COMMITTEE REPORTS AND MINISTERIAL STATEMENTS — CONSIDERATION

Committee

Resumed from an earlier stage of the sitting. The Deputy Chairman of Committees (Hon Jon Ford) in the chair.

Standing Committee on Legislation — Fourteenth Report — "Inquiry into the Jurisdiction and Operation of the State Administrative Tribunal" — Motion

Hon SALLY TALBOT: As I earlier stated, the fourteenth report of the Standing Committee on Legislation contained 60 recommendations. The committee received nearly 100 submissions and undertook 13 public hearings. I wish to draw attention to, and make comments on, two substantive points in the report—Hon Giz Watson will take up a number of other matters in her contribution to the consideration of this committee report.

Similar to many committee members, I found myself being lobbied, I suppose—not to dramatise it too much—about the activities of the State Administrative Tribunal. I suspect that that is probably a fairly regular part of the workload of most members of Parliament in their electorates. I was particularly enthralled by the comments of one person who came to me to complain about his experience before SAT. He had been to a local hearing in Mandurah and he said that it was nothing like *Judge Judy*. He said that everybody on *Judge Judy* is very well briefed and everything works very well, and he was terribly disappointed that SAT had fallen a little short of his expectations. However, he did make a serious point, which leads me to the first substantive comment that I want to make about the adequacy of the premises in which the State Administrative Tribunal operates. SAT has been in its temporary accommodation in Perth for some time. The accommodation at St Georges Terrace was never supposed to be its permanent home and SAT has already outgrown those premises. My comments partly focus on the accommodation inside the building. Parliament should take these matters extremely seriously, even though these matters are not uncommon in the courts of Perth. We should ensure that there is a degree of privacy and comfort for the people who participate in SAT hearings. Obviously, some of the material with which SAT deals is fairly routine and does not excite great emotions; indeed, some of it is particularly dry. However, SAT also deals with guardianship applications and has a number of disabled clients. We found that often the provisions that are made for those people are inadequate. For example, upon walking into the building in Perth, SAT clients might find themselves confronting people who they do not want to confront or being caught up in the highly emotional discussions of people involved in other hearings. Paragraph 2.679 of the report refers to the waiting areas. The submission from the Fairholme Disability Support Group states, in part —

> *There is very little provision for privacy. If a person becomes disturbed while waiting for a hearing or particularly after a hearing there is little space in which to deal with such circumstances. One may access the floor from one of the lifts and be among clients who are anxiously awaiting a hearing or venting the feelings about the outcome of such. The potential for disturbances is very high indeed. The seating provided allows for very little space between those awaiting and leaving hearings.*

There is also a question about parking for disabled people. The SAT staff have done their absolute best to try to facilitate people who cannot park too great a distance away from the building or use public transport. Nevertheless, the provision for disabled parking is patently inadequate. The former president of SAT, and undoubtedly the current president, have some firm ideas about where that parking should be. The former president mentioned that he had his eye on the former Treasury building. He thought it would be fitting to turn that building into a building that served the interests of the community. It is disappointing that a better provision has not been made for SAT. We can spend many hours talking about the legalistic aspects of what SAT deals with, but if we do not get the basics right so that people can walk in and function to the best of their ability, we are selling them short on what should be a very good and positive process.

That brings me to one of the serious points that my constituent raised, apart from the fact that the proceedings bore little resemblance to *Judge Judy*, which is that when SAT conducts regional hearings, it often operates in very trying circumstances that no-one considers to be ideal. At paragraph 2.699 of the report, the president of SAT, the Honourable Justice Michael Barker, states —

> *The tribunal goes to country areas to do business wherever it seems appropriate. We do it quite often in respect of, say, guardianship and administration matters, going to major regional centres.*

I interject on myself to point out that I have chosen to single out this particular comment because he is talking about the subjects and the types of hearings that could be very stressful for people and elicit a very high degree of emotion; that is, guardianship and administration matters. The quote continues —

> *But we do not want to sit in the Kalgoorlie courthouse to deal with a matter like this, or any other courthouse. They are intimidating places; totally inappropriate for what our decision making involves, and so we will sit in other places. In guardianship, you will finish up perhaps at the hospital, and they*

> *will say "There is a room down the end of the corridor available for you." This produces all sorts of problems, and indeed it happened in Kalgoorlie on one occasion. There is no way out apart from the way in, and if people become upset, and you do not have security available, and even if you do, it is not a good place to be. If you choose that place and someone is disabled, and they have to attend there, we are just using someone else's premises. They are not always well designed from a number of perspectives.*

It is incumbent on the government and all of us when we focus on these matters to make sure that SAT, both in its city premises and its regional hearings, sits in appropriate places that are set aside for its activities. When designing new court and judicial buildings, particularly in the regions, we should incorporate provisions for SAT into the new development.

The second substantive point I want to make has already been touched on by Hon Linda Savage, who said that SAT was established to facilitate a different kind of legal process from that which we might find in the traditional court system. It sometimes takes the form of mediation but it comes under the broad heading of "alternative dispute resolution" Having talked to friends and colleagues who have involved themselves professionally in that field, I know that is an aspect of the law that has often been resented and resisted by the more conservative practitioners of law, most of whom tend to be middle-aged males of the class that has traditionally generated members of the legal profession. That attitude is on the wane and it is high time that we in this place do everything we can to make sure that that very quickly becomes a thing of the past. Alternative dispute resolution is, without doubt, an option that we should be very actively promoting to people who do not fare well in the adversarial system that constitutes our traditional legal framework.

I was very struck by the comments made on the web site of LEADR, the Association of Dispute Resolvers, that a more accurate name for "alternative dispute resolution" might be "appropriate dispute resolution". There are many cases in which it is much more appropriate for a client to go into a room with a trained mediator to try to resolve the situation in which he finds himself than it is to undertake costly adversarial processes through a court. There will be situations when it is inappropriate for people to seek that kind of alternative or appropriate dispute resolution. There will be cases when there is no clear indication that both parties want a resolution and there will be cases in which there are points of law to be tested. There will also be cases when there is the potential for some redress to be gained by one of the parties that is clearly advantageous to one side over another. It seems to me perfectly obvious that by far the majority of cases that go to the State Administrative Tribunal, by definition, do not fall within that category.

In closing, I particularly wanted to draw the attention of honourable members to the two recommendations that specifically deal with alternative dispute resolution. I will just conclude by saying that it is recommendation 2 and the narrative of the surrounding paragraphs. At that point I will draw my remarks to a close and look forward to hearing other members of the committee comment on the report.

The DEPUTY CHAIRMAN (Hon Jon Ford): Just before I give the call to Hon Giz Watson, I remind members that under the temporary orders, we are limited to a one-hour debate per item. Therefore, an indication from other members who would like to speak would be important. I remember at the last sitting that some members missed out on speaking on reports, so if members can indicate to me if they wish to speak on this, I can make sure that I do not give one member too much time.

Hon GIZ WATSON: Is that an indication that perhaps there are no other speakers? I will probably not be more than 10 minutes.

The DEPUTY CHAIRMAN: No, it is okay. We have until 5.44 pm on this report.

Hon GIZ WATSON: As we know, the operation of the State Administrative Tribunal is a very substantial subject. Previous speakers who have contributed to this debate have said that this was a lengthy inquiry, which it was, and that it produced a very substantial report. I also reiterate my thanks and admiration for the work done by Denise Wong, who was the primary officer who worked on this report. She put in an extraordinary amount of work to assist the committee in producing its final report.

As much as the work of the State Administrative Tribunal perhaps to a lot of people is rather dry and boring, having been a part of the original standing committee that looked at the establishment of SAT, I found the inquiry into reviewing its operations quite engaging, given that prior to legislation being enacted to establish SAT we were obviously aware of a number of issues that were interesting to follow up on after SAT had been in operation for two or three years.

It is worth noting that the observations of the committee overall, which appear right at the beginning of the report in the "Executive Summary", state —

> The Committee found that the SAT is meeting its objectives and achieving its self-imposed benchmarks and noted that the SAT constantly monitors its operations in attempting to achieve best practice.

If members were to look at the overall impression that the committee had, they would see that the committee was satisfied not only that SAT was meeting its objectives, but also that the feedback that the committee had received in submissions and from witnesses indicated that the majority of people were also satisfied. We engaged in an interesting process of contacting a sample of all the people who had had matters dealt with by SAT, and that resulted in quite a number of submissions. It was a random process to try to get a sample of people who had had their matters dealt with by SAT. We did not know whether they would be people who were happy or who had had really negative experiences. Out of that random sample we received quite a significant number of submissions—99 submissions. We also heard from specific stakeholders and had 13 public hearings, which was quite an extensive process, as well as a site visit to SAT, as Hon Sally Talbot has discussed.

Again in the "Executive Summary", the committee went on to say —

> The Committee made several recommendations to improve the operation of the SAT and to clarify any ambiguities, or remove redundant provisions, in the SAT's empowering legislation. For example, the Committee recommended that:
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> - section 24 of the *State Administrative Tribunal Act 2004* be amended to expressly require the original decision-maker to provide the SAT with documents and materials which are otherwise subject to legal professional privilege and/or public interest immunity …

Interestingly enough, this was one of the recommendations—recommendation 9—that was not supported by the government, which I think is disappointing. I have not had the opportunity to go into the detail of the government's rationale for not accepting that recommendation of the committee. However, that is one of the recommendations that was not accepted.

The other significant recommendation that I had a keen interest in, and continue to have a keen interest in, is about certain third parties being permitted to apply to SAT for the review of planning approval decisions. That was recommendation 18 of the committee's report. Again I note that in the government's response, it has not rejected outright all the recommendations that relate to these third-party appeal rights, but it has basically said that it is engaging in its own process of looking at planning approvals and environmental approvals and that it will withhold its final position on the recommendations in the committee report until it has completed those processes. For example, recommendation 5 of the committee's report states —

> … **that the *Planning and Development Act 2005* and any other of the State Administrative Tribunal's relevant enabling Acts be amended so that the right to apply for a State Administrative Tribunal review of a decision relating to a proposal under those Acts does not arise until after:**
>
> **(a) the completion of any environmental impact assessment process under Part IV of the *Environmental Protection Act 1986* which is related to the proposal;**
>
> **(b) the completion of any appeals which may arise out of that Part IV process; and**
>
> **(c) the expiry of any appeal periods applicable to that Part IV process.**

Recommendation 18 states —

> **The Committee recommends that the *Planning and Development Act 2005* be amended to give third parties who have previously made submissions about, or objected to, a planning proposal at earlier stages of the planning approval process, and:**
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> **(a) who are directly affected by the planning proposal; or**
>
> **(b) the planning proposal is a matter of public or environmental interest,**
>
> **a right to initiate an application for a State Administrative Tribunal review of:**
>
> **(c) the grant of planning approval;**
>
> **(d) the refusal to grant planning approval;**
>
> **(e) the conditions, if any, imposed on the grant of planning approval; or**
>
> **(f) the amendment, revocation or suspension of the grant of planning approval.**

Members are probably aware that this issue of third-party appeal rights under planning and environmental legislation is one that the Greens have pursued vigorously in this Parliament for more than a decade. Work was done by the committee to hear submissions and to take evidence about amending both the environmental protection legislation and the planning legislation to enable third parties to lodge appeals, and this was supported

unanimously by the committee. For the government of the day to not accept the recommendations of the committee, for me, is very disappointing. Perhaps it reflects the change in government since the committee first started this review, although it is fair to say that the previous government also did not support changes to legislation to provide for third parties to have access to appeals processes. Western Australia is the only state in Australia that does not provide, albeit with some limitations, access for third parties to appeal environmental approval and planning approval decisions. The committee clearly recommended that the State Administrative Tribunal was an appropriate body to deal with those third party appeals, with some restrictions on that, as I have just read out, being that the third party had to have already been a party to making objections or comments at the earlier stages of planning approval, rather than coming in at the last minute. I would put in an extra plea to the government to consider these recommendations. I realise that the government is currently engaged in its own review of planning and environment assessment processes, and I urge it to look carefully at the detail of what the committee discussed in this report because we do go into it in some detail. I think the government will find, as these recommendations had the support of the full committee and a lot of thought went into putting in place an appropriate level of appeal, that it would improve the expediency of planning and environmental assessment processes to have an appeal to a body like SAT, which can, as we know, consider the relevant matters de novo and provide an opportunity for interested third parties to have their views considered. It is interesting, as far as I understand, that the only time SAT has listened to third party appeals on a planning matter was a few years ago when, under a provision of a local law of the City of Albany, SAT heard from third parties about their objections to the height of a multi-storey proposal in the centre of Albany. The height of the building was the main issue and SAT made a recommendation to modify that proposal, to the satisfaction of that community. That process worked quite well. I was interested in that, not the least because my parents were one of the third parties engaged in the decision, but it is an example of where SAT heard from those people in regard to a planning approval process. We do have a working example in this state, and I think that successive governments that have been reticent or anxious about providing third parties with appeals rights should look closely at what this report says and they might find it is not what they think it is. The evidence from other states in Australia is that it has not caused the disruption, delays and vexatious applications that people would claim have occurred. That is simply not the evidence. I ask the government to look closely at that scenario to see whether it can support the committee's recommendations.

The committee made some recommendations, a substantial portion of which have been supported by the government. We are particularly pleased that the government has supported the recommendation regarding accrediting mediation and considering utilising intake specialists to prepare parties for mediation and compulsory conferences, and the second recommendation that SAT consider either having all its mediators nationally accredited or becoming the recognised mediation accreditation body. A very important part of SAT's function is to be a low-cost, user-friendly and less-legalistic jurisdiction, which it was always contended to be established as, particularly in those jurisdictions where resolutions can be mediated before having to go to a full tribunal hearing. We had some very good evidence from some of the experts in the area of mediation, which I found very interesting.

The other area in which we had some criticism of the operation of SAT was in that difficult area of guardianship issues, which will always be challenging, whoever the decision-making body is, and not surprisingly there were some people whose experience in those matters had been negative. The committee had to consider whether that might have been the case, no matter what the jurisdiction was and whether there were perhaps limited changes that the tribunal could actually make. It is a very emotional and difficult area of conflicting rights and responsibilities in terms of guardianship issues. We did note that SAT should continue to liaise with the Disability Services Commission to address the issues of the power imbalance between people with disabilities and other interested persons in its proceedings. Again, that was one of the few areas where there was some criticism of the State Administrative Tribunal. Hon Sally Talbot made reference to the actual premises of the State Administrative Tribunal, which is emphasised in the executive summary, and we recommended that the government provide adequate resources to relocate SAT to another permanent location as soon as practicable after the expiry of the lease at its current premises. It had a number of problems with its premises, size being one, but also the question of a limited adaptation of the existing building to provide separation between parties, who should ideally be kept separate ahead of hearings or after hearings. Being an old building, there were issues of access and parking, particularly for people with disabilities or special needs.

I applaud the State Administrative Tribunal for the work it is doing. It is providing a very good service to the community of Western Australia across a whole range of jurisdictions.

On a lighter note, I am disappointed that despite our further recommendations on the question of appeals in the area of racing and gaming that the government has not accepted the recommendations to include that jurisdiction under SAT. I guess it is going to continue as it is. That was recommendation 52 that the Racing Penalties (Appeals) Act 1990 be amended to transfer the functions exercised by the Racing Penalties Appeals Tribunal of Western Australia under the act to the State Administrative Tribunal. I guess it is one of those historic inertias in

this state that racing is going to continue to want to look after its own business. I am not sure that is ideal, and maybe it is not a huge matter but it is interesting that they managed to continue to stay outside of that review that could be offered by the Administrative Tribunal.

Also, I wanted to particularly note the excellent work of Hon Justice Michael Barker, who was the President of the State Administrative Tribunal. I am not sure of his title now. Hon Justice Michael Barker showed extraordinary leadership and planning in successfully establishing the State Administrative Tribunal in Western Australia. I guess the culture and the good work that the tribunal does certainly reflects the impetus and energy he put into setting it up. I commend this report to the house; it is a substantial report. It would probably not be everyone's cup of tea to read it in detail.

Hon Nick Goiran: Michael Barker is a judge of the Federal Court.

Hon GIZ WATSON: Thank you very much.

The tribunal carries out an important range of functions. I hope it will continue to be resourced and supported by all future governments to do that work well on behalf of the Western Australian community.

Question put and passed.

Joint Standing Committee on Delegated Legislation — Thirty-fourth Report — "City of Joondalup Cats Local Law 2008" — Motion

Resumed from 19 May on the following motion moved by Hon Giz Watson —

That the report be noted.

Hon ROBIN CHAPPLE: A matter came before the committee relating to the City of Joondalup local law 2008 that at times created great mirth among committee members. Comments were made about cat naps and catastrophic events or "impurfect" legislation. It is a committee report that cut through the issues pertaining to committee members' preferences for these matters and certainly went to the heart of whether indeed clauses 7, 18 and 21(b) of the local law were envisaged under the Local Government Act 1995. The Joint Standing Committee on Delegated Legislation raised a number of concerns with the City of Joondalup over a number of weeks as we sought undertakings on those concerns. Although the City of Joondalup was prepared to provide undertakings on several issues, several other matters remain outstanding. The city did not provide undertakings on the committee's significant concerns about clauses 7, 18 and 21(b) of the local law. The committee was of the view that clause 7 of the local law was neither authorised nor contemplated by the Local Government Act and, further, it is a provision that would have been more appropriately contained in an act. As such, clause 7 offended the committee's terms of reference 3.6(a) and 3.6(f). To provide the house with an idea of what those references referred to, 3.6(a) reads —

(a) is authorised or contemplated by the empowering enactment;

We felt that reference did not comply with the empowering enactment. Reference 3.6(f) reads —

(f) contains provisions that, for any reason, would be more appropriately contained in an Act.

Once we had completed our review we proposed recommendation 2, which reads —

The Committee recommends that the Minister for Local Government give consideration to introducing a Cat Bill into the Parliament dealing with such issues as the sterilisation of cats in certain circumstances.

To move on, it is interesting to note what clause 7 of the City of Joondalup's local law intended —

All registered cats within the City shall be sterilised except cats owned by residents in possession of written approval from the City to keep up to 6 adult breeding cats in accordance with clause 45(2) of the City's Animals Local Law 1999.

In considering the local law, the committee noted that it was the first time a local government had attempted to impose compulsory sterilisation on an entire local government area under the delegated power in section 3.5 of the Local Government Act. In going through the processes, we looked at many aspects of that. But I suppose the committee took the view that clause 7 of the City of Joondalup local laws raised the extent of the legislative power delegated to local governments. In particular, the committee considered whether the clause sought to widen the scope of 3.1 of the Local Government Act by legislating for a matter that went beyond the accepted notions of local government to make local laws for the good government of the persons in their district. Information was provided to the committee by both the City of Joondalup and, indeed, the City of Albany, in relation to issues surrounding cats in their districts and the reason the laws requiring compulsory sterilisation of cats "were directed to the good government of persons within their districts". Policy issues of whether compulsory sterilisation of cats is desirable was not actually a matter for the committee's consideration.

Although the committee did consider the issue of whether cats should or should not be sterilised, it was quite clearly outside the realm of debate. It is not the committee's role to consider whether a local law in question addresses an identified problem, but rather to examine whether it is authorised or contemplated by the act or is a matter more appropriately dealt with by state Parliament. The committee believed that the matter was more appropriately dealt with by state Parliament. But the committee did not believe that clause 7 was indeed contemplated by the Local Government Act. In its report the committee noted that clause 7 —

- imposes requirements on residents to fund and have carried out a surgical procedure which alters the condition of their private property;
- takes effect in relation to cats that may never leave their owner's residence or pose a risk to wildlife;
- produces an outcome, sterilisation, that is not linked only to the district, but continues to impact on a cat owner for the rest of the cat's life wherever they choose to live should they leave the local government area; and
- deals with policy matters of statewide concern and interest which require the consideration of the State Parliament.

It was interesting to note that, when we looked at the sterilisation of dogs, the Dog Act 1976 applies to all local governments. It is therefore clear that the intent of the Dog Act is to allow local governments to deal with matters in relation to dogs. But we could find no intent in the Local Government Act 1995 or indeed in any other act that gave local government the ability to independently, and in a manner that affected others, apply sterilisation of cats. The committee considered that the Dog Act is relevant to the committee's inclusions, as it indicates that the Parliament has considered sterilisation of dogs to be a matter that requires authorisation at a state level and, therefore, the consistency of application of the Dog Act on the one hand and an independent council making regulations discreetly in its own area were inconsistent.

Interestingly enough, the committee initially operated on the assumption that, with the exception of the Cities of Joondalup and Albany, sterilisation of cats was not an area that had previously been subject to local laws. As we continued the inquiry, the committee became aware that the City of Armadale prohibited cats that were not sterilised from certain areas within the city. However, we concluded that, from a practical sense for the purpose, it did not alter our position because we felt that that was in power as it was restricted to areas and did not apply a compunction on members of the public to sterilise their cats; it merely provided that cats that were not sterilised could not go into certain areas.

The committee concluded that clause 7 was an attempt to widen the scope of the general function found in section 3.1 of the act. The committee was of the view that clause 7 goes beyond the accepted notion of local government in that it imposes a law on a highly controversial and emotive subject that had significant implications beyond its district. Clause 7 results in a permanent effect, whether the owner of the cat in question continues to reside in Joondalup or another area. Potentially, this would lead to inconsistency of application throughout the state. Further, the committee did not consider that the scope of "general function" extends to local government legislative matters that by virtue of their potentially unique and controversial nature and their impact at the state level should be debated by the state Parliament.

It is also interesting to note a couple of other areas that the committee looked at. Part of the problem faced by the committee was, indeed, that we could not get a satisfactory answer from the City of Joondalup about some of the requirements that we required it to undertake in responding to our concerns. Clause 8 of the local law required cat owners to ensure that their registered cats could be identified by one of three methods—that is, a collar, a tag attached to a collar or an implanted microchip. However, it was noted that clause 18 of the local law required a registration tag to be worn by registered cats, so we found that eventually cats would have to wear a collar and have a microchip. We felt that was quite onerous; it was getting to the stage that cats would be required to have all manners of identification and that identification would not be isolated to one or another.

It was an interesting committee inquiry, and one that the committee took very seriously. At this time I really do need to mention the assistance and, indeed, advice and support we got from our advisory officer, Christine Kain, on this issue. It was an issue that went on for some time. I urge members and even local governments that consider making recommendations on local cat laws to review the Joint Standing Committee on Delegated Legislation's thirty-fourth report in some detail. Again, on behalf of the committee, because of the inconsistencies and the concerns raised by local government, I urge the Minister for Local Government to consider introducing a cat bill into Parliament to deal with issues such as the sterilisation of cats.

Question put and passed.

Kimberley Science and Conservation Strategy — Statement by Minister for Environment

Resumed from 18 March 2009.

Motion

Hon SALLY TALBOT: I move —

That the statement be noted.

It is now some time, well over a year, since Hon Donna Faragher, Minister for Environment, came into this place and made the statement about the Kimberley science and conservation strategy. The statement itself was very much to be welcomed. It reads, as honourable members who have undoubtedly refreshed their memories about the content of the minister's statement know, a little like a travel brochure. However, it is hard to say anything other than hyperbole when talking about an area like the Kimberley. Therefore, that comment is not a criticism of the minister; it is offered more as an observation of the place that she spoke about. The statement is full of good intentions and it will be incumbent on us in this place and on the opposition generally to ensure that many of these things are delivered.

In the course of noting the statement, I will make a couple of comments about a number of things that have happened in the ensuing 14 or 15 months. I make my comments under the umbrella of the general community perception, which unfortunately the minister has done little to allay, that the government's heart is not really in this project to protect the Kimberley.

Hon Donna Faragher: Can't you try not to be negative for one day?

Hon SALLY TALBOT: The Deputy Chairman (Hon Jon Ford) will note that I am not making these accusations myself; I am saying that there is a perception in the community that the government's heart is not in the implementation of this strategy. The minister is clearly upset and agitated by my observations. I do not know whether she talks to people outside her own cabinet room when she asks for feedback about community perceptions. However, if she is that surprised to hear me make that observation, I suggest the minister get out a little more. The reality is that ever since this government took office about three-quarters of the way through 2008, it has completely botched its approach to the Kimberley in all sorts of different ways.

When the Labor Party was in government, we had in place a process that one would have to be extremely churlish to say was not a sound process. I say that not out of any particularly partisan intent—although, clearly I will defend many things that the Labor Party does —

The DEPUTY CHAIRMAN: Order, members. Noting the time, I am required to report progress.

Progress reported and leave granted to sit again, pursuant to temporary orders.

Sitting suspended from 6.00 to 7.30 pm