

**Division 50: Office of the Environmental Protection Authority, \$14 277 000 —**

Ms W.M. Duncan, Chairman.

Mr A.P. Jacob, Minister for Environment.

Mr K. Taylor, General Manager.

Mr A. Sutton, Director, Assessment and Compliance.

**The CHAIRMAN:** This estimates committee will be reported by Hansard. The daily proof *Hansard* will be available the following day.

It is the intention of the Chair to ensure that as many questions as possible are asked and answered and that both questions and answers are short and to the point. The estimates committee's consideration of the estimates will be restricted to discussion of those items for which a vote of money is proposed in the consolidated account. Questions must be clearly related to a page number, item, program or amount in the current division. It will greatly assist Hansard if members can give these details in preface to their question.

The minister may agree to provide supplementary information to the committee rather than asking that the question be put on notice for the next sitting week. I ask the minister to clearly indicate what supplementary information he agrees to provide and I will then allocate a reference number. If supplementary information is to be provided, I seek the minister's cooperation in ensuring that it is delivered to the principal clerk by Friday, 3 June 2016. I caution members that if a minister asks that a matter be put on notice, it is up to the member to lodge the question on notice with the Clerk's office.

[Witnesses introduced.]

**The CHAIRMAN:** I give the call to the member for Gosnells.

**Mr C.J. TALLENTIRE:** I refer to the first dot point on page 566 of volume 2 of the *Budget Statements*, and in particular to the reduction in the number of companies seeking approvals. How many attempted referrals—these are referrals when the Environmental Protection Authority said there would not be a significant impact on the environment—were made in 2015–16?

**Mr A.P. JACOB:** So far this financial year the EPA has received 27 referrals of development proposals. Of those referrals the EPA has decided to assess six.

**Mr C.J. TALLENTIRE:** There is another category though—the minister has not caught this point. There is a category of letter referral to the EPA, when the EPA responds that it does not think it will look at that; it will not even accept it as a referral. I am keen to know how many of those types of referrals were made. These are referrals from the community's point of view, but the EPA says that it will not treat them as referrals under section 38; nevertheless, in the community's mind this is a letter of referral. How many of those were made in the past 12 months?

**Mr A.P. JACOB:** The EPA does not keep statistics on those. They are generally nowhere near the significance test that the EPA would apply. I use the point to stress—it comes up a number of times—that when the EPA makes a decision that a project is not significant, it means that it is still significant but that it is better addressed under part V of the Environmental Protection Act rather than part IV. It is clunky language, but essentially it is saying that the EPA believes it is better regulated under, for example, the Department of Environment Regulation or another authority as opposed to the EPA, which is there to do the most significant proposals in terms of their potential environmental impact. The EPA does not keep statistics on the proposals the member is referencing that go beyond those 27 referrals of development proposals, but I believe that information could be sourced by going back through correspondence.

**Mr C.J. TALLENTIRE:** I am pleased to hear the minister say that he acknowledges that those projects often have some level of significance and that the person making a letter of referral gets a response from the EPA saying that it can be managed under part V, but nevertheless the person who has referred the project would love to see it as an EPA assessment. It wants the full weight of an EPA assessment rather than simply a works approval under part V, which does not bring out the same depth of consideration. It is important that we get to the bottom of this. The EPA is not publishing any list of these types of referrals—I will call them referrals; the minister might call them letters to be refused. Why are we not keeping good statistics on those referrals as well?

**Mr A.P. JACOB:** We might need to look at the language used around this. Although it is a significance test, when we use the significance test in our language, it is confusing to people, because it is really about saying who is better positioned in my mind to regulate. The Department of Environment Regulation is a much larger department than the office of the EPA and its resources are particularly geared towards regulating certain activities, whereas the office of the EPA is geared towards regulating another form of activity. In some instances a local government is a better positioned body to regulate an activity. It is not saying that a certain activity

cannot have any import or should not be regulated; it is more a decision on where it is best regulated for outcomes for a range of interested stakeholders. I will get the general manager to make a further comment on that.

**Mr K. Taylor:** The decision on whether projects or developments referred to the EPA are a significant proposal in the context of the act is a decision made by the EPA itself. The member would appreciate that it is a statutory authority, so that decision is made by it. However, when matters are brought to its attention and the EPA thinks they are not a significant proposal, that information is retained. We do not have the statistic here today, but the number of those can be provided.

**Mr C.J. TALLENTIRE:** Can I have as supplementary information the number of referrals that in the minds of the community were referrals but that the EPA declined to accept as referrals?

**Mr A.P. JACOB:** Yes, we will provide beyond the 27 referrals of development proposals what other proposals came up to the EPA in that time.

[*Supplementary Information No A86.*]

**Mr W.J. JOHNSTON:** How many of the applications relating to the uranium sector relate to in situ leach mining? Does the EPA have a policy regarding in situ leach mining?

**Mr A.P. JACOB:** I do not believe the EPA has any ISL proposal for uranium mining before the EPA at this point. I am happy to be corrected on that. That is correct: we do not have any ISL proposals before us at this point.

**Mr W.J. JOHNSTON:** And you do not have a policy?

**Mr A.P. JACOB:** I do not believe the EPA in its policy instruments has formed a position on ISL proposals either.

**Mr R.S. LOVE:** I refer to service 3 on page 568 headed “Compliance Monitoring Services to the Minister”. I understand that a statement was made that iron ore mines in the Pilbara would, as a condition, contribute funding to a strategic regional conservation initiative. Is that going forward or is there any update on that?

**Mr A.P. JACOB:** This is an important issue and is something that has come up in previous estimates as well. The Pilbara strategic conservation initiative working group was established in 2015. That had industry representatives as well as departmental representatives from within the portfolio to provide advice on the establishment of a Pilbara strategic conservation initiative to deliver environmental offsets for proposals assessed and approved within the Pilbara region under part IV of the Environmental Protection Act. Specifically, it was to discuss and report back to me on the merits of establishing the initiative. I think that is well established and there is agreement around that—the principles that should underpin the development of this initiative, the scope of the initiative and the preferred option for design of the initiative as well as the implementation plan for funds to contribute to a strategic offset initiative. The working group has now finalised its report to me and I am considering that report and its recommendations.

[4.40 pm]

**Mr W.J. JOHNSTON:** I turn to page 566. The second dot point states —

The Office will be reviewing existing practices for development and application of policies ...

I understand that 50 environmental policies, guidelines or position statements have been archived. What role did the office play in that archiving?

**Mr A.P. JACOB:** This relates predominantly to internal policies of the Environmental Protection Authority and the Office of the Environmental Protection Authority. The recent review that we announced looked at existing policies as well. Archiving policies change and adapt over time and there is a normal process of archiving previous ones when they are updated or replaced.

**Mr W.J. JOHNSTON:** Given that the courts have found that the EPA is legally obliged to follow its own guidelines and policies, is the effect of setting aside these policies to change the obligations on the EPA?

**Mr A.P. JACOB:** That question is wrong on a few grounds. That is not what the court found, and in any event that is still being tested through an appeal. The decision on Roe 8 found that policies were to have been mandatory relevant considerations and not enforceable as such.

**Mr W.J. JOHNSTON:** Just mandatory!

**Mr A.P. JACOB:** No; it is a key distinction in the process. I refer to the second part of that question. Many of the proposals, particularly those that go through part IV of the act, span many years, and policies may change throughout that period of time. A policy that is relevant at a given time is a policy that is relevant at that point.

**Mr W.J. JOHNSTON:** So you are saying yes; by setting aside those policies you are changing the obligations on the EPA.

**Mr A.P. JACOB:** I do not set aside those policies; they are the EPA's policies.

**Mr W.J. JOHNSTON:** When I use the term "you", I am, of course, meaning the agency, as anybody would have understood.

**Mr A.P. JACOB:** Again, it is not the agency either; they are the EPA's policies.

**Mr W.J. JOHNSTON:** Yes, that is right—the agency.

**Mr A.P. JACOB:** No; they are two separate things.

**Mr C.J. TALLENTIRE:** The minister is suggesting that these 52 policies, in total, that have been archived are of an administrative nature, and he does not have any responsibility for them. I will tell the minister three that are his responsibility: the environmental protection policies; the Swan coastal plain lakes, the Gngangara mound and the wheatbelt wetlands. At a stroke of a pen, the minister dismissed those policies. I am keen to know how the minister sees the imbalance and how he feels about—perhaps he can get advice—the months and months that it takes to prepare an environmental protection policy and how that equates with his dismissal of it in a matter of days or, really, at the stroke of a pen? How can we have something which the community puts submissions into and helps craft and which has all sorts of deliberative procedures, and the minister can, years later, dismiss it at the stroke of a pen? How can that be a good way of conducting environmental policy?

**Mr A.P. JACOB:** There was certainly not a stroke-of-a-pen action on behalf of the government in this matter. A large amount of time and consideration went into this process.

**Mr C.J. TALLENTIRE:** But no consultation.

**Mr A.P. JACOB:** I sought advice from the Environmental Protection Authority, as an independent body and the peak body to provide advice to the Minister for Environment, and on its advice I revoked three environmental protection policies. They were the Environmental Protection (South West Agricultural Zone Wetlands) Policy 1998 —

**Mr C.J. TALLENTIRE:** I have just said what they were; I have just reeled them off!

**Mr A.P. JACOB:** I think the dates are relevant for these as well in my answer. The other two are the Environmental Protection (Gngangara Mound Crown Land) Policy 1992 and the Environmental Protection (Swan Coastal Plain Lakes) Policy 1992. The Environmental Protection (South West Agricultural Zone Wetlands) Policy 1998 protected only those wetlands that were voluntarily registered under the policy. During the 17 years that that policy was in force, only two of the wetlands were registered.

**Mr C.J. TALLENTIRE:** Because the department did not actively go and get more; it was a failure to act.

**Mr A.P. JACOB:** The environmental values of those two registered wetlands are not in any way affected by the revocation of the policy. The Environmental Protection (Gngangara Mound Crown Land) Policy 1992 was successfully implemented through a number of programs in the 23 years that it was in force. Since its gazettal in 1992, a number of policy and regulatory mechanisms have been introduced that afford ongoing protection to the values of the Gngangara mound. They include the environmental harm and clearing provisions under the Environmental Protection Act, none of which were in place in 1992; therefore, we believed that the EPP was no longer required because subsequent instruments provided equivalent or, in some instances, better protection. Similarly, the Environmental Protection (Swan Coastal Plain Lakes) Policy 1992—again a policy of 1992—protected the environmental value of lakes on the Swan coastal plain from some damaging processes. The policy covered only one type of wetland, specifically lakes; it did not cover all significant wetlands on the Swan coastal plain. Again, since 1992, a number of legislative policy and planning mechanisms have been introduced that adequately protect high-value wetlands, including lakes. These measures include, again, the environmental harm and clearing provisions under the Environmental Protection Act, as well as land use planning and development processes under the Planning Development Act 2005.

**Mr W.J. JOHNSTON:** To make it easier, why not table the document?

**The CHAIRMAN:** Member for Gosnells, before your question, are you aware that we have several more divisions to go?

**Mr C.J. TALLENTIRE:** Yes; thank you.

The minister is suggesting that some of the 52 policies that have been archived are of an administrative nature. What about a policy regarding management of mosquitoes by land developers and sampling of subterranean

fauna? Why would the minister get rid of these? What about a policy that looks at the protection of Cape Range or a policy about environmental air? Why would the minister archive these without any consultation at all?

**Mr A.P. JACOB:** Again, time evolves, and scientific understanding and methods evolve as well. The member mentioned sampling for subterranean fauna. We have, or the EPA has—not “we”—an existing policy on that. If that is one that was archived, it has been subsequently replaced with a more up-to-date version.

**Mr C.J. TALLENTIRE:** Why did the minister not consult with the community? There may have been useful elements in that that could have been conveyed to an updated policy. I do not deny the need to update them from time to time, but the minister just withdrew them and archived them in this way—52 of them, and at various levels of policy development. Is the minister not just paving the way for yet more confusion? I notice that the Quinlan report does not look at these 52 policies. The minister is paving the way for yet more court cases and more confusion.

**Mr A.P. JACOB:** Again, member for Gosnells, by and large these are not my policies; they are policies of the EPA, which is an independent board.

**Mr C.J. TALLENTIRE:** At least three of them are the minister’s!

**Mr A.P. JACOB:** Yes, and I answered those comprehensively enough that I was asked to stop answering them.

**Mr W.J. JOHNSTON:** No, the minister did not; he just droned on! The minister did not answer the question at all.

**Mr A.P. JACOB:** The majority of those are internal policies for the operation of the EPA. The subterranean fauna policy that the member read out is a great example. If that has been archived, it means that it has been replaced with the subterranean fauna policy that the EPA currently operates under. That is a matter for the EPA as an independent body. For a minister of the day to dictate or try to interfere in that matter is interfering, essentially, with the independence of the EPA.

**Mr C.J. TALLENTIRE:** Minister, has the policy on conservation of roadside vegetation been replaced by something better, or has the minister just got rid of it because it was inconvenient?

**Mr A.P. JACOB:** Every policy could be different. For example, we still have within the Department of Parks and Wildlife a roadside vegetation conservation advisory committee. Maybe a decision was taken that those matters are better addressed through other areas, and I know that that is still addressed through an internal committee. There could be a range of reasons. I am not familiar with that particular policy nor the decision-making of the EPA around archiving it.

**Mr C.J. TALLENTIRE:** It was done on the minister’s watch.

**Mr A.P. JACOB:** Yes, but it was a decision for the EPA.

**Mr W.J. JOHNSTON:** Did the EPA provide the minister with a briefing note on each of the policies that were archived?

**Mr A.P. JACOB:** No, I do not believe so. I expect, as a matter of fact, the EPA to significantly review its policy library. I read that out in a brief ministerial statement in this place last week. There has been a thorough report into the EPA’s policy instruments; they sit well in excess of 50.

**Mr W.J. JOHNSTON:** That is not answering the question; it is just rabbiting on.

**Mr A.P. JACOB:** There needs to be a structure in how they produce them going forward. I also observe the independence of the EPA in how it goes about —

**Mr W.J. JOHNSTON:** That is the point I am asking about. I am not asking the minister whether he interfered; I am asking whether he was briefed.

[4.50 pm]

**Mr A.P. JACOB:** I am briefed by the Environmental Protection Authority on a range of matters, but not necessarily every single aspect of how it operates.

**Mr W.J. JOHNSTON:** The minister is saying that he has not been briefed so he does not know what is in the policies that have been archived.

**Mr A.P. JACOB:** Again, the EPA’s existing policy suite is available on its website. It needs to be tidied up extensively.

**Mr W.J. JOHNSTON:** I have not asked about that; I am asking about the minister’s knowledge.

**The CHAIRMAN:** Order, member for Cannington!

**Extract from *Hansard***

[ASSEMBLY ESTIMATES COMMITTEE A — Thursday, 26 May 2016]

p475b-479a

Chairman; Mr Chris Tallentire; Mr Albert Jacob; Mr Bill Johnston; Mr Shane Love

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**Mr A.P. JACOB:** I expect the EPA, as an independent statutory authority, to manage its portfolio of policies internally. I expect it to do more work in terms of that structure, not less.

**The CHAIRMAN:** Member for Cannington, is this a further question?

**Mr W.J. JOHNSTON:** I am actually asking the same question, because it did not get answered.

**The CHAIRMAN:** It is the minister's prerogative to answer how he sees fit. If the member is not getting an answer, he is probably wasting everybody's time continuing to pursue the question.

**Mr W.J. JOHNSTON:** It is a pretty easy question, minister. If the minister has not been briefed on these decisions—he says that is fine, and I am not arguing with him—how is he confident that the EPA has made the right decision?

**Mr A.P. JACOB:** It depends on the nature and basis of the policies. I have received briefings on some, obviously, and I answered those previously, but many of them are internal policies. The EPA's policies sit under six genres of content. As the minister, I expect that the EPA, in retaining its independence and functioning as not only a functioning board, but also a board entrusted with a large responsibility, and independent, responsibility, to undertake its responsibilities.

**The appropriation was recommended.**