have a bit more to say later in my comments. The committee came up with a whole series of recommendations and findings. Although that was probably the least satisfactory aspect of our briefing yesterday, I appreciated the chance to raise some questions about how the government might be proposing to deal with the recommendations in that report.

Let me go into a little detail about the substance of the opposition's response to this bill. I have referred to what for me has become a bit of a reference point for understanding the language in which we tend to conduct our political debates a lot of the time these days; that is, the book with the glorious title *Don't Think of an Elephant* by George Lakoff. Lakoff's point is that we tend to corrupt the language by using certain words and phrases so that they take on a meaning of their own, they become devoid of any substance and they are used in a kind of question-begging way. Two examples I recall he uses are "family values" and "national security". We cannot any longer have an argument about family values without being somehow cast either as someone who is an arch conservative in terms of that person's expectations about families; or some kind of loony radical who wants to see the dismantling of the whole western capitalist system. It is the same with national security. If someone argues against national security, all of a sudden that person is a terrorist. I raise that reference because we are seeing this very phenomenon creep into our debates about this whole notion of reforming the approvals process. I note that my colleague on this side of the house, Hon Giz Watson, who is the Greens (WA) lead speaker on the bill, has moved an amendment to change the title of this bill by removing the word "approvals" and substituting "assessments". That is in line with a very strong and important stream of thought within the environment movement: that the language we use to couch these debates is actually very important. The language can sometimes pre-empt the direction in which the discussion goes; to say nothing of the sort of conclusions that are reached.

I will stand in this place and indicate the opposition's intent to oppose the passage of this bill and immediately the rhetoric will come out of the minister and the government in general that Labor is refusing to contemplate improvements to the system.

Hon Donna Faragher: Don't pre-empt what I am going to say. I might say a lot more than that.

Hon SALLY TALBOT: The minister makes a comment about me trying to pre-empt what she will say. I am not actually trying to pre-empt what she will say. I live in hope that we might be able to have a proper debate on some of these things. But certainly, going on the record of the past 18 months, there is a bit of a stuck record coming from the other side. Government members refer less frequently now to carrying on our way of doing things. I think they have been instructed by their powers that be that they had better move away from that because they have been in government for nearly two years now. But we are still hearing this basic retort—the default position—that says, "If you don't approve of the legislation we are bringing into this place, then clearly you are in favour of propagating the bad old ways." That is simply not true. We have looked at this bill very carefully and we have consulted very widely; as has the government, I may say. I do not think I have talked to anyone who has not at some point, since September 2008, also made the same points to the government. We

have, therefore, consulted widely and we have analysed the bill very carefully. Our opposition is based on our assessment that the bill simply does not do what it claims to be doing. It does not improve the timeliness of the system. It does not streamline the approvals process. It does not do anything to increase the transparency and openness of the system; in fact, it will probably have the opposite effect. I cannot prove that any more than members of the government can prove there is going to be a massive unblocking of backlogs because of this bill. What I can do is go through the bill clause by clause and show that it is much more likely to have the reverse effect to that claimed by the minister. Interestingly enough, if one analyses the second reading speech, there are a couple of references to administrative procedures. Having had these two briefings with the Environment Protection Authority, I think that I am pretty much across what it is planning to do and what it has already put in place. The minister has already announced, if you like, the front-end change to administrative arrangements, and I think on Tuesday she made a statement about the back-end improvements to administrative procedures. I will go a bit more deeply into exactly what I mean by that later. I really wonder whether a much better way to have commenced this process of making sure that we have the best possible approval system would not have been to put in place a regime that was administratively more efficient. The minister did not have to come into this place to do that. As the minister said, the front-end and back-end procedures have already been changed in an attempt to improve the system. The minister's remarks in the fourth paragraph of the second reading speech read —

> The government is committed to transparent decision making and the public's "right to know" whilst facilitating an administratively more efficient appeal regime.

The minister did not have to come into this place with a bill to put those mechanisms in place. I put it to the minister that it would have been far more effective and shown a far more genuine attempt on her part to speed up the system, to remove unnecessary delays and to remove duplications and things that have generally been identified by a whole range of stakeholders as being potentially improvable elements of the system if the minister had come back in two years—or even a year, because we get statistics on an annual basis—and showed members in this place the effect of the new measures that had been put in place and asked us to consider whether it was worth removing some of the appeal provisions. The minister decided not to do that, and I suspect that I know the reason why the government decided not to do that. I think it is because the government needs a framework on which to hang some of its rhetoric. The minister needs to be able to go out there amongst the stakeholders and talk about the number of appeal rights she has abolished; she needs to be able to talk about the concrete things that she has taken out of the legislation. The minister has all of the major industry stakeholders pleading for some action and she wants to be able to go out and say, holding up a number of fingers, this is the number we have abolished; these do not exist any more.

This is one of a suite of four bills, one of which is the Approvals and Related Reforms (No. 3) (Crown Land) Bill 2009, which I heard the other day is about to be proclaimed or has been proclaimed. We were in the same ludicrous position with that bill. I use that term quite carefully, as it actually made everybody in this house laugh when the parliamentary secretary told us that while the system was being made less transparent, the information that opponents might want was available under freedom of information. As Hon Ljiljanna Ravlich has said, "Very helpful!" The government had just spent hours and hours in this place arguing that we should be using FOI a lot less than we are! The crown lands bill was another instance, and we are seeing the same sort of the thing here under the heading of approvals and related reforms. Once we start picking apart the clauses of this bill and looking for the real substance to back up the government's rhetoric about ensuring timeliness and certainty and streamlining the approval system, we realise there is no real substance in the bill. That is the basis of the opposition's decision to oppose the bill.

The Labor Party will always use as its default position the statement that was so clearly articulated in the second reading speech of the Environmental Protection Act 1986. I note that the parliamentary *Hansard* search engine does not go back as far as that, so I was not able to get the exact quote, but I have seen it cited in many other contexts. That specific reference was made in the second reading speech of the EPA that our intent was to provide a clear and easy appeals system. There is nothing complicated about that concept. If anyone in this house can suggest to me a better litmus test for every single measure that is put in place, then please tell me and let us discuss it. However, I put it to members that if the object is to provide a clear and easy appeals system, then this bill is a backward step.

I am going to come to the specific provisions of the bill a little later, but before I do that I want to talk about the history of the discussion that has led us to this point today. This bill is by no means the end of the process, because we still have not had the government's response to the very substantial report of the Standing Committee on Uniform Legislation and Statutes Review. We have a way to go on this one. The story is not over yet, but it started a long time. It started under the Labor government in February 2008 when the then minister, David Templeman, established the process to review the environmental impact assessment process in Western Australia, and which eventually reported in March 2009. I want to talk a little about the activities of that group because I want honourable members to get the same sense of the enormous amount of advice and experience

there is out there in the community amongst the specialists and the non-specialist agencies, that is, industry sources, the community in general and the conservation movement about how the approvals process might be monitored and about the specific suggestions for improving that process. All these documents are publicly available on the EPA website. The EPA released its report on this review of the environmental impact assessment process in Western Australia in March 2009. A large part of that report is devoted to a summary of the stakeholder forum held on 9 April 2008. The key stakeholders identified by the EPA in setting up the review covered just about anybody it could think of who would have anything to say about the process of environmental assessments. The key peak stakeholder organisations and government agencies were put into a stakeholder reference group. They included the Association of Mining and Exploration Companies, the Australian Petroleum Production and Exploration Association, the Chamber of Commerce and Industry, the Chamber of Minerals and Energy, the Conservation Council of WA, the Department of Environment and Conservation, the Department of Industry and Resources, the Department of Planning and Infrastructure, the Environmental Consultants Association, Murdoch University, the Office of Development Approvals Coordination, the Urban Development Institute of Australia, the WA Local Government Association, the WA Planning Commission and the World Wildlife Fund. That group was split into a couple of other working groups. They held a very intensive one-day forum. If we look at the Environmental Protection Authority's report, members will see it is about 250 pages long. I decided not to print it out because I am the shadow Minister for Environment as well as opposition spokesperson on climate change so I was trying to save paper. I thought I would just print out appendix 1, which is the report of the all-day forum. That turned out to be nearly 200 pages long! One cannot fault this process as having cut any corners.

The group received submissions. Paragraph 2.2.2 of the review is headed "Submissions". It is worth drawing honourable members' attention to comments made about the submissions. I quote —

> On the positive side, submissions indicated that the aspects of the current assessment process that should be retained were:
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> - appeals process as it is of public benefit
> - public participation in the process
> - transparency of the process
> - levels of assessment based on severity of impact
> - EPA website information
> - good range of policy documents

I am not for one moment suggesting that there were not criticisms made of the existing system. They are set out. There are probably too many of them for me to read into *Hansard* but I will give members a flavour of what they consist of. They talk about it being an overly complicated and onerous process. The dot points read —

> - confusion about the definition of a proposal
> - perceived restrictions on DMAs to process applications related to a proposal before the Part IV process is completed — reluctance to process approval applications in parallel
> - restrictions on DMA decisions to issue approvals and proponents to undertake activities that may implement the proposal before the Part IV process is completed
> - too many levels of assessment
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> …
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> - lack of certainty as to timeframes …
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> …
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> - too many issues, often trivial, are being dealt with
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> …
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> - lack of an outcome-based approach …

There is a list of probably 30 problems that have been identified. The main point I want to make at this moment is that the very first positive comment that was made was that the appeals process, as it is of public benefit, should be retained. As I say, that report was made public in March 2009. That group took a little over a year to put all its processes in place and come up with a series of recommendations.

In June 2009 the Minister for Environment established the environmental stakeholder advisory group, known by the slightly unfortunate acronym ESAG. It sounds like something one might go to a clinic to get injected for!

Hon Donna Faragher: They came up with that, not me. I am not into acronyms.

Hon SALLY TALBOT: It is just a straight acronym.

ESAG started to meet pretty much straightaway. It was established in June 2009. Its first briefing was 21 July. It subsequently met on 24 August and 11 September. On 20 August the minister went to ESAG with a request for advice on the specific topic of how the appeals process could be improved. The minister set a time frame that must have slightly alarmed people, but she obviously looked around the room and decided the people there were sufficiently committed to be able to comply with the time frame. Indeed, they did. On 20 August 2009 the minister asked the group to report by 25 September 2009 with recommendations about how the process might be improved. The report I am now quoting from is the final report to the minister dated 21 September. It actually reported a couple of days earlier than the deadline she had given them. It is a very carefully crafted document.

Before I start talking about the document, perhaps I could just confirm for members that the membership of ESAG was a little different from the stakeholders identified by the EPA report on the environmental impact assessment process. The chair was Dr Bernard Bowen. Membership of the group was—Dean Koontz from the Association of Mining and Exploration Companies; Tom Baddeley from the Australian Petroleum Production and Exploration Association; Greg Kaeding from the Chamber of Commerce and Industry of Western Australia; Nicole Roocke or Gavin Price, one or the other, from the Chamber of Minerals and Energy; Piers Verstegen from the Conservation Council; Robert Atkins from the Department of Environment and Conservation; Ian Le Provost from the Environmental Consultants Association; Josie Walker, principal solicitor of the Environmental Defenders Office; Dr Angus Morrison-Saunders from Murdoch University; Karl Welker or Robyn Glindemann from the National Environmental Law Association; Glen McLeod from the Urban Development Institute of Australia; Mark Batty from the Western Australian Local Government Association; Peter Robertson from the Wilderness Society; and Paul Gamblin from the World Wildlife Fund. That is a pretty impressive collection of people to put in a room to come up with concrete suggestions about how the appeals process and the general matter of environmental assessments might be improved. I put it to honourable members that nobody sitting around that table would have had any problem with the suggestion I made earlier that the basic parameter against which their recommendations might be measured—and that parameter was established a couple of decades ago now—involves providing a clear and easy appeals system. That was the membership of the group that met.

The timing here is quite significant. As I said, ESAG reported on 21 September. Part of its report comprises a comprehensive list of all types of appeal that are available under the Environmental Protection Act 1986. They are broken down into various categories—environmental impact assessments, licensing and works approvals, clearing processes and compliance notices. It is not insignificant that when I started to go through this list earlier, in preparation for speaking today, it is the first three types of appeal under the heading "Environmental Impact Assessment" that are being removed by the Approvals and Related Reforms (No. 1) (Environment) Bill we are considering today. It was most certainly not the recommendation of ESAG to remove those appeal rights.

The environmental stakeholder advisory group's final report grappled with the problem that many of us have been challenging ourselves with for the past couple of years; namely, that with the introduction of the State Administrative Tribunal, the Minister for Environment became the only minister who acts as an appellate body. Anyone who has a life outside of this kind of debate probably finds that a bit of an odd assertion, but the fact is that the appeal rights are established by part VII of the Environmental Protection Act and under the appeal rights that are granted under part IV, the minister is the person who determines the appeal. I was on the Standing Committee on Legislation that conducted the mandated five-year review of SAT. I am sure members have all read that report, which is many, many hundreds of pages, very carefully and know that that report made certain recommendations about part IV and part V appeals. The committee recommended that part V appeals probably should go to SAT and that part IV appeals should stay with the minister. It is difficult and it is complex, so it is hard to get our heads around what the implications are. It is much easier once we are able to furnish concrete examples of some of the types of appeals that are received. However, it interested me greatly that a body of such august minds as the minister put together in ESAG actually bit the bullet and looked very hard at this question of whether it was appropriate to retain the system whereby the minister still acts as an appellate body. The group canvassed a couple of opinions and in the end made a slightly tentative recommendation that probably part IV appeal rights should stay with the minister. However, it did note that the Urban Development Institute of Australia did not concur with that.

I think that this is a very impressive report that governments should be using for the next considerable period of time to measure their progress down the track in ensuring that we do indeed have the best approvals and assessment system that we possibly can. I want to make the specific point that this report does not recommend the removal of the three appeal rights that this bill will remove. Indeed, even more than that, it is not just that the

report does not talk about it, the report on page 1 in the second paragraph begins by quoting paragraph 2.2.2, which I have already quoted, from the EPA report and states —

> This section lists aspects of the current assessment process that submissions indicated should be retained including the "appeals process as it is of public benefit"

Therefore, it is not just that the report omitted a consideration of whether these appeal rights should be removed, ESAG clearly did consider them and recommended that the appeals process be left as it is because it is of public benefit.

The recommendations are, again, probably too lengthy to read into *Hansard* at this stage of the debate, but are extremely comprehensive. I cannot see how the minister having been in receipt of this document could contrive any excuse to come into this place with a bill that addresses none of the points raised by the advisory group that she established and furthermore effectively thumbs its nose at the process she has put in place. Even more significantly, the minister effectively demeaned the findings of ESAG by coming in to this place with a bill that will have an absolutely negligible effect on speeding up the process and in doing that ignores the substantive recommendations contained in the ESAG report. I also note that one of the specific comments made on these recommendations was an offer by ESAG to provide advice. Recommendation (k) on page 12 states —

> That the Minister notes that ESAG would welcome the opportunity to provide advice to the Minister at a future date on appeal provisions within the Act that could be considered for removal.

I put it to members of this house that we could not have had a more cooperative group made up of people who could make a very substantial, believable and thoroughly credible response. These people are experienced in the types of appeals and approvals processes that we are talking about. They are people who have practical experience of the appeals process and who have theoretical and practical understandings of the environmental issues at stake. All I can say is that the minister appears to have walked straight past that offer and come in to this place with a bill that effectively trivialises all the work that has been done. I am not just talking about the ESAG report. Remember that I started off by talking about the review of the environmental impact assessment process in WA that was carried out by the Environmental Protection Authority. Again, that was a very substantive report that included recommendations. Where are those recommendations in this bill? They are simply not there.

The next part of the story is that we had a blip in the system because I am told that the minister walked in to this place on 19 November 2009 and read the Approvals and Related Reforms (No. 1) (Environment) Bill 2009 into the house. I think it is probably a gross understatement to say that all the members of ESAG were a little taken aback by that. However, the minister agreed that they would receive a briefing on the bill and I understand that she sent one of her staffers and somebody from the Environmental Protection Authority, which I think at that stage was the OEPA because it had been made the Office of the Environmental Protection Authority.

Hon Donna Faragher: And wasn't that a good decision by the government?

Hon SALLY TALBOT: It was an excellent decision. It was a decision that were David Templeman still the environment minister would certainly have been put in place by the Labor government. The minister is still coasting along on work that was done by David Templeman and his predecessors in that portfolio and I suspect that she will come to a grinding halt some time very soon. However, we will see when that happens. Of course, it was an excellent move to establish the Office of the Environmental Protection Authority and we will be watching it very carefully. I am very optimistic that it will work; it has some people of the highest skill and integrity working for it and I think it has every chance of being a very, very effective government agency.

Two people were sent to brief the members of the environmental stakeholder advisory group and I gather things got a little heated because when the members of ESAG saw what was in front of them, they were, I think, probably horrified—although, again, that is a bit of an understatement. These people have put in many, many hours of work. As I say, the collective expertise in that room is truly impressive. When the minister's officers and staff walked in there and said, "Well actually guys, this is the bill we are putting to the Parliament" I gather that a huge amount of displeasure was expressed. I do not know whether the minister got that message, but I am told that it was expressed absolutely and unequivocally.

Another thing happened about that time—that is, what I referred to earlier as the new administrative procedures at the front end of the process. I put it to honourable members—I am sure that the minister will not pass up the opportunity to correct me if this is not right—that I suspect what happened was that when the minister began to collate some of the responses she received about the content of the bill, she heard alarm bells ringing. She realised that she was removing three different kinds of appeal rights. She at least needed an equivalent amount of rhetoric to fall back on about the transparency and openness of the system. We can see the reference in the second reading speech. These strange terms are beginning to creep in to so much of what the government does.

We get informed by ministers about their expectations of the way the public service will carry out some of the provisions. We are seeing an increasing number of things left to regulation. That is a problem in itself, which members on this side of the house have pointed to many times. Sadly, I suspect that our references will become more and more heated and agitated as the government resorts more and more to government by regulation. At least regulations are disallowable. What we have in relation to the EP act and the EPA's processes are another set of guidelines called administrative procedures. These are gazetted but they are not regulations, so they are not disallowable. We have the minister coming in here—she is not the only one—saying that this is what she expects, this is what she hopes and this is what she has asked to happen. We had some tinkering with the administrative processes at the front end of the system. In her second reading speech the minister said that the Environmental Protection Authority is revising its administrative procedures to implement some of these reforms in consultation with stakeholders to ensure that transparency and accountability are strengthened throughout the administration of its assessments. They are fine words. If it works, it will be a fine thing. I remind honourable members again that we needed no legislative amendment to put those new administrative procedures in place.

I will walk honourable members through these new administrative procedures. We have a statutory 28-day period for appeals on EPA decisions. The clock starts ticking on day one. Under the new procedures, a notice is posted on the website on day one to say that a certain submission has been received. For seven days after day one, anybody who is interested can contact the EPA and give their thoughts on that proposal. I have been informed that the officers at the EPA—I am sure the minister will correct me if I have misunderstood this—will be able to collect all those submissions. People are not being asked to submit comments about any particular thing, just about the submission that has been received. They are not specifically about levels of assessment or any particular parameters; they are just general comments. When those general comments go to the chair of the OEPA with the recommendations, those officers will be able to say that these are the submissions that have been received from the public. I will use the example of the Yeelirrie uranium mine proposal. We had the minister's determination about a level of assessment and then either nine or 13 submissions were received appealing the level of assessment. I was one of those people who made a submission. Along with a number of other people, I argued that the level of assessment should be set higher than the minister set it. I argued that there was a provision in the act for a public inquiry. Indeed, we can invoke the Royal Commissions Act 1968 in relation to an environmental assessment and appeal. I, along with many others, argued that it is such a significant project from the point of view of the development of the state that it should be assessed at the very highest level possible, which I argued was at a public inquiry. I then had a number of days to put in an appeal and went through the processes of being interviewed by the appeals convenor. Many members will be very familiar with that process.

If we re-run that situation with the proposed administrative procedures, I would first have to find the announcement on the OEPA website. I would then make a submission in the absence of anything from the OEPA about what it intended to do or what its advice to the minister would be. I would make a general submission to the OEPA. My submission would be taken to the chair for some sort of consideration when the chair made the final recommendation about the level of assessment. It does not sound like a bad way to proceed. It could well work, particularly if the OEPA is successful in co-opting its technical boffins to devise a website that will notify people when proposals are submitted to the OEPA. I have some hesitation about endorsing it unequivocally. Obviously somebody like me or Hon Giz Watson will register to receive those notifications. We will click a button, type in a couple of key words and every time an assessment is received by the OEPA, we will presumably get a text message or an email to tell us to look at the EPA website. In the past some of our community groups have submitted to these kinds of appeal procedures very extensively. It is not clear whether they would have the same opportunity to comment. That opportunity may well pass them by if they do not look at their inboxes every day, if they do not receive text messages or if they live in a place with no mobile phone coverage. It seems that the opportunities for bypassing people increase with the new system. Nevertheless, it is not a bad way to proceed.

It also worries me that when one makes a submission, one is not submitting about any particular thing. In my submission about Yeelirrie I was able to make a number of fairly clear statements about the fact that it should be assessed at one level rather than another for certain reasons. In a sense our submissions will not be bouncing off something when we submit under this new process. That may be considerably more time-consuming for the person submitting the appeal. I still say that it is not a bad system. I also say that we did not need to come in here to do it. It is just a change to the administrative procedures. If it works and if the advice from the OEPA is right, we should arrive at a situation where we do not have appeals on levels of assessment because the EPA is getting it right all the time and because it is able to consider that advice from appellants right at the beginning. We will not be in a position to know that. Those two reservations that I just expressed will never be tested because the right to appeal on the level of assessment will be abolished.

As I have already said, the minister came into the chamber just the other day and talked about some changes to the administrative procedures for the back end of the process. It is probably fresh enough in the minds of members who heard the statement read into *Hansard* on Tuesday for me to not go into it in any detail. My first question on both those announcements of revised administrative procedures is: what level of consultation did the minister undertake before she brought the changes in? Without being presumptuous, I understand that most members of the environmental stakeholder advisory group would not disagree with my comments about them being generally good ideas. I know that a couple of stakeholders had concerns about the five-day turnaround time at the end of the process, and I will say something more about that in a minute. I think that ESAG would have been generally quite happy to see the new administrative procedures put in place.

Hon Donna Faragher: The Environmental Protection Authority has maintained its larger stakeholder reference group, and clearly these are administrative procedures for the EPA, so it still regularly meets with the stakeholder reference group.

Hon SALLY TALBOT: Yes, that is fine. As I have said, there is a large overlap between both groups. I make the point that I do not think the minister would have met with any kind of serious opposition if she had just asked the EPA to put in place these revised administrative procedures with a view to seeing whether we could get closer to the stage at which we could have an informed discussion about the possible amendment or even removal of certain appeal rights.

I want to comment on the back-end provisions that the minister announced on Tuesday. Once again, we are seeing things creep in not by regulation but by administrative procedure; they are going to be very hard to keep tabs on, and almost impossible to subject to any kind of meaningful accountability. I draw the attention of honourable members to the paragraphs at the bottom of the first page of the minister's statement. It states —

> The EPA will publish the outcomes of any consultation within its report to me, which will remain appealable. Consultation will seek outcomes so that appeals from proponents about technical matters and implementation do not occur unnecessarily. The consultation period will be five business days to ensure that the EPA's reporting process is not unduly lengthened. For complex issues, the EPA may spend additional time consulting, at the written request of the proponent. Where necessary, consultation with key DMAs will occur in parallel.

Again, there is a level of informality creeping into the system. It will be fascinating to see what happens if and when it goes wrong. Where are the accountability mechanisms when we are relying so heavily on administrative procedures and, indeed, regulations?

Speaking of regulations, we have not seen any relating to this bill; I understand that they are not yet available.

Hon Donna Faragher: Administrative procedures have never been done through regulations.

Hon SALLY TALBOT: No, but will there be any regulations associated with this bill?

Hon Donna Faragher: No.

Hon SALLY TALBOT: There are none. Okay. All we have are the administrative procedures.

Hon Donna Faragher: Yes.

Hon SALLY TALBOT: I suspect that my colleague Hon Adele Farina will have a little more to say about that aspect of things when she makes her contribution to the debate.

I will now talk about the stage at which we have now arrived. Some weeks ago the forty-eighth report of the Standing Committee on Uniform Legislation and Statutes Review was tabled in this place; this is the report required under standing order 230A for bills of this kind. This report is 309 pages long, and I must say that one really wants to have Hon Adele Farina on one's side when doing this kind of exercise. She displays a capacity for hard work and forensic analysis that could be held up as something of a model for other chairs of standing committees in the context of the requirement for us to proceed efficiently, effectively and in a timely manner. There are a few chairs in this place at the moment, if the cap fits; I do not see a cap on Hon Giz Watson's head! We have a massive report relating to this bill.

I was going to say that I understand the standing orders as well as Hon Norman Moore, but that probably is not true. Maybe by the time I have been here as long as Hon Norman Moore I might approach his level of understanding of the standing orders, but I do understand that ministers have 120 days to respond to a committee report, so the government's response to this report is not due until sometime in August. It was my understanding on the basis of what I recall to be quite a casual conversation with the Leader of the House as we crossed the floor on a division at some stage that he was going to wait for the minister's response to the bill before bringing it on for debate.

Hon Norman Moore: My recollection is that —

Hon SALLY TALBOT: I think the Leader of the House has no recollection of the conversation!

Hon Norman Moore: I have been thinking about it subsequently, because I don't want to mislead you, but my understanding of what I said was that the minister would not be responding to the bill until she had read the report and was able to respond to the issues raised, which she will do in the house.

Hon SALLY TALBOT: I may well have understood that to mean that we would not be discussing the bill; okay.

Hon Norman Moore: But it is silly to require bills to be sitting around doing nothing while the four months go by.

Hon SALLY TALBOT: The Leader of the House makes the point that it is silly to have that provision. I think the much sillier thing is to have the 120-day provision for the minister's response.

Hon Norman Moore: When it is a report into a bill, it means that the government responds in the house when the bill is being debated, which is what we should be doing.

Hon SALLY TALBOT: I understand that, but we are all very clever people and there would be a way around it if we had the will to find a way around it.

Hon Norman Moore: It's never been a problem in the past until today.

Hon SALLY TALBOT: I do not make this point in a vacuum; I make this point knowing—the minister's advisers have told me, and I am sure it is not a secret—that the minister has certainly read the report and prepared a response. She has a response and she is going to refer to it; I actually made a note of what the advisers said. They said that the minister will address the findings of the report but will not table her response because she is still working through it, and that she would table the response when it was finalised. That is not terribly controversial; I am sure I am not letting any secrets out.

Hon Donna Faragher interjected.

Hon SALLY TALBOT: This is an extraordinary thing. The minister should go out there and try to explain to the electorate and the voters who put us here that she is not going to give us her response. I want to make it clear that on this occasion I am not having a go at the minister; I am making a point in response to the comments made by the Leader of the House that if he were to try to go out and explain this in ordinary language to the people out there who vote for him to come in here and sit in one of these seats, they would think it is crazy. It is not beyond our wit to be able to receive a report from the government. Even if the government wants to put it into the bin, it could do that, but to have the response to a report of this magnitude delayed presumably until after the passage of the bill through this house is just plain silly. There is currently a Standing Committee on Procedure and Privileges process underway to look at the revision of standing orders; I did not make a submission on this particular point when I made my submission to that committee, but I certainly would have had I known then what I know now. I hope that the committee will take this on board and see whether we can smarten it up a bit.

Nobody could react to this report in any way other than to congratulate Hon Adele Farina and her committee for what they have done in a relatively short time. Obviously, they have worked with an extraordinary level of efficiency in that committee. This report contains 21 recommendations and 48 findings. When the minister received a copy and flicked through it—she might be like me and have a tendency to read documents from the back to the front, which I have never understood, but I certainly find myself doing that—I am sure that she hoped that more of the findings would be like findings 47 and 48, which basically say that the committee feels that clauses X, Y and Z of the bill raised no issues under fundamental legislative scrutiny principles. Unfortunately, of course, that is not the case. The committee has come up with a number of very substantial conclusions about the effectiveness of this bill. Fundamentally, its basic recommendation is that the bill should not proceed. I put it to members that it makes even less defensible pushing this bill through this chamber before we have heard the government's response to a report that says not to go ahead with the bill. I will talk about a couple of reasons that the report says this. I know that Hon Adele Farina will go into this in much more detail in her contribution.

One of the most significant recommendations in the report is recommendation 6, which reads as follows —

> **The Committee recommends that consideration of the Bill be deferred until:**
>
> - **a replacement bilateral intergovernmental agreement has been entered into between the State and the Commonwealth; and**
> - **the EPA's proposed administrative procedures have been gazetted pursuant to section 122 of the EP Act,**
>
> **in order that the Bill can be considered in its final context.**

As many members would know, we have an agreement that has been in existence since 1992. It is the Intergovernmental Agreement on the Environment, which is signed by the commonwealth and all the states. This is a bilateral agreement between the commonwealth and Western Australia, which basically brings our processes into line with the provisions of the commonwealth Environment Protection and Biodiversity Act. I put it to honourable members that at least an open question is whether we can proceed before the bilateral intergovernmental agreement has been revised. It is the committee's view that we cannot. I know the advice given to the minister is that we can. However, it is at least a debate that we should be having in this place.

The committee goes on to talk about a number of other elements of the bill. As I have said, I am going to leave all the substantive points to be made about the report to Hon Adele Farina. Basically, the committee finds that the right of appeal cannot be substituted with a consultation process. They are two very different things; they are not mutually interchangeable, yet that is effectively what the government is doing. I have already talked about removing the appeal on the level of assessment. I used the Yeerilie proposal to illustrate that point.

Let me just talk about the other two. The second one is the removal of the appeal on the designation of a project as a derived project. Again, these are fairly technical points. The Labor government set up provisions for what we call a strategic assessment. Only one strategic assessment has been carried out and that was on the Canal Rocks proposal. Another one is underway at the moment on the James Price Point development, the proposed liquefied natural gas hub in the Kimberley. It works like this: anybody can be the proponent of a strategic assessment. In the case of James Price Point it is the government. We put this in place because we genuinely believe that it is a good way to proceed. The example that occurred to me when I began to get my head around all this was the issue that we debated a few weeks ago about the development at Jandakot Airport. It occurred to me when I was thinking about this that a strategic assessment could be done on all that land at Jandakot. People would then be able to go to potential proponents and sell the package. If they got it right and everybody was working cooperatively, people could overcome a lot of the difficulties that proponents are constantly coming to us with just because we are members of Parliament when they talk about the lengthy delays that they experience while they get various types of approvals lined up. Essentially a strategic assessment does that. A strategic assessment can even complete the commonwealth processes, so that in fact what people are doing then is presenting the developer with a package where all the i's are dotted and the t's are crossed, and obviously that is very attractive. We have talked about it in relation to pieces of land and now we have talked about it in relation to James Price Point. I know it has been talked about in the past in relation to things like aquaculture, which a number of members in this place take a great interest in. People therefore can scale a lot of hurdles before they get down to the nitty-gritty of development.

It does not require much imagination to contrive a situation in which a proponent might come along and say that he reckons we could get away with this by claiming it is a derived proposal and that if we succeed then we would have had all these corners cut for us. There must be a moment at which the Environmental Protection Authority looks at the derived proposal and decides whether or not it is a dinkum derivation or whether somebody is just trying to cut corners. We could think of all kinds of circumstances under which that might arise. I understand that the basic objective of this strategic assessment process was not to have a standard time frame that relates to all strategic assessments, so people would have an inbuilt time frame for individual assessments, which means that the proponent could come along and say that there are only six months left on one and we had better act quickly. It devolves to the EPA to then say that this is a genuinely derived assessment; in other words, yes, we have genuinely done all the assessments in relation to this project and they do not have to be repeated. The government is proposing to take away the ability to appeal that decision. The minister has had to leave the chamber on urgent parliamentary business and perhaps we can just clarify this when we go into committee, but I believe that the minister is proposing to leave in place the other appeal, which would be when the EPA has said that it is not a derived project. I think that is the case, but I cannot find anywhere in the bill where that appeal arises. That seems to be a bit lopsided, but I may have missed something in my reading.

The third type of appeal right that is being removed is essentially to not assess a project. A large category of projects receive that decision from the EPA. This appeal right relates to a small subclass of those proposals in which the EPA decides to refer it essentially back to the Department of Environment and Conservation for a part V assessment, and that is under the clearing provisions. What happens at the moment with that appeal right still in place is that the EPA will look at the project and say that in its view it would be adequately handled by DEC because it essentially relates to clearing, and so it gives it back to the Director General of the Department of Environment and Conservation. At that stage somebody can come along and say that that is not right because a lot more is at stake than merely clearing provisions. I understand that the one that is most frequently cited as an overlooked consideration is the effect of a proposal on water quality. The appeal right will still be there over non-assessment but not over non-assessment that involves a referral back to DEC for assessment under part V of the Environmental Protection Act. Those are the three appeal rights that are being removed.

I made the point at the beginning that we are utterly unconvinced that this move will have any real effect on the speeding up of environmental assessments and approvals. That is borne out in spades for me once I start considering—I hope it will be the same for other honourable members in this place—the numbers that are involved. Let us work backwards. I will start with referrals back to the Department of Environment and Conservation for consideration under part V of the Environmental Protection Act. These are the numbers with which I have been presented. First of all I will give members the numbers that relate to appeals against the decision not to assess. There were 21 in 2005; 31 in 2006; 19 in 2007; 12 in 2008; and 19 in 2009. They are not vast numbers. Members can imagine that it would be a couple a month in most years. I then asked for those figures to be broken down into the number of appeals that were received against referrals for part V assessments. These are the ones that go under the clearing regulations. The figures reduced to three in 2005; seven in 2006; six in 2007; two in 2008; and nine in 2009—a bumper year. What, therefore, will this bill do? It will remove appeal rights on such a small number of appeals that it defies belief that it will, all of a sudden, add that crucial drop of oil to the approvals systems that will have us whiz-banging into the middle of the twenty-first century with the wind in our hair and everything hunky-dory. It is just an absolute nonsense.

Let me skip back to the first appeal right that I spoke about that will be removed. These are part IV approvals. I need do no more than refer the house to the report from the Standing Committee on Uniform Legislation and Statutes Review. I will just find the part of the report I want to refer to as members, I am sure, eagerly go to their copy of the report. It starts on page 127 at chapter 5, headed "Practical Effects of the Bill — General". There is a general section, a section headed "Review findings" and then a section in the index headed —

> Evidence as to 'delay' …
>
> > Whether proponents have complained about delays in appeal processes …
> >
> > Time taken to resolve appeals …

There are then tables 6 and 7. Again, we can see there very low numbers. The numbers of appeals on level of assessment were 14 in 2005; 18 in 2006; 12 in 2007; seven in 2008; and eight in 2009. Table 7 gives basically the same information. We are looking at a handful of processes a year. It is just a nonsense. It insults the intelligence of everybody in this place, let alone everybody on those two advisory and consultative groups, to have us believe that this will be the magic potion for speeding up the system.

I have saved the best for last. The best is that middle appeal right I talked about, which is the appeal on the designation of a project as a derived project. Guess how many of those appeals there were last year? None. The year before there was none. The year before that there was none. There has never been any. Why has there never been any? It is because only one strategic assessment has ever been done. Never in the history of the state has there been one single appeal on the status of a derived project, yet that will be one of the things the government will go out to the community and crow about. It will say, "These are all the appeal rights we have removed." It is simply a nonsense. It is a silly trick, and we cannot stand in this place and let the government get away with it.

By way of summary I will make a couple of points. I can summarise everything I have said in these two points. The first is that the government did not need any of these amendments to put the new administrative procedures in place. The government should have done us in the Parliament the courtesy of putting the new admin procedures in place and then come back and reported to us about the effect of the new admin procedures; it should have done the people in the environment sector the courtesy of going in that direction; and, of course, it should have done the people in industry the courtesy of doing that. I do not know which people government members talk to when they ask for feedback about the things they do. We heard debate during non-government business this morning in which members of the government clearly indicated that, even if they are standing face-to-face with the people who are trying to tell them what is wrong with the system, all they see are lips moving; they do not hear anything. However, I could suggest to members the names of a number of people in industry to talk to who would express their extreme concern about what the government is doing with the removal of these appeal rights. I will tell members why. It is in the interests of everybody to have the problems ironed out at the beginning of the process—the stage that we call the front end of the process. The further we go down the track, the more expensive it gets and the more delays are put in place. Has the government removed any of those appeal rights at the back end of the process? No. It cannot, because they are needed. Until admin procedures are put in place that the government can show us work, those appeal rights must remain. The government has taken out a couple of appeal rights at the beginning of the process. All that will mean—this is what industry is fearful of—is that appeals will take weeks, months and in some cases even years. Hon Adele Farina's committee reported on one aspect of that. I draw the house's attention to finding 19, which states —

> The Committee finds that, on the evidence made available to it, at least 50% of the time taken to resolve appeals under Part IV of the EP Act is due to proponent delay.

Industry members find that weeks, months and even years after they go through the front end of the process, they get to the back end and all of a sudden the problems emerge; and at that stage it is time consuming and expensive. Nobody wants that. The government, therefore, should have done us all the courtesy of putting the new admin procedures in place and then letting us know how they work.

The second point is that the government has been able to produce absolutely not one shred of evidence that appeals are causing delays to the system. All the government has given us is the window-dressing in which it frames all its rhetoric about passing red and green tape. There is absolutely no substance whatsoever to the government's claims. The minister is always anxious when she thinks that I am being a bit negative, so I will end on a positive note.

Hon Donna Faragher interjected.

Hon SALLY TALBOT: There is very clearly a better way of doing all this. I do not need to take honourable members any further than to the Environmental Stakeholder Advisory Group report to the minister of 21 September 2009, which sets out on page 11 the statement of principles. I say to the minister again that there is no need to reinvent the wheel; all this has been done. If the minister has an argument to make with this set of principles, it is beholden on her to come into this place and explain to us what those objections are. In the absence of a statement to that effect, we must assume that the minister agrees with that statement. The work has been done. Recommendation d) of the report states —

> … the Minister notes that whatever appellate body is decided upon, ESAG is strongly of the view that the assessments and actions taken pursuant to the EP Act need to conform to the following broad principles:
>
> - provide for effective and timely decision-making;
> - allow for third-party appeals;
> - be transparent;
> - provide for procedural fairness;
> - lead to evidence-based decision-making;
> - provide for a consultation process involving all parties early in the assessment of proposals;
> - reduce the potential for duplicative appeals on the same subject matter;
> - reduce as far as possible the desire for parties to appeal EPA reports;
> - provide a system whereby the result of the appeal considerations, wherever undertaken, be in the form of advice to the Minister so as to assist her/his final decision on a proposal; and
> - provide for a coordinated appeal system

What underlies this is the belief expressed by the members of ESAG, to which I draw the attention of members. It is expressed in paragraph a) on page 10, and refers to —

> … improving the environmental impact assessment process itself to avoid the need for appeals.

That is where we should get to! We can do that without legislating until we put that safety net in place. That safety net will tell us that we are on the right track. I have already referred to recommendation K, which was the Environmental Stakeholder Advisory Group's offer of assistance to the minister, and I am sure she could have taken that up with either the group or individually.

We have to protect the right to challenge decision making. That is a fundamental right of everybody involved in our community, from ordinary community members to industry stakeholders. With this bill, the government is eroding the fundamental right to challenge decision making. The bill is not timely, effective or a genuine attempt to improve the system; it is a botched attempt to give some semblance of credibility to the rhetoric about cutting red tape. What we have here is a third-rate bill, a third-rate minister and a third-rate government.

HON ADELE FARINA (South West) [3.20 pm]: I rise to speak in favour of the forty-eighth report of the Standing Committee on Uniform Legislation and Statutes Review and to oppose the Approvals and Related Reforms (No. 1) (Environment) Bill 2009 that is before us. Before I start, I acknowledge the work of all members of the committee on this report. As members can see, this was a substantial effort by the committee and I need to acknowledge the work that was done by all members of the committee in analysing a huge amount of material that was received on this bill. The committee met on numerous occasions at all hours in order to get this work done as expeditiously as we could, yet at the same time make sure that we provided a very thorough report to the Parliament. I also acknowledge the committee staff. Without them the committee does not function. I acknowledge the work of Mark Warner, the clerk assisting the committee. In particular, I commend Susan O'Brien, the legal advisory officer to the committee, whose work effort on this particular bill and report has been extraordinary. Her capacity to get across a vast amount of information and her clarity of assessment was of great assistance to the committee. The other thing that is important to note is the huge community interest in the bill

and the ramifications of the amendments proposed by the bill. It was for this reason that the committee felt the need to look at the legislation in detail.

Before addressing the bill, I want to pick up a matter that I raised on Tuesday—that is, the difficulty that the committee has in reporting within 30 days. The bill was referred to the committee on 19 November 2009. As members are aware, the obligation is on the minister to provide the committee with all the relevant documentation on the bill in a timely manner on the referral of the bill to the committee. The minister provided the committee with the Intergovernmental Agreement on the Environment on 9 December 2009. That is 21 days after the bill was referred to the committee. Twenty-one out of the 30 days that the committee has to report on the bill were spent waiting for the intergovernmental agreement. The covering letter that came with that intergovernmental agreement to the committee referred to two other documents, which were not enclosed and so the committee had to pursue with the minister the provision of those two documents. That took another seven days. That is 28 days out of 30 days gone just trying to secure and identify the right documents that the committee needs to have before it to consider in order to do a thorough job in reviewing the bill. As the committee started to inquire into the matter, the committee identified another six documents relevant to the committee's inquiries that committee staff had to locate themselves because they were not provided or identified by the minister. The committee's 30 days were up obtaining the documentation needed for the committee to undertake the review. The 30 days was up through no fault of the committee. I want to place that on the record so that members are aware that this is a continuing problem for the committee. I do not raise this matter to embarrass the minister, but to highlight to members the difficulty with the 30-day reporting time.

Hon Donna Faragher: It was similar problem when I was a member of the uniform legislation committee in opposition. And I think that Hon Simon O'Brien would agree; it is a consistent problem. I do not disagree with the member.

Hon ADELE FARINA: The committee also experienced delays in getting relevant information and answers to questions from departmental staff. Again, this is not a criticism of departmental officers who I know are very professional and in this instance genuinely tried to assist the committee in its deliberations. In this case, the department did not have in a collated form some of the statistical data requested by the committee and it needed to collate it, and to do so manually. This was a surprise to the committee and obviously took some time. The committee was very surprised to discover that some straightforward statistical data was not readily available, and that some data was not available at all. For example, the time taken by proponents in the appeal and assessment processes to provide necessary information or to respond to queries was not available. The committee thought that would have been standard tracking data maintained by departments, especially given there has been such a spotlight on delays with the approvals process. Without this sort of data, it is very difficult to assess the cause of the delay and to address it, and it is difficult to understand how the government can say that the bill addresses the delays with the approvals process when it has not looked at the statistical data to support that because the committee, through its inquiries, caused a lot of that data to be collated for the first time. The committee had not anticipated this problem at all.

Seven reviews or inquiries have looked at the environmental appeals process and alleged delays with the approvals process, and six of these took place in 2009. In view of this, the committee expected that its request for the statistical data would not have been a problem as the information would have already been collated for these other reviews and inquiries, and it was really surprised to find out that this was not the case. As I have said, it is difficult to understand how a valid conclusion that there are delays with the approvals process can be made without examining the data, establishing whether this is indeed the case and identifying where the problems are occurring. Members will be interested to learn that, despite the picture that is frequently drawn of hundreds of proposals backed up and not going anywhere, the numbers we are looking at are surprisingly low. For example, in 2009 the number of proposals referred to the Environmental Protection Authority was just 103; 73 of which were not assessed. There were only 30 proposals assessed for the year 2009. The number of schemes referred in 2009 was 313; however, of these, only two were subject to appeal. The number of proposals on which level-of-assessment appeals were reviewed in 2009 was just eight; six proposals had third party appeals only and two had proponent appeals only. In 2008 only seven proposals were appealed; five attracted third party appeals only, and two proposals received both proponent and third party appeals. As I said, we are talking about very low numbers here. The data on the length of time taken to process appeals also does not support the view that there is a great number of proposals that are taking an extraordinary or unduly unreasonable time to resolve. There have been some spikes in the time taken to resolve some appeals, but we are talking about just a handful of appeals. When inspecting the reason for the time taken to resolve those appeals, one finds there is usually a very simple and good explanation for the anomaly and some of the reasons that were identified with some of the appeals were elections and change of government and appointment of a new minister, which causes a number of months of delay in the process. Another reason was the time taken by proponents to respond to matters raised through the appeals process; which they have an opportunity to do. There have been instances in which proponents

themselves have taken time to reconsider whether they want to proceed with the proposal. I think that was the explanation provided, from recollection, for the one that was noted as taking the longest time.

The Office of the Appeals Convenor gave evidence that at least 50 per cent of the time taken to resolve appeals is due to proponent delay. In fact, the evidence was that it was significantly more than 50 per cent. The committee was not able to get data on this as such data is not collected. The clock is not stopped for the time that the appeal is in the hands of the proponent so it is very difficult to obtain data on exact time lines. In brief, the report clearly sets out that no evidence was presented to the committee to support the proposition that there are delays with the approvals process, in particular with appeals. Further, no evidence was presented to the committee that the deletion of relevant appeal rights will result in significant improvements in the time taken to assess a significant number of proposals. In fact, the committee heard evidence that it was doubtful that the amendments to the bill would result in shortening the time taken to assess or approve a proposal. The committee heard that proposed changes to administrative procedures are likely to deliver shorter assessment or approval times, to a very limited or small extent. When we asked officers to advise how much the time lines would be reduced as a result of the administrative procedures, they were not able to tell us. There is nothing by which the community can benchmark the success or otherwise of the proposed amendments to the bill or the proposed administrative changes. Too much is unknown, too much is fluid. The data does not exist to enable that sort of benchmarking to occur.

Based on the evidence presented to the committee, the committee could not conclude that the amendments contained in the bill—that is, the deletion of the relevant appeal rights—would result in shorter approval times. In fact, it is highly doubtful that this would be the outcome. In brief, there is no evidence to support the need to delete the relevant appeal rights. Furthermore, neither the proposed amendments to the bill nor the proposed administrative procedures address what has been identified as a significant factor in the time that it takes to complete an assessment, particularly poor or inadequate documentation provided by the proponent up-front; the time taken for proponents to respond to questions, issues or requests for further information; and proponents reconsidering whether to proceed with the proposal. Had the minister consulted with stakeholders, including industry, many of whom support the existing appeal process—that is documented in a number of reports—the minister may not have brought this bill to the house. The potential harm to result from this bill may be significant, and in my view is significant, and should not be quickly discounted. It is important we understand that the Environmental Protection Act is finely balanced and that the appeals process is used by proponents as well as third parties. The EP act provides for the making of regulations and administrative procedures. The power to make administrative procedures is balanced in the EP act, as it currently stands, by an appeals process that is enshrined in the legislation. This bill seeks to delete certain appeal rights that are enshrined in the legislation in favour of an administrative procedure that provides for greater consultation up-front in the process. This ignores that administrative procedures can be amended at any time, with or without approval, knowledge or consultation with the minister and without the scrutiny of Parliament. This is a very significant factor. We are looking to remove something that is currently enshrined in legislation in favour of what is an administrative procedure that this Parliament will not get to scrutinise and that can be changed by departmental officers or the Environmental Protection Authority at will.

If members are of the view that that is not likely to occur, I will illustrate by way of example how easily it can occur. Earlier this week the minister made a ministerial statement about new administrative procedures that have been established in relation to the setting of conditions in bulletin reports. That will then go to the minister for the minister's consideration on assessments and proposals. The minister indicated that the new administrative procedures would provide for departmental officers to consult with the proponent, relevant decision makers and other government agencies in relation to the content of certain conditions to ensure that there are no errors contained in those conditions or that they are workable. I was surprised when I read the ministerial statement. I thought it was a statement of nothing. To the best of my knowledge that practice was already occurring in the EPA. It certainly was happening in the late 1980s and early 1990s when I was a state government ministerial adviser to the Minister for Planning, who then changed portfolios to become the Minister for the Environment. I know for a fact it was certainly the practice that occurred then. I raised it with departmental officers at the briefing we had yesterday. They informed me that, yes, those administrative procedures were in place at that time—in the late 1980s to early 1990s—but that over time they had fallen away or someone had made a decision to change those administrative procedures. I thought it would be commonsense for a government agency, when it is drafting conditions that require other government agencies to do something or to tick off whether that condition has been satisfied, to consult with those government agencies in drafting the wording of that condition. I am stunned to find out that does not appear to be happening or, if it does, it is happening at a very informal level.

There is now a concern that we need to formalise it. My point is that once something goes to administrative procedures, it is very easy for those to be amended at any time, and this house will not get an opportunity to scrutinise that decision. Although we are told not to worry as we debate this bill, we are deleting relevant appeal

rights. The government obviously does not believe that appeal rights are important. We will replace those with a consultation process that will occur up-front. We are told community participation and consultation in the approvals process will not be lost; it will just take a different form. The problem is that I certainly, as a member in this house, do not take any comfort from that, particularly given the experience that I have just outlined. I think members of this house need to be very careful. We are taking away rights that this Parliament determined were important in respect of environmental assessment and environmental approvals to ensure that there is public participation in the process.

This Parliament decided to enshrine those rights in legislation. What we are being asked to do through this bill is to take away some of those rights with respect to certain appeals, but not to worry because it will all be looked after in the administrative procedures. I really caution members against taking that approach because there are significant issues in taking away a right that is enshrined in legislation and replacing it with something that is nothing more than a procedural process that can be changed at will by a departmental officer. That is not a fair exchange. Also, it really does tip the balance provided for in the current Environmental Protection Act. The EP act allows for administrative procedures to be made because so much of the detail of the framework of the approvals process is actually enshrined in the legislation. If we remove that, it will impact on the balance because it will tip the balance more towards the administrative process, and the checks and balances that exist currently within the legislation will be lost. Members, please be very clear about what we are being asked to do. We are being asked to do this with absolutely no evidence presented to this house and to the committee that justifies it. That is a matter of great concern.

Another point I make is that it is important to understand that an opportunity for consultation up-front ahead of a decision being made is very different from an opportunity to appeal a decision. We are being asked to accept that an opportunity to consult, to make some comment ahead of a decision being made, is equal to an ability to appeal a decision that has been made. I think that members can see clearly that that is not the case. With the consultation up-front, I am very concerned that members of the community will not actually have sufficient time to provide comments. My understanding is that the administrative procedures propose a seven-day period for that public consultation. The Standing Committee on Uniform Legislation and Statutes Review heard evidence that often the documentation that is presented by proponents when they first refer a proposal is inadequate for the Environmental Protection Authority to proceed to make the assessment whether to assess, so it needs to go back and get further documentation and information from proponents.

Now we are saying on the one hand that the EPA needs this additional information, yet we propose on referral of a proposal to put that basic information given at the referral point on the website and invite members of the community to comment on that, with only seven days in which to do so. In many cases, the information would be inadequate to make a valued judgement or comment, and in cases in which the documentation may be sufficient, the time to assess the documentation, form a view and write that up is simply not enough. We need to remember that in many cases we are dealing with community volunteers doing that assessment work, or people who work doing it in their own time after hours. Therefore, to allow only seven days to provide that comment is completely inadequate.

Of course, there is also the assumption that the issues raised through that consultation process will be taken on board and adopted by the decision maker. We all know that that is frequently not the case; consultations are carried out and a range of different views are obtained that are sometimes diametrically opposed and some value judgements need to be made in making the decision. The advantage with the right of appeal is that it gives people an opportunity to assess that assessment and that judgement that has been made. By enabling people to have a comment up-front in the process and removing that appeal right, that opportunity to provide a check and balance on the decision that is made is lost. That is a significant factor. The committee heard evidence that we were not to be concerned because the EPA has been doing this assessment for decades now and it does not get it wrong. The number of times that a level of assessment, for example, is changed is very small. In numeric terms that may be small, but we are also dealing with a very small number of proposals that are assessed and a very small number of proposals that are actually appealed. For the proponent of a proposal, it is a pretty significant factor, and we should not discount that. We should not discount the community that wants to have input into that process.

Having examined all the evidence that was presented to the Standing Committee on Uniform Legislation and Statutes Review, the committee has clearly formed the view that a consultation up-front in the process does not and cannot replace the right of appeal on a decision that has been made. It is very important that members understand that. In fact, I will read directly from the summary section of the committee's forty-eighth report, which states —

> … an opportunity to comment on a proposal or scheme prior to the Environmental Protection Authority making a decision should not and cannot be equated with a right of appeal against that decision. The

> submissions made to the Committee do not support the Executive's position that community expectations in respect of public participation in the relevant decisions have been met.

Another important point in all of this is the very odd position in which we find ourselves whereby we are being asked to amend legislation but not to worry because these things will be picked up in the administrative procedures that the government proposes to set down. A level of community consultation will continue and this will streamline the appeals process. The bottom line is that we do not actually have to delete any appeal rights to implement the administrative procedures that have been suggested. In fact, a far more preferable way to go would be to implement the administrative procedures, provide the opportunity for the consultation up-front and then, after a number of years, undertake a review and assess whether that has had the effect of streamlining and reducing the number of appeals that are lodged; and, if so, at which points. That would enable Parliament to make an informed decision about which appeal rights ought to be deleted, if any at all. We are being asked, yet again, to make decisions without evidence being presented to the Parliament to support the actions that we are being asked to take, which I find to be very unsatisfactory, as I am sure other members in this place do too. I urge the minister to consider that option because we lose nothing at all. If it is the case that the administrative procedures are going to be effective in streamlining the approvals time frame and will result in fewer appeals being lodged, there is no harm in implementing that proposal, that system, ahead of deleting the appeal rights so that we can have some certainty that this is in fact the case. If the administrative process works to streamline this process as intended, we will not need to immediately run with deleting the appeals. If the consultation up-front does not produce the results at the end of the process, we have not acted in a way that has greatly reduced the rights of the community to participate in the assessment process as we have not removed those rights that the community currently enjoys under the EP Act.

One of the appeal rights that is proposed to be deleted is the appeal on the level of assessment. There is an argument that this is an unnecessary appeal because the level of assessment is rarely varied as a result of the appeal process. As I have explained previously, the facts are that very few proposals are appealed against and there are a number of appeals whereby the level of assessment has changed as a result of the appeal. The evidence that was heard from the officers from the Office of the Appeals Convenor was very interesting. They were surprised at how many significant issues found their way to the appeals process without being picked up by the EPA and addressed much earlier on in the process. If they had been picked up, the appeals would not have been lodged. The Office of the Appeals Convenor stated very clearly that significant issues are raised through the appeals process that should have been caught earlier, which again highlights the fact that replacing an appeals process that occurs after a decision has been made in favour of a consultation process up-front is unlikely to provide the check and balance that the appeals process provides.

The other thing that the committee heard was that we could do away with the appeal on the level of assessment because that issue could be picked up later during the appeal on the EPA bulletin report, which goes to the minister for consideration. That was the most extraordinary explanation I have ever heard. By the time we get to that stage, the proponent has invested a huge amount of time and money undertaking environmental assessments in support of the proposal. The whole point of having the level of assessment decision early is that we can tell proponents who have a crazy proposal not to waste their time and money as it will never be approved because it does not comply with rules or legislative provisions so they should not go down that path. The proponent can at least walk away at that point having invested very little time and money advancing the proposal. If we remove that and allow them to go right through to the point of doing the environmental assessments and having them assessed by the EPA and then say to them that the proposal was never going to be seriously entertained. Alternatively, if the EPA got the scope of assessment wrong and it missed some critical aspect of the proposal because it had only 28 days in which to assess it and set the scope of the environmental assessment too low, at the appeal point on the level of assessment, there is an opportunity for the community to say that it has missed a factor that it thinks should be included in that assessment or that warrants a higher level of assessment. It provides a check and balance at that point before any investment in time and money. If it is left for that assessment to be made at the point at which the EPA lodged the bulletin report and then says that the proponent needs to go back and redo an assessment on this particular aspect, I assure members that proponents will not thank us for imposing that cost and uncertainty on them that late in the process. The proponents I talk to who use the process frequently say they appreciate the opportunity very early on in the process to have feedback of the community's reaction to the proposal and to know what they need to deal with in terms of time. This enables them, while undertaking the environmental assessment, to also undertake a targeted community consultation process.

Hon Donna Faragher: I don't disagree with you in that regard, and there is obviously a public process whilst the assessment is undertaken. As I go through appeals without any changes, often third party appellants will raise a number of issues at that point that would still cause potential delays for proponents because they are issues that

are still being raised at the end of the process. That will not change under this legislation. There is always that opportunity for third party appeals to occur at the end of the process, which they often do.

Hon ADELE FARINA: That is fine but the fact that the minister has assessed those appeal grounds at the point of the level of assessment means that much of that work is already done. It will not take that long for the Office of the Appeals Convenor to process that ground of appeal because the work has already been done.

Hon Donna Faragher: It can take a lot longer.

Hon ADELE FARINA: I do not think it takes a lot of time. It will be a lot worse for proponents if, after they have invested a couple of years undertaking flora surveys and all the other environmental assessments, they are told at the time of the assessment that they have missed certain aspects and they need to go back and undertake further assessment.

Hon Donna Faragher: They are regularly told by me at the appeal determination because points are raised at that end of the process and I say that they do need to do that, and that strengthens the conditions that are recommended to me. That is not changing.

Hon ADELE FARINA: I am saying that removing that appeal right at the level of assessment actually creates more uncertainty for the proponent and runs a risk of a higher cost imposition for the proponent. I do not think that proponents will be grateful for that change if that is the result.

The committee also heard evidence that there is likely to be an increase in the number of applications to the minister for a section 43 consideration. That is where the minister can direct the EPA to reassess a proposal and can be very specific and direct that it be reassessed at a certain level rather than the level at which the EPA has set. That is a very interesting comment. It changes what is currently an independent process under the EP act to a political process. The minister of the day would need to be persuaded that this is something that the minister should give a direction on. What we are doing with the amendments to this legislation is changing what is an independent process, which is highly regarded right around the world, to one that will result in a higher level of political interference if the minister of the day elects to exercise that power.

Hon Donna Faragher: I exercise that. It is the same process. The minister still has the capacity to do that.

Hon ADELE FARINA: How frequently has the minister exercised the section 43 power? Very, very infrequently, because the appeal rights are there to ensure that those issues and concerns that the community has are addressed through the appeals process. There is no need to do that. If the minister removes a number of those appeal rights, there will be an increase in section 43 referrals, which will result in a politicisation of the process. All of that is unnecessary because we can implement the administrative procedures. The evidence before the committee is that if there is to be any shortening of the approvals time frame as a result of this proposed scheme, it will happen through the administrative procedures, not through the amendments to the legislation. My view is that we should test that to see what shortening of the approvals process will actually occur as a result of those administrative procedures being imposed, and that after a number of years we should review whether it has had the impact of reducing appeal rights so that we can see which appeal rights can be deleted with minimal impact on the independence of the process, at a time when we have the data to make those sorts of assessments. We do not currently have such data. I will not have time to cover every point in the bill, so I will have to deal with a lot of these issues during the Committee of the Whole House.

However, in the limited time I have left, I will talk about another appeal provision that is proposed to be deleted. I refer to the appeal right on the level of assessment on native vegetation clearance. Currently, if a proposal before the Environmental Protection Authority effectively deals with clearing issues, it is referred to the part of the act that deals with native vegetation clearing and is assessed through a separate process by the Department of Environment and Conservation, not through the Environmental Protection Authority process. This bill proposes to delete the appeal right at the point a decision is made by the EPA to not assess a proposal and to refer it on. The argument is that there is already an appeal process through the native vegetation clearing process that is outlined in the act; therefore we do not need an appeal right at that point. The problem with that is that it removes the right of the public to appeal on the grounds that the proposal should be assessed by the EPA rather than by the DEC under the native vegetation clearing process. For reasons I do not understand, departmental officers continue to say that it is not a problem. It may well be the case that there will not be too many applications involving native vegetation clearing or some other aspect of environmental concern about that proposal that would warrant assessment, and that when that occurs, in the majority of cases the EPA will pick it up and decide to assess it under the Environmental Protection Act rather than refer it to the DEC for assessment under the native vegetation clearing process. The issue is that having the right to lodge an appeal at that point provides a check and balance that the EPA is getting its decisions right. That is the greatest concern that the committee has—this bill will remove a number of appeal rights that actually provide the checks and balances

which are highly valued by the community and which ensure that the process is robust and the right decisions are made.

Evidence has shown time and again that when we remove those checks and balances, the work begins to get a little sloppy, and decisions are not made of the highest level; the ruler is not run through the proposal to the same extent that it would be otherwise. When one knows that one has to justify the decision one has made, and that there is an opportunity for people to assess and judge the decision one has made, one pays more attention to the making of the decision. The concern is that when we remove those rights of appeal, we will run into a situation in which standards to which those decisions are being made will, over time, erode, and there will be no capacity to provide that check and balance, as we have seen with the administrative procedures that were announced earlier this week. In the late 1980s and early 1990s, it was standard for the EPA to consult with the proponent and the decision makers on the wording of a condition. Over time, that has eroded away, and now we are introducing new administrative procedures to bring that back in. That is the sort of problem that we face and what is being proposed in this bill. Absolutely no evidence has been presented to the committee to justify the proposed deletion of those appeal rights. There is no evidence to support that, and no evidence that the bill will achieve what it is alleged it will achieve, which is that it will shorten the assessment and approvals time lines. On the contrary, the evidence that we have from the Office of the Appeals Convener is that those appeals pick up failings in the decision making—in some cases, very important failings.

We need to retain all appeal rights; I do not believe that there is any evidence to suggest that there are delays in the environmental approvals process because of those appeal rights.

HON GIZ WATSON (North Metropolitan) [4.05 pm]: I rise to make some comments on this bill and to indicate that the Greens (WA) do not support it.

Hon Ljiljanna Ravlich: No-one does.

Hon GIZ WATSON: There is a fair amount of opposition to it; that is correct.

I will start by talking about the context of this bill and the Greens' concern about the context in which we are looking at this legislation. From my perspective and from the perspective of a lot of people in Western Australia who are very interested in good conservation management and the preservation of the environment, the premise on which this bill is based must be questioned.

The minister's second reading speech begins interestingly, for a bill supposedly about environmental matters. It starts with a comment about economic activity and growth; it sounds like the precursor to a budget speech or at least something that does not relate to the environment. It goes on to state —

> Since September last year it has been clear that the approvals system in Western Australia was in need of reform. The approvals system has created uncertainty and delays.

If I were to apply analysis 101, I would have to ask: Why is it clear? Clear to whom? What uncertainties? What delays? As we know, in any process—whether the judicial process, the review of legislation in Parliament or environmental assessment—some people will say that the process is too quick, and others will say that it is too slow. Processes, by their very nature, have a time line. If we are going to do something in a thorough and—in the case of an environmental assessment—supportable way, the process will take time. Depending on what is being assessed, environmental impact assessments inevitably take time, as Hon Sally Talbot has pointed out. The proponent may have to carry out studies over two seasons to make an assessment. There is an interesting case, which members might not know about, of a particular moth that is rare and endangered, and appears only at certain times of the year.

Hon Donna Faragher: Is that the graceful sun moth?

Hon GIZ WATSON: The graceful sun moth, that is right. It is very hard to work out whether a particular ecosystem is providing habitat for this moth; depending on when one looks in a particular section of bush, one will not necessarily find any evidence of that moth. That is just one example that illustrates that the environmental impact process, whether or not it is being carried out as part of the obligations on proponents to fulfil certain scientific data requirements, is going to take some time. Whether we think the approvals process does or does not create uncertainties and delays will vary according to the community perspective. Environmental science is my original qualification, so I know a little about what is involved in environmental assessment on the ground.

Coming from the community conservation sector, I know that for most community groups that do not receive any funding and are self-funded and largely volunteer, the approvals process is essential for those people to have input in a meaningful way and to meet the time frames. The community generally, certainly on large projects, finds that it is under a lot of pressure to respond to voluminous material in relatively short time frames. I realise

it depends on the nature of the proposal and what time has been allocated for the process. Looking at it from a community conservation sector point of view, the time that some people might define as delay is actually a reasonable amount of time in which to write a submission. The same applies here. People in government might complain that it is taking a long time to get a piece of legislation through Parliament, but members scrutinising that legislation in opposition or on the cross benches might think that time is fairly constrained when providing input.

I have not seen any substantial indication from supportable data that supports the claim that there are unnecessary delays and uncertainty. Looking at it from a business perspective, the business sector wants to get its projects up and running as quickly as possible. Its objective is to have its investments operating as quickly as it can. Therefore, there is tension. This is where the community, and the conservation sector in particular, is very concerned about the tone of where this government is going. It is not disguised in any way, but basically the tone is about streamlining and increased efficiency. Those looking at it from the other side of the fence see it as putting extreme pressure on the community and the conservation sector to respond to numerous development proposals, some of which have very large environmental impact potential. Some of them are new to Western Australia, such as uranium mining, which brings a very high level of risk and potential environmental damage. There is increased pressure for those developments and at the same time this government in all its sectors is talking about efficiency and streamlining.

It is very interesting from an environmental perspective that streamlining is really bad news. What we want to do with streams is to slow them down so that nutrients come out of them and they provide a nice habitat. Streamlining is what people do if they are about to create an environmental disaster. Maybe the language is correct! An example is the upper reaches of the Swan River, where the local environmental group will show people the impact of streamlining on the Avon River. People basically put a bulldozer through meandering vegetation and made a nice straight river. In those days it was considered to be improving the river. It is interesting, because people can stand on a bridge and look one way and see a non-functional stream that runs in a straight line through sandy banks with no vegetation and no animals, and they can look the other way and see what the environment was before the river was straightened. They can see all the vegetation and water sitting in pools. It would take all my time if I did this so I probably should not do too much of it, but I am just giving an example of why language is important. Streamlining, in environmental terms, is disastrous. I suggest that thinking about streamlining appeals provisions might be a portent of a similarly bad outcome.

The Greens in particular, representing the community and the conservation sector, will always be very sensitive when we start mucking around with the Environmental Protection Act. It is a very important piece of legislation, which has primacy over most other pieces of legislation in the state. In fact, it is the envy of many places. By and large, we think it has been working pretty well since it was introduced in 1986. It has been amended, and we are not suggesting that it should never be reviewed or that the processes under it should never be reviewed, but I would like to see a review that actually suggested how we could end up with better environmental outcomes, rather than an efficient, streamlined process. If we are looking at modifying or improving the act, that should be the objective.

Debate interrupted, pursuant to temporary orders.

[Continued on page 4038.]

Sitting suspended from 4.15 to 4.30 pm