

Hon Giz Watson; Hon Dr Sally Talbot; Hon Donna Faragher; Hon Adele Farina; Deputy Chairman; Hon Simon O'Brien; Hon Liz Behjat

Committee Resumed

Hon GIZ WATSON: I realise that events have moved on, but I think the minister was about to elaborate—for whichever draft we are talking about; I hope they are substantially the same—on the details of the administrative procedures that provide public access to the processes of the Environmental Protection Authority.

Hon DONNA FARAGHER: The procedures are on pages 6 and 7 of the final draft.

Hon Adele Farina: Which version are we looking at?

Hon DONNA FARAGHER: It is version 9.

Hon Adele Farina: I do not have it.

Hon DONNA FARAGHER: It is being distributed. I will read it out to Hon Giz Watson. On page 7 it states —

Once the EPA has enough information about a proposal referred, the EPA will publish the referral information on the EPA website. The EPA will provide a 7-day public comment period on each referred proposal before it proceeds to make a decision on whether or not to assess the proposal, and if so the level of assessment. Comments on the referral information must be made using the Referral Comment Form available on the EPA website.

The referral information should not contain information that is confidential, as the referral information will be published.

Proponents and DMAs are to provide an electronic copy of the referral information submitted to the EPA, at the time the proposal is referred, to enable the information to be readily uploaded onto the EPA website.

Hon SALLY TALBOT: I ask the minister again whether she will report progress. I give her an undertaking, to the extent that it is within my capacity to do so, that it would need to be only for the 15 minutes before the lunch break. The document that the minister has now provided to us is 31 pages and the version that we have been working with is only 27.5 pages.

Hon Adele Farina: It is 32 pages.

Hon SALLY TALBOT: Is it?

Hon Adele Farina: My version is.

Hon SALLY TALBOT: I seem to be missing a page; I do not have page 32. It is some three or four pages longer than the document that we have been working with. Even the preamble has grown by a paragraph. It is really problematic if the minister insists on proceeding with this debate when many members in this chamber need to read the revised documents. I can read pretty fast but I cannot compare and contrast two 30-odd page documents while focusing on and contributing to the debate. I ask the minister again, for the sake of 14 minutes, to please give us the lunch break to look at the revisions that have been made without our scrutiny.

Hon DONNA FARAGHER: I inform the house that, as I understand it, the additional parts relate to the beginning of the document regarding the principles of the environmental impact assessment for the EPA and the principles of the EIA for the public. The beginning of the document has been added to, which has added to the volume.

Hon SALLY TALBOT: I take it that means no, so we will press on. The minister will have to go into a bit more detail than that, I am sorry. The “purpose and scope” in version 9 has grown by about half a page. Can the minister tell us how the first paragraph has changed between the two drafts, please?

Hon ADELE FARINA: Excuse me, Mr Chairman; just while we are waiting for the minister to respond, we have been provided with version 9, which gives us 31 pages of the 32 pages that comprise the document. None of us, to the best of my knowledge, have page 32 of 32.

Hon Sally Talbot: It stops mid-sentence.

Hon ADELE FARINA: I would appreciate it if we could get a copy of page 32 of 32.

Hon DONNA FARAGHER: I now see that the document I have, which is the one the members wanted, has 31 pages of 32. I previously indicated to the chamber that I was happy to get a clean, full copy for members; but, no, they did not want that. Members did not want that, so they have now got this copy, which—it has now become apparent to me—has one page missing. The member asked for the copy I had, which, as I said, is a

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working draft, and I provided it to the member. I reiterate that I was happy—go back and check *Hansard*—to give the member a copy of version 9.

Hon Adele Farina: But that doesn't assume that we would get all 32 pages.

Hon DONNA FARAGHER: I am just making the point that I tried to be helpful but the member wanted to be difficult.

Hon Adele Farina: No; we didn't want to be difficult; we want to be able to review the information. The Parliament is considering the bill now, and we are entitled to have the information.

Hon DONNA FARAGHER: I have given the member the information that I had.

Hon ADELE FARINA: I acknowledge that the minister has provided us with the document that she has in her possession; however, the document is missing a page, and I think this Parliament is entitled to have the full document so that we are fully informed while we consider this bill. Not only is this government using its numbers in this chamber to push through this bill regardless of the community's concerns and those being expressed, but the government is now expecting us to do it without the full information. I think that is completely unreasonable, and the tack the minister is taking is only going to further delay the progress of this bill in this chamber. None of us on this side of the chamber expected the consideration of this bill to take as long as it has.

Hon Donna Faragher: Yes, you did.

Hon ADELE FARINA: And it will take a lot longer if the minister continues to be difficult.

Hon Kate Doust: You're just being petulant.

Hon Liz Behjat: She has been more than accommodating.

Hon ADELE FARINA: No, she has not.

Hon DONNA FARAGHER: I am not being difficult; I have said that I will give the member a full copy of version 9. It has only just been brought to my attention that a page is missing. I was not aware of that because it was a working draft. I am happy to get a copy of the full draft, but I, obviously, do not have that; I was just provided with a working document. But the notion of being petulant is quite wrong.

Hon Adele Farina: I didn't say that.

Hon Kate Doust: I said that.

Hon DONNA FARAGHER: Sorry; Hon Kate Doust suggested that I was being petulant. I indicated that I was very happy to get a clean copy —

Hon Kate Doust: It was your tone, minister.

Hon DONNA FARAGHER: — but that was not agreeable to Hon Adele Farina at the time.

Hon Adele Farina: It is now.

Hon DONNA FARAGHER: It is now? I hope that is recorded in *Hansard*.

Hon ADELE FARINA: We will just continue to debate this until we have the full copy—that is not a problem.

The front page of the final draft refers to the transition provision, and it states —

The Environmental Protection Authority gives notice that proposals being assessed prior to gazettal of the *Environmental Impact Assessment Administrative Procedures 2010* will continue to be assessed under the processes described in the *Environmental Impact Assessment (Part IV Division 1) Administrative Procedures 2002*.

Will the minister please table a copy of the environmental impact assessment part IV, division 1 administrative procedures 2002?

Hon DONNA FARAGHER: The 2002 version would have been gazetted; I am happy to get a copy of that for the member though.

Hon Adele Farina: Some time soon, so that we can consider it during this debate.

Hon DONNA FARAGHER: Yes; we will ensure that that is provided to the member.

Hon SALLY TALBOT: Can I just check whether the minister has come into this place for this debate without a complete copy of the administrative procedures?

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Hon DONNA FARAGHER: I have been provided with a working draft during the debate, from which, it appears, there is one page missing.

Hon SALLY TALBOT: Does the minister have a copy of the latest final version of the administrative procedures?

Hon Donna Faragher: That is version 9.

Hon SALLY TALBOT: But version 9 is not complete.

Hon DONNA FARAGHER: On a number of occasions during this debate I have indicated that the draft administrative procedures have been out for public comment, and some minor amendments are still being made to the draft. The final procedures have not been finalised, and, therefore, gazetted.

Hon Sally Talbot: So are we in a state of limbo?

Hon DONNA FARAGHER: I have already responded to questions from Hon Sally Talbot or Hon Adele Farina—I cannot quite remember who—in the past couple of days about this matter. I have indicated that there are some minor editorial matters to be dealt with, as I understand it, before they are finalised.

Hon SALLY TALBOT: In order that we can make the best use of lunchtime, can I ask the minister about missing page 32? In draft version 8, the final section, which is on page 27, is the last part of schedule 2. It is section 5 of schedule 2 on page 27 of version 8, which reads —

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and it has seven paragraphs. Can the minister confirm that in the draft she has just given us, which is version 9, section 5, schedule 2 starts on page 31? We have paragraph 1, which begins —

The EPA will provide a copy of the submissions —

and we have the first two lines of the second paragraph, which read —

The proponent will be required to prepare a written response ...

Can we assume that the rest of section 5 is identical in version 9 to section 5 in version 8?

Hon DONNA FARAGHER: I have indicated to the chamber that I will provide a copy of the full version 9, and that will be circulated as soon as possible.

Hon SALLY TALBOT: Would it help if I provided my copy of version 8 to the minister so that she can check?

Hon DONNA FARAGHER: I have said that if the member wants version 9, I will provide the chamber with a full copy of version 9; that will be provided as soon as it is received.

Hon SALLY TALBOT: Will that be by the time the debate resumes after lunch?

Hon Donna Faragher: Yes.

Hon ADELE FARINA: The transition provision in this incomplete final draft version 9 reads —

The Environmental Protection Authority gives notice that proposals being assessed prior to gazettal of the *Environmental Impact Assessment Administrative Procedures 2010* will continue to be assessed under the processes described in the *Environmental Impact Assessment (Part IV Division 1) Administrative Procedures 2002*.

All proposals referred to the Environmental Protection Authority after gazettal of the *Environmental Impact Assessment Administrative Procedures 2010* will be assessed under the procedures described in the *Environmental Impact Assessment Administrative Procedures 2010*.

Sitting suspended from 1.00 to 2.00 pm

Hon DONNA FARAGHER: I table version 9 of the draft “Environmental Impact Assessment Administrative Procedures 2010”. I understand that a copy has also been placed on the member’s desk.

[See paper 2410.]

Hon ADELE FARINA: Before the break I was referring to the transition paragraphs in the final draft of the “Environmental Impact Assessment Administrative Procedures 2010” version 9 document. I will not read them again. I find it interesting and somewhat concerning that the transition provisions do not make any reference to the enactment of a bill that is currently before the chamber or that the application of the 2010 administrative procedures do not appear to be linked to the enactment of all the provisions of the bill currently before the chamber. It concerns me that we may find ourselves in a situation in which the bill is enacted but the administrative procedures 2010 have not been gazetted, and, in such a situation, for any proposal then before the

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EPA at the initial stages the community would find that the right to appeal on the level of assessment has been deleted. That is, the administrative procedures 2010, which provide the seven-day community comment opportunity, have not been gazetted and are therefore not available to the community. I would like the minister to give an undertaking to the Parliament that this situation will not arise and that at all times the community will have either an appeal right on the level of assessment or the seven-day opportunity to comment, which are provided under the administrative procedures.

Hon DONNA FARAGHER: I recall when we debated clause 2 on Tuesday night and we were dealing with matters surrounding transitional provisions that Hon Adele Farina asked when those parts would come into operation. I confirmed that those elements that were required for matters relating to environmental impact assessment procedures and issues around the computer system and the like would not come into force until those matters were finalised. I have given that commitment.

Hon ADELE FARINA: I understood the request I made then related to the minister's undertaking that administrative procedures would not be enacted for those provisions in the bill until such time as the computer systems were up and running. This question is a bit wider than that. It is about not having a situation arise in which we have deleted the appeal provision but the administrative procedures have not been gazetted and therefore the seven-day right to comment is not in place and the appeal right is lost. I take it from the minister's response that she has given an undertaking that that situation will not arise. I am comfortable with that.

I have been comparing the preamble in version 9 with that in version 8. Version 9 reads —

The Environmental Protection Authority undertakes the environmental impact assessment of some proposals referred to under Part IV of the *Environmental Protection Act 1986*. Environmental impact assessment is a systematic and orderly evaluation of a proposal and its impact on the environment.

I am interested in the fact that the word “significant” has been deleted in version 9 but was included in version 8. Given that the act refers to “significant” environmental impacts, I ask the minister whether there has been some shift in the government's position. Could the minister explain why that word is being deleted, as I would have thought it was relevant to keep it consistent with the legislation?

The DEPUTY CHAIRMAN (Hon Jon Ford): There were a number of conversations going on in front of Hon Adele Farina that would have made it very difficult for the minister to hear—I had trouble hearing—and there were other conversations taking place. I ask members if they can keep the noise down, so we can understand the debate, especially when quite a lengthy discourse is occurring as it would make matters a lot easier.

Hon DONNA FARAGHER: There are no changes to the effect that have been suggested by Hon Adele Farina. The member asked whether there has been any substantive shift by the government. No, there is not. I appreciate that I have tabled the administrative procedures document, and I was happy to table it; however, the administrative procedures are not the bill. I appreciate that we have an amendment before the chamber, but we are dealing with the bill, not going through the administrative procedures line by line.

Hon ADELE FARINA: Would the Deputy Chairman like to hear submissions on the issue?

The DEPUTY CHAIRMAN: I have not seen any evidence that the member is going to go through the administrative procedures line by line.

Hon ADELE FARINA: I have not had a chance to go through both versions of the administrative procedures in detail. To the extent that I have, there are some omissions in version 9 that I think are significant given the undertakings of the minister that relate to the bill currently before us. Parliament needs an opportunity to explore these, particularly given that the amendment before the chamber seeks to require the administrative procedures to go through the same process as regulations, which would then enable this chamber to review changes to the administrative procedures or the enactment of new administrative procedures. The minister has indicated the government will not support that. In view of the refusal by the minister to give this Parliament an opportunity to scrutinise the administrative procedures, and given the evidence we now have that there have been significant changes between versions 8 and 9, and there does not appear to be any ability for community comment on those changes, it is reasonable that the Parliament be able to explore them at this opportunity. It highlights the reason Hon Sally Talbot has moved her amendment and it is why this Parliament should be able to scrutinise the administrative procedures. They will have a significant impact in the way environmental impact assessments are undertaken in the future.

I will go onto my next question. Again in the preamble, a sentence has been omitted in version 9 that was in version 8; namely —

Successful environmental impact assessment is supported by co-operation, effective communication and strong working relationships between all stakeholders.

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I want to know why these words have been deleted in version 9 and whether the deletion of these words represents some shift in the way the government intends to deal with the environmental impact assessment process.

The DEPUTY CHAIRMAN: A couple of issues have been raised. One basic argument was the contention that we should be allowed to go through every single administrative procedure. The other contention is that we do not do that because it does not form part of the bill. It does, however, relate to the consideration of the procedures in so much as it relates to supporting the arguments either for or against the proposed new clause. I would be hard pressed to accept as a reasonable argument that the committee needs to consider every single procedure. If the committee wants time to examine all those procedures, the suggestion I make is to defer consideration of the new clause. I do not think it would be in the committee's interest to go through the procedures line and verse, except maybe a few, to support an argument for or against the clause. That is a view I have put. I am not saying the chamber should not examine the procedures, but I am suggesting that we do not go through it clause by clause. If members want time to examine the procedures in support of this, I suggest that we defer consideration of the clause. The chamber is in control of its own direction. I will give the minister the call.

Hon DONNA FARAGHER: I reiterate that these are not finalised procedures. However, the member has referred to the removal of one paragraph in the preamble. As I indicated before lunch, the new draft 9 includes new sections at the beginning that identify the principles of EIA for the EPA, which was not in draft 8, and the principles for environmental impact assessment for the proponent. They refer to matters that seek to promote public comment appropriate to specific proposals. In fact, it has been broadened within the principles outlined on pages 3, 4 and 5. It is stated on page 5, under number 6 "Principles of EIA for the Public", at paragraph 2 —

Engage as early as possible in the process.

It has actually been expanded to quite clearly give the principles for the proponent, for the EPA and for the public.

Hon SALLY TALBOT: I have never had an interest in drawing this debate out. However, I do have an interest in getting certain things on the record. A member of the minister's own party this morning, a member of the commonwealth Parliament, was quoted as saying that it is not up to oppositions to govern the country; it is up to oppositions to hold governments accountable. I take that part of my job very seriously. That is what I am trying to do here. I understand the import of the Chair's ruling; we will not work through this line by line. In a slightly different context, on two or three occasions this morning we asked the minister to report progress to the house to give us a chance to do the work that I think the Deputy Chairman was just referring to so that we know exactly what we are dealing with. Frankly, I think it was an extraordinary circumstance to find that we were not able to get copies of the most up-to-date draft administrative procedures. The minister did not even carry a complete copy. With all that in mind, I refer the chamber to my amendment which simply asks the minister to accept a new subsection (3) in section 122 to make these administrative procedures a disallowable instrument. Can the minister show me anywhere in this draft 9 where there is a clause that would not be appropriately subject to the provisions of a disallowable instrument?

Hon DONNA FARAGHER: As I have indicated, these set out objectives, principles and procedures for the Environmental Protection Authority. I appreciate that the opposition would like the government to support the amendment, but the government has indicated that it will not be supporting Hon Sally Talbot's amendment. I bring the member to what she said at the very beginning when she moved the amendment; that is, the procedures have served us well since 1986 and there is no reason to suggest that they will not serve us well in the future. It is not the government's intention to make them regulations and disallowable.

Hon SALLY TALBOT: The minister is being completely disingenuous here. She knows that circumstances have changed. She knows that since 1986, when the act was proclaimed, there has never been a government that walked into this place and removed appeal points to such an extent that this government has proposed. There has never been a government that delivered a second reading speech that bore no resemblance to the intent of the bill. There has never been a government that walked into this place and listened to what now amounts to many hours of argument and was unable to put up a single counterproposition of any integrity whatsoever. Minister, that is what has changed. The minister should not take my word for it. She should ask the members of the Environmental Stakeholder Advisory Group. Most of those sitting around the ESAG table were appalled when she walked in with the Approvals and Related Reforms (No. 1) (Environment) Bill 2009. They hate this bill. They have been talking to me and Hon Giz Watson. They have tried to talk to the minister, but she renders herself deaf to their pleas. We have never faced a circumstance such as this, which is why I have made the point clearly. I am sure the minister has not failed to understand it. Up until now section 122 of the Environmental Protection Act and the procedures for formulating the administrative guidelines, principles and objectives have, as the minister said, worked well. We are living in a changed world. After the election the government changed

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and Hon Donna Faragher became the Minister for Environment. All of a sudden the Western Australian government is not driving an environment agenda. All of a sudden the forces —

Hon Donna Faragher: It has more of an agenda than what happened under your government when you were the parliamentary secretary. It did nothing for eight years.

Hon SALLY TALBOT: Is the minister seeking the call?

Hon Donna Faragher: No, I am making a statement of fact. The Labor government did nothing in eight years.

Hon Adele Farina interjected.

The DEPUTY CHAIRMAN (Hon Jon Ford): Order, members! We have rules of debate in this chamber. The member on his or her feet has the call. I need to be able to name the member who has the call so that Hansard knows to whom to point the camera and attribute the words. Let us stick to the rules. I give the call to Hon Sally Talbot.

Hon SALLY TALBOT: I will resist the temptation to take up another few hours of debate by going over everything that the Labor Party did from 2001 to 2008 to accrue significant benefits for the environment. Of course, there is always more to do. Hon Donna Faragher would know that better than anyone else in Parliament. When she walked into the office and took over as Minister for Environment a heap of stuff on her desk was awaiting the final sign-off. Has she done anything about marine parks? No, not one single thing, apart from fast-tracking Camden Sound in response to the Premier asking her to come up with something green to get him off the hook in the Kimberley. I hope members do not feel that I am straying too far off the point.

Point of Order

Hon DONNA FARAGHER: Hon Sally Talbot is straying quite significantly from the bill at hand. She is talking about marine parks and a range of other matters. We are dealing with the Approvals and Related Reforms (No. 1) (Environment) Bill 2009.

The DEPUTY CHAIRMAN: There is no point of order, although I take the minister's point. Although discussion can be broad, eventually we have to get back to the main point.

Committee Resumed

Hon SALLY TALBOT: That is precisely the direction in which I am heading. I give the house an undertaking that I will resist the minister's invitation to extend the debate in directions that move away from the subject matter at hand, because the subject matter at hand is very serious.

Things in this state have changed. Under normal circumstances the government would be proud to proclaim that change. However, we are in the extraordinary circumstance in which our government does not have a plan or an agenda. It is proceeding by a series of thought bubbles and directives from the Premier, who is the only person showing any authority. The environment agenda of this state is now being driven very firmly by pro-development forces. No-one on this side of the house, in the Labor Party at least, is anti-development. In our eight years of government, we oversaw one of the biggest industrial and developmental booms that this state has ever seen. Nobody can say that we were anti-development. We always strove to the best of our ability to rate environmental concerns as highly as we did the need to develop the state, create jobs and expand opportunities. All of a sudden everything has changed. With the change of government has come a lack of focus on developing the state. With the change of government has come a change in rhetoric.

The DEPUTY CHAIRMAN: Order, member! Earlier I talked about allowing a broad conversation. However, we are dealing with proposed new clause 18, specifically that the words to be inserted be inserted. Whilst I appreciate what the member is saying, it is sounding a bit like a second reading speech than debate on a clause or amendment in committee. I advise the member to bring her remarks closer to the point at hand.

Hon SALLY TALBOT: I am pointing out to the chamber what has changed. Last night I began debate on new clause 18 by indicating that the Labor Party has very serious concerns about deleting section 122. We believe that that section has served us well up to this point. The key words are "up to this point". We are now in a changed world. We are now dealing with a government that is seeking to make substantial changes to appeals procedures. This government has tried to sell us the wholesale withdrawal of points of appeal. When we asked for the reasons for that and when we asked for the rhetoric in the second reading speech to be explained—that rhetoric being about duplicative and delaying mechanisms that take a long time to resolve—and when we asked for concrete evidence that that is the case and that the removal of appeal rights will speed up the process and make it more efficient, that evidence has not been forthcoming in all these hours of debate, which is why I have moved the amendment standing in my name. My amendment simply asks—nothing more—that the administrative procedures are subject to the same disallowance provisions as the regulations relating to the

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Environmental Protection Act. The minister has not been able to provide one substantial reason why there is a problem with that. I am still waiting to hear from her, but I am happy to move on with the debate.

Hon ADELE FARINA: I support Hon Sally Talbot's comments. Members on this side of the chamber feel strongly about her amendment because the amendment proposed by the government, and the move to put more of the environmental impact assessment process into administrative procedures rather than having them provided for in the legislation, raise real issues for this Parliament in terms of adequately scrutinising administrative procedures. If they were regulations, we would at least have an opportunity to review them and the changes that are being made. By way of illustration, I refer to a simple comparison between version 8 of the administrative procedures and version 9 of the administrative procedures. I understand that because an amendment was made during the consultation process, there are significant changes in the two versions; changes about which the community will have serious concerns. However, the community will be denied an opportunity to express concerns about version 9 or 10, or whatever comes after, because it has only been able to comment on version 8 or 1 of the draft. It does not get another opportunity to comment on each version that is being made. For example, in the preamble of version 8 the words "transparent" and "public input" appear; those words have been removed from the preamble in version 9. In the objects of the environmental impact assessment process, version 8 talks about ensuring accountability and transparency in the Environmental Protection Authority's assessment; those are omitted in version 9. Most people would expect those to continue to be objectives of the EIA process. Those words do not appear anywhere in the chapters that deal with the principles that the minister referred us to earlier either. Some very important issues about transparency and accountability have now been removed from the administrative procedures. Do we have an opportunity to comment on those? No. That is why Hon Sally Talbot's amendment should be supported. I just want to illustrate with one more example: on page 2, there is a reference to mitigation and it states —

Mitigation, in an environmental context, means a sequence of proposed actions designed to help manage adverse environmental impacts, and which includes (in order of preference):

1. avoidance – avoiding the adverse environmental impact altogether;
2. minimisation – limiting the degree or magnitude of the adverse impact;
3. rectification – repairing, rehabilitating or restoring the impacted site as soon as possible;
4. reduction – gradually eliminating the adverse impact over time by preservation and maintenance operations during the life of the action;

In version 8, there is a fifth action that has been omitted in version 9, and that is —

5. offsets – undertaking activities that counterbalance an adverse, residual environmental impact, after all other steps above have been exhausted.

I would think that actions for mitigation being reduced by one whole step is quite a significant change. Does the community get to have any input on that change—whether it is appropriate and whether the community supports it? No, because it is in administrative procedures. Does this Parliament get an opportunity to comment on whether that is appropriate? No, because this Parliament does not get to scrutinise the administrative procedures and this information is not included in regulations as it would normally be under other acts of Parliament.

Hon Donna Faragher: There is now a definition of "offsets".

Hon ADELE FARINA: Yes there is a definition of "offsets" but it is not listed as an action step for mitigation. There is a very clear difference there —

Hon Donna Faragher: Read the definition.

Hon ADELE FARINA: The minister should read the definition that the EPA provided in the administrative procedures for mitigation. In version 8 there are five actions for mitigation, in version 9 there are four. The community does not get an opportunity to comment on that sort of stuff. That is why we need to support the amendment moved by Hon Sally Talbot to ensure that there is adequate review of administrative procedures and that this government and the EPA, through sleight of hand, do not go moving the environmental assessment process and changing it into something that we in this Parliament have no understanding of in passing these bills. I think what is happening is of great concern to the community. The minister may sit there ignoring this debate as much as she likes in the comfort of knowing that she has the numbers to pass this legislation through the house, but let me assure the minister that if she continues down this path she will be occupying and warming the seats on this side of the house very, very soon.

New clause put and a division taken with the following result —

Extract from *Hansard*
[COUNCIL - Thursday, 9 September 2010]
p6230c-6247a

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Ayes (12)

Hon Matt Benson-Lidholm
Hon Helen Bullock
Hon Robin Chapple

Hon Sue Ellery
Hon Adele Farina
Hon Jon Ford

Hon Lynn MacLaren
Hon Linda Savage
Hon Sally Talbot

Hon Giz Watson
Hon Alison Xamon
Hon Ed Dermer (*Teller*)

Noes (17)

Hon Liz Behjat
Hon Jim Chown
Hon Peter Collier
Hon Mia Davies
Hon Wendy Duncan

Hon Phil Edman
Hon Brian Ellis
Hon Donna Faragher
Hon Philip Gardiner
Hon Nick Goiran

Hon Alyssa Hayden
Hon Col Holt
Hon Robyn McSweeney
Hon Michael Mischin
Hon Simon O'Brien

Hon Max Trenorden
Hon Nigel Hallett (*Teller*)

Pairs

Hon Kate Doust
Hon Ken Travers
Hon Ljiljana Ravlich

Hon Norman Moore
Hon Ken Baston
Hon Helen Morton

New clause thus negated.

New clause 18 —

Hon SALLY TALBOT: I think Hon Giz Watson said that she would postpone debate on the amendment standing in her name on new clause 18 until we had debated two other alternatives, of which we have done only one. That being the case, I will move the amendment standing in my name, which is an amendment to section 123 to insert a new subsection (5). I will explain my reasons for moving this amendment and, in an anticipatory sense, thank the Greens (WA) for their support for this amendment. I move —

Page 10, after line 25 — To insert —

18. Section 123 amended

After section 123(4) insert:

- (5) Regulations made under section 123 of the Environmental Protection Act will stipulate —
- (a) minimum periods for public consultation;
 - (b) measures to ensure adequate information is made available to make consultation about environmental impact assessment processes efficient and transparent; and
 - (c) measures to ensure the EPA's treatment of public comment on its decision making is open, transparent and accountable.

As Hon Giz Watson noted when she was speaking to the amendment that has been postponed, the committee considered the whole business of the delegation of administrative power to be so serious that it devoted an entire chapter, chapter 6, to the question. Chapter 6 is entitled "Appropriate Review and Delegation of Administrative Power: Principles and Evidence". Those who are familiar with the report will recognise that the amendment in my name that we are now considering is a very slight reworking of recommendation 10 of the committee's report. We get to look at recommendation 10 only if the government fails to respond to recommendation 9, because recommendation 9 was the one that asked the minister to provide an account of what the government is proposing in the context of delegating its administrative power to administrative procedures. That, in our view, has not been adequately addressed and we therefore move to recommendation 10.

Throughout this entire debate, all my comments about new section 18 must be seen in the context that the Labor Party believes that the existing sections 122 and 123 have served us well up to this point, and that there is great benefit to be gained for the whole environmental impact assessment process by having a set of administrative procedures that are a little more flexible and responsive than regulations that are essentially disallowable instruments. That is why this has now become a three-stage argument, and we are now at the middle stage. I thought—it was gratifying to hear colleagues on this side of the house agree with me—that this was the best way to allow the government to proceed with what it is proposing to do and, in a sense, to take the government at face value, give it the benefit of the doubt and do all we can do to say, "Okay, if you think that this bill will result in improvements to the system, then show us it will do that." Earlier on, I suggested that that could have been done without legislative amendments but with a set of new administrative procedures. If the government had agreed at that stage, we probably would not be here today.

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We then go through a series of what are, frankly, for me and other members of the Labor Party, compromises. The amendment standing in my name and the amendment that was just defeated are compromises; most people in the Labor Party would prefer to leave sections 122 and 123 exactly as they are. The problem is that the government seems to be only increasing the momentum with which it is running away from an adequate explanation of how transparency, openness and clarity are going to be preserved in the process of assessment and appeal. That being the case, we are offering a series of compromises. I think that the government has already bypassed the opportunity to accept the compromise that would have required the least amount of concession from it. If I had been in the government's position, the first offer I would have accepted would have been the offer to give the new administrative procedures a short trial period to see whether the government's assessment that they would improve the process proved to be the correct assessment. The government rejected that. We just considered an amendment to keep the administrative procedures essentially as they are, but to make them disallowable instruments. I still cannot explain why the government did not accept that compromise. The government was not able to tell me what difference it would make to the operations of the EPA.

Once again, in the same spirit of wanting to work towards a better system, I offer the government the chance to accept a compromise on the part of the Labor Party—we would prefer to not move this amendment—that would see at least the very points that the government has conceded that are central to the integrity of the appeals process enshrined in regulation, rather than simply in administrative procedures, which never get near the Parliament and which we, as elected representatives of the community, are never allowed to pass an opinion on. It is simply unacceptable to have that circumstance brought about in a situation in which important, valued and effective appeal points are being removed. I ask the minister to please consider the measures contained in proposed paragraphs (a), (b) and (c) of my amendment, which simply enshrine in legislation three fundamental principles. Can the minister tell me when she would want to amend these principles? Can she tell me when she would be sitting at her desk in Dumas House, saying, "Oh, it's such a shame we can't make these fantastic improvements to the system because I've got to go through the arduous process of changing a regulation"? When, in terms of paragraph (a), might that ever be the case? It refers to regulating for minimum periods of public consultation. The government should at least stipulate a minimum period for public consultation. As the debate has gone on, recurring concern has been expressed by everybody who is not a member of the government that we are effectively truncating the period in which people will have the opportunity to submit appeals. By regulating for a minimum period of public consultation, we would safeguard against the suspicion that that period is being cut.

The minister should give me a concrete example of an occasion in which she might want to change the regulation relating to paragraph (b) of my amendment, the requirement for regulations to stipulate measures to ensure adequate information is made available and to make consultation about environmental impact assessment processes effective and transparent. I defy the minister to give me a broader set of terms in which to express that set of principles. If she is going to respond to me and say that "adequate" is not a defined term and she is not willing to look at regulations that are couched in such generalities, maybe that is a debate that we could have, but I am deliberately leaving these terms as open as I possibly can. I am interested in enshrining principles. The minister used the term "principles" when talking about the core of the administrative procedures document. I completely lost the coherence of the argument that says because there are a set of principles, they cannot be enshrined in regulation. She might like to come back to that and point out what I have misunderstood.

The whole point of regulations is that they leave room for interpretation. That interpretation can be challenged. Were the government to agree to this amendment and we had a set of regulations that enshrined these principles, there may be an occasion when a disallowance motion comes to the house on the basis that inadequate information has been made available or, to look at the second part of paragraph (b), consultation processes are not effective and transparent. Again, "effective" is a fundamentally subjective term. One person's idea of whether a process is effective can be quite different from another's. This is how we work in this place. We lay down structures, boundaries and guidelines and we talk about principles and then we move out of this estate to make sure that those principles are put into effective practice. That is what we do in this place. That is what the community expects us to do. Yet that is precisely what the government is trying to deny all elected members of this place the chance of doing. I ask the minister to look at paragraph (c) of my amendment, which states —

measures to ensure the EPA's treatment of public comment on its decision making is open, transparent and accountable.

When will the minister want to amend that if it was set out in a regulatory form? When will she want to put up a change to a regulation that just talks in those broadest possible parameters? Again, I say to the minister that if she is in any doubt—she has pointed out to the chamber on a couple of occasions, as recently as today, that she is not a member of the board of the EPA or of the authority and she has even said that she does not know how it operates because she does not sit in on its meetings—she should please seek leave to report progress and adjourn

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the house for 10 minutes. Ten minutes later we will be back here. In the meantime, she would have spoken to people at the EPA to ask them whether this amendment will in any way restrict its processes or inhibit the effectiveness with which it has been operating until this point.

I put this amendment to the chamber in the spirit of compromise. My mother always used to caution against compromise. She always said that if we compromise, nobody is happy. In this particular circumstance, I think that this amendment will give us a set of regulations that we can live with, at least in an interim sense. A month or two down the track we can start collecting empirical evidence of the effect that her changes are having. We can come back to this chamber and debate this topic in some way, shape or form. This is perhaps a way forward. I ask the minister to give it her support.

[Quorum formed.]

The DEPUTY CHAIRMAN: I remind members who are present—I will remind Hon Ljiljanna Ravlich when she returns—that when the bells are rung, members cannot leave the chamber. It is pointless calling for a quorum if members leave. The minister has the call.

Hon DONNA FARAGHER: Thank you, Mr Deputy Chairman. It is good to have an audience again.

The government will not be supporting the amendment moved by Hon Sally Talbot for the following reason. Section 123(1)(a) of the act, relating to regulations, states —

Prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed, for giving effect to the purposes of this Act;

If this amendment was to pass, the stipulations proposed in paragraphs (a), (b) and (c) would apply to all regulations under section 123, not just the EPA's administrative procedures. I would argue that that would make no sense in the light of the very diverse purposes for which regulations may be made, whether they relate to standards for ambient air and emission concentration, fees and those sorts of things. I refer the member to clause 22 of schedule 2, which states —

Prescribing types of plates, labels and other markings and the information to be contained thereon or therein.

Clause 21 states —

Requiring any equipment or the packaging thereof to be fitted or marked with a plate, label or other marking and prescribing the manner in which the plate, label or other marking is to be fitted or marked.

They are a couple of examples under which regulations may be made. If this amendment was agreed to by the chamber, it would mean that each of these potential regulations would have to go through minimum periods of public consultation, with adequate information being given. I am not quite sure how requiring any equipment or packaging to be fitted or marked with a plate requires that. I hear what the member is saying but the ramifications of such an amendment would be significant for many of the regulations that may be made under this act.

Hon SALLY TALBOT: It is a standard part of any bill, or indeed any act, that what is subject to regulation is specified in the act.

Hon DONNA FARAGHER: It is schedule 2. I was reading out of schedule 2.

Hon SALLY TALBOT: My amendment says that regulations made under section 123 of the EPA act will stipulate (a), (b) and (c).

Hon DONNA FARAGHER: Does the member expect there to be a minimum period of public consultation with respect to requiring any equipment or the packaging thereof to be fitted or marked with a plate, label or other marking?

Hon Adele Farina: Why is that difficult?

Hon DONNA FARAGHER: Is the member saying there should be public consultation on that?

Hon Adele Farina: Why not?

Hon SALLY TALBOT: It is not incumbent on the minister to try to second-guess what is important to people. This is the nub of the problem. The government is arrogant in thinking that, because it feels a certain way about something, that is the right view. We heard the sneering in the minister's voice.

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Hon DONNA FARAGHER: I am not. I just read the words in the bill out to the chamber and outlined the problem of accepting an amendment such as that moved by the honourable member. The only sneering that happens is on her side.

Hon SALLY TALBOT: Are members opposite having a sneering competition?

Hon Simon O'Brien: This is getting ridiculous. Let's get on with it.

Hon SALLY TALBOT: My amendment talks about regulating for three specific circumstances relating to the appeals process. It canvasses some regulations on the issue of public consultation and of effectiveness and transparency, openness and accountability. Some regulations may relate to something that the minister considers to be quite trivial. But how can that argument possibly relate to these matters of openness and transparency that are canvassed in this amendment?

Hon ADELE FARINA: I apologise; just before we move away from new clause 18, I want to point out to the minister that, prior to the break, she undertook to provide a copy of the "Environmental Impact Assessments (Part iv Division 1): Administrative Procedures 2002". She has not done so.

Hon DONNA FARAGHER: I apologise. We were getting the other one and we did not get that but we will get it to the member.

Hon ADELE FARINA: Thank you. Page 1 of the administrative procedures refers people who read this document to the environmental assessment guidelines. Are they also undergoing a review? If so, can the minister inform the chamber at what stage that is at?

Hon Simon O'Brien: What does that have to do with this clause?

Hon ADELE FARINA: This relates to part of this clause. It deals with how we go about making administrative procedures and regulations.

Hon DONNA FARAGHER: There are a series of guidelines for a range of purposes. I understand they are amended from time to time. That is a normal process, but I cannot tell the member which ones are being amended.

New clause put and negatived.

Postponed new clause 18 —

The clause was postponed at an earlier stage of the sitting after it had been partly considered.

Hon GIZ WATSON: We are essentially arguing the same matter, so I do not intend to continue at length.

Hon Adele Farina interjected.

Hon GIZ WATSON: Yes. When we started debate on this new clause last night I think the minister's response was that if we deleted section 122, the EPA would not have the power to make administrative procedures. However, subsection (3) of section 123, "Regulations", reads in part —

- (a) adopt, either wholly or in part or with modifications and either specifically or by reference, any rules, standards, regulations, local laws, by-laws, codes, instructions, specifications or administrative procedures prescribed or published by any person or public authority, including the Authority and the CEO, either as in force at the time of prescription or publication or as amended from time to time thereafter;

The minister can correct me if I am wrong but I suggest that means that the regulations can deal with matters of administrative procedure.

Hon DONNA FARAGHER: Section 123(3)(a) refers to "adopt". It is the ability to adopt rather than the ability to make.

Hon Adele Farina: What is the difference?

Hon DONNA FARAGHER: We can adopt procedures but the power to make them would be removed. I understand that is the reason for the difference.

Hon GIZ WATSON: Neither of us is lawyers, but maybe that helps; I do not know. I suggest that there is an implication that if something is being adopted, it does not prevent one from making it. I considered that by deleting section 122, the EPA would be left without the capacity to deal with administrative procedures. The way I am reading section 123, that can still be done. Section 123(1) reads —

The Governor may make regulations —

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- (a) prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed, for giving effect to the purposes of this Act.

I would have thought that that, in itself, included any administrative procedures. I wanted to respond to the suggestion that that would leave the EPA without the capacity to create administrative procedures and deal with them by way of regulation, because I think the act will still enable that provision under section 123. Having said that, I ask again for the support of the chamber to delete section 122. That will ensure that the administrative procedures are subject to parliamentary scrutiny. That is in effect what we are trying to achieve. We have debated this for some time and I think this amendment will achieve that.

Hon SALLY TALBOT: This now brings, I suppose, last night's debate to a conclusion. I do appreciate the effort that members on my side of the chamber, including Hon Giz Watson, have put into trying to avoid the moment when we had to look at deleting section 122. I rise to indicate that Labor will be supporting the amendment. However, we do so with enormous reluctance. We believe there is a better way of doing it. Unfortunately, the government has simply used its raw numbers in this chamber to frustrate our attempts to come up with what would genuinely have been a better outcome. There is a better way. As I have now said three or four times today, section 122 has served us well. Had we not had the facility to put in place administrative procedures that, as I said earlier, are able to take account of technological changes and are able to respond swiftly to new information—all the sorts of things that environmental activists know are crucial to achieving good environmental outcomes—this state would be in a poorer place. However, this government is obviously intent on ramming through these changes, which effectively, as Hon Giz Watson has summarised extremely eloquently, will remove from this chamber the possibility of scrutinising these important safeguards and attempts to change or reduce or dismantle these safeguards. Therefore, it is without any pleasure at all that I indicate that the Labor Party will be supporting this amendment.

New clause put and a division taken, the Deputy Chairman (Hon Jon Ford) casting his vote with the ayes, with the following result —

Ayes (12)

Hon Robin Chapple
Hon Kate Doust
Hon Sue Ellery

Hon Adele Farina
Hon Jon Ford
Hon Lynn MacLaren

Hon Ljiljana Ravlich
Hon Linda Savage
Hon Sally Talbot

Hon Giz Watson
Hon Alison Xamon
Hon Ed Dermer (*Teller*)

Noes (15)

Hon Liz Behjat
Hon Jim Chown
Hon Peter Collier
Hon Mia Davies

Hon Wendy Duncan
Hon Phil Edman
Hon Brian Ellis
Hon Donna Faragher

Hon Nick Goiran
Hon Alyssa Hayden
Hon Col Holt
Hon Robyn McSweeney

Hon Michael Mischin
Hon Simon O'Brien
Hon Nigel Hallett (*Teller*)

Pairs

Hon Matt Benson-Lidholm
Hon Ken Travers
Hon Helen Bullock

Hon Norman Moore
Hon Ken Baston
Hon Helen Morton

New clause thus negated.

New part 4 —

Hon SALLY TALBOT: I move —

Page 10, after line 26 — To insert —

Part 4 — Review of Approvals and Related Reforms (No. 1) (Environment) Act 2010

18. Review of Act

- (1) The Legislative Council Standing Committee on Legislation is to carry out a review of the operation and effectiveness of the *Approvals and Related Reforms (No. 1) (Environment) Act 2010* to commence on 1 September 2012 for report within 6 months of the commencement of the review.
- (2) The Standing Committee is to prepare a report based on the review and, as soon as practicable after the report is prepared, is to cause the report to be laid before each House of Parliament.

I do not think this amendment is controversial. If the government is right, and the transparency and timeliness of the appeals processes under the EP act will be improved, the government will have nothing to fear from a

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review. Indeed, honourable members will know that the EP act itself contains a review provision. That review was clearly carried out at the appointed time; I cannot find it now, and it does not matter. So, the insertion of a review period in an act is not something that can be considered controversial. One of the reasons that I am optimistic that the government will support this amendment is that consideration of this issue again in two years would provide the opportunity for the community to engage with some of the key points and some of the key principles that the government has put forward in presenting this bill to the chamber. Two years seems to me to be an appropriate period in which we could do a number of different things. I cannot see that any of these things would be in any way threatening, or undermining or remotely distasteful or compromising, to the government's agenda. As honourable members will see, I have suggested that this review be carried out by the Legislative Council Standing Committee on Legislation. That is a fantastically effective committee and has been now for many, many Parliaments. It was the committee that I chose to go on when I joined this place, because it is the committee that gets a chance to do two things, one of which is to look at contentious legislation. I know that Hon Adele Farina is very fond of her committee too, because we all have a sense of ownership over our own committees. However, I think that the Standing Committee on Legislation is particularly well placed to do a review of this kind, because it has not only established its credentials as being a very effective way of both considering contentious legislation and bringing it back to this chamber in a form that is almost always improved—I think every member would agree—but also undertaken several significant reviews of legislation in the past, the most recent of which we were debating the other day in this place, which was the review of the State Administrative Tribunal legislation. I am very pleased to have moved this amendment to insert the provision for a review in two years' time.

As I said, I have couched this amendment in pretty broad terms. What I anticipate happening, without in any way second-guessing the way the committee chooses to proceed at that time, is that the normal practice would be for the committee to advertise for submissions. Therefore, we could test some of the assumptions made in this very substantial report of the Standing Committee on Uniform Legislation and Statutes Review.

Hon Adele Farina: They were not assumptions; they were findings.

Hon SALLY TALBOT: I am sorry. Hon Adele Farina quite rightly corrects my use of the term "assumptions" because all the recommendations and findings in this report are indeed based on evidence. It would be interesting to come back and test that evidence after two years of operating the new system. I think also—I would be prepared to go out and advocate to this effect—that many of the people who are expressing grave concerns about what is going to happen once this legislation is enabled would be given some comfort by the fact that in two years' time there would be an extensive and comprehensive review. I put it to the government, through the minister, that there is no reason not to accept this amendment. It is not controversial. It is not a trap. It is simply a way that the community and third party stakeholders, whether they are proponents or environmental activists, can be assured that at a certain point in time they will be able to have their say once more about the changes being made in this legislation.

Of course, the other very important thing about this amendment and why inevitably I have raised it at the end of debate is because that is where it sits in the structure of the bill, but there is another sense as well in which it was more appropriate to raise it now than at the beginning of debate. I hope I have managed to make it clear, and other members of the Labor Party and certainly the Greens have made it clear, how deep-seated are our objections and fears about the effect of this bill. Accepting this amendment effectively enables the government to keep control of the political agenda, because as we all know this report will be laid before each house of the Parliament where it will eventually come up for debate. Who knows, in two years' time we might have a new set of standing orders that requires reports to be debated in a more timely fashion than they are now. The report would come up for debate in the normal course of the parliamentary program and the government would be able to keep control of the agenda and what happens to that report. So there is no way that this amendment will force the government into any position that it does not want to adopt, but it will enable the community and interested third parties to have a sense that they are going to be invited to re-engage with the process in a couple of years' time. At that stage, advice and expert opinion can be called from whomever it is felt appropriate.

The final point I want to make about the legislation committee is that it has been the custom and practice of this place for the government parties to have the majority on that committee. Although, of course, we always have to plan for the possibility of having minority reports, essentially it is not a dangerous way for the government to proceed. As certain as we can possibly be about these things, it is likely that if this amendment is accepted, when this referral comes about in September 2012, the referral will be to a committee on which the government has the numbers. I commend the amendment to the chamber and ask for the support of honourable members.

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Hon LIZ BEHJAT: As a member of the committee that provided this original report, I thought I would stand and read a few chapters this afternoon because I have not said anything in the debate! That woke members up! Baby Faragher will be on its way very soon! Let us leave aside the frivolity and be serious for a moment.

I am not sure what the government's response will be to this amendment, but I would like to ask the mover of the amendment whether it would perhaps be more effective if any review was done, that it be by the committee that originally looked at the bill, given the fact that many hours, days, nights and weekends went into this report. Also, given Hon Sally Talbot's comment about the government's having the majority on the legislation committee, as the member knows, the Standing Committee on Uniform Legislation and Statutes Review has an even number of members from each side and therefore the member might get a more even-handed review of anything that was to be done. I suggest that perhaps it be the Standing Committee on Uniform Legislation and Statutes Review that undertakes any review of the act, rather than the legislation committee.

The DEPUTY CHAIRMAN: Is Hon Liz Behjat indicating an amendment to the proposed amendment or is she just making a comment?

Hon LIZ BEHJAT: I can move an amendment to that.

Hon SALLY TALBOT: I have been inundated with offers here. Hon Kate Doust has put in a pitch for the Standing Committee on Environment and Public Affairs! I made the observation just now that we all have a particular allegiance to our own committees, and I think the legislation committee would do a damn fine job! However, there is a strong argument, which I accept, that the same committee that prepared this extensive report should be able to take up the review in two years' time. Does that mean that the amendment is now moved by Hon Liz Behjat?

The DEPUTY CHAIRMAN: The member has not moved an amendment; she was just passing comment.

Hon SALLY TALBOT: In that case I am happy to change the wording of new part 4.

New part, by leave, withdrawn.

Hon SALLY TALBOT: I move —

Page 10, after line 26 — To insert —

Part 4 — Review of Approvals and Related Reforms (No. 1) (Environment) Act 2010

18. Review of Act

- (1) The Legislative Council Standing Committee on Uniform Legislation and Statutes Review is to carry out a review of the operation and effectiveness of the *Approvals and Related Reforms (No. 1) (Environment) Act 2010* to commence on 1 September 2012 for report within 6 months of the commencement of the review.
- (2) The Standing Committee is to prepare a report based on the review and, as soon as practicable after the report is prepared, is to cause the report to be laid before each House of Parliament.

I thought I would say a couple of words before the minister responds. In this new spirit of the sun shining in, I am happy to welcome another ally from the other side to join Hon Peter Collier. There are now three of us working together on this matter.

Seriously, the proposed amendment is a very sensible and constructive one; that is, to refer the bill to the Standing Committee on Uniform Legislation and Statutes Review. It gives me one final opportunity to say that this is actually a very, very good report. It was constructive in this debate at least in formulating the arguments that needed to be addressed in a way that I have seen very few reports play out over the past few years. In that regard, I am very happy to move this amended amendment that now stands in my name.

Hon DONNA FARAGHER: The government will oppose the amendment.

Hon Kate Doust: We thought the minister might support it given that one of her colleagues suggested it!

Hon DONNA FARAGHER: I know it is getting late in the day.

The government believes that this amendment is not necessary. I note the practice of successive governments has been not to provide for a review of amendments to the Environmental Protection Act through a legislative requirement. We do not believe this is a necessary requirement. As I have said consistently throughout this debate, we believe this bill simply removes duplicative and unnecessary appeal points within the act. I do not believe, and the government does not believe, that it is necessary to review the act within two years as suggested.

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Hon GIZ WATSON: I stand to say that the Greens (WA) support the proposed amendments. I heard the minister's response. We do not automatically put review provisions in every piece of legislation that passes through this place. This bill has had sufficient concerns raised around it that a review of it would be a good safeguard. It means also that the Parliament will have another opportunity to actively investigate what effect the changes have had, whether they have been detrimental to environmental outcomes and whether they have reduced public participation. All those things could be assessed by way of a formal review. In light of that, we are happy to support this amendment. My proposed amended amendment was going to be "a standing committee of the house"; but that is fine. If the uniform legislation committee is keen to put its hand up, that is fine. The Greens think it is a good amendment and will support it.

Hon SIMON O'BRIEN: I can get as misty-eyed through nostalgia as anyone. I think some members in the chamber are yearning for a past era in the previous Parliament when the Standing Committee on Uniform Legislation and Statutes Review was a great instrument of this house. It bristled with talent; the chairman was particularly good! Hon Donna Faragher and Hon Matt Benson-Lidholm were on it. I am sure it is still a very good committee.

There are a couple of things that need to be considered before we proceed to vote down this ill-considered amendment. Firstly, this sort of review is not the business of the Standing Committee on Uniform Legislation and Statutes Review as envisaged by the standing orders of our house. Although there is capacity, in effect, to refer anything to any committee if the house, in its absolute discretion, chooses, it is still not appropriate to refer matters to, in effect, an inappropriate committee. Following that theme, it would be singularly inappropriate for this chamber to contemplate putting into legislation a provision of this type even if one allowed for the matter that I have just mentioned.

This house of Parliament is the controller of its own destiny in relation to its standing committees. In its own wisdom it decides, through its standing orders and through its own votes as carried out by the Legislative Council of the day, what its committees will do. I do not think we should be recording in a proposed act that a future standing committee of this house of Parliament will undertake an inquiry into any particular thing. That might well be at variance with a view that might be formed by this house in due course. If the honourable member wants to move that a particular committee she is referring to will undertake reviews into legislation—whether it be legislation generally, bills, or acts that are in force from time to time—that is something that needs to be addressed through the standing orders of the house. With respect, amusing as it has been in places, this debate has probably gone on long enough and we should not entertain any longer a review mechanism that automatically involves a prescriptive reference to a standing committee created by the house that may or may not endure in the future. We should not entertain further a proposed provision for a bill that seeks to bind this house specifically about matters in the future. This is not the sort of legislation that invites us to take that course of action.

Hon GIZ WATSON: In the State Administrative Tribunal Bill I recall there was a provision for review. The only difference is it did not specify which standing committee but it specified "a standing committee of the Legislative Council". I have some sympathy with what the minister has said—I think that is probably accurate—but the way to get around that is to move the amendment I was contemplating to simply specify "a standing committee of the Legislative Council".

Hon Simon O'Brien: I believe you are technically correct —

Hon Adele Farina: It is actually correct!

Hon GIZ WATSON: I will just take "correct"!

Hon Simon O'Brien: I just like adjectives, all right!

Hon GIZ WATSON: There is a precedent in that particular bill that passed through this place. When I was on the Standing Committee on Legislation, the debate that was had in this place was which committee the bill would be referred to. It went to the legislation committee because, by the same argument, it was the committee that had originally reviewed the bill. I guess that is Hon Liz Behjat's argument. If we want to leave this option open and make it doable, I suggest an amendment be made to the amendment to make it a standing committee of the Legislative Council rather than any specified standing committee.

Hon SIMON O'BRIEN: Obviously, the class of 1997 is showing the way here! Hon Giz Watson has made some good points with which I concur. However, I also offer the following view that builds on those points. It is the prerogative of this place, by direction to any of its standing committees in its discretion, and, indeed, the prerogative of probably more than one of our standing committees, by its own motion, to embark on a review of any piece of legislation and its operation in the future. That applies to this bill as well. That tends to make the

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proposed amendment before us redundant rather than necessary. I am sure that the minister at the table heartily concurs with my view that the government respects the right of this place, through its committees or any other mechanism, to review legislation at any time. By being prescriptive with this amendment and by trying to put the amendment into the legislation, members are arguably restricting the future capacity of this place; they will certainly not enhance it. By purporting to set some sort of precedent of this type, does that mean that other acts that are passed from time to time without such an amendment as this are not as available for review by a standing committee? Again, it is an interesting discussion, but one that has run its course for today.

Hon Adele Farina interjected.

Hon SIMON O'BRIEN: I am glad I have inspired members opposite.

Hon Adele Farina: You have energised us!

Hon SALLY TALBOT: I appreciate the assistance that has been provided by members of the Liberal Party in framing this amendment in a more acceptable way. I accept that it is appropriate to move it in my name. I accept a further amendment to my amendment so that it simply reads "A Legislative Council Standing Committee is to carry out". I do not, however, accept the second part of Hon Simon O'Brien's argument about limiting the power of this place or any individual committee to carry out a review by self-referral. The reality is that the committees that do have the power to self-refer may well choose to do that and may well choose to carry out a review of these amendments in six or 12 months. If it gets to the two-year period, those committees will take into consideration the fact that there will be a review by a Legislative Council standing committee. I also point out to Hon Simon O'Brien that there are plenty of precedents for such a clause in a bill. The one to which I have already referred is the State Administrative Tribunal Act, which contains a referral to a Legislative Council committee.

Hon Simon O'Brien: But if you don't have a clause like this, what does that mean?

Hon SALLY TALBOT: What it means is that the chamber has been prepared to put in place a formal review that will happen because it is enshrined in legislation, rather than to wait and see whether a committee will self-refer.

Hon Simon O'Brien: Who's going to compel the house to do that, pray tell? Will the house be fined or sent to prison if it does not do it?

Hon SALLY TALBOT: If it is in the act, it becomes a legislated provision, as the member well knows.

Hon Simon O'Brien: As I well know, the Parliament is supreme. The member has not thought this through and does not know what she is talking about.

Hon SALLY TALBOT: With diminishing respect, it is Hon Simon O'Brien who does not know what he is talking about. He is proving once again that thought bubbles should be left at the door of the chamber.

Hon Simon O'Brien: You're the one scratching out on-the-go amendments that do not appear on the supplementary notice paper.

Hon SALLY TALBOT: Hon Simon O'Brien has been paying close attention to this debate. I have seen him walk in and out of the chamber a few times over the past couple of days. He will know that, far from scratching out amendments as I walk into this place, the amendment we are now debating was circulated on the supplementary notice paper.

Hon Simon O'Brien: The last one wasn't.

Hon SALLY TALBOT: No. Was Hon Simon O'Brien here this morning? Shortly around 11.30 this morning I provided the chamber with an explanation about why Hon Giz Watson and I were suggesting that we proceed in a certain direction. When Hon Giz Watson and I came to consider her amendment to insert new clause 18, we spent a considerable amount of time between the house getting up last night and sitting this morning working out a couple of alternative ways forward. I was very happy with the cooperation and willingness that everyone on this side of the chamber showed to engage in this issue. That includes my colleagues from the other place. Hon Simon O'Brien has not been paying as much attention as I thought; otherwise, he would not be making such ridiculous observations. There are plenty of precedents for stipulating that a measure will be subject to review. There are plenty of precedents for suggesting that it will be subject to a review by a standing committee of the Legislative Council.

New part, by leave, withdrawn.

Hon SALLY TALBOT: Therefore, I move —

Page 10, after line 26 — To insert —

Part 4 — Review of Approvals and Related Reforms (No. 1) (Environment) Act 2010

18. Review of Act

- (1) A Legislative Council Standing Committee is to carry out a review of the operation and effectiveness of the *Approvals and Related Reforms (No. 1) (Environment) Act 2010* to commence on 1 September 2012 for report within 6 months of the commencement of the review.
- (2) The Standing Committee is to prepare a report based on the review and, as soon as practicable after the report is prepared, is to cause the report to be laid before each House of Parliament.

I have written that amendment on the supplementary notice paper to prove the point that it was not scratched out on the run. It is a fully considered proposal. If we reach 1 September 2012 and there is a resistance by this chamber to put that referral into effect, I promise Hon Simon O'Brien that I would be very happy to postpone debate on that particular point.

Hon LIZ BEHJAT: I do not know whether this is relevant. The date to which the member referred, 1 September 2012, is a Saturday. Does that matter? Does a review have to take place on a business day or can it happen on a weekend?

Several members interjected.

The DEPUTY CHAIRMAN (Hon Jon Ford): Members, we can either descend into a rabble or conduct ourselves in good order.

Hon ADELE FARINA: I was not proposing to speak on this amendment because I thought the need for it was self-evident. The government is going to oppose it; I do not know what the government is running scared of. If it is so sure about what it is doing, one would think that it would welcome a review that would establish that the government had taken the right action, that there had been no detrimental impact as a result of these amendments and that, in fact, the approval process times had been greatly condensed as a result of the great measures that we are being asked to pass today. Why the government would run away from that opportunity is beyond my understanding. When members opposite were sitting on this side of the chamber, they frequently moved amendments to legislation requiring reviews to be undertaken. It was a frequent occurrence. Now they are sitting on the government benches, they all of a sudden have a different view about it. I found the circular argument advanced by Hon Simon O'Brien very entertaining, but I think I need to perhaps make a few corrections. Hon Simon O'Brien was very concerned about whether the Standing Committee on Uniform Legislation and Statutes Review in fact had the power to review the act in the event that it was referred to the committee. I draw to the member's attention that the committee has the power to consider and report on any matter referred by the house.

Hon Simon O'Brien: That's precisely what I said.

Hon ADELE FARINA: The member questioned it first. The reality is that this house is master of its own destiny and has the capacity to decide anything it so wants in terms of the future operations of this house. It is quite appropriate for this chamber to determine that there should be a review of this legislation in two years.

Hon Simon O'Brien: That's what I said.

Hon ADELE FARINA: Is the member now supporting the amendment?

Hon Simon O'Brien: No, because the amendment is contrary to that. Perhaps when the member has a bit more experience, she will understand how the house works.

Hon ADELE FARINA: I do not see how the member can say that he made the same argument that I am now making, but that it is contrary to the powers that the house has to make those provisions. His argument was circular and entertaining, but it went nowhere. The bottom line is that the house has the power to make this provision and incorporate it as part of the bill. It has done so on numerous occasions, and I think the slight change to the amendment proposed by Hon Sally Talbot to change it to a standing committee of the house deals with some of the concerns raised by the member about whether a committee will be in existence at that point. It would simply refer it to a standing committee and the house could determine, at an appropriate time, which committee that should be. It is not an unreasonable provision to have in legislation; we have it in a number of acts. As I said, I do not know what the government is running scared of. Why would it decline to support a review provision if it is not running scared?

Hon Giz Watson; Hon Dr Sally Talbot; Hon Donna Faragher; Hon Adele Farina; Deputy Chairman; Hon Simon O'Brien; Hon Liz Behjat

Hon Simon O'Brien: This is the third version of this proposal that we have had before us, because the others were wrong.

Hon ADELE FARINA: What difference does that make? I understand why Hon Simon O'Brien might be having difficulty with this, because time and again, ministers of this government refused to listen to any submissions put to them that might actually improve legislation that is before this chamber, and they simply rely on their numbers to push legislation through, regardless of whether it is good legislation. On this side of the chamber, we engage in debate, we listen, and if there are suggestions that actually improve a bill or a proposed amendment, we are happy to take them on board. I understand why Hon Simon O'Brien might have difficulties comprehending the concept of listening and responding accordingly, because it is something that he struggles to do, but on this side of the chamber we do not have a problem with that. I do not know why he is seeking to make a point about slight changes to an amendment. It is clearly not made on the run, it is well considered and it is already in other legislation. The issue is: what is the state government scared of? Why is it running away from a review of this legislation in two years? It is extraordinary. If this side of the chamber needed any indication that the government does not have confidence in what it is doing, it is this example of the government refusing to support a review provision. Only a government that is scared of review and refuses to be open, transparent and accountable would refuse. That is what the government promised the people of Western Australia, and to a much higher level than under the previous government, yet every time this government is put to the test to be open, transparent and accountable, it takes a hike and forgets the election commitment that it made to the people of Western Australia that it would be open, transparent and accountable and that it would raise the bar. Members on that side of the chamber make promises and then forget about them. They are not people of their word; one election commitment after another has been broken, and this is another one. Members opposite promised to be open, accountable and transparent. We are seeking to put an amendment in the bill that will provide for open, transparent and accountable government, and this government is refusing to support it because it does not support open, transparent and accountable government.

New part put and a division taken, the Deputy Chairman (Hon Jon Ford) casting his vote with the ayes, with the following result —

Ayes (12)

Hon Matt Benson-Lidholm
Hon Robin Chapple
Hon Sue Ellery

Hon Adele Farina
Hon Jon Ford
Hon Lynn MacLaren

Hon Linda Savage
Hon Sally Talbot
Hon Ken Travers

Hon Giz Watson
Hon Alison Xamon
Hon Ed Dermer (*Teller*)

Noes (17)

Hon Liz Behjat
Hon Jim Chown
Hon Peter Collier
Hon Mia Davies
Hon Wendy Duncan

Hon Phil Edman
Hon Brian Ellis
Hon Donna Faragher
Hon Philip Gardiner
Hon Nick Goiran

Hon Alyssa Hayden
Hon Col Holt
Hon Robyn McSweeney
Hon Michael Mischin
Hon Simon O'Brien

Hon Max Trenorden
Hon Nigel Hallett (*Teller*)

Pairs

Hon Kate Doust
Hon Ljiljana Ravlich
Hon Helen Bullock

Hon Ken Baston
Hon Norman Moore
Hon Helen Morton

New part thus negatived.

Title put and passed.

Bill reported, with amendments.