

STANDING COMMITTEE ON LEGISLATION

**INQUIRY INTO THE JURISDICTION AND OPERATION OF THE STATE
ADMINISTRATIVE TRIBUNAL**

**TRANSCRIPT OF EVIDENCE TAKEN
AT PERTH
WEDNESDAY, 7 MAY 2008**

SESSION FOUR

Members

**Hon Graham Giffard (Chair)
Hon Giz Watson (Deputy Chair)
Hon Ken Baston
Hon Sally Talbot**

Hon George Cash (Substitute member for Hon Peter Collier)

Hearing commenced at 11.47 am**VOGEL, DR PAUL****Chairman, Environmental Protection Authority,
sworn and examined:**

The CHAIR: On behalf of the committee, I welcome you to the hearing. Before we begin, I ask you to take either the oath or the affirmation.

[Witness took the oath.]

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

Dr Vogel: Yes, I have.

The CHAIR: These proceedings are being recorded by Hansard. A copy of the transcript of your evidence will be provided to you. To assist the committee and Hansard, please quote the full title of any document that you refer to during the course of this hearing for the record. Please be aware of the microphones and try to talk into them, and ensure that you do not cover them 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 proceeding, 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 premature publication or disclosure of public evidence may constitute a contempt of Parliament and may mean that the material published or disclosed is not subject to parliamentary privilege.

Dr Vogel, we forwarded to you a list of six questions. I will invite you to both make an opening statement to the committee, if that is your wish, and then to answer the questions. I do not propose to read out those questions to you. It would be a much better way to proceed by having you address those questions for us.

Dr Vogel: I do not wish to make an opening address. I am happy to get straight into the questions.

The CHAIR: You can go straight to the questions, if that is your preference.

Dr Vogel: With your concurrence I intend to refer to notes that I am happy to make available to the committee. I have been in the job for only six months and I need to make sure that I am on top of the legislation. Some of these questions relate both to the interpretation of the legislation and policy.

The CHAIR: Would you like to distribute those notes now?

Dr Vogel: I am happy to make them available now.

The CHAIR: It might be easier for members if they were distributed now.

Dr Vogel: I should have done that before, and I apologise for that.

The CHAIR: It would be easier for members if they had them. It will allow them to make notes on anything that arises out of your notes.

Dr Vogel: I will refer to the answer to the questions before you. I think there has been some confusion, particularly in relation to section 41 of the Environmental Protection Act. Part of the review process that the Environmental Protection Authority is undertaking at the moment will provide some clarification on how section 41 works. Some of the information in question 1

paraphrases legal advice that we have had in relation to parallel approval processes and of which there has been criticism around before I arrived, and it certainly continues.

Current government policy is that appeals are dealt with by the Minister for the Environment and the Appeals Convenor under part IV of the act. The Keating review, some five or six years ago, confirmed that. Recommendation 7, which is to amend section 41 to allow DMAs to give their approvals before formal assessment has concluded, was rejected by government. The current government policy is that that is how it wishes to have appeals dealt with.

Importantly, section 41 is a whole-of-government decision-making process. I do think it has been well understood by decision-making authorities that the minister, in consulting with decision-making authorities on implementation agreements, consults with other DMAs. Those other decision-making authorities then need to align their processes with the environmental assessment process. They need to be in a position when the minister consults to make their decision. The delta between the process of environmental impact assessment and the minister's decision and other DMA decisions could be a matter of seconds or minutes, or longer depending on how long those other approvals processes take. That has not been well understood and I will be issuing statements shortly to clarify how section 41 works, because there has been some confusion.

Moving to question 2, if I have interpreted this correctly my view is that if the minister was given the power to intervene it would not be of any great value unless the minister had received the EPA's report and recommendations on the referred proposal. Is the minister in a position to intervene in a sensible way in that process? If the minister does not have any information from the EPA, on what basis is he or she intervening? There is some uncertainty about whether that would be a useful thing to do. I am also advised that perhaps the minister already has that power. I would need to seek further advice on that. I am advised by someone in the department that the minister already has that power. I am not sure what value it would add.

Hon GIZ WATSON: Under what provision does the minister have that power? Would it be under the act?

Dr Vogel: Under the SAT act. It says that the tribunal can permit any person; therefore, presumably, it could permit any person without changing the legislation. Presumably a natural person could be permitted by the tribunal to intervene. I am not clear on whether the SAT act should be changed to do that. The minister would want to be well advised before intervening. On what basis would he or she intervene if the EPA had not reported on or made recommendations on a referred proposal?

Question 3 is clearly one that I have already expressed an opinion on, and it relates to part IV of the act; that is, the environmental impact assessment process. Currently it is a matter of government policy that appeals on those decisions are a matter for the minister.

Part V, the environmental regulation part of the EPA act, is not something that I can comment on. It would be inappropriate for the chairman of the EPA to provide advice on how other parts of the act should be dealt with in relation to environmental regulation decisions. It is a question for the director general or the minister.

On question 4, again part V of the EPA act is administered by the Director General of the Department of Environment and Conservation and it would be more appropriate for these questions to be directed to him. He has administrative responsibility and accountability for that part of the act. While we work very closely with the Department of Environment and Conservation to ensure compliance with ministerial conditions recommended and ultimately decided upon by the minister under part IV, those questions would be more appropriately directed to Mr McNamara, the DG of the department.

Question 5 is an important matter and it was actually discussed today at an international conference on impact assessment being held in Perth. We have 700 to 750 delegates from around the globe

talking about impact assessment and best-practice models; and, in fact, we had a two and a half hour session on the WA system of impact assessment. One of the key and fundamental principles of impact assessment in Western Australia is the principle of third party appeal rights. It is a right and a principle that the community holds very dear. It is around those issues of ease of access, simplicity and cost that it believes it is one of the fundamental principles and any change to that would cause a lot of concern. I have worked in other states where they have different arrangements. Access to the courts to consider appeal rights can be an expensive and daunting process for community members. If there was any consideration of transfer of appeals rights to other state jurisdictions, it would be a matter for government policy. Again I refer you to my previous answers in relation to that. Let me reiterate that the community in this state holds dear, and it is seen internationally as a very good principle, that there are third party appeal rights to impact assessment decisions.

[12 noon]

Chairman, in relation to the last question, I think it is certainly worthwhile informing the committee of the environmental impact assessment review that the EPA is conducting. It is a review of the impact assessment processes and the policy it underpins. There are a number of other terms of reference that are on our website. It is a wide-ranging initiative. We have established very comprehensive stakeholder reference groups, including environmental NGOs, government and the private sector, looking at how we can improve the process of impact assessment in Western Australia. It is a fundamental tool of sustainability, but like any good process in place, it can always be improved. That is the goal of the review. The focus is really around ensuring that the review looks at how impact assessment can be more integrated into risk assessment, and how we have a focus on outcomes. I think we need to ensure that the outcomes we recommend to the minister that mitigate the identified risks need to be clear and outcomes focused and enforceable. Companies should be held to account for ensuring they comply with those conditions, because those conditions are the ones that ensure, over time, the environmental sustainability of that project. That is a very clear goal of the review. It has a number of other terms of reference, but the critical one is that we need to be much more strategic in our approach and we need to recognise—not just because we are in a boom situation—that it makes good public policy sense to occasionally review fundamental and important government functions. That would conclude my statement in addressing the questions, Chairman.

Hon GIZ WATSON: I was curious to know when that review process is to be completed.

Dr Vogel: It started two or three months ago. We will have a consultant for about three or four months, but in my view these sorts of change programs take about three years because much of it is about culture change and relationship building. We need to ensure that the staff of the department, advising agencies, consultants and proponents understand that there will be a new way of doing business. That will not happen overnight, but we need to ensure that we start developing new administrative procedures, engaging staff, training, building capacity through the universities also, as students coming through that system eventually might find themselves—as a practitioner of impact assessment—understanding the new way of doing business. Most reform programs, in my experience, take about three years; that is, irrespective almost of the size of the organisation or the challenge, but we have a very concerted three or months' effort to get through the stakeholder reference group and, through my board, recommended changes in procedures. That may ultimately lead to changes in legislation as well, but that is a longer term matter which will probably take two to three years before we decide upon which changes are relevant for the EP act. I think we want to get some runs on the board very quickly so that we do manage significant risk but have an outcomes focus whereby we can demonstrate to the community, government and industry that these projects are sustainable over time.

Hon GIZ WATSON: Is it an internal review?

Dr Vogel: It is internal in the sense that we are only looking at EPA as part of the process. We have an external consultant assisting us, but we have a stakeholder reference group of 16 or 17 individuals from the chambers, from the WWF, from the Conservation Council and government bodies. We are using them extensively as a sounding board, putting forward issues and options for improving both the process and the policy settings for impact assessment. It is internal in that sense, but it is external in the sense that we are consulting extensively. In fact I might add; we had a forum in April at the WACA when we had the attendance of a broader church of players in the impact assessment. About 150 or so people came and we had a workshop addressing that very issue of a much broader discussion about issues and options for improvement: what should we keep, what should we get rid of, what should we do more of, what should we do less of? That was a very useful discussion and everybody was very pleased with that process of engagement.

Hon GIZ WATSON: I am just curious, because I am not aware of this: was it driven by specific concerns or complaints or is it a review that has arisen out of a certain sort of time frame?

Dr Vogel: It is a 1986 act, and it is still viewed internationally as a very good piece of legislation and the process is very good. It is not driven by the boom. I think it is something I am always very keen about, to ensure that the processes do reflect contemporary practice. That is part of why we have adopted a sort of risk based and outcomes focus to impact assessment. It is not purely driven by the boom. We always exhort industry to adopt continuous improvement. I think it beholds government and bureaucracy also to demonstrate that they are undergoing continuous improvement in the processes, procedures and practices of important government functions. There are a lot of very good reasons. Sure, there are calls for streamlining assessment and approvals processes; I think every state and every jurisdiction is confronted by those sorts of questions. We need to ensure that yes, they need to be streamlined, but importantly they cannot compromise environmental standards or long-term sustainability of the environment. We need to be very clear that this is not about expedited assessment and approvals to give quick yeses to proponents who are subjecting the system to an enormous amount of pressure. We have a very high attrition rate in the department; it supports the EPA. That concerns me, too, because in the system, I guess I would have to say, if we lost five or six key people in the EPA service unit we would be in very serious trouble about the quality of information, the quality of decisions and the timeliness of decisions. For all those good reasons, we need to have the impact assessment process working very well, particularly now.

The CHAIR: Any further questions? It looks like no further questions arise from that. Thank you very much for your attendance today and your evidence to the committee. You will be getting the draft *Hansard* in due course and be asked to sign any corrections to that. That concludes today's hearing. Thank you.

Hearing concluded at 12.06 pm