

ENVIRONMENTAL PROTECTION AMENDMENT BILL 2020

Committee

Resumed from 3 November. The Chair of Committees (Hon Simon O'Brien) in the chair; Hon Stephen Dawson (Minister for Environment) in charge of the bill.

Clause 1: Short title —

Progress was reported after the clause had been partly considered.

Hon Dr STEVE THOMAS: It is my intent to not delay too much on clause 1. This is a fairly substantial bill and we will be able to get through much of what I need to talk about during the substance of the debate. From my perspective—if the minister is comfortable with it—if we go through section by section and maybe have a smaller more targeted clause 1 around that process, that would be useful.

I will start with the obvious question, from my perspective, around time frames. Is the minister in a position to give us today—I suspect we will not finish the bill, but perhaps it might have to be taken on notice—a summary of the average time frames for the approvals process? I am particularly interested in the time frame from the submission of an application to the decision on whether to assess it, and then the average time frame from the decision on the decision to assess to the development of the decision. Perhaps I could even have a summary on the average time frame for how long it takes when a recommendation is made by the Environmental Protection Authority to the minister for that announcement to be made public. That information would be very useful.

The minister may not necessarily have that information with him. I know that it is a fair ask. It is something that I would ordinarily ask in budget estimates. But a comparison of those time frames, I think, would be very instructive. Whether that happens today or during a future part of this debate might mean, for example, that I do not need to move some of my amendments on time frames if it can be demonstrated that those time frames are being adequately met. Perhaps that information could be provided when we get to the clauses on time frames and we can have a little bit more detail, particularly about those jumps in time from the time the application is made to the decision to assess, from the decision to assess to when a recommendation is made by the EPA, and from the time of the recommendation to the when minister makes the announcement. It would probably also be useful to get an idea of the average time frames taken in the appeals process—that is, the average minimum and maximum time frame from the lodging of an appeal to the minister making a public statement on that appeal. All those things would be useful. I absolutely accept that it may take the minister some time to get that information together. We will move into question time in not much more than a couple of hours and I suspect we will still be dealing with this bill and will not yet have got to some of the time frame clauses by the time we get into the substance of this debate.

The CHAIR: With those thoughts very much in mind, it is quite legitimate, of course, for members to range over the various provisions in the bill in the course of a clause 1 debate and to indicate any amendments they may wish to raise in due course. Although I think, as the member alluded to, perhaps some of the matters of detail he raised are best reserved for a response when we get to those specific matters, unless, of course, the minister wishes to address them immediately to deal with that.

Hon STEPHEN DAWSON: Thanks, Mr Chair. I appreciate your guidance.

Honourable member, I do not have that information with me. I will be able to provide it, so I will provide it at a later stage of the debate.

Hon Dr Steve Thomas: I just wanted to give you fair warning.

Hon STEPHEN DAWSON: Thank you. I really appreciate it.

The member has some amendments on the supplementary notice paper speaking either against or in favour of some of those time lines, and so I will have some of that information for him. The member has requested a little bit more information than I have here, so we will do an exercise and get that for next week.

Hon Dr Steve Thomas: We might have a semi-clause 1 debate on it when we get there.

Hon STEPHEN DAWSON: Sure.

I am very happy with the member's earlier request for how we will proceed. We can proceed in blocs if it makes more sense.

Hon TJORN SIBMA: Minister, I, too, want to give an indication of two primary areas of interest that I have as we assess the bill. My first concern is the regulatory workload that is employed throughout the bill, which the minister made explicit reference to in his second reading reply. The second concern—I do not anticipate receiving this information now, but it would be helpful for not only me personally, but also the house—is to get an understanding of a regulation-by-regulation work program with an anticipated time line for drafting and resolution. I bring this up

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because earlier the minister indicated an absolute clear intent to work with industry on the development of the regulations that will flow as a consequence of the passage of this legislation. It would be very useful to receive some notification of precisely what we are talking about, considering that a lot of these regulations might not come to this chamber until well after the next election when there will, perhaps, be a recomposition of this house. It would be interesting to know what regulations or gazettal notices, if any, we might need to keep an eye out for.

Hon STEPHEN DAWSON: Honourable member, first, none of the regulations will be before the Parliament before the election. As I have previously indicated, the intention is to consult with industry and also all stakeholders on the development of those regulations. We are fairly adept at dealing with those stakeholders currently and a stakeholder reference group has operated for a while, certainly in relation to the EPA. We will work with those stakeholders once the bill has passed to get those regulations through as quickly as possible.

Did the member ask me about priorities?

Hon Tjorn Sibma: Yes.

Hon STEPHEN DAWSON: We are giving the highest priority to the commencement of the bilateral agreement and the part IV cost-recovery head powers, so they will be dealt with first. They are the highest priority. I have a helpful document here, so rather than taking up time, I am very happy to table it. I ask that the attendants give me back a copy. I think it will be helpful to Hon Tjorn Sibma and other members. As members will see from this schedule, we will start the work as soon as possible after assent. Some things will take three months, six months, 12 months or up to two years.

[See paper [4560](#).]

Hon ROBIN CHAPPLE: I will help the minister and provide some information to my honourable colleague. In a classic proposal, Nammuldi–Silvergrass sought a public environmental review in mid-2000, but it took until October to process it and the mine came onstream in 2017. There was quite a delay in the process, but it was the miner not the environmental process that caused the delay.

Hon STEPHEN DAWSON: Thank you for that helpful comment. That is often the case; in fact, we are often in the hands of the proponent itself. Sometimes during the process, a proponent might change tack and decide to take a different course of action, so it would obviously need to then provide extra information to the Environmental Protection Authority. We are in the proponent's hands.

Once we provide the time lines to Hon Dr Steve Thomas, we can acknowledge some of the detail by saying when it started and when it finished and what variables are in place.

Hon COLIN TINCKNELL: I am very keen for the minister to enlighten us on the part of this Environmental Protection Amendment Bill that I have a few concerns about, some of which have been allayed in the last few months after many discussions. I am keen on economic development in this state, but it needs to be done in a sustainable and environmentally sound way. I am very keen that industry have surety in the future. It needs that. There is a lot of competition for business in this state from right around the world. Good, high-quality companies that operate under our regulations and environmentally sound rules need surety by knowing that in the future things will not change rapidly and that they will not be surprised.

When I first looked at the bill, I had a few concerns about approvals. Let us say that a business has already gone through all the hoops over many years—sometimes 10 years—and has done everything and pushed through to get its environmental approval from one government for its project, but then a new government has come into office and, for some reason, the approval starts to be challenged by that new government. Can the minister say that protections are in the bill for businesses in the future, unless, obviously, some new information becomes available? Is surety there for those proponents?

Hon STEPHEN DAWSON: If an approval has been given, it is not revisited, unless a proponent comes back to us at a future stage and says it needs to be revisited. Sometimes proponents do that because they have decided to build things differently, so they might need further approval for that. However, essentially, once approval is given and it has been through the process, I do not revisit it. There are the same good staff in the agency who served the last government and who serve me who will serve the next government. They just get on with their job.

Hon TJORN SIBMA: Minister, thank you very much for tabling the document concerning the prioritisation of the regulatory workload that the department will be very busy with. It is exceptionally useful. If I might say, it could be established as some kind of precedent for the way we deal with other reforms, particularly substantive reform of legislation. I say that genuinely. Much of the implementation and the effect is, obviously, bound in the regulations, so it is good to know the sequence and prioritisation that goes with them. It makes our job of scrutiny a lot easier to discharge, so I offer my compliments.

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I have a series of questions on clause 1 and I seek a bit of advice now. The relevant proposed sections are in clause 100 and deal with bilateral agreements. I refer to a joint media statement from the minister and the Premier from 10 August titled “Agreement to streamline environmental approvals given green light”. It cites an indication given by the commonwealth government of its desire to enter into these kinds of arrangements with the state government. Aside from the passage of the legislation, which is obviously pivotal, what will be the steps when entering into a bilateral agreement? I understand that, at the moment, we have, effectively, statements of intent from both counterparties to the desirability of this set of arrangements. I am interested to know whether a bilateral agreement, presumably a head agreement or a memorandum of understanding, has been drafted. What will be the resourcing implications for the state to implement the various responsibilities that will flow as a consequence of that document? Does the minister consider that the department is fully equipped to put the intent of the agreement into effect; and, if so, by when?

Hon STEPHEN DAWSON: I appreciate the honourable member’s comments about the table I have given him. As he knows, I aim to please. I cannot say we will always provide such a document, but I think it will be helpful and, hopefully, will help with the progress of the debate.

We are continuing to work with the commonwealth to reach agreement on a bilateral agreement under the Environment Protection and Biodiversity Conservation Act. The passage of this bill will give us the head power to do what we need to do in Western Australia. It is quite a different process for the commonwealth, though. It is prescribed, so there are statutory time lines and there is an order in which the commonwealth needs to do certain things. That is not within our power.

The federal minister, Hon Sussan Ley, is currently consulting with Western Australia as part of the bilateral process on commonwealth-led national environmental standards. I have to say that very good work has been happening between my office and the agency and Minister Ley’s office and her department. I also have to acknowledge Assistant Minister Ben Morton, who has been working very closely with us to move this along. As I said, consultation is happening at the moment on the national environmental standards. The standards will underpin the bilateral agreements. They are obviously intended to remove the duplication of the state and commonwealth environmental assessment approvals processes. We are engaging on them at the moment. Once they are landed on, I think that will give everybody confidence. Western Australia will probably be the first state off the mark in this regard.

In answer to the member’s question, once we have the head powers, we will be ready to go. Obviously, the regulations will be worked on, but the commonwealth will have to follow its prescribed process. I do not have the commonwealth’s process before me, but I am happy to get that and give it to the member at a later stage. If the member has questions on that, he can ask them at clause 100.

Clause put and passed.

Clause 2: Commencement —

The CHAIR: By way of brief explanation to the Committee of the Whole, the minister has indicated on the supplementary notice paper that the government intends to replace clause 2 with a fresh clause 2. In effect, it is not an amendment; it is a replacement.

Hon STEPHEN DAWSON: You are correct, Chair. It is the government’s intention to oppose the clause. That is obviously a technical way to describe the replacement of this commencement clause with a new commencement clause. This is necessary due to the timing of the passing of the Planning and Development Amendment Bill 2020, which had been before the Parliament at the same time as this bill. I am advised that the passing of that bill has resulted in some cross-references in the Environmental Protection Act 1986 requiring updating, and amendments are also required to address overlapping amendments between the two bills from when they were before Parliament at the same time. These new commencement date provisions were drafted by the Parliamentary Counsel’s Office to address the overlap and ensure that this bill reflects the amended provisions of the Planning and Development Act 2005, and also to ensure that the relevant amendments occur in the correct sequence. Hon Michael Mischin has the same amendment on the supplementary notice paper, but obviously mine will be dealt with first. I have a new clause 2 on the supplementary notice paper, as does Hon Michael Mischin. It is my intention not to move my new clause 2 because we are in agreement with the extra detail that is included in Hon Michael Mischin’s new clause. I therefore move —

Page 2, lines 4 to 11 — To oppose the clause.

Amendment put and passed; clause thus negated.

New clause 2 —

Hon MICHAEL MISCHIN: I move —

Page 2, after line 11 — To insert —

2. Commencement

- (1) This Act comes into operation as follows —
 - (a) Part 1 — on the day on which this Act receives the Royal Assent (*assent day*);
 - (b) section 4(3A) — on the later of the following —
 - (i) the day on which the *Planning and Development Amendment Act 2020* section 64 comes into operation;
 - (ii) immediately after section 4(2) comes into operation;
 - (c) section 59 — on the day on which section 83 comes into operation;
 - (d) section 116A — on the day after assent day;
 - (e) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.
- (2) However —
 - (a) if no day is fixed under subsection (1)(e) before the end of the period of 10 years beginning on assent day, this Act is repealed on the day after that period ends; or
 - (b) if paragraph (a) does not apply, and a provision of this Act does not come into operation before the end of the period of 10 years beginning on assent day, that provision is repealed on the day after that period ends.
- (3) Despite subsection (1), if section 112 has not come into operation before the day on which the *Planning and Development Amendment Act 2020* section 68(2) comes into operation, the 2nd row in the Table to section 112 —
 - (a) does not come into operation; and
 - (b) is deleted on that day.
- (4) Despite subsection (1), if section 112 has not come into operation before the day on which the *Planning and Development Amendment Act 2020* section 70 comes into operation, the 4th row in the Table to section 112 —
 - (a) does not come into operation; and
 - (b) is deleted on that day.

I am obliged to the minister for his explanation about the government’s intention. It is something we discussed very briefly behind the Chair yesterday evening. My proposed new clause 2 picks up on the more expanded, staged implementation of the amendments that were foreshadowed by the minister in his proposed new clause 2, but with the additional feature of, if you like, a 10-year sunset on any provisions that are not operative at the expiration of 10 years from the bill being granted royal assent. Perhaps the minister could explain one element of his proposed new clause 2, which I have adopted in any event—that is, the provision regarding proposed new section 116A taking effect on the day after assent day and whether that also is geared to the Planning and Development Amendment Act or whether there is another feature here that is unique to require that particular provision, because that appears in proposed new clause 2(1)(d).

Hon STEPHEN DAWSON: As I indicated, the government supports this amendment. It is intended to commence the provisions of the bill as soon as possible and as soon as any necessary consequential regulations are drafted. In relation to the particular question about proposed new section 116A, the new section will amend the Mining Act 1978 to update cross-references to provisions in the EP act where the numbering will change following these amendments.

New clause put and passed.

Clause 3 put and passed.

Clause 4: Section 3 amended —

Hon ROBIN CHAPPLE: There seems to be nothing reinserted in the bill to deal with the removal of the definition of “prescribed premises”. Can the minister give an overview of why and how?

Hon STEPHEN DAWSON: In the bill before us, the term “prescribed activity” replaces “prescribed premises”. It is a new way of dealing with the issue.

Hon ROBIN CHAPPLE: Can a prescribed activity refer to premises? That is really what I am trying to get to.

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Hon STEPHEN DAWSON: No, but it will deal with the activities at the premises. Following our consultation, this was suggested to be a better way forward. It allows us to dig a little deeper. Rather than looking at the premises, we are looking at the activity that happens at the premises, so regulations will be made in that regard.

I have another amendment. I move —

Page 3, lines 5 to 15 — To delete the lines and substitute —

- (1) In section 3(1) delete the definitions of:

bilateral agreement

Chairman

Deputy Chairman

implementation agreement or decision

implementation conditions

proposal

- (1A) In section 3(1) delete the definitions of:

applicant

licensee

prescribed premises

works approval

This amendment does not make any material change but will allow a number of the amendments to commence immediately, separately from those that require development of new regulations. It will support phased commencement of different parts of the bill. It will allow some of the new definitions relating to part IV, the environmental assessment area, to commence earlier than the definitions that are linked to the replacement of part V, division 3, “Licences”. This will be done by moving the definitions to be removed into separate subclauses, which can then commence at different proclaimed dates along with the amendments that refer to them. The replacement of the licensing provisions will take place after review and amendment of the Environmental Protection Regulations 1987, which will require extensive stakeholder consultation.

Hon ROBIN CHAPPLE: In terms of “works approval”, can the minister go through what happens in that case? Currently, we can deal with works approvals. Will this amendment mean that we cannot address works approvals in future?

Hon STEPHEN DAWSON: The works approval process and the licensing process will be combined so that it is one process in the future rather than two; so, yes, it can still be dealt with.

Amendment put and passed.

Hon STEPHEN DAWSON — by leave: I move —

Page 5, lines 4 and 5 — To delete the lines.

Page 6, after line 6 — To insert —

- (2A) In section 3(1) insert in alphabetical order:

prescribed activity means an activity prescribed as a prescribed activity for the purposes of Part V;

Again, the amendments in my name at 21/4 and 22/4 on the supplementary notice paper do not make any material change, but will again allow a number of the amendments to commence immediately, separately from those that require the development of new regulations. Again, this proposed amendment will support phased commencement of different parts of the bill. It allows some new definitions relating to amendments to part IV, “Environmental impact assessment”, to commence earlier than the definitions that are linked to the replacement of part V, division 3, “Licensing”. This will be done by putting the new definition of “prescribed activity” into a separate subclause of the bill that can commence on the same day as the provisions that replace part V, division 3. Again, the replacement of the licensing provisions will take place after review and amendment of the Environmental Protection Regulations 1987, which, again, will require extensive stakeholder consultation.

Amendments put and passed.

Hon STEPHEN DAWSON: I move —

Page 6, after line 31 — To insert —

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- (3A) In section 3(1) in the definition of *planning instrument* paragraph (b) delete “section 29 and published in the *Gazette*; or” and insert:

Part 3; or

This amendment updates cross-references to the Planning and Development Act 2005 resulting from the Planning and Development Amendment Act 2020.

Amendment put and passed.

Hon Dr STEVE THOMAS: Can I take the minister briefly to page 7, clause 4(4), proposed section 3(1B). I understand that this is the first mention of “cumulative effect of impacts of the proposal on the environment”. I think this is a very useful component. I would like to get it on the record, because the definition of “cumulative effect” is not written into the bill. I am interested to have the minister describe to us how he envisages the measurement of cumulative effects and in what circumstances they might be applied.

Hon STEPHEN DAWSON: I will just talk about clause 4, “Section 3 amended”. This clause seeks to insert new defined terms into the bill, amend existing defined terms and delete defined terms that are no longer required. Many of the changes are a result of amendments to processes under part IV of the Environmental Protection Act, the form of regulation of emissions and discharges in part V, division 3, and the introduction of new parts into the EP act. Proposed section (1A), inserted by clause 4(4), defines the term “Ministerial statement” to refer to the implementation agreement or decisions made under part IV to accord with common terminology.

I refer to cumulative impacts. This clause also seeks to introduce proposed section 3(1B) into the EP act, which states that the effect of a proposal on the environment includes its cumulative impacts. The consideration of cumulative impacts is not new, and the Environmental Protection Authority has had a longstanding practice of considering them in its assessments. Cumulative impacts are considered on a case-by-case basis, where relevant, subject to the circumstances of the project and environment. The EPA has provided general advice on cumulative impacts under section 16(e) of the EP act—for example, cumulative environmental impacts of development in the Pilbara region in 2014—and those impacts have been considered in strategic assessments, such as the “BHP Billiton Iron Ore — Pilbara Strategic Proposal” in 2019. Relevant cumulative impacts may include historic impacts, such as the clearing of vegetation within a region; the combined impacts of currently approved proposals; and, in some cases, likely future developments in an area. Consideration of cumulative impacts is discretionary; it is not mandatory. The EPA will have flexibility to determine the relevance of cumulative impacts in each case, and this amendment will not increase the risk of challenge to approvals.

The phrase “cumulative impacts” is not defined and will have its ordinary meaning. The EPA’s approach to cumulative impacts is outlined in a number of its current policies and guidelines, and these are updated to reflect developments in science and environmental assessment methodologies. I can give members a couple of examples. The first example is that in the Burrup area, emissions may have a cumulative effect on Aboriginal rock art at Murujuga. Because a number of operations contribute to emissions, they should not be treated in isolation. Another example may be particulate emissions from operations at Port Hedland that cumulatively may exceed air quality thresholds. The consideration of all relevant operations allows solutions to be designed collectively.

I will finish off by saying that this amendment is intended to clarify the longstanding approach of the EPA, which considers cumulative impacts when it considers this appropriate. It is not intended to impose new or stricter obligations on decisions to assess or the assessment itself. The assessment of cumulative impacts will be based on science and environmental values and not on arbitrary regional boundaries, and the new provision should not prevent new entrants from commencing operations in a region with existing development or place an unfair burden on a new entrant. Assessment of cumulative impacts avoids the scenario of “death by a thousand cuts” and projects being assessed in isolation.

Hon Dr STEVE THOMAS: I thank the minister for that. I think it is an important point to make and it is a good insertion into the Environmental Protection Act, because I am absolutely certain that cumulative impacts are a critical part of the assessment that needs to be made. Ultimately, I am just concerned whether there might be limitations, or where limitations might be set, and particularly whether in the future there might be the potential for the examination of potential future cumulative impacts, as it were, which starts to become a very confusing process. I am just concerned that the EPA might get bogged down in debates around greenhouse gas emissions, for example, and potential future cumulative impacts, which are very difficult to measure. Are there any limitations on the EPA regarding the forward projection of cumulative impacts?

Hon STEPHEN DAWSON: No; it has to be connected to a proposal, but the EPA does some of this stuff already in strategic assessments. If we look at BHP’s plan for the next 50 years in the Pilbara, it went to the EPA with the proposal. The EPA looked at that and saw all the potential projects in one go, and that has gone through the process and been approved. I do not imagine that this will create any issues in the future but I think it is a sensible inclusion.

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Hon RICK MAZZA: I refer to the cumulative impacts, if I can. We spoke about emissions, but what about land clearing itself when a catchment area of some sort has agricultural activity going on in it, and some of the catchment area has been cleared and some has not? If someone applies for a clearing permit, are assessments done on the lands that have already been cleared in that catchment, and will it be first in, first served based on the amount of clearing that has already been done?

The CHAIR: I am struggling to relate this to clause 4, perhaps the minister can.

Hon STEPHEN DAWSON: It does not. This relates only to the Environmental Protection Authority; it does not relate to the Department of Water and Environmental Regulation, so that member's issue would not be affected by this.

Hon ROBIN CHAPPLE: The minister has already identified two of the issues I was going to raise at this point, so I need to go a bit further. We are saying that there will be an assessment of the cumulative impact. Is that an assessment of the limitations or just an acknowledgement of the various components that create this cumulative impact? In an airshed, for example, the limitation might be so many parts per million of sulphur dioxide. Does that limit things or does it establish the cumulative effect without any management of that cumulative impact?

The CHAIR: Again, I am not sure how this relates to clause 4, but if the minister is able to entertain it, he can.

Hon STEPHEN DAWSON: I will provide an answer. This essentially codifies an existing practice. This is how the EPA operates already, but the existing practice is codified. It is up to the EPA to decide whether it thinks it might be needed; it may not be. If the EPA thinks it might be needed, it will take it into consideration as part of its decision-making. That is essentially what this is.

Hon ROBIN CHAPPLE: The minister mentioned Port Hedland in his example a bit earlier on, and I assume we will look at dust levels when we get to that. There are various industries there that create different levels of dust. Does establishing this cumulative impact mean that new proponents will not be allowed into different areas of the harbour? When assessing the cost of impacts, will the throughput of various corporations determine the cumulative impact?

The CHAIR: Minister, would we be better discussing this under proposed part VIIB?

Hon STEPHEN DAWSON: My advice is yes.

The CHAIR: In the short term, the minister may wish to indicate that, but we can have a good consideration of part VIIB in full in due course.

Clause, as amended, put and passed.

Clause 5: Section 3A amended —

Hon Dr STEVE THOMAS: This is an excellent part of the bill. I think it is very important that the sum of the threshold amount will be increased from \$20 000 to \$100 000 for environmental damage. How was the number reached?

Hon STEPHEN DAWSON: It is an arbitrary figure. It is an increase from \$20 000 to \$100 000. It is based on stakeholder feedback that the cost of dealing with incidents on remote sites is largely related to the cost of getting equipment to site, so it does not reflect the environmental significance of the harm.

Hon Dr Steve Thomas: Can I bid you up?

Hon STEPHEN DAWSON: I am loath to do it. This is being consulted on, so rather than do something on the run that may put some noses out of joint, I would prefer to leave it as it is.

Clause put and passed.

Clause 6: Section 7 amended —

Hon ROBIN CHAPPLE: I am trying to put this in the context. Proposed section 7(3) states —

Before making a recommendation under subsection (2) the Minister must publish a notice calling for expressions of interest ...

I thought that was already the case. If it is not the case, how is it currently done?

Hon STEPHEN DAWSON: I am told that previously the legislation referred to advertising whereas the new section says "publish", because it recognises that there are more than just newspapers. There are other ways to do it.

Clause put and passed.

Clause 7 put and passed.

Clause 8: Section 11 replaced —

Hon Dr STEVE THOMAS: Proposed section 8 defines the independence of the Environmental Protection Authority and the chair. I quote —

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Subject to this Act, neither of the following is subject to the direction of the Minister —

- (a) the Authority;
- (b) the Chair.

The CHAIR: Order, member. We have just passed clause 7, which was to introduce a new section 8.

Hon Dr STEVE THOMAS: I am sorry; I have jumped over. I have read the wrong clause. It is all right; I will not ask for the clause to be recommitted.

Clause put and passed.

Clauses 9 to 14 put and passed.

Clause 15: Sections 37B to 38A replaced —

Hon ROBIN CHAPPLE: As members will note, there is an amendment standing in my name. This is an interesting insertion and I need to give quite a bit of an explanation about it. I move —

Page 15, after line 20 — To insert —

37C. Aboriginal cultural heritage

- (1) In this section —

Aboriginal cultural heritage matter means a matter for which provision for preservation, protection or management is made under the *Aboriginal Heritage Act 1972* or any Act that replaces that Act.

- (2) In deciding whether to assess a referred proposal, and in assessing a referred proposal, the Authority must consider any Aboriginal cultural heritage matter that is likely to be significantly affected by the implementation of the proposal.
- (3) If, after the assessment of a proposal, the proponent of the proposal becomes aware of an Aboriginal cultural heritage matter that is likely to be significantly affected by the implementation of the proposal, the proponent must give the Authority written notice of the matter.
- (4) If the Authority becomes aware of an Aboriginal cultural heritage matter that is likely to be significantly affected by the implementation of an approved proposal, the Authority must carry out an inquiry under section 46 as to whether or not the implementation conditions relating to the proposal, or any of them, should be amended.
- (5) Section 46 applies to an inquiry under subsection (4) as if the Minister had requested the inquiry under section 46(1).

The rationale and reason for my amendment is interesting and complex. There is a section in the act that deals with the determination of what is the environment. Section 3 of the act contains a definition of “environment”. It states —

environment, subject to subsection (2), means living things, their physical, biological and social surroundings, and interactions between all of these;

Section 3(2) of the act states —

For the purposes of the definition of *environment* in subsection (1), the social surroundings of man are his aesthetic, cultural, economic and social surroundings to the extent that those surroundings directly affect or are affected by his physical or biological surroundings.

The longstanding view is that virtually everything that can be impacted by the environment—whether it is human or otherwise, or the impact on a heritage building or whatever else—can be assessed. It is not purely plants and animals; it is a much broader understanding of the environment.

My amendment relates to a case study that I will refer to. In October 2000, the Nammuldi–Silvergrass iron ore project was assessed by the EPA in bulletin 997. It found that that no heritage values could be identified in the project area and states —

The proponent intends to address such impacts through the establishment of a land use agreement with the Eastern Gurama native title claimants.

Later in 2002, and again in 2007, the agreement established by Rio Tinto with the traditional owners states that the claim-wide participation agreement releases Rio Tinto from any actions, claims, demands or proceedings of any kind under any law, including the Racial Discrimination Act 1975, the Native Title Act 1993, the Aboriginal Heritage Act 1972, the Fair Trading Act 1987, the Trade Practices Act 1974, the Environment Protection and Biodiversity Conservation Act 1999, the Environmental Protection Act 1986, the Mining Act 1987, the Aboriginal and Torres Strait

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Islander Heritage Protection Act 1984, the Rights in Water and Irrigation Act 1914, the Land Act 1933 and the Land Administration Act 1997. Therefore, the statements in EPA bulletin 997 “Nammuldi–Silvergrass Iron Ore Project, 55 km north west of Tom Price” dated October 2000, are basically trumped by the claim-wide participation agreement inasmuch that if in the future anything is found within that area, the traditional owners cannot use either the EP act, or any other act for that matter, to raise their concerns.

I am trying to insert into the process a legal framework whereby the existing claim-wide participation agreements cannot be used against traditional owners. There is the unfortunate situation whereby Rio has recently said that it will not implement the claim-wide participation agreements but they still exist. They have not been removed, so at some stage in the future, Rio may be able to use them again. It is interesting to note that in the ensuing period a large number of very important Aboriginal sites have been identified. The EPA is not aware of these and has not considered them; but, in fact, the current Minister for Aboriginal Affairs, on 15 August 2019, some 19 years later, determined that a number of sites, including caves dating back 40 000 years, could be destroyed. He did that by letter to Ms Sam Moody, heritage compliance, Hamersley Iron, on 15 August 2019.

The recent issues at Juukan Gorge show that this should not occur, but it obviously occurred on the current minister’s watch, and he gave permission for the destruction of those caves, as I say, on 15 August 2019. But because of the claim-wide participation agreements, the traditional owners, the Wintawari Guruma in this case, cannot go back to the EPA and say, “We have a major area of importance in our area. We want you, the EPA, to look at it.” Indeed, they are not allowed to oppose the minister’s destruction.

We have a process whereby heritage—I use that word very broadly—that should be protected under section 3(2) of the act needs to be enforced. At the moment there is an incredible workaround whereby traditional owners cannot protect their country either now or into the future through the Aboriginal Heritage Act or, indeed, under the EP act. That is the intention of this amendment.

Hon STEPHEN DAWSON: This amendment is not supported. I want to make the point at the outset that no person can waive access to the EP act or limit the powers of the EPA by agreement. That cannot happen.

However, I acknowledge the honourable member’s commitment to the protection of Aboriginal cultural heritage. Aboriginal cultural heritage is very important in decision-making. It is proposed that the Aboriginal Cultural Heritage Bill 2020 will be the primary legislation for the management of activities that result in direct impacts on Aboriginal cultural heritage in Western Australia. The Aboriginal Cultural Heritage Bill will address many of the failings highlighted in the Juukan Gorge cave incident. I am confident that the environmental impact assessment process, under the Environmental Protection Act, provides a sound basis for assessing the significance of impacts on Aboriginal cultural heritage.

The definition of “environment” in the Environmental Protection Act includes social surroundings where they interact with the physical or biological environment. That means that social surroundings in these circumstances are a key part of the environment that will require consideration by the EPA, and that culture, including Aboriginal culture, is specifically included in the definition of “environment”. Accordingly, the EPA considers the impacts to Aboriginal cultural heritage during the environmental impact assessment and has established specific advice on assessing impacts to Aboriginal heritage under its social surroundings factor guideline. Under this guideline, the EPA considers Aboriginal cultural heritage, including traditional customs, directly linked to the physical or biological environment. This ensures that impacts from industrial emissions or groundwater drawdown can be considered and managed.

Under section 46 of the EP act the power to change implementation conditions in response to new information, including on Aboriginal heritage, already exists. I have used that power a number of times to ask the EPA to inquire into the conditions on a number of projects. The provisions under both the amended Environmental Protection Act and the proposed Aboriginal Cultural Heritage Bill will ensure better protection of cultural heritage in Western Australia and more effective decision-making for Indigenous people, industry and the broader community.

I understand what the member is trying to do, and I appreciate his sincere support for Aboriginal heritage. However, I do not think the member’s proposed amendment will be the fix. I have consulted with my ministerial colleague the Minister for Aboriginal Affairs. We do not think this is needed. The Environmental Protection Authority can do this stuff already. The new Aboriginal Cultural Heritage Bill will, as I have indicated, be the primary legislation for the management of activities that will result in direct impacts on Aboriginal cultural heritage in Western Australia.

Hon ROBIN CHAPPLE: I will make two points and then call it a day. At no time since 1972, in any heritage assessment under the Aboriginal Heritage Act as it exists today, has a minister ever opposed the destruction of an Aboriginal heritage site in Western Australia associated with mining activities—not once. Under the new act, the minister will still be the final arbiter and decision-maker, as is the case today.

Extract from Hansard
[COUNCIL — Thursday, 5 November 2020]
p7446b-7463a

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At the time of the Silvergrass project in 2000 when this was brought forward, it is noted in the documents that when that matter was put before the EPA, no heritage surveys had been done and nothing was known about heritage values. Therefore, should a matter eventuate or become public, it is highly important that the EPA is charged with the ability to call the matter back in and deal with those issues that are covered by the current act. Those are my observations.

Division

Amendment put and a division taken, the Chair casting his vote with the noes, with the following result —

Ayes (4)

Hon Robin Chapple	Hon Tim Clifford	Hon Diane Evers	Hon Alison Xamon (<i>Teller</i>)
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Noes (27)

Hon Ken Baston	Hon Sue Ellery	Hon Michael Mischin	Hon Matthew Swinbourn
Hon Jacqui Boydell	Hon Donna Faragher	Hon Simon O'Brien	Hon Dr Sally Talbot
Hon Jim Chown	Hon Nick Goiran	Hon Martin Pritchard	Hon Dr Steve Thomas
Hon Alanna Clohesy	Hon Laurie Graham	Hon Samantha Rowe	Hon Colin Tincknell
Hon Peter Collier	Hon Alannah MacTiernan	Hon Robin Scott	Hon Darren West
Hon Stephen Dawson	Hon Rick Mazza	Hon Tjorn Sibma	Hon Pierre Yang (<i>Teller</i>)
Hon Colin de Grussa	Hon Kyle McGinn	Hon Charles Smith	

Amendment thus negatived.

Hon Dr STEVE THOMAS: Before I move on to the environmental impact assessment process more generally, I want to make a quick comment. Proposed new sections 38C and 38D are very welcome components. They provide that a proponent may amend a referred proposal, and that a proponent may give notice to the government that a referred proposal will not proceed. Those are very good and worthwhile improvements to the bill, so well done on that.

I move now to page 20 of the bill. I want to make some preliminary comments before I contemplate the amendment standing in my name on the supplementary notice paper at 1/15. We are now in the area of the approval process. This is an environmental assessment. It is obviously a critical part of this bill. It is a bit of a shame that we did not have the time frame stuff in advance so that we could have had a more fulsome debate. I suspect that we will come to other bits of it down the track.

A proponent wants to proceed with a development that they believe, or someone else believes, may have an environmental impact, and they refer the matter to the EPA for a potential assessment of the proposal. I am referring in particular to proposed section 38G. We need to bear in mind that there has been a movement of numbers around the place from the Environmental Protection Act to this bill, so I will try to explain it as succinctly as I can. We are now dealing with the proposed section under which the Environmental Protection Authority, having been notified that a development of some sort is going to occur, has to make a decision about whether it will assess the development; and, if it does so, on what level it might assess it. It might, for example say, "This is a very minor development. We believe the impacts on the environment are negligible; therefore, we are not even going to assess it." It could decide that it might ultimately assess it based purely on information that is readily available, or it might do a full investigation, all the way up to a public environmental review.

Proposed section 38 deals with the decision the EPA will face about whether to assess, and for that it obviously needs information from the proponent. Generally, having received that information, it will seek information from various departments that might have something to say on the issue—particularly the Department of Water and Environmental Regulation and, not infrequently, the Department of Biodiversity, Conservation and Attractions. That is a name we still should change at some point, back to DPaW! We will try that again in budget estimates this year, minister, and see whether the government has shifted any ground!

My issue is about defining the time frames for getting a development up. On one level we want to make sure that we look after the environment and do not make rash decisions and that we put the long-term survival of the environment at the top of the agenda. Effectively, we all have the same agenda here. I must say that it has been a very positive debate thus far; everyone has a very similar intent. The question is: how long will this take? We are always flooded with examples of situations in which the approvals process takes longer than people think it should take, particularly proponents who are interested in economic development. I have made attempts at various places in this bill to put statutory time frames around these developments. In a moment I will move an amendment to, as much as anything else, get some debate going and get some responses from the minister. How hard we proceed with this might depend on the responses we get, but it is absolutely the case that there are deferrals.

If a deferral comes about because of a lack of information from a proponent, it is the proponent's fault if the time frame blows out. If a proponent puts in a poor submission in the first instance, it is fair enough for the EPA to reject

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it out of hand and say, “Go away and do a better submission.” In fact, the bill deals with some of those issues, which is good. However, if it is a reasonable submission but the EPA decides that it requires further information and that that information should come from the proponent, it is fair enough to extend that time frame. Members should be aware that there is, effectively, a time frame under proposed new section 38G. It provides that the EPA must make a decision within 28 days of receiving a proposal. In theory, it will have almost a month to make a decision on whether to assess, but the clock stops. The minister and the government have acknowledged that it may be an issue to stop the clock frequently when it is not necessary to do so. I have had very good discussions with the minister and his advisers on that issue for however long it is that this bill has been going; it seems like three or four years! Whatever the time frame has been, there actually have been very fruitful discussions.

The proponents might get seven to 10 days into the process and the EPA could say, “We’ve had a cursory look at your proposal and it is not good enough. We’re giving it back to you.” The clock stops at that point and it does not start again until the proponent comes back with an adequate proposal. I think everyone would agree that that is a sensible outcome. There will be situations in which the EPA says, “We need more information; the proposal is not adequate. We’ve accepted what you’ve said, but we need more information to justify it.” There are probably occasions on which it could be argued that the information requested is too extreme, but I generally have enormous respect for the work of the EPA, so, again, I think that is a reasonable outcome.

An issue arises if the EPA says, “We need information from one of the various departments”, and that department does not put delivery of that information at the top of its priority list. Not infrequently in such cases, there is a blowout in time frames as the EPA waits for that information to come back, and it becomes a very complicated process. For example, a proponent might lodge a proposal with the EPA and the EPA says, “Well, that’s all well and good; it’s a proposal to clear a piece of land to build something that will deliver lots of jobs and everybody’s in favour of it, in this COVID environment, but we want an opinion from DWER. There might be water issues, land care issues, salinity issues and potentially many other issues.” In the south west it is all cockatoos and possums. If it is anything, they have to do a study on cockatoos or possums.

Hon Stephen Dawson: Or banksias.

Hon Dr STEVE THOMAS: Or banksias—a conversation for another day.

It comes back as one of those things, and then the EPA says, “All right, you need to do a fauna survey and a flora survey.” A smart business would probably recognise that it needs to do those things at the beginning, and that work would have been done before it lodged its submission and got to the point of the 28-day proposal. On occasions, the department will tell the proponent, “You have to go back and do that”, and that can take a long time. I know of examples in which a flora survey has been carried out and the EPA says, “Hang on a minute, you did the flora survey at the wrong time of year”, so the proponent has to go away and do another one at the right time of year, which puts them back by 18 months. Those sorts of things will still occur, but in my view the department needs to be pushed to make sure that those requests are done in a timely manner. There are still going to be significant time blowouts on the basis that further information is required, frequently under different sets of circumstances.

I propose to set a statutory time frame within which the department must reply. In the interests of debate, I move —

Page 20, lines 23 and 24 — To delete the lines and substitute —

- (b) if a requisition is issued to the person who referred the proposal and is not complied with within the compliance period — the compliance period;
- (c) if a requisition is issued to a Government Department and is not complied with within the compliance period — 14 days.

Hon STEPHEN DAWSON: I say at the outset that I appreciate how Hon Dr Steve Thomas has engaged with us in respect of the amendment before us, and also as we have progressed with this legislation. My advisers remind me that work on this legislation started in about 2005, so it has been around for a long time. They have been gathering information over different administrations!

Hon Dr Steve Thomas interjected.

Hon STEPHEN DAWSON: Well, it has taken a long time to get here. Anyway, it is here before us now, and, hopefully, it will not take that long to pass through the Legislative Council! I understand what the member is trying to do; he is certainly trying to help the system along and to ensure that proponents are well served by it, so I acknowledge that.

The Environmental Protection Authority must determine whether to assess a significant proposal within 28 days. Proposed section 38F applies to referred proposals in situations in which the EPA considers it does not have enough information to decide whether to assess the proposal. Proposed section 38F(3) allows the EPA to set a period known as a “compliance period” in a notice for the purposes of determining whether the 28-day period has ended.

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This is intended to provide more certainty about when the 28-day period starts and is stopped. In his proposed amendment, Hon Dr Steve Thomas seeks to differentiate between the person who refers the proposal and the government department that receives the notice. The proposed amendment provides for a shorter compliance period in the event that a notice is given to the government department. It is likely that this is intended to ensure that the proponent is not disadvantaged by a slow response.

The government does not support this amendment. In practice, the EPA seeks advice from other government departments for a range of reasons, and that can include advice that is complex and technical, or advice to help understand how the other government department might manage a particular key environmental factor.

The time frame that is proposed by Hon Dr Steve Thomas reduces the flexibility of the Environmental Protection Authority to set dates based on the complexity of the matter that is being considered, and so this may actually reduce the EPA's capacity to support more efficient assessment time frames, including by leading the EPA to set a higher level of assessment than might otherwise be the case. We have to be careful. This could make things harder for Parliaments or make the EPA jump on a more cautious side, so there are risks associated with this. It may result in a more conservative approach to assessment as there may not be sufficient information to support the proposal being managed under another statutory process, which is the opposite of what is desired and what the member desires in his amendment.

The EPA publishes its administrative procedures in the *Government Gazette*. The procedures set out the practices for how the EPA undertakes environmental impact assessment under part IV of the Environmental Protection Act 1986. Once the bill is passed, the EPA will need to update this document. I have received advice that the procedures can include an obligation to publish the time frames set in notices issued under proposed section 38F, and so this provides transparency and accountability while removing the risk of perverse outcomes.

Noting what the member is trying to do, and I appreciate it, there are inherent risks associated with this amendment. I would urge honourable members in this place not to support this amendment. Knowing that Hon Dr Steve Thomas is trying to be helpful to industry and proponents, I would urge honourable members not to support this amendment because I think it brings risks with it and the possibility that the EPA could err on the side of caution more frequently, which would potentially delay projects.

Hon Dr STEVE THOMAS: I thank the minister for that, and I appreciate the interactions that I have had with his office.

If we do not proceed with some form of statutory time line, it still concerns me that the EPA, with all the best intent in the world and having a 28-day statutory time frame set upon it, is held to ransom to some degree by other departments. One might argue that the EPA is held to ransom by departments that, effectively, provide the EPA information and budgetary support anyway; it is very hard for the EPA to directly override either the Department of Water and Environmental Regulation or the Department of Biodiversity, Conservation and Attractions. But I just wonder whether the government has considered any other mechanism to limit the time frames here. I looked at 14 days for a government department to provide a response if it prioritised it, and I thought that was a pretty reasonable outcome, but 28 days is getting beyond the pale.

Is there a time frame that the government would consider reasonable for a response from, in particular, DWER, DBCA or occasionally the Department of Primary Industries and Regional Development to an EPA request for further information about an assessment?

Hon STEPHEN DAWSON: Honourable member, noting that the EPA has been consulted as part of the legislation before us and that the things that it sought changes to the act on have been included, from all reports and my understanding, it is not a problem. Currently, agencies respond in a timely fashion.

Hon Dr Steve Thomas: Proponents might necessarily be —

Hon STEPHEN DAWSON: No, I do not think that this is an area that the proponents have an issue with. Proponents would always like to have a decision not to assess. To enable the EPA to make that decision, it needs to have confidence that something is dealt with under another act, and it needs to have that advice from that other agency.

Because, to my understanding, this area is not a problem at the moment, and it has never been a problem, we do not support any changes to it. I note that the member has on the supplementary notice paper proposed sensible amendments—I am not saying that this one is not sensible—that we will accept, because we recognise that something can be tightened up and can benefit the legislation. In this case, the risks outweigh any potential benefit. The risks could mean that things are assessed and there is the potential to bog down the system. It is not a problem at the moment; therefore, we do not propose to fix it.

Amendment put and negatived.

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Hon ROBIN CHAPPLE: In relation to the clause 15 amendments deleting words and inserting new ones, I just wanted to clarify, because I could not find anything in the act or within the regulations, that if a proponent has not progressed a development within five years, it has to resubmit the development. Are any protocols being evolved around this within these amendments?

Hon STEPHEN DAWSON: That could be a condition in a ministerial statement, and is quite often a condition in a ministerial statement, but it is not actually in the legislation before us.

Clause put and passed.

Clause 16: Section 39 replaced —

Hon Dr STEVE THOMAS: This clause will insert a replacement section 39 into the act. The EPA will be required to keep records of proposals. In the old act, the EPA was required to keep a record of whether a proposal was to be assessed and the level of assessment applied. The original bill that the house received removed the level to which the application would be assessed, whether it was a public environmental review or whatever other level. That section is being replaced. I have simply sought to put that section back in because I think it is important information and I understand that the government has agreed with that. I move —

Page 24, lines 24 to 27 — To delete the lines and substitute —

The Authority must keep a public record of each referred proposal, and shall in that public record set out —

- (a) whether or not that proposal is to be assessed under this Part; and
- (b) if the proposal is to be assessed under this Part, the level of assessment.

All this amendment really changes is that the level of assessment is recorded.

Hon STEPHEN DAWSON: As Hon Dr Steve Thomas has indicated, the government accepts this proposed amendment. It returns the provision to the current version in the EP act, so we will support it.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 17 put and passed.

Clause 18: Section 40 amended —

Hon Dr STEVE THOMAS: Effectively, this clause is about the EPA publishing information. Under my amendment, I simply propose that in publishing the information on the EPA's decisions, the authority would also publish an indicative time line. Again, funnily enough, time lines are important to me and we will be discussing this a little as we go forward. I understand that the minister has moved a different version of my amendment that also suggests an indicative time line. My amendment is for an indicative time line and I understand that the minister's people have looked at this and accepted the principle. I accept that their capacity to get the wording right is probably greater than mine, given the resources that they have. Therefore, if the minister is committed to moving his amendment, I will not be moving mine.

Hon STEPHEN DAWSON: I again thank Hon Dr Steve Thomas. As he has indicated, the intent of his amendment was supported, but a requirement to publish the indicative outline of timing would provide greater transparency and will be a more streamlined process than providing written notices to the minister for each proposal. We accepted the spirit of his amendment but my advisers tell me that the amendment in my name at 24/18 on the supplementary notice paper is a better way forward. I move —

Page 25, after line 1 — To insert —

- (1A) In section 40(3) delete “subsection (2)(b).” and insert:
subsection (2)(b) and publish an indicative outline of the timing of the environmental review.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 19 to 24 put and passed.

Clause 25: Section 43 amended —

Hon Dr STEVE THOMAS: Clause 25 will amend section 43 of the act. This will enable the minister to give some directions to the authority. It is a very limited power by which the minister can effectively ask for a reassessment et cetera. In my miscalculation of time frames, I was previously going to suggest that perhaps it is not the Minister for Environment who seems to have overt control over the Environmental Protection Authority; I am a bit more concerned about the Premier's control, particularly given what happened a couple of years ago with the greenhouse

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gas emissions guidelines published by the department, which appeared to be overridden by the Premier. I therefore wondered whether we needed to insert into the previous clause that not only the EPA and the chair should be under the direct authority of the minister, but also the Premier should be added to that list. I think the minister is a very competent minister and looks after the environment. I am more nervous about the Premier overriding the EPA than I am the minister. I want to jump to proposed section 43(3A) at the top of page 31 of the bill. If he wants me to keep going for a bit longer, that is fine.

Hon Peter Collier interjected.

Hon Dr STEVE THOMAS: Yes. Is his preselection sorted out? It is too late to influence that now.

Hon Stephen Dawson: You missed me taking the knives out of my back!

Hon Dr STEVE THOMAS: Yes; excellent work!

I am interested in whether the minister can give us an example of the sorts of cases he envisages, particularly under proposed section 43(3A) where it states —

A direction can be given under subsection (1) even if the Minister has dismissed an appeal under section 100(1)(a) —

This is a separate part of the act —

against a decision by the Authority ...

A direction can be given even if an appeal has been dismissed. What sort of direction would the minister give under those circumstances? Can the minister give an example of what that might look like?

Hon STEPHEN DAWSON: I am reminded that an appeal was previously dismissed on a technicality. The environment side of it was fine; however, there was strong public opinion that an issue should not go forward. The reason for direction is in case new information about potential impacts becomes available or there is a high degree of public concern about the proposal's impacts justifying assessment, which includes a period of public review. This clause also makes drafting improvements and updates cross-references.

Clause put and passed.

Clause 26 put and passed.

Clause 27: Section 44 amended —

Hon Dr STEVE THOMAS: We are getting through this Environmental Protection Amendment Bill far faster than I thought we might do. I thought we might be a bit further behind.

Once again, I am looking at an appropriate level of assessment and the time frame in which assessments should be delivered. I will move the amendment in my name, as I did the previous one, and get the minister's view about what is deliverable and what is not. I therefore move —

Page 32, lines 2 to 5 — To delete the lines and substitute —

(1) Delete section 44(1) and insert:

(1) If the Authority assess a proposal, it must prepare a report on the outcome of its assessment of the proposal and give the report (the *assessment report*) to the Minister within one calendar year of the date of the Authority giving written notice of its decision to assess the proposal under section 39A(3).

(1a) If the Authority is unable to complete its assessment in the time period stipulated in section 44(1), it may seek in writing an extension of time from the Minister.

(1b) If the Minister grants in writing the extension of time sought by the Authority under section 44(1a), the Minister must —

(a) give notice to the person who submitted the proposal; and

(b) cause the written notice of that extension to be published.

We are now dealing not so much with the decision whether to assess; we have moved past that bit. I did not manage to restrain the time frame within which an assessment decision might be made. This amendment seeks to limit the time frame in which the actual assessment can occur. I have tried very hard to find amendments to this legislation that might put statutory time frames in place and did not limit, to the extent of environmental damage, the work that can be done by the Environmental Protection Authority or government and the minister as part of the process. I am a firm believer in government making decisions and that the Minister for Environment, no matter what side of politics they come from—good, bad or indifferent—needs to make that decision. The minister needs to stand by the decision and take that decision to the next election if they have done a bad job. I am not seeking to limit the

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power of the government or the minister to make decisions or do their job properly; I am simply seeking to put a time frame in place.

I would have thought that 12 months for most assessments would be reasonable to put in place. If the EPA is able to deliver an assessment to the minister in that time, I think 12 months would be reasonable. Bear in mind this is the time frame from which they have taken the decision to assess. They have said that they will probably assess it. If that takes 12 months, I hope it is assessed at a public environmental review level—the highest level of assessment—within the time frame from that decision to when the recommendations are given to the minister. We will deal later with how long it takes ministers to respond because that is a whole different argument. The minister needs time to consider both the environmental and, not infrequently, the political impacts of a recommendation by the EPA. Bear in mind, members, that the minister is not required to agree with the EPA. The minister has the power to ask it to do another report. If the EPA says, “Do not do this”, the minister can still do it. That is the power of executive government. That gives ministers the ultimate decision-making process. In this amendment I am simply seeking to limit the amount of time that it can take. I did not want to put it as a year because I accept that in some circumstances some of the analysis takes a long time and there are seasonal impacts. We might need to consider the environmental impact over a breeding season or long-term ocean impacts. For example, is it breeding season for cockatoos? In the environmental area of Hon Robin Chapple’s electorate, turtle breeding season makes a difference. We are all very fond of turtles. All of that matters. I agree that sometimes it cannot be limited to 12 months. That is why as a component of this amendment I have suggested that it is limited to 12 months, but that an extension can be sought that does not ultimately limit the extension the minister can grant to the approvals process, so the minister can grant pretty much an unlimited extension to that process.

There is a 12-month period and at the end of that period if the Environmental Protection Authority is not ready to present its assessment to the minister, it seeks an extension from the minister and the minister can give that extension for as long a period as he likes. In proposed subsection (1)(1a) of my amendment, if it is unable to be delivered within 12 months, the minister can grant an extension, without specifying a time frame, but at least has to tell the community that an extension is being granted. In an ideal world, the minister should probably suggest why an extension is being granted, but at least if it has become public knowledge that the extension is granted, the authority has the capacity to ask the minister the question. That is the reason I moved this amendment. I thought this was a reasonable amendment. I will hear from the minister in a moment. I understand the government is not keen on it, but to me this amendment is much less time limiting than my previous attempt to put a specific limit on how long a government department can sit on a reference on whether to assess for further information. This amendment is very much about the government of the day simply having to respond to the public and if granting an extension, to explain why it would grant an extension.

Hon ROBIN CHAPPLE: There will be a question for the minister, but this is almost a question for Hon Dr Steve Thomas. The member talks about an assessment report. What is the context of the report? Is it a big report or just a one-liner? My question for the minister is about what impact that would have on staffing and those sorts of things as well.

Hon Dr STEVE THOMAS: The assessment report is a statutory report, so it is part of the act. The EPA must give a report on its assessment to the minister. That assessment report is what the minister uses to judge whether the minister, and ultimately the government, will support or oppose a particular proposal. Some of those are immensely long, complicated documents. If we were to assess the knocking down of one tree, the report would probably be a few pages. If we wanted to develop the Gorgon gas fields or Barrow Island near the member’s electorate, that report could lend itself to hundreds of pages, if not a thousand, with the appendices. Occasionally they are big, long reports. It is absolutely the case that this can be a very technical argument. That is why I do not seek to limit the amount of time the EPA has to put the report together. I am saying that if it is not capable of doing so in a year, it reports should report that to the minister and the minister should report that to the community and grant an extension if an extension is appropriate. The member raises a very good point: some of those investigations are immensely complex. If we are looking for turtles at the wrong time of year, we need to go back the next year and count the number of turtles walking up the beach; some of these things do take a while, but there should be a reason for it and an explanation given. It is, to some degree, being more open, rather than necessarily fettering the power of the Environmental Protection Authority to examine, because, ultimately, there is no time frame that the minister cannot approve.

Hon STEPHEN DAWSON: I am not in a position to support the amendment moved by Hon Dr Steve Thomas. The time frames for environmental reviews are already required to be given to the proponents. The EPA publishes on its website the estimated time frames for each project. I have just been reminded of that now. If members go to the website, they will see there is a status of active formal assessments spreadsheet that is updated, I think, quarterly. It states where in the process a proponent is and the anticipated approval date.

The time taken for the EPA to finalise a report will depend on the quality of the information that is given by the proponent and the nature of the proposal, but also the complexity of the assessment. Currently, the department reports

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on assessment time frames through its key performance indicators. The current KPI is that 75 per cent of assessment reports must be completed within 12 weeks from the time that all relevant environmental review documentation has been received from the proponent. The performance against this KPI is regularly reported to the minister and is also part of the state budget. The inside cover of each assessment report published by the EPA contains a table that sets out the time taken for each stage of assessment of the proposal. There is already a high degree of transparency around time frames and ministerial oversight of time frames through the KPIs. I think it is important to point out that the estimated time frames for each project and status of active formal assessments are already published on the EPA website.

If we were to go along with the amendment moved by Hon Dr Steve Thomas, it could add a bit more red tape; it would certainly add to the administrative burden. We are trying to get decisions made. The EPA is trying to get decisions out the door as quickly as possible to move on to the next one. Again, I know the honourable member was being helpful and I appreciate him bringing forward the amendment, but I am comfortable that the spreadsheet available on the EPA's website that lists where things are in the process and the anticipated approval date is very helpful and gives transparency to, and puts transparency on, its decision-making. Obviously, afterwards, we report the time taken. There are opportunities already to scrutinise the EPA's decisions and the time frames in which they are made. I do not think adding more processes will help the system or improve transparency, so I do not support the amendment.

Amendment put and negatived.

Clause put and passed.

Clause 28: Sections 45 to 45C replaced —

Hon STEPHEN DAWSON: I will shortly move the amendment standing in my name at 25/28 on the supplementary notice paper, but I will just advise the house where this came from. This amendment is based on feedback from stakeholders. We have simplified the definition of “key decision-making authority” to remove the previous criteria and to make the discretion more broad. The process of identifying key decision-makers to consult with is intended to be flexible and will not create any additional grounds to challenge a decision. The process will focus on including decision-makers who have a significant role in relation to the proposal's environmental impacts, rather than the whole suite of decision-makers who grant minor approvals. I move —

Page 33, lines 25 to 27 — To delete the lines and substitute —
under section 45(2).

Amendment put and passed.

Hon STEPHEN DAWSON: I move —

Page 33, line 34 to page 34, line 3 — To delete “has a role, or have roles, in making major decisions in relation to matters in the proposal that may have significant effects on the environment.” and substitute —
the Minister considers to be a key decision-making authority.

Amendment put and passed.

Hon Dr STEVE THOMAS: Minister, I am inclined to test the will of the chamber on one of these amendments. I just give the minister warning that we will see what the will of the chamber is on this. I have relinquished my goal to shorten the time frame from the decision to assess to the assessment process itself, but my view is that the time frames in this section, which is basically making a decision and getting it out there into the marketplace, is worthy of support and testing in the marketplace. Proposed section 45 of the act sets out the procedure for deciding whether the assessed proposal may be implemented and the process that will occur once those decisions have been made. I have a series of proposed amendments to this clause. The first relates to proposed section 45(5). Proposed sections 45(3) and (4) set out what is to happen if the key decision-making authority or authorities cannot make a decision and cannot get together and sort out precisely what they intend to do. These clauses generally exist in the current bill but in a slightly different place. I jump to proposed section 45(5), which my first amendment goes to. It states —

If the Minister and the other Minister or Ministers referred to ... cannot agree on an implementation issue, the Minister must refer the matter or matters in dispute to the Governor ...

That is normal process. If one minister says yes and another minister says no, although it states that it goes to the Governor, it effectively goes to cabinet for a decision, and the vote is the vote, unless one lives in an autocracy, which I suspect sometimes happens, but let us not go there. This is the process whereby the authority cannot make a decision and the minister must refer the matter to cabinet, effectively, although the act would say “Governor”, for debate. All I am seeking to do is to put a time frame on which the minister can sit on a decision because the various ministers

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cannot reach an agreement. The minister could sit on a decision for a long period. If a minister who is in dispute with another minister does not want to take the matter to cabinet because they think they might lose, they could sit on it for an indeterminate period. I am simply suggesting that we do not allow the minister to sit there for an indeterminate time and say, “We can’t come to a decision.” How long would it take two ministers to decide whether to agree or not to agree? Bear in mind that this is not the start of the debate. As the bill suggests, if the minister or ministers cannot agree—they have decided that they cannot agree—how long can the minister sit on that and wait before it is taken to cabinet to get an arbiter’s decision? My amendment at 6/28 seeks to insert after the word “must” —

... within 60 days of receiving a report from the Authority under section 44(1) of this Act.

I am suggesting that 60 days after the minister receives the report, they go to cabinet or to the other ministers who are part of the decision-making body and say, “We agree with this” or “We don’t agree with this.” I do not think it should take more than a couple of months to decide that the minister cannot agree in the longer term. I have suggested a fair time frame for two, three or four ministers to say, “No, we are implacably divided on this and it is required to go to cabinet”, and ultimately circumvented via the Governor for a final decision. I have repeated this again for proposed section 45(6), which states that if the minister and the decision-making bodies cannot agree, the minister must appoint an appeals convener to consider it. Again, if the minister cannot agree on an implementation issue, they must appoint an appeals committee to consider it and report to the minister. Again, I am trying to put a time frame on this. The Minister for Environment might stand and say that a dispute has never gone more than 60 days anyway, so we do not need to worry about it. I am prepared to accept that it might be the case that that amendment is unnecessary.

I have another couple of amendments on the supplementary notice paper at 8/28 and 9/28 about the announcement of that. I am inclined to test the first two amendments; therefore, I move —

Page 34, line 17 — To insert after “must” —

within 60 days of receiving a report from the Authority under section 44(1) of this Act

Hon STEPHEN DAWSON: I do not support this amendment, nor do I support amendment 7/28. I support amendment 8/28, but we will get to that when we get to it. The proposed section 45 process, which is the procedure for deciding whether a proposal may be implemented, is a collaborative whole-of-government decision-making process. It will provide certainty to a proponent that the proposal is supported by all the relevant decision-makers. It makes for a smoother process in obtaining secondary approvals from the decision-makers involved. We normally have a response from ministers within two weeks, so that is not an issue at the moment. In my time as the minister, there may well have been only one proposal that took longer than 60 days to reach agreement. Obviously, ministers need to take into consideration not only environmental reasons, but also social and economic reasons for a proposal going forward. Fourteen days is the average time. Proponents know where we are at in a cycle. If a proponent knows that a decision is with a decision-making authority for agreement, they are on the phone because they want the proposal to go through as quickly as possible. It literally takes 14 days for a minister or a decision-making authority to get back to me to give their agreement and then we are away. Only in rare cases would it take longer than 60 days for an agreement to be reached. In these cases, it would be preferable for the proponent that a negotiated outcome could be reached between all key decision-making authorities so that unresolved issues do not delay subsequent approval. I do not support the 60-day provision. I think it is a current flexibility that we deserve to keep. It is used in rare instances. To my recollection, in my time as minister, one case has taken more than 60 days. Everything else is basically done within two weeks. I do not think this amendment is needed and I am not in a position to support it.

Hon COLIN TINCKNELL: I support the amendment. Having dealt with industry over the last 20-odd years, certainty in these secondary approvals is very important. I feel that giving a time frame, with the minister having the ultimate right to add to it later on, is a good idea.

Amendment put and negatived.

Hon Dr STEVE THOMAS: I indicate that I do not intend to move amendment 7/28 on the supplementary notice paper, which was effectively a carry-on from amendment 6/28.

I will take the opportunity to move amendment 8/28. I move —

Page 35, line 4 — To delete “must —” and substitute —

must within 30 days of the agreement or decision being made —

This relates to the last bit of the time-frame component that I am interested in—that is, the period from the decision within which the minister has time to make that announcement. Ministers and governments of both persuasions over the years have held onto these announcements for, let us say, best political result, and in my view, limiting their capacity to do that to within four weeks, a month, is a reasonable option. I get that the ministers sometimes take a while to get all these things lined up when they want to make a formal announcement and have lots of positive

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press around it, and I am sure that both sides of Parliament would continue to want to do that. I think limiting that largesse to a month is a reasonable option. This is once all the decisions have been made—the answer is known. The application has gone in; the Environmental Protection Authority has decided whether to assess it; it has made the decision and assessed it; it has made a recommendation to the minister; the minister has accepted it; the minister has discussed with any other ministers involved, any other decision-makers, whether they think the proposal should succeed; they have all agreed on it; and at the end of that process we say, yes, it has been ticked off by everybody. How long is a minister allowed to sit on that? I think 30 days is a reasonable time to limit the political advantage of that. That is why I have moved the amendment.

Hon STEPHEN DAWSON: I acknowledge the amendment and I am happy to support it. Once I have agreement from DMAs, a decision is normally published the next day, so I have no problem with setting a 30-day period. It is well within current practice, so I am happy to support the amendment.

Amendment put and passed.

Hon Dr STEVE THOMAS: I move —

Page 36, line 29 — To insert after “must” —

within 30 days of the agreement or decision being made

This effectively does the same thing in a slightly different section.

Hon STEPHEN DAWSON: Again, I am happy to support this amendment. This, too, is well within current practice and I am happy to support it.

Amendment put and passed.

Hon Dr STEVE THOMAS: I will move the last amendment. This might take a little more time and be a little more interesting. I move —

Page 37, lines 23 and 24 — To delete “on the environment;” and substitute —

that cause material environmental harm or serious environmental harm;

Committee interrupted, pursuant to standing orders.

[Continued on page 7473.]

Sitting suspended from 4.15 to 4.30 pm