STANDING COMMITTEE ON
UNIFORM LEGISLATION AND STATUTES REVIEW

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

TRANSCRIPT OF EVIDENCE TAKEN
AT PERTH
MONDAY, 8 FEBRUARY 2010

SESSION ONE

Members

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

Hearing commenced at 9.36 am

McNAMARA, MR KEIRAN
Director General, Department of Environment and Conservation,
sworn and examined:

McEVOY, MS SARAH
Principal Policy Advisor, Department of Environment and Conservation,
sworn and examined:

The CHAIRMAN: On behalf of the committee I would like to welcome you to the meeting. Before we begin, I must ask you to take either the oath or the affirmation.

[Witnesses took the oath or affirmation.]

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

Mr McNamara: Yes.

Ms McEvoy: Yes.

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

Mr McNamara: No.

The CHAIRMAN: To begin, Keiran, I might just ask you to outline to the committee the recent separation of the EPA and the DEC and the role of the DEC in the EPA approvals process now under the new structure.

Mr McNamara: Thank you. The government decided during the course of last year that the Environmental Protection Authority, which is a five-person statutory authority, would have, if you like, control of its own resources and its own staff. To give effect to that intent, the Office of the Environmental Protection Authority was established with effect from 27 November 2009, if I recall correctly. The office of the Environmental Protection Authority has its own CEO, titled "General Manager", and it is a normal government department, the office of the EPA. It assists the EPA in respect of all of the EPA's functions, essentially environmental impact assessment, policy and also monitoring and compliance with the conditions that are set on projects as a consequence of environmental impact assessment processes. That in essence is the separation that has taken place. The role that the department ceases to have as a consequence of that is that I am no longer the director general with the normal public sector and financial responsibilities in respect of the staff who are now in the office of the EPA. But the department is still an important contributor to the

work of the EPA, both in a general sense and also specifically as a significant adviser in terms of our expertise and knowledge in respect of environmental impact assessments and also in respect of the EPA's policy functions.

The CHAIRMAN: So the role of the department is now just in an advisory capacity like any other government capacity on a proposal, so the EPA will seek your advise or you will make submissions. You are not actually involved in the assessment of any proposal.

Mr McNamara: That is essentially the case. We are advisory to the environmental impact assessment process. We still have our full range of other functions. There are other parts of the Environmental Protection Act, particularly licensing and works approvals and regulatory functions, that rest with us. And we of course still have a range of functions under other statutes, particularly the Conservation and Land Management Act and the Wildlife Conservation Act.

The CHAIRMAN: And what about in relation to native vegetation clearing? Is that processed by the EPA or by DEC?

Mr McNamara: The native vegetation clearing provisions of the Environmental Protection Act are in part V of the act. That part of the act is administered by the department, not the office of the EPA. But clearing of native vegetation can be a factor in proposals that are submitted to the EPA, and the EPA makes its own judgement on what proposals to assess. It may well assess proposals that have clearing of native vegetation as one of the considerations.

[9.42 am]

The CHAIRMAN: Just to get this clear: if someone needs to get a licence for the clearing of vegetation, they lodge that with the DEC?

Mr McNamara: That is right.

The CHAIRMAN: Then the DEC refer that to the EPA in the event that the EPA should want to assess it? How does the EPA come into play in an assessment of the clearing of native vegetation?

Mr McNamara: I will ask Ms McEvoy to assist in a moment, but, in essence, applicants make their application to the Department of Environment and Conservation in accordance with the provisions of part V of the act. But quite separately from that, where, for example, there might be a major development proposal, a major mining proposal that triggers the significance test of the act anyway and is submitted to the EPA for its consideration whether to conduct an assessment—there could be a range of air quality, noise, dust, vegetation, other biodiversity considerations for example—the EPA makes its decision across that full range of factors. Ms McEvoy might be able to elaborate.

Ms McEvoy: Keiran has got that correctly. Under the clearing provisions, the CEO, also under part V, has an obligation to refer a significant proposal to the EPA for their consideration so if there were a significant proposal that was submitted as an application for a clearing permit, under section 38 the CEO must refer that to the EPA for their consideration as to whether or not to assess it.

The CHAIRMAN: The committee has a range of questions to run through. I understand they have already been provided to you so that you have some idea of the sorts of issues or information the committee is seeking from you. I note that some of them may be more appropriately directed to the EPA. If I ask a question that you feel is more appropriately directed to the EPA, can you let me know and we will move on to the next one.

For each of the last 10 years, are you able to provide information about how many proposals were referred to the EPA; and, of those proposals, how many required native vegetation clearing permits?

Mr McNamara: Chair, we have provided this morning a written response to the questions that were sent to both the department and the Office of the EPA last Wednesday. It is a combined response prepared by DEC and the Office of the EPA which answers each of the questions that were put to us on Wednesday of last week to the best of our ability in the time that we had available. There are some matters in terms of statistics and so on that were not able to be readily

compiled in the time that we had. There is a full set of written answers to the questions that were provided to us last week, including the ones you just commenced with.

The CHAIRMAN: Members, there are quite a few pages here. I do not know about you, but I would certainly like an opportunity to review the information that we have been given before we continue with the hearing. If members are agreeable, I would like to adjourn the hearing and ask our witnesses if they could leave so the committee can review the information that has been provided to us. I apologise, but having just received this now, we need an opportunity to look through it and determine whether we have got any follow-up questions that we would like to ask either of you. If you do not mind, I am hopeful that we can probably do it in about half an hour; it might be a little bit longer.

Mr McNamara: Chair, if I might just say: my understanding is that the questions were received on Wednesday last week. We worked diligently on Thursday and Friday, and indeed much of yesterday, to complete them. I apologise that they have only been able to be tabled this morning, but it was an extensive list of questions

The CHAIRMAN: That is okay. That was not a complaint on my part. I do not want to go through the process of asking you the questions, if we have received written replies, without consulting with my members first to see whether that is the process that they think we need to go through anyway. There might be some follow-up questions that we can deal with. We will adjourn for about half an hour, or as soon as we are able to come back to you.

Proceedings suspended from 9.46 to 10.00 am

The CHAIRMAN: My apologies for that. We actually had separated the questions out to ask you this morning, so it has taken a bit of time to work through how to handle this. I think there is clearly little point in asking statistical questions because they are just figures and they are fairly straightforward, so I propose not to ask those questions of you directly, and look at asking you questions specifically in relation to the clearing of native vegetation, works approvals process, and some other questions so that they go on the record. Before doing that, I would like to get your agreement that we can make public the answers to the first set of questions, which refer to the statistics; is it okay for us to make that information public?

Mr McNamara: From my perspective, yes. The questions have been answered jointly by DEC and the EPA. We certainly expected that that would be the case, but the committee will note that in some cases we have said that some information was not able to be collated in the time available, and we stand ready to add some extra information after another week or so.

The CHAIRMAN: Just in relation to those statistics, we asked for information in relation to the past 10 years, but you provided information in relation to the past six years. Is that because information for four years is not available or was not able to be collated within the time provided? That is the first lot of questions.

Mr McNamara: It is the former to some degree. The question, I think, could be answered by Ms McEvoy but belongs more to the office of the EPA. Ms McEvoy may be able to shed some light on that.

Ms McEvoy: The act was amended in 2003 and therefore there were some changes that meant that data was not directly comparable before that time. For example, the clearing provisions were introduced in 2004 and therefore questions relating to that would not make any sense. There are still some data, I believe, that may be available for the years before, but in the time available it was not possible to provide them—for instance, on the number of proposals referred to the EPA.

The CHAIRMAN: In view of that explanation, I think we will ask that question directly of EPA and also note that in some instances there is a very good explanation for why the earlier information has not been provided. Just quickly looking through this, is there any other area of information that

we have asked for that was not able to be provided because of the lack of time, which could be provided as supplementary information?

Ms McEvoy: Yes, in relation to comparisons with other jurisdictions, that is not able to be answered in the time available, although it could be answered within the next week or so.

The CHAIRMAN: I think, on behalf of the committee, I would like to ask you to provide that information and ask that it be provided by Monday of next week, please.

Mr McNamara: The other answers that probably fall into that category are some that relate to information held by the Office of the Appeals Convener, rather than being held by either DEC or the EPA, where we have to go to that office to provide some of the answers.

The CHAIRMAN: Okay. Would be appropriate for the EPA to get that information from the Office of the Appeals Convener, or are you suggesting that it would be better for the committee to go directly to the Office of the Appeals Convener?

Mr McNamara: That is an interesting question. The appeals convener is an independent office. We have made contact with the Office of the Appeals Convener to let it know that there are a number of questions. I think, between the department and the EPA, we can make that request and facilitate the answers, but they do have to be provided by that office rather than either DEC or the EPA.

The CHAIRMAN: Again, if it is possible to get those answers to the committee by Monday, that would be appreciated.

Mr McNamara: We will seek that.

The CHAIRMAN: Thank you. I might now just go to the questions on the clearing of native vegetation and works approval and licences. The Standing Committee on Legislation has recommended to Parliament that the appeals currently made to the minister in respect of decisions made by the CEO pursuant to part 5 of the Environmental Protection Act 1986 be referred to the State Administrative Tribunal. If this recommendation is accepted, will it have any practical effect for the amendments proposed by the bill?

Mr McNamara: No, the amendments proposed in the bill for appeals relating to part 5 are independent of any decision to refer appeals currently made to the Minister for Environment to the State Administrative Tribunal.

The CHAIRMAN: In view of the clearing of native vegetation April 2009 report and its recommendation that ministerial appeals on decisions made under part 5 of the act should be retained, what is the rationale for the proposed amendments? Again, if you feel that it is not appropriate for you to answer any of these questions, Keiran, please state so.

Mr McNamara: Thank you. The report's recommendations were in relation to appeals on clearing matters and do not apply generally to part 5 of the act. The committee's finding was that it supports the retention of existing appeal provisions associated with applications to clear native vegetation and notes the opportunity for appeals to be dismissed quickly if considered groundless or vexatious. The committee's finding is that existing appeal rights under part 5, division 2, should not be reduced. The amendments proposed in the bill do not materially affect any rights that are currently exercised by applicants, approval holders or third parties. The proposed amendments to appeal rights under part 5, division 2 relate firstly to the amendment of appeal periods for applicants and permit holders from within 28 days to within 21 days of being notified; and, secondly, removal of appeal rights for third parties against the refusal, revocation or suspension of a permit. The Department of Environment and Conservation sends all decisions as registered mail and therefore the date that it is received by the applicant is recorded. As appeal rights for third parties are by reference to the period in which the permit holder is notified, appeals on the specifications of a permit will also be reduced from 28 days to 21 days. The amendment of appeal periods will align the appeal period to that for other part 5 environmental regulation functions and does not

significantly affect the rights of appellants, as the appeal period only commences once the applicant or permit holder has been notified. The period for appeals against the EPA's decision on whether to assess a proposal or on the content of any recommendation contained in its assessment report is 14 days. There is no significant effect on approval rights as a result of the proposal to remove third party appeals on refusals, revocations or suspensions. These appeal rights have never been exercised. This is because these decisions affect the applicant or approval holder only.

The CHAIRMAN: Thank you. Can I just explore a bit further the view that you have expressed that there is no impact on appeal rights as a result of the proposed amendments? I would have thought that clearly there are, because we are removing, for example, the right to appeal on a level of assessment.

Ms McEvoy: That is an appeal right in respect of the EPA. These appeal rights relate to the period for the applicant and permit holders to appeal various decisions from 21 days to 28 days of being notified. The original reason it was increased in the Legislative Council from 21 days to 28 days was the view that regional mail services may be inadequate. Because the period only commences from the time that the applicant or permit holder is notified, inadequate mail services are not a serious consideration. Even if the services were inadequate, the department is aware of the time that the applicant or permit holder receives notification.

The CHAIRMAN: But how about the return mail? If the services are inadequate, it would take longer for a submission made to be returned to the department, which could cut into the time to actually prepare the submission by reducing it from 28 days to 21 days.

Ms McEvoy: The submission period is not to the department, it is to the Office of the Appeals Convener. It is usual practice for most appeals to be made electronically by either fax or email. It is very unusual for an appeal, in this day and age, to be made using old-fashioned snail mail. Obviously, for legal reasons, the department in providing its decision to the applicant uses the old-fashioned means of advice. Therefore, the notice period is important.

Mr McNamara: If I might just add, the overall intent of the government is to streamline some of the approvals processes and time lines without reducing the standards or the transparency. The reduction from 28 days to 21 days is consistent with that intent. The period of 21 days is consistent—I will ask Ms McEvoy to correct me if I get this wrong—with other parts of part 5 of the act concerning works approvals and licences, and it indeed exceeds the standard 14 days that applies for appeals in the EPA arena, rather than the DEC-managed arena. By comparative standards, 28 days is unnecessarily generous. From the experience of those other provisions, reducing it to 21 days should not have any material effect on the ability of people to make their appeals in a timely manner.

The CHAIRMAN: Correct me if I am wrong, but I understood from your answer that you were suggesting that there were not third-party appeals on the clearing of native vegetation. Can you clarify whether my understanding is correct and whether there are or are not third-party appeals on the clearing of native vegetation permits?

Mr McNamara: Once again, I will answer and ask Ms McEvoy to add or clarify as necessary. There are still appeal rights in respect of clearing permits, so if the department decides to issue a clearing permit and attach conditions to it, it is appealable by both the applicant and other parties. The right that is proposed to be removed by virtue of this bill is where the permit is not issued by the department, we are removing the right of a third party to appeal against that. For example, if a farmer applies to clear some native vegetation on his or her farm, if we decide to issue that permit, it will be subject to appeal processes, including by third parties. If we decide to refuse that permit, the applicant is able to appeal but third parties are not. The view that has been taken is that it is really of no consequence to others in the community if that application is refused. Indeed, the experience of the act since the clearing amendments were introduced in 2003 and took effect in 2004 is that there has been no third party appeal against the refusal of such a permit.

Hon HELEN BULLOCK: Has the third party appeal been used a lot in the past?

Mr McNamara: It is used frequently when we propose to grant a permit in respect of both the granting and the conditions, but it has never been exercised when we have refused a permit, except by the applicant. It has never been exercised by a third party.

Ms McEvoy: That is correct. The same experience is the case for works approvals and licences going back to 1987, when the act commenced. The reason it would be the same as for clearing permits is that only the applicant is materially affected by that refusal, rather than a third party. That does not prevent a third party assisting the applicant in preparing an appeal; legal advice is frequently sought by applicants.

The CHAIRMAN: So under the proposed amendments, the right of a third party to appeal on the granting of a licence or the conditions set on the granting of a licence are still protected?

Mr McNamara: Yes.

Hon NIGEL HALLETT: What is the time frame with the appeal?

The CHAIRMAN: Can you be a bit more specific in terms of what you are asking for—the lodging of the appeal or the processing?

Hon NIGEL HALLETT: When the appeal has been lodged, what is the time frame for dealing with that appeal?

Mr McNamara: Once again, I will answer the question as I understand it and seek clarification if necessary. It is 28 days, which I understand is from the date of receipt of the notification by the applicant. As per the previous round of questions, the proposal is that that be reduced to 21 days.

The CHAIRMAN: I think my colleague was actually asking how long it takes the department to process an appeal. I do not know whether you can answer this question, because I do not know whether it is the department that deals with this or the Office of the Appeals Convener that deals with it. The question was, from the point that the submissions close for appeals, how long does it take the Office of the Appeals Convener to actually process those appeals?

[10.15 am]

Ms McEvoy: As for the other information we require from the Appeal Convener's office, we would need to seek advice from them. We can do so if the committee would like.

The CHAIRMAN: If you do not mind, that would be appreciated. Again, the time line is a response by Monday.

Hon NIGEL HALLETT: In our region there is a lot of angst at the time taken to get appeals sorted out. Sometimes it is running into years, and that window of opportunity for either a business or project has gone. It is trying to bring it back to accountability.

Mr McNamara: I appreciate that. The Appeals Convener operates independently of the department and indeed of the EPA, as I think is widely known, and advises the minister, who makes the ultimate decision. The Appeals Convener will routinely seek information and advice from the department in considering appeals. But I guess by definition, where there are appeals there is the potential for a variety of issues, and contentious issues, to be on the table, and they have to be worked through by the Appeals Convener and the minister.

The CHAIRMAN: Okay, I might just move along. The second reading speech in respect of the bill states that the clearing permit process is robust, transparent and accountable and with its own comprehensive appeal provisions. Please explain how this process is robust and transparent and what appeal rights exist under the clearing permit process. You have outlined some of them, but if you do not mind just going through that briefly again.

Mr McNamara: Applications to clear native vegetation and the CEO's decision are advertised in *The West Australian* newspaper. Records of applications and decisions are maintained on a publicly available website, as required under section 51Q of the act. The CEO in making a decision about a clearing permit application under section 51O must have regard to the clearing principles contained in schedule 5 of the Environmental Protection Act so far as they are relevant to the matters under consideration. These clearing principles address all the environmental values of native vegetation, including biodiversity, water quality and land degradation issues. Section 51O requires that the CEO shall also have regard to planning instruments or any other matter that the CEO considers relevant. Planning instruments include a scheme or a strategy, policy or plan made or adopted under a scheme, a statement of planning policy approved under section 29 of the Planning and Development Act 2005 or a local planning strategy made under the Planning and Development Act 2005. The CEO is also required under section 51P(1) to ensure that a clearing permit is consistent with any approved environmental protection policy. Information available on the Department of Environment and Conservation's website includes the decision report containing an assessment in accordance with section 51O as well as the application and any permit granted. Therefore, the applicant and community have access to the basis and outcome of the CEO's decision on an application. Appeal rights on clearing permits are contained in section 101A of the Environmental Protection Act 1986. Comprehensive appeal rights, including third party appeal rights, exist on the decision to grant or to refuse to grant a permit or undertaking, the specifications of a permit or undertaking, or the amendment, revocation or suspension of the permit. An appeal must be lodged with the Minister for Environment in writing setting out the grounds of that appeal. The office of the Appeals Convener administers the appeal and conducts an inquiry and makes recommendations to the minister. Section 109B states that the committee is to conduct its inquiry according to equity, good conscience and the substantial merits of the case, without regard to technicalities or legal forms; shall not be bound by any rules of evidence; and may conduct its inquiries in what manner it considers appropriate. The Appeals Convener has a statutory role under the act and is independent from the Department of Environment and Conservation.

The CHAIRMAN: Just looking at clause 5(1)(a) of the bill, would you be able to explain why clause 5(1)(a) of the bill has been drafted so as to delete the right to appeal the decision not to assess on the basis of the proposal being dealt with under part 5, division 2, in the circumstance that a person may wish to raise issues other than the clearing of native vegetation as a reason that the proposal should be assessed? Do you feel that is a question that better directed to the EPA?

Mr McNamara: Clause 5(1)(a) does not delete the right to appeal, because the proposal is being dealt with under part 5, division 2, but only in certain cases where the EPA has made a recommendation to that effect. The EPA's administrative procedures are being revised to create the opportunity for a public comment period on referrals where a person can raise issues other than the clearing of native vegetation and which the EPA must take into account in making its decision on whether to assess the proposal.

The CHAIRMAN: If a recommendation has been made for a proposal to be dealt with under part 5, division 2, can a person appeal a decision not to assess?

Ms McEvoy: No, they cannot if that is the recommendation of the EPA, under this bill.

The CHAIRMAN: Is that the case regardless of the grounds on which they might want to appeal?

Mr McNamara: If you do not mind, could I have a previous question repeated just so that I can follow, please?

The CHAIRMAN: Sure, that is not a problem. If a recommendation has been made for a proposal to be dealt with under part 5, division 2, can a person appeal a decision not to assess?

Mr McNamara: That was the previous one.

The CHAIRMAN: So the follow-up question is: is this the case regardless of the grounds on which they might want to appeal?

Ms McEvoy: That is the case. It is the EPA's choice whether they want to make that recommendation. The point of having the administrative procedures amended to create an opportunity for public submissions on the level of assessment and whether the proposal should be assessed is to make sure that the EPA is aware of all of the issues that may be of public concern and the level of public concern that there may be. It is open to the EPA not to report a recommendation that it be managed under part 5, division 2. Then the appeal would remain on that and on any permit that was later required after the appeal period is finished under part 4.

The CHAIRMAN: Can I just get some clarification. If a proposal is referred to the EPA for assessment and the EPA determined not to assess it, under the current processes that exist now if they need a vegetation clearing permit, that would be separate to the EPA's current decision on the proposal. They would still be required to go through the process of getting a vegetation clearing permit.

Ms McEvoy: Yes, that does not change. However, at the moment we have got two appeal points: one on the level of assessment if it is to be managed under part 5, division 2, a clearing permit, and then subsequent to that on any clearing permit application decision or conditions of a permit granted.

Mr McNamara: If I might elaborate, it goes to the point of the fundamental objectives of the bill in terms of streamlining. What we have at the moment is a situation where for a proponent who has a proposal that has been looked at by the EPA in respect of clearing, there is an appeal point in the EPA part of the process, and then if it is subsequently dealt with under part 5, the clearing permit process, exactly the same proposal can be appealed again. So the intent is that the government is looking to remove the situation where exactly the same proposition is subject to appeal at two points and reduce to having that appeal at one point simply for efficiency and streamlining. There is no loss of appeal right to anyone, either applicant or third party; it is simply doing it once rather than twice.

Ms McEvoy: An example of that is a few years ago with the South Street station for the Perth to Mandurah railway. The EPA decided not to assess the creation of the station. That was appealed by the community and the subsequent clearing permit decision was appealed on exactly the same grounds with exactly the same issues again, and that created quite a lot of delays in being able to get a final decision.

The CHAIRMAN: However, is it not the case, though, that if the EPA make a decision not to assess, then the opportunity to assess the clearing permit is avoided?

Ms McEvoy: No, clearing requires a clearing permit unless there is a permit or an exemption. There is no exemption that applies if the EPA decides not to assess a proposal. It is only where they assess it and the minister issues of ministerial statement of implementation, and any clearing is done in accordance with the outcome of the EPA's formal assessment.

The CHAIRMAN: Let me just get this right. If the EPA determined to assess, then there is no requirement to go through and get a separate clearing permit licence.

Ms McEvoy: That is correct.

The CHAIRMAN: If the EPA determined to assess only under the clearing permit licence, then you automatically jump to that process and that process is adopted.

Ms McEvoy: The EPA does not determine whether a clearing permit is required; it is an independent fact. But if they make a recommendation that it be managed under a clearing permit, then the appeal right on the level of assessment will be removed.

The CHAIRMAN: Okay, but if the EPA determined not to assess because in their view the project is not significant enough, are you saying that that decision not to assess will take into account the assessment under the native vegetation clearing permit process?

Ms McEvoy: Yes.

The CHAIRMAN: So if they have decided not to assess, there is no need to get a native vegetation clearing permit?

Ms McEvoy: That is correct. The EPA in its decision on whether it will assess or not takes into account a process like the clearing permit process, knowing that it has its own robust standards that apply.

Mr McNamara: And its own appeal provisions.

The CHAIRMAN: There will not be any appeal provisions if the EPA determine —

Ms McEvoy: There will be appeal provisions on the clearing permit and all of the decisions that are associated with that.

The CHAIRMAN: But if the EPA make a decision not to assess —

Ms McEvoy: On the basis that it is managed under a clearing permit.

The CHAIRMAN: Okay.

Ms McEvoy: The EPA's decision not to assess is not appealable, but all of the normal appeal rights that apply to a clearing permit application still apply.

Mr McNamara: So the appeal provisions come into play in the exercise of the clearing provisions rather than the EPA's decision whether or not to assess.

The CHAIRMAN: So there will not be a situation where an EPA decision not to assess can be interpreted as a decision that a native vegetation clearing permit is not required.

Ms McEvoy: No, the EPA's decision cannot affect that in any way.

Hon NIGEL HALLETT: Can you give us an explanation of why the blow-out of times from 38 days in 2006-07 for the level of assessment out to 81 now for 2008-09?

Mr McNamara: I think the question relates to the EPA. Do you have a question number?

Hon NIGEL HALLETT: That is on 3.8.

The CHAIRMAN: I think that is a question that is directed best to the EPA. Just following on in relation to clause 5(1)(a) of the bill, what is the practical effect of clause 5(1)(a) of the bill where an application for a clearing permit is to be made under other legislation or in another department pursuant to a memorandum of understanding with DEC?

Mr McNamara: In terms of the effect in respect of other legislation, the answer is that applications for clearing permits can only be made under section 51E of part 5, division 2 of the Environmental Protection Act. In respect of the question as it relates to another department pursuant to an MOU with DEC, the answer is that the proposed amendment in clause 5(1)(a) of the bill does not have any effect other than in this case, as the EPA's recommendation must refer to part 5, division 2; in other words, the clearing provisions of the act.

[10.30 am]

A delegation is made under section 20 of the act of the CEO's powers in respect of part V, division 2, to the director general, and separately to the office of the director, environment, in the Department of Mines and Petroleum. The delegation applies to clearing done as a result of mining and petroleum activities under the authority of the Mining Act and various petroleum acts or a government agreement administered by the Department of State Development. Under the delegation, the Department of Mines and Petroleum administers the clearing provisions in

accordance with the requirements of the act, and decisions are made according to the same principles and rules as those of the CEO. Records are maintained in the same database management system and accessed from the Department of Environment and Conservation's website. The EPA is aware of the delegation. There is no practical effect of this delegation and clause 5(1)(a), as the EPA will continue to make its decision as to whether or not to assess a proposal or recommend that it be dealt with under part V, division 2, on the merits of each case.

The CHAIRMAN: Are you able to detail the differences in the assessment process carried out by the EPA in respect of a clearing of native vegetation implications of a proposal and the inquiry undertaken by the CEO pursuant to part V?

Mr McNamara: An application for a clearing permit is made in the form and manner prescribed by the CEO and may be supported by any other information required by the CEO under 51E(1). The CEO assesses applications for clearing in accordance with the requirements of section 51O and against a set of clearing principles contained in schedule 5 of the act. The clearing principles comprehensively address the environmental values of native vegetation. The Department of Environment and Conservation has published a guide on how it undertakes assessments under part V, division 2—a copy of the guide is available on the department's website. The EPA has broad powers in relation to assessment generally and may make such investigations and inquiries as it sees fit and require any person to provide it with such information as is specified. The EPA publishes standards and policies in relation to assessment generally and for vegetation in particular. The issues considered in relation to clearing of native vegetation and the standards applied are generally consistent between both processes.

The CHAIRMAN: Does the CEO assessment under part V of the EPA act meet the criteria for assessment set out in the bilateral agreement, and, if not, might a proponent of a proposal prefer EPA assessment rather than CEO assessment?

Mr McNamara: The clearing permit process does generally meet the standards expected by the commonwealth. However, the current bilateral agreement relates only to those EPA assessments and proposals under part IV of the EP act that meet specified requirements. While it is preferable that there be concurrent assessment under state and commonwealth processes, this depends on the proponent referring the proposal to both the EPA and the commonwealth at the same time and, therefore, is within the proponent's control. The EPA's decision on whether to assess a proposal takes into account the triggering of the bilateral agreement.

The CHAIRMAN: The proposed amendments to section 101A of the EP act, which is clause 5(1)(a) of the bill, speaks of a recommendation that the proposal be dealt with under part V, division 2. However, under part V, division 2, the CEO considers applications for clearing permits, not a proposal. Please explain how these provisions are consistent and why different terminology has been used in the legislation?

Mr McNamara: While the terms "proposal" and "application" have different meanings, they are not inconsistent, as the action of undertaking clearing of native vegetation is within the meaning of "proposal". Part V of the Environmental Protection Act deals with the referral and assessment proposals by the EPA. The term "proposal" has a broad meaning and includes a project, plan, program, policy, operation, undertaking or development, or change in land use or amendment of any of the foregoing. This was deliberate and gives the EPA wide powers to assess and provide recommendations to the minister in respect of referred proposals. "Clearing" means the killing, destruction or doing of any other substantial damage to some or all of the native vegetation in an area, and includes severing or ringbarking of trees or stems, flooding, draining, grazing and burning. Native vegetation includes all types of native vegetation, including that found in aquatic and marine environments. These definitions shape the meaning of an application to clear native vegetation and there is no need for a broad term like proposal.

The CHAIRMAN: By section 63A of the EP act, the CEO is to publish particulars of a works approval from time to time in the prescribed manner. Please identify the regulation or regulations stipulating the manner in which the public is informed of the particulars of a work approval?

Mr McNamara: Section 54(2)(a) of the act requires an application for a works approval to be advertised in the prescribed manner seeking submissions from interested persons. Section 57(2)(a) of the act requires an application for a licence to be advertised in the prescribed manner seeking submissions from interested persons. The manner of the advertisement is prescribed in regulation 5CAA for works approval applications and regulation 5J of the Environmental Protection Regulations 1987 for licence applications, and includes advertising applications in a newspaper circulated daily in the state, providing where and by when submissions may be lodged and details of the applications, such as prescribed category, name of applicant, locality and reference number.

The CHAIRMAN: What is the process for making a member of the public aware of the CEO's decision to grant a works approval/licence?

Mr McNamara: Applications for works approval and licences and the CEO's decision on these are advertised in the public notices section of Monday's *The West Australian.*

The CHAIRMAN: What constitutes minor or preliminary work?

Mr McNamara: "Minor" or "preliminary" in relation to works is not defined and therefore has its ordinary dictionary meaning. The EPA is the arbiter of what constitutes minor or preliminary works, having regard for its reasonable meaning.

The CHAIRMAN: Is there a body of evidence that has been established within the EPA or a set of guidelines in determining what constitutes "minor" or "preliminary".

Mr McNamara: Chair, I suggest that is probably a question to be directed to the office of the EPA.

The CHAIRMAN: How will the CEO be advised that the EPA has consented to minor or preliminary works?

Mr McNamara: The CEO would be advised by the EPA in writing.

The CHAIRMAN: Is there a time frame for that notification?

Ms McEvoy: No, there is not. The effect of the minor and preliminary works is relevant to a decision-making authority, including the CEO of DEC in its capacity in making a decision in respect of those minor or preliminary works. Therefore, the EPA and, quite frankly, the proponent may well notify the decision-making authority as well, if they are keen to have those works commence.

The CHAIRMAN: A query has been raised with the committee as to whether the terms used in the proposed amendments to section 51F, 54 and 57 of the EP act, when compared with those used in the proposed amendment to section 41, have the unintended effect of restricting the implementation of works approvals, clearing permits and licences, more broadly than proposals. Would you please respond to this concern that has been raised with the committee?

Mr McNamara: The CEO is currently more restricted in making decisions on clearing permits, works approvals and licence applications under sections 51F, 54 and 57 than other decision-making authorities. The CEO may not perform any duty imposed on him in respect of decisions on clearing permits, works approval and licence applications if the application is related to a proposal for which any decision-making authority is precluded by section 41 from making a decision that could have the effect of causing or allowing the proposal to be implemented. In other words, the CEO is constrained, not only in respect of the proposal itself, but for any related proposal. The proposed amendments remove this constraint on the CEO in respect of minor and preliminary works that are related to the proposal being assessed where the EPA has given consent to these works.

The CHAIRMAN: This question might be better directed to the EPA, so feel free to respond in that manner if you like. Are you in a position to advise the committee who or what bodies the government has consulted on the proposed amendments and what was the response of each individual or organisation?

Mr McNamara: I am able to answer the question, but some of the briefings and consultations that took place involved an officer of the OEPA rather than an officer of the department, so it is probably better that the OEPA answers the question.

The CHAIRMAN: Do members have any additional questions that you would like to ask? Given the way things have panned out this morning, there may be a need for the committee to come back to you with some follow-up questions. If that is the case we will get those to you as quickly as possible, and also stipulate in that letter the time frame for responding. On behalf of the committee, I thank you for attending this morning and beg your indulgence for the short adjournment this morning while we read through the answers and reorganised our questions. I appreciate your patience during that time.

Hearing concluded at 10.41 am