

Deputy Chair; Hon Tjorn Sibma; Hon Sue Ellery; Hon Dr Steve Thomas; Hon Stephen Dawson; Hon Aaron Stonehouse; Hon Martin Aldridge; Hon Diane Evers; Hon Rick Mazza; Hon Jacqui Boydell; Hon Martin Pritchard

ENVIRONMENTAL PROTECTION AMENDMENT BILL 2020

Committee

Resumed from an earlier stage of the sitting. The Deputy Chair of Committees (Hon Robin Chapple) in the chair; Hon Stephen Dawson (Minister for Environment) in charge of the bill.

Clause 44: Sections 51B to 51D replaced —

Committee was interrupted after the amendment moved by Hon Dr Steve Thomas had been partly considered.

Ruling by Deputy Chair

The DEPUTY CHAIR (Hon Robin Chapple): Prior to question time, the minister sought a ruling on amendment 12/44. Hon Dr Steve Thomas has moved an amendment to impose an obligation on the CEO to deliver a memorial of an environmentally sensitive area to a relevant land registration officer. Further, the land registration officer is to register that memorial accordingly. The minister has requested a ruling about whether this amendment involves an appropriation of funds and therefore is not in order pursuant to section 46(3) of the Constitution Acts Amendment Act 1899.

Over time, the Legislative Council has adopted a narrow interpretation of section 46(3) so as not to restrict its rights and privileges in relation to bills. Under this interpretation, amendments in the Legislative Council have been ruled in order if they involve a redirection or reallocation of proposed expenditure, the subject of an existing appropriation. However, the imposition of a new legal and definable financial responsibility may involve an appropriation. On its face, this amendment will impose a substantial new legal and definable financial obligation on the minister; the advice from the department being a cost of up to \$17 million, which could not be absorbed within the department's existing operating budget. For that reason, I rule that the amendment is not in order.

Committee Resumed

Amendment ruled out of order.

Hon TJORN SIBMA: I imagine that conversation on this topic will soon come to an abrupt end. If I may, I will make some observations in respect of this amendment. The motivation for the amendment was clearly expressed by Hon Dr Steve Thomas. It was effectively and essentially about providing a measure of transparency around encumbrances or memorials that affect land use. It does not create a new encumbrance; all it does is oblige the department to advise landowners accordingly, and for that encumbrance to be registered. What I have borne witness to over the course of the past 24 hours is the pushback on this measure, which has been absolutely extraordinary. One might reflect on the vigour and desperation of this defence. I will not reflect on the Clerk's ruling, suffice to say the Clerk is limited to the information —

The DEPUTY CHAIR: May I just point out that it is not the Clerk's ruling.

Hon TJORN SIBMA: Sorry; the determination that has been read is anchored in the advice provided by the department. To some degree, that is a necessity. I might put to the minister, if he is in a position to answer this question, whether or not that is the only estimation of the cost of this motion that he has been advised or indeed that he has provided to other members of the chamber. If that is the case, if there is only one estimation and that is the estimation, I will let it rest, but I find it extraordinarily high.

I also make this observation: amendments that are moved in this chamber obviously have financial implications. In fact, in its own Planning and Development Amendment Bill, the government was more than prepared to accept a downward revision of the threshold of project values that could be facilitated by the significant development assessment unit. If the government was to be in any way consistent, I thought it would have sought a ruling at that point. Obviously, the government will accept some amendments, sight unseen; and others it will fight a last-ditch battle to defend against.

I might also reflect on this: I have absolutely no doubt what an inconvenience it might be for the department and the CEO to have to advise some 100 000 landowners of a caveat affecting their title, which they might not have been aware of. I could anticipate the kind of reaction that might elicit. I could anticipate the kind of political reaction that might elicit, too. I suspect that is what is at issue here. But we are where we are, and I will sit down and rest, and hopefully live to fight another day.

Point of Order

Hon SUE ELLERY: I say this reluctantly, but I think we have to be careful about the language being used here. I listened carefully to what the honourable member said. As I heard him, he said his view was that the ruling given by the Chair was "anchored in" the advice provided by the minister on behalf of the government. If by "anchored in"

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he meant that the ruling was based on listening to the argument put by the minister in respect of the actual costs or estimated costs, I think we have to be careful about that. The Presiding Officers and the Chairs, acting on the advice of the Clerks, are well used to reading legislation—that is their job; that is what they do all the time—and determining whether or not something constitutes a money proposition. It is poor form, if not a breach of standing orders, to reflect on a ruling in that manner. The honourable member may actually just have been trying to dispute the amount of money that the government said it would cost, and that is a legitimate point for him to put, but if the proposition the honourable member meant when he used the expression “anchored in” was that somehow there was something improper or that the ruling being provided was being led by the government, that would not be appropriate.

The DEPUTY CHAIR (Hon Robin Chapple): Thank you, Leader of the House. I need to point out that the ruling was from the Chair and is not defined on anything that has been provided by the minister or his officers. I take the Leader of the House’s point of order. It is quite clear that when the Chair makes a deliberation, it is from the Chair and from nobody else.

Committee Resumed

Hon Dr STEVE THOMAS: I think that will ultimately put paid to my agenda, and I suspect the department will be very pleased.

I want to check something with the minister. The minister indicated that he opposed the registering of 98 000 moratoria on titles. During an earlier part of the debate, I asked whether the amendment I moved would impinge upon the existing environmentally sensitive areas or whether those would continue. I thought the minister indicated to the chamber that those existing ESAs would remain in place and that the moratoria would not necessarily be applied automatically; it would not start over. When the amount of \$17 million was raised, the minister effectively mentioned that 98 000 moratoria would have to be registered. Is it a genuine 17 point whatever million dollars, and is it the case that all of those ESAs would have to be re-registered? Can we get that confirmation? I would also make the point, secondary to that, obviously it is government imposing a fee upon government; one government department would effectively charge another government department.

I also note, Mr Deputy Chair, that the minister has an amendment on the supplementary notice paper by which the minister would notify each owner or occupier of land on which an ESA applied. I would have thought that a cost would be associated with that. There will be a significant cost involved in advising—would all 98 000 titleholders be contacted and notified? Would responses be expected from them and would those responses be taken into account? I would have thought that would have had a pretty big cost impost and the ruling on my amendment might well knock out the ruling on the minister’s amendment, which will certainly have a significant impact on the amendment on the supplementary notice paper under the name of Hon Rick Mazza. I would be interested to know exactly how many titles and how many moratoria we are talking about. If the amendment had proceeded, exactly how many memorials would have had to be placed on titles? If it is the entire 98 000, I would be very interested to know whether that amendment would have meant we would have to start over with everything, because that is not the indication the minister gave us earlier in this debate.

Hon STEPHEN DAWSON: I am not going to answer questions on what is not there anymore, so I am not answering questions about the amendment that has been ruled out of order.

The DEPUTY CHAIR: The minister is quite correct, in that the amendment has fallen away.

Hon STEPHEN DAWSON: However, I am very happy to provide answers to a number of questions that the member asked. I am proposing to send correspondence to tens of thousands of Western Australians.

Hon Dr Steve Thomas: All memorials or all affected landholders?

Hon STEPHEN DAWSON: Yes, there will be consultation with all affected landholders in relation to the new regulations. I am advised that it could cost around \$200 000 to send correspondence to them, in terms of the processing, which includes staff time, postage and paper. That is easily done within existing resources and would not require an additional appropriation for the department. That is the difference in something that costs \$17.1 million. The fee is about \$174 per title. If we multiply that by 98 000, it equals upwards of \$17.1 million, because that does not take into consideration the extra staff or resources required to do the work. My proposal will cost a lot less. I am taking this course of action because of members’ suggestions and work in this regard. Members of the Nationals WA have engaged with me on this over the last few weeks. They, too, care about regional constituents and want to see an outcome that benefits regional Western Australians.

My amendment on the supplementary notice paper recognises the views of honourable members in this place. This is truly about getting something better than we have currently that will have a positive impact on residents in regional Western Australia. It is in that regard that I will move my amendment. Members can talk against it or ask questions on it. I am moving the amendment, but I do not propose to go over the same points that I went over when

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speaking against Hon Dr Steve Thomas's amendment. I outlined the reasons for moving my amendment. I also outlined the reasons we have moved down the property interest report route. I have also previously indicated the number of stakeholders in the community who have a view on this. I move —

Page 59, after line 28 — To insert —

- (2) Before regulations are made declaring an area of the State as an environmentally sensitive area for the purposes of this Part —
 - (a) the CEO must, in a prescribed manner, notify each owner or occupier of land in that area of the State of the proposed regulations and invite comments about the proposed regulations to be made within the period specified in the notification; and
 - (b) the Minister must take into account any comments about the proposed regulations made by an owner or occupier of land in that area of the State pursuant to an invitation under paragraph (a).
- (3) Subsection (1) does not apply to regulations proposing to declare an area of the State as an environmentally sensitive area if a declaration of that area as an environmentally sensitive area already has effect under section 133B(2) or subsection (1).
- (4) The CEO must notify the agency (as defined in the *Public Sector Management Act 1994* section 3(1)) principally assisting the Minister administering the *Transfer of Land Act 1893* in its administration of the declaration or amendment of an environmentally sensitive area with a view to that agency including information as to the environmentally sensitive area in information disseminated by it as to property interests in land.

Hon AARON STONEHOUSE: Mr Chair, I think I have a solution that addresses the ruling made a moment ago. It would of course require the chamber to vote down the proposed amendment now or for the minister to seek leave to withdraw that amendment and for my solution to be adopted by the Committee of the Whole House, which I suspect, with a glance around the chamber, a majority of members may be interested in. My proposal is that the Legislative Assembly be requested to make the following amendment, which would follow the proposed amendment of Hon Dr Steve Thomas on the supplementary notice paper at 12/44. That would overcome the obstacle of the ruling made a moment ago, of course, whereby the Legislative Council may not make amendments, deal with bills or create bills that are money bills.

Hon Sue Ellery: The ruling is a ruling. You cannot say the ruling is an obstacle; you are reflecting on the ruling.

Hon AARON STONEHOUSE: I am making no such reflections; I am merely foreshadowing what I propose may be a superior solution than adopting the minister's proposal. That would ensure that existing property owners with ESAs would be notified of those ESAs through their title, which I suspect may be the preferred route for the Committee of the Whole House. As I said, if I had the opportunity, I would seek that the Legislative Assembly be requested to make the following amendment followed by precisely the amendment proposed by Hon Dr Steve Thomas. If members are interested in such a way forward, we would simply vote down the amendment proposed by the minister, or the minister could do us a favour and seek leave to withdraw that amendment, and then we could proceed with the course of action that I propose.

Hon MARTIN ALDRIDGE: I left the chamber briefly to attend to urgent parliamentary business when, I understand, the minister made a commitment about writing to and informing affected landholders about a proposal arising from either the existing notice that is in place or the proposal to gazette regulations. If that was the commitment the minister made, is it then necessary to retain subsection (3) of his motion, which I understand is effectively contrary to the commitment that he has made to the Legislative Council?

Hon STEPHEN DAWSON: I have asked the director general to prioritise the regulations for ESAs. This will ensure that consultation occurs with all property owners who may potentially be affected if their property is in an ESA so they are aware of what it means. We will also explain the new expedited referral process if they are looking to clear native vegetation. Following the making of regulations, we commit to notifying all those who have ESAs that they are aware that they are defined in regulations.

My advisers tell me that we need subsection (3) in case we wish to make changes to ESAs in the future. We are not proposing to at this stage, but we do not want to write that letter every time.

Hon DIANE EVERS: I am responding to the paper that was tabled before we stopped for question time. It mentioned that the department is having discussions with the Real Estate Institute of Western Australia to highlight this information. I wonder whether the department is also in contact with conveyancers, banks or other businesses that might be loaning money, because it seems that even though these environmentally sensitive areas have been around for some time,

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they are still not common knowledge. Along with the letter, I think it seems like we really need to do this and it has to go through our culture when we purchase a property. It is like when we buy a house and we have to do a pest inspection and a building inspection; this would become part of that process and all those involved would have to know about it.

Hon STEPHEN DAWSON: We have consulted the Real Estate Institute of Western Australia and the UDIA's of the world and others. As I have indicated previously, REIWA is open to including information on the offer and acceptance report. I am told REIWA is working with the Law Society of WA at the moment on how that information might be included on the form.

Hon DIANE EVERS: Knowing that REIWA would want to get the highest price for its members when they are selling a property, it might not be something that it puts forward unless it has an obligation to do so. In order to inform the purchaser about it, will the form that includes the information be a requirement or will it be something that may or may not come up?

Hon STEPHEN DAWSON: The amendment I moved locks it into the Landgate system forever. It is not about real estate agents making more or less money, or anything else. If my amendment is passed, it will be included in the Landgate system forever.

Hon DIANE EVERS: Regarding clearing, the letter tabled by the minister before question time states —

This does not account for removal of areas without native vegetation, as to do this would require further investigation.

I assume that suggests some of these ESAs have been applied to areas that might be plantations, if it was done via satellite, areas that are completely weed infested or areas that would have been cleared. What are the penalties? For someone going out and checking these places, if they find areas that have been cleared, how would it be handled if it was determined that it had been cleared illegally some time in the past five to 10 years? Would we say, "That's it; there's nothing we can do", or are there some repercussions in place?

Hon STEPHEN DAWSON: The part of the letter that the honourable member read out refers only to the cost. The letter refers to \$17.1 million, which is the appropriation needed to undertake certain administrative requirements. The next line states —

This does not account for removal of areas without native vegetation, as to do this would require further investigation.

That refers to the extra money that would be associated with doing that work.

Hon DIANE EVERS: I understand that, but it suggests there are areas that do not have native vegetation on them that currently have an ESA on them incorrectly.

Hon STEPHEN DAWSON: ESAs count only if there is native vegetation on them.

Hon RICK MAZZA: I have to express that it is a bit of a disappointing turn of events that we were unable to support the amendment put up by Hon Dr Steve Thomas. Registration has been a big issue for a long time.

Point of Order

Hon STEPHEN DAWSON: I have a point of order. The member is reflecting on a decision of the chamber and advice that was given. As much as the member might be disappointed, the standing orders do not allow that, so I would ask that he does not continue.

The DEPUTY CHAIR (Hon Robin Chapple): The minister's point of order is correct. We are not dealing with the previous amendment that was put up, which has no validity. We are dealing with the minister's amendment.

Hon Sue Ellery interjected.

The DEPUTY CHAIR: Yes, sorry; that is correct. The member cannot reflect on a ruling.

Hon RICK MAZZA: I will listen to the Deputy Chair, thank you. Thank you for that guidance, Deputy Chair.

Committee Resumed

Hon RICK MAZZA: The problem I have with the amendment before us is that, the way I read it, existing properties with ESAs on them will be not be notified.

Hon Stephen Dawson: By way of interjection, they will be. I have given the undertaking that they will be.

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Hon RICK MAZZA: In the forty-first report of the Standing Committee on Environment and Public Affairs, finding 6 states —

The Committee finds that the then Department of Environment limited its consultation in relation to the draft *Environmental Protection (Environmentally Sensitive Areas) Notice 2005* to only seven days (and for peak stakeholder bodies only) before the Notice was published in the *Government Gazette*. This consultation was so limited as to be pointless and was merely undertaken to ‘technically’ comply with legislative requirements.

We have got to this position because the legislation was rushed through. I accept that the minister is going to notify all property owners that have an ESA on their property—some 98 000 people. The concern I have is what mechanism the government will have to notify every new owner as those properties change hands. An owner might have been notified, but, over time with transfers, the new owners will not know about it. What will happen then after two or three changes of ownership? How will the government keep track to advise people that they have ESAs on their property?

Hon STEPHEN DAWSON: Honourable member, as I have indicated, the memorials are gone for now. To move forward, we have the process of property interest reports. It did not exist previously. It is now in place in Western Australia. We are also having conversations with REIWA about including it on its offer and acceptance forms, so everybody should get a property interest report before buying a property. An honourable member raised with me earlier an issue about the \$60-odd cost. That \$60-odd cost is a pittance in comparison with the \$400 000, \$500 000, \$800 000 or \$1 million that someone is going to spend on a property. It is an investment to spend \$60 to get a property interest report. It will now list the ESAs on it. That is the solution moving forward. Again, I reiterate that this came out of the genuine concern expressed by honourable members in this place about finding a workable solution for the future.

Hon MARTIN ALDRIDGE: I asked a question before about the reason for requiring the insertion of proposed subsection (3). I take the minister’s point that if a series of regulations is gazetted over time, we do not want to be required to notify and consult with a whole range of 98 000-odd property owners. I wonder whether an amendment could be made to improve subsection (3) in reference to section 133B(2). I do not have a tracked version of the bill with me at the moment, but I have requested one. I suspect that section 133B(2) is the head of power that currently allows for notices to be issued for environmentally sensitive areas. If that assumption is correct, I would be interested in the minister’s view. The minister has already made the commitment that he intends to notify the relevant, affected property owners as a result of this process. I am now in possession of a copy of section 133B(2), which is, as I thought, the head of power that allows for the declaration of environmentally sensitive areas by notice. Given the minister’s commitment, I wonder whether section 133B(2), referenced in subsection (3), is relevant or ought to be deleted. I would be interested in the minister’s advice on any unintended consequences of its deletion.

Hon STEPHEN DAWSON: My advisers tell me that that would probably be okay, given that we are going to go down the path of advising affected people in the first place.

Hon MARTIN ALDRIDGE: I have great news. I move —

In subsection (3) — To delete “section 133B(2) or”.

Hon STEPHEN DAWSON: As I indicated, we are fine with the amendment. We will support the amendment to the amendment.

Hon DIANE EVERS: Noting that the minister said that the amendment will not have any large effect, I wonder what the minimal effect of deleting the words “section 133B or” will be?

Hon STEPHEN DAWSON: I am told that it will mean that we will have to notify people, including on the old ESAs.

Amendment on the amendment put and passed.

The DEPUTY CHAIR: We are now dealing with the minister’s amendment, as amended.

Hon MARTIN ALDRIDGE: The government has settled on a property interest report as the instrument of choice. The thirty-third report of the Standing Committee on Public Administration made some findings on property instrument reports. Finding 11 states —

Property Interest Reports cannot be relied on to disclose all interests affecting land.

I think that is understood. More interestingly, finding 12 states —

The Western Australian Government is unwilling and unable to guarantee the information contained in a Property Interest Report.

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Given that that report was tabled in September 2020 and that the time frame for a government response under the standing orders has not yet expired, obviously I do not have the benefit of a government response to finding 12 and other findings and recommendations in that report. But I would like to know whether the government agrees or disagrees with finding 12 of the majority report of the Standing Committee on Public Administration; and, if so, what steps has the government taken to ensure that property interest reports and the information contained within them to notify landowners or people interested in land that the information particularly with respect to environmentally sensitive areas can be relied upon?

Hon STEPHEN DAWSON: I cannot indicate a government response to that committee report yet. It has not been through cabinet and, as the honourable member pointed out, it is not yet due back to the chamber. A response, of course, will be provided to the chamber in due course.

Proposed subsection (4) of the amendment that we are dealing with, states —

The CEO must notify the agency (as defined in the Public Sector Management Act 1994 section 3(1)) principally assisting the Minister administering the Transfer of Land Act 1893 in its administration of the declaration or amendment of an environmentally sensitive area with a view to that agency including information as to the environmentally sensitive area in information disseminated by it as to property interests in land.

My advisers tell me that this is a fix to this issue and is a solution to the issue raised by the committee. As I indicated, I cannot give a formal government response on the report.

Hon MARTIN ALDRIDGE: It is disappointing that we are not in possession of a government response to this important majority report of the Standing Committee on Public Administration because it has many crossovers with the matter before us, particularly with respect to this clause.

I should have disclosed earlier that I am an owner of a parcel of land with an environmentally sensitive area on it. I took the benefit last night of paying my \$60, noting that that is more than double the price for a certificate of title search, which is a precise document and which landowners or people with interest in land can rely upon with respect to encumbrances or interests in land. Nevertheless, the government has chosen that a property interest report is the way to go despite the fact that the good members of the Standing Committee on Public Administration have found that there are shortcomings with the PIR. However, I paid my 60 bucks last night in the interests of research and obtained this property interest report, which discloses, indeed, amongst a whole range of other things, that there is an environmentally sensitive area registered on my land. I knew that before I purchased the land. In fact, one of the reasons I purchased the land was the opportunity to own a unique parcel of land that included an environmentally sensitive area.

In the property interest report there are things like—surprise, surprise—my land is subject to the emergency services levy, land tax and local government rates. Who would have thought that? It is also subject to sprinkler restrictions and bans. It is also prone to mosquito-borne disease.

Hon Colin Holt interjected.

Hon MARTIN ALDRIDGE: That is an ESA. That is an interesting one.

It is in a bushfire-prone area and—again, surprise, surprise—I would need a building permit to construct a building. It is also subject to the building and construction training levy. As I indicated, running through this list of dots points are a number of things that would ordinarily apply to every parcel of freehold land in Western Australia, particularly things like local government rates and the emergency services levy. Then there is a long list of things that do not affect the property.

It is quite an extensive report; I think I counted 26 pages. But buried at the back of the report is information on each of those interests that affect the property. A significant number of pages are dedicated to Aboriginal heritage, which is interesting. I have not had time to consider that in full. But, when I turn to “environmentally sensitive areas”, it provides a good deal of information on the property interest report, notwithstanding finding 12 of the majority report of the Standing Committee on Public Administration. It defines the interest. It also talks about the effect of interest and provides information on where I can access further information from. The question I want to get to relates to the effect of interest. It is explained in the document that environmentally sensitive area mapping is intended to be used as a guide only and that further information to assist in determining whether an ESA exists can be obtained from the Department of Water and Environmental Regulation website.

When people go to this ESA mapping tool, which I think members may be familiar with through research in preparation for this bill, they find that it is a rather cumbersome website. It is not terribly intuitive, but generally people can navigate to the parcel of land that they are interested in. They have bought the \$60 report, they have

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gone to the Department of Water and Environmental Regulation's website, they finally find their parcel of land, and then they are faced with a 465-word disclaimer. I am not sure whether the minister is aware of the 465-word disclaimer, but basically it says, "You can't rely on anything we tell you, and by the way," —

By accessing information at or through this site each user waives and releases the Department of Water and Environmental Regulation and the State of Western Australia and its servants to the full extent permitted by the law from any and all claims relating to the usage of the material made available through the website.

That fills me with great confidence! I am glad that the government, in its wisdom, has navigated away from using an instrument like a certificate of title to register an interest in a property. We have landed on this property interest report—more than twice the cost of a certificate of title—and buried down the back it advises people to go to the Department of Water and Environmental Regulation's website to find 465 words explaining why they cannot rely on that information.

Most landowners in Western Australia do the right thing and want to make sure they conserve their land and their environment for the future. The problem—I saw this in some of the evidence that was presented to the Standing Committee on Public Administration—is that actually defining the boundaries of an environmentally sensitive area is very difficult to do. Given that I have no definitive advice from the PI report, except that an ESA exists, and the website that advises that I cannot rely on anything on it, how will I know where an ESA starts and stops, and where my legal responsibilities start and stop with regard to environmentally sensitive areas?

Hon STEPHEN DAWSON: If people apply to the CEO, they can find out that information. The document that the member has just read from gives a phone number and email address for the department. If people ask the question of the department through either of those means, the department will give them information on where the ESA is and what applies.

Hon MARTIN ALDRIDGE: If I ring the CEO tomorrow and say, "I've got a surveyor coming next week. I need some cadastral information and data that I can give to my surveyor so I can peg a fence line to make sure that I discharge my legal responsibility to protect the environmentally sensitive area from my stock", the CEO will provide me with information that I can rely on to peg a fence line.

Hon STEPHEN DAWSON: Yes, the CEO of the department will provide that information to the member. In fact, through this bill we are establishing a new referral system. The bill allows landholders to refer proposed clearing to the department for a decision about whether a clearing permit is required. The CEO will then determine whether a permit is required against criteria contained in the bill, and that decision must be made within 21 days of the referral. There is no cost to the landowner in making that referral.

Hon MARTIN ALDRIDGE: Will the information provided to me by the CEO include a 465-word disclaimer?

Hon STEPHEN DAWSON: It will not!

Hon Dr STEVE THOMAS: We have come to the point at which we have to look at the minister's amendment. I appreciate his comments and I think the amendment is there because we have now recognised that there is an issue with environmentally sensitive areas. I think the solution is not as good, but I have to say that it is probably a better outcome than no outcome. I think we are going to be left with a second-rate result, but a result all the same. I am not surprised that the usual suspects were dragged out for support for or opposition to these various proposals. Interestingly, we have had input from everyone who makes money from the development of land, but not representation of the people who own the land and have to live with it. Unfortunately, it is often the case that landowners are not a very effective lobby group and that those who purport to represent them are actually representing the interests of those who make a dollar off them, so I take that representation with a small grain of salt.

I seek advice from the Deputy Chair. Hon Aaron Stonehouse discussed the potential to change the outcome. I suspect we find ourselves in a position in which the amendment before the chamber has to be voted on, and there may then be no capacity for Hon Aaron Stonehouse to change that outcome. I would be interested to hear a ruling from the Deputy Chair on whether Hon Aaron Stonehouse's intent can actually be met within the standing orders of the Legislative Council.

The DEPUTY CHAIR: I thank Hon Dr Steve Thomas. Section 46(4) of the Constitution Act Amendment Act 1899 states, in part —

The Legislative Council may at any stage return to the Legislative Assembly any Bill which the Legislative Council may not amend, requesting by message the omission or amendment of any item or provision therein: —

This is the important part —

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provided that any such request does not increase any proposed charge or burden on the people.

Therefore, unfortunately, the member's view of a potential amendment would be ruled out of order.

Hon Dr STEVE THOMAS: In that case, we have no alternative but to support the amendment proposed by the minister, albeit with deep regret that we did not come up with something better, and explain to the community of Western Australia that it could not have full transparency due to the \$17 million cost. At a time when we are throwing money around for COVID responses, I thought the government might have considered that a reasonable expense, but this amendment is better than no amendment, and on that basis I intend to support it.

Hon JACQUI BOYDELL: I rise to make some brief comments. I concur with the comments of Hon Dr Steve Thomas on the amendment before us. I think it falls short of the expectations of the public and definitely falls short of the expectations of those who made submissions to the Standing Committee on Public Administration's inquiry into private property rights. I draw members' attention to paragraph 4.88 on page 56 of the committee's thirty-third report, "Private Property Rights: the need for Disclosure and Fair Compensation", which clearly states —

Evidence to the Committee showed clear support for all interests and encumbrances affecting land to be displayed on a Certificate of Title.

I agree that we have probably fallen short, and that is a little disappointing, but I acknowledge the minister's attempts to engage with members and hear our concerns on this issue, and the openness of his ministerial office and department to try to understand and address the issues.

I wrote to the Real Estate Institute of Western Australia. I want to put this on the record because the minister made reference to REIWA engaging with a member. I do not know whether other members have done the same, but I wrote to REIWA, and it wrote back pretty quickly—almost within an hour of it receiving my letter, which I was exceptionally impressed with. I want to put REIWA's position on the record, as it was put to me in its letter. It confirmed that it had engaged with the minister's department on issues relating to prospective buyers being aware of Landgate's property interest report. The letter states —

During those discussions, REIWA said that it was open to including a notice on REIWA's Contract for the Sale of Land by Offer and Acceptance ("the O&A"). The notice would draw the prospective buyer's attention to the fact that the Property Interest Report was available.

There is still a step, as Hon Martin Aldridge pointed out, that the prospective buyer or owner would have to take. Although they may be aware that it is available, they have to go and get it. There is still the possibility of confusion for the buyer, in that sense. Further on, the letter continues —

REIWA is of the view that the certificate of title is not a suitable document on which to place any notifications. The Landgate Property Interest Report is a suitable document where all property interests can be described, including environmentally sensitive areas.

REIWA would not support any proposal that the use of the Property Interest Report is mandatory.

Although REIWA may be open to including that on its contract for the sale of land by offer and acceptance—I note it says that that discussion is ongoing—it does not want to see that become mandatory in its operation. I also reached out to some contacts in the real estate industry who are members of REIWA but have not contacted REIWA on this issue. REIWA has not yet consulted its membership, and its members may indeed have a different view; REIWA may yet change its position.

Sitting suspended from 6.00 to 7.00 pm

Hon JACQUI BOYDELL: I will briefly continue my remarks from before the dinner break. I seek the minister's guidance on how the government will continue to engage with the Real Estate Institute of Western Australia, which has put a very definite position on the table. That is REIWA's position, but it is my understanding that it has yet to consult with its membership on that position, so it is likely that that position may change. That position is to amend their offer and acceptance to include a recognition of a property interest report being available to a potential buyer. How will the government continue to engage? If that is the position that the government prefers, what is its strategy to ensure that that happens?

Hon STEPHEN DAWSON: Thank you for the question. As I have indicated previously, I have used the words that the team at REIWA is "open to it". It is my understanding that the intention is to bring it to the board and do some internal consultation following that. That will happen and we will continue to engage with REIWA. Conversations between the state and REIWA, at a staff level, have been positive thus far.

Hon TJORN SIBMA: I think this has been a valuable debate to have had in this chamber. Where we have landed is certainly an improvement on the bill as it was originally presented to this place. I want to use this opportunity

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to congratulate my colleague Hon Dr Steve Thomas, who was my predecessor as the shadow minister in this space, for bringing some measure of sharp focus to this issue. As a pragmatist, I appreciate that opposition amendments or amendments moved by other members in this chamber are not always easily or willingly adopted by the government. However, I compliment the minister for what I believe is at least an incremental improvement in this space. It is certainly not the full measure of what we had hoped to see; nevertheless, it is an improvement. With that, I will acknowledge that the Liberal Party will support the minister's amendment. My colleague Hon Dr Steve Thomas has already indicated his support in a personal capacity, but I want to indicate that that is our party position, with the obvious underscoring of the fact that it was not our preferred option.

Before I sit down, I have a question to put to the minister about his commitment to advise the 98 000 landowners who are subject to an environmentally sensitive area covenant on the government's proposal to advise them of that fact. It is a commitment that the minister has repeated a few times. Can I get an indication of by when he might do that? Let us be honest about where we are in the cycle of this parliamentary term. Will the minister do that before the election?

Hon STEPHEN DAWSON: I indicate that we will do it and that is a commitment. As I have indicated, that has come out of some conversations that I have had with a number of members in this place about their hope that we would do such a thing. I consulted with my director general today, who has in turn consulted with the head of Landgate to make sure that it can be done. We will do it this financial year. We are committed to working on the regulations and doing it in conjunction with those regulations.

Amendment, as amended, put and passed.

Hon RICK MAZZA: I move —

That the Legislative Assembly be requested to make the following amendment —

Page 59, after line 28 — To insert —

51BA. Persons affected by declaration entitled to compensation

- (1) A person who suffers loss or damage as a result of a declaration made under section 51B is entitled to make an application to the CEO for compensation for the loss or damage.
- (2) The application must be made in the form and in the manner approved by the CEO and must state —
 - (a) the details of the person's loss or damage; and
 - (b) the amount of compensation claimed and the grounds for the amount claimed.
- (3) If an application is made under subsection (1), the CEO must determine whether or not compensation should be paid to the person.
- (4) The amount of compensation payable is to be determined by agreement between the person applying for that compensation and the CEO or, in default of any such agreement, by the Magistrates Court on the application of the person so applying or of the CEO.

Ruling by Deputy Chair

The DEPUTY CHAIR (Hon Matthew Swinbourn): There is an issue with the member's proposed amendment. It is along similar lines to issues raised with the amendments of Hon Dr Steve Thomas and Hon Aaron Stonehouse. It comes back to section 46(4) of the Constitution Acts Amendment Act, which provides —

The Legislative Council may at any stage return to the Legislative Assembly any Bill which the Legislative Council may not amend, requesting by message the omission or amendment of any item or provision therein: provided that any such request does not increase any proposed charge or burden on the people.

The member's amendment would create a new compensation scheme and does not involve a redirection or reallocation of proposed expenditure that is the subject of an existing appropriation. Rather, it would impose a new legal and definable financial responsibility. Therefore, my ruling is that the amendment would increase a proposed charge or burden on the people and is therefore not in order. Therefore, the member's amendment cannot proceed.

Committee Resumed

Amendment ruled out of order.

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Hon MARTIN ALDRIDGE: I want to make some comments before we move off clause 44. Earlier, Hon Jacqui Boydell quoted from a piece of correspondence from Neville Pozzi, the chief executive officer of REIWA, which sets out REIWA's position, and states —

REIWA is of the view that the certificate of title is not a suitable document on which to place any notifications. The Landgate Property Interest Report is a suitable document where all —

With an emphasis on “all” —

property interests can be described, including environmentally sensitive areas.

I was listening to Hon Jacqui Boydell when she referenced that correspondence. That is obviously consistent with the position of the government. Earlier, I informed the chamber that I had accessed, last evening, a copy of my own property interest report on which, according to REIWA, all property interests are recorded, so people do not need to go further than the \$60 property interest report to learn all and sundry about the property that they either own or intend to purchase. What is interesting to note—I reflected on this listening to Hon Jacqui Boydell's contribution—is that when I compare the property interest report with the record of certificate of title, four property interests and encumbrances are recorded on the certificate of title that are not recorded on the property interest report; namely, easements. For example, by reference to my personal circumstance, the property I own that has an environmentally sensitive area on it has three easement benefits and one easement burden. That means that I have an entitlement to access my property through three other properties and I have a burden to allow access to a further property. Four easements are registered on my certificate of title of which there is no mention in the property interest report, which I procured for \$60 from the state of Western Australia last evening. According to the Real Estate Institute of Western Australia, one need look no further than the property interest report because all property interests are contained in the property interest report. Notwithstanding, this may well go to the good work done by the Standing Committee on Public Administration, and the point raised in finding 12, which states —

The Western Australian Government is unwilling and unable to guarantee the information contained in a Property Interest Report.

I remind members that this was a majority report of Hon Adele Farina, Hon Jacqui Boydell, Hon Darren West, Hon Kyle McGinn and Hon Ken Baston. Perhaps this is a case in point in that if a person wants to inform themselves as a purchaser of land in Western Australia, they now have to procure not only the \$60 property interest report, but also the record of certificate of title for some \$26.20. People should not be mistaken by the advice of REIWA and its chief executive officer and the advice of the government that all a purchaser should do is access the property interest report and all will be told, because my experience from examining these matters is that that is not the case.

It is a shame that we do not have before us a government response to the thirty-third report of the Standing Committee on Public Administration, because it makes a number of findings and recommendations that directly relate to the matter before us that the government is not able to provide an answer on tonight. I want to put one recommendation on the record. We are dealing with clause 44 and environmentally sensitive areas, and recommendation 6 of the thirty-third report, a majority report, of the Standing Committee on Public Administration states —

The Western Australia Government pay landowners impacted by an Environmentally Sensitive Area fair compensation if the value of the property is diminished by the Environmentally Sensitive Area due to the landowner being unable to use the land subject of the Environmentally Sensitive Area in accordance with its zoning use.

Nowhere in the Environmental Protection Amendment Bill, which is quite a substantial bill, can I see where the government has given due regard to recommendation 6 of the thirty-third report. I remind members that this is a majority report of the Standing Committee on Public Administration. It concerns me that we have finally reached a milestone after 15 years, and the Legislative Council of Western Australia is now prepared to ensure that the government is finally going to notify landowners in Western Australia that they may have legal obligations in respect of an environmentally sensitive area, but we are going to pass a bill, perhaps some time this week, that has no regard for recommendation 6. I remind members that this report was authored by Hon Adele Farina, Hon Jacqui Boydell, Hon Darren West, Hon Kyle McGinn and Hon Ken Baston. I want to make special reference to Hon Darren West, the self-proclaimed only farmer in the Parliament. The rest of us work full time for the taxpayers and constituents of Western Australia, but Hon Darren West enjoys participating in a farming operation as well as undertaking his duties as a member of Parliament. The part-time member authored the thirty-third report of the —

Point of Order

Hon MARTIN PRITCHARD: I cannot quote the actual words, but I think they were about the motivations of other members of the house. Suggesting that Hon Darren West is a part-time member of Parliament is most unparliamentary.

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The DEPUTY CHAIR (Hon Matthew Swinbourn): I think that Hon Martin Aldridge is definitely moving into some dangerous area and casting some unparliamentary aspersions on Hon Darren West. We are currently dealing with clause 44, as amended. I would appreciate it if you can bring your comments back to clause 44, as amended.

Committee Resumed

Hon MARTIN ALDRIDGE: As I was saying, it is unfortunate that the member in question, a member of the executive and sworn-in by the government of Western Australia as the Parliamentary Secretary to the Minister for Regional Development; Agriculture and Food; Ports and self-proclaimed only farmer in the Parliament, authored the majority report, the thirty-third report, but there is no evidence in this bill that gives effect to recommendation 6 of that report.

I want those comments to be reflected on the record as accurate comments of the current situation. We have taken a small step forward with respect to finally notifying some 90 000-odd landholders in Western Australia that they have an environmentally sensitive area on their property and associated legal obligations. I find it quite strange that it has taken us 15 years to reach this point. If the gazettal of environmentally sensitive areas is in the interests of protecting the environment, why have we spent 15 years afraid to inform people that they exist? Unfortunately, and sadly, as this bill makes progress this evening, recommendation 6 languishes without a government response and without adequate regard for the issues that the good members of the Standing Committee on Public Administration brought to our attention.

Clause, as amended, put and passed.

Clauses 45 and 46 put and passed.

Clause 47: Section 51H amended —

Hon Dr STEVE THOMAS: I apologise to the chamber for springing upon it an amendment upon which I did not give a great deal of warning. I am not generally in the habit of trying to move things off the cuff. I have done this only because of the good advice of the Minister for Environment who indicated in an earlier amendment that he thought I was attempting to address the issue of offsets in the wrong part of the legislation. I thank the Minister for Environment for his timely good advice and indicate that I think I have, with this current amendment, corrected that amendment. It is with great pleasure that I move —

Page 67, after line 12 — To insert —

(2) In section 51H(1) after “vegetation” insert:

as a result of material environmental harm or serious environmental harm

I apologise; I gave the minister a copy of it before the dinner break, but other members have not seen it.

On the advice of the minister, I looked for an alternative place where one might put in an amendment to deal with the issue of offsets. Having received his good advice, I chanced upon clause 47, which amends section 51H of the Environmental Protection Act under part V “Environmental regulation” and division 2 “Clearing of native vegetation”. Section 51H(1) of the act states —

A clearing permit may be granted subject to such conditions as the CEO considers to be necessary or convenient for the purposes of preventing, controlling, abating or mitigating environmental harm or offsetting the loss of the cleared vegetation.

The amendment in clause 47 of the bill is —

In section 51H(1) before “offsetting” insert:

directly or indirectly

This is the one place that “offsetting” is mentioned in relation to the clearing of native vegetation, and is the section the minister said earlier is the one we should focus on. I originally focused on major projects, but withdrew that on the minister’s advice because he said major projects, by definition, will not cause low-grade environmental harm. I am a little unconvinced, but I have taken the minister at his word that there will not be any impact in that area. I have therefore shifted to this amendment. I could have sought to restrict all conditions in all circumstances to those more severe cases, but I have left the first part as it is. Section 51H(1) reads —

A clearing permit may be granted subject to such conditions as the CEO —

Bear in mind it is the CEO of the department who gets to set the conditions —

considers to be necessary or convenient for the purposes of preventing, controlling, abating or mitigating environmental harm —

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I have left that alone; I think that is reasonable. It is only in the offset exception, which is why I am seeking to add the words where I have indicated. It continues —

or offsetting the loss of the cleared vegetation.

I have sought to restrict that part to more significant areas of environmental harm. That was in the definitions that I read out earlier in section 3A. I will remind members of that definition, because it is fun to read it out. It states —

environmental harm means direct or indirect —

- (a) harm to the environment involving removal or destruction of, or damage to —
 - (i) native vegetation; or
 - (ii) the habitat of native vegetation or indigenous aquatic or terrestrial animals;
- or
- (b) alteration of the environment to its detriment or degradation or potential detriment or degradation;
- or
- (c) alteration of the environment to the detriment or potential detriment of an environmental value; or
- (d) alteration of the environment of a prescribed kind;

It should be remembered that “material environmental harm” is the same thing, but it is neither trivial nor negligible and results in actual or potential loss or damage, and that “serious environmental harm” means environmental harm that is irreversible, of a high impact or on a wide scale. The difference between material environmental harm and plain environmental harm is simply one of scale, but material environmental harm is neither trivial nor negligible, which again, by definition, in my view means that plain environmental harm can be trivial or negligible. In that case, under this amendment, the director general or the CEO could still refuse to allow clearing in these circumstances and under a range of options. They could say either yes or no to allowing clearing to occur, but the capacity for the CEO to require offsets in circumstances of trivial or negligible environmental harm would be removed; it would be restricted to material environmental harm or serious environmental harm.

As we discussed earlier, it is my view that the offsets process is incredibly complicated and difficult and will not achieve the results we want it to. It is generally agreed, even by the minister, that, historically, this system has not delivered for the environment in Western Australia. I therefore ask members to consider whether taking that onerous component off “trivial and negligible clearing” would be a good outcome for the state of Western Australia and would allow us to concentrate on those who actually cause damage to the environment according to the CEO.

Hon STEPHEN DAWSON: It will not be a surprise to the honourable member that I am certainly not in support of this amendment. I share the same concerns about this amendment as I had for the amendment to clause 28. There is currently an assessment bilateral agreement for the clearing of native vegetation under part V of the act, and the state is working with the commonwealth government to determine the accreditation process for clearing permits under the bilateral approvals process. This amendment will again increase the risk of us not getting accredited if we change the legislation around offsets. By way of background, clearing offsets under part V of the act is also subject to the offset policy framework that I outlined earlier tonight. An example has been provided to me—the widening of Toodyay Road through multiple local governments. This is an important project for state road safety. It had a significant residual impact after efforts were made to avoid and mitigate the impact. The offset was part of an assessment under the bilateral assessment agreement and helped to ensure that the overall impact of the project was acceptable. Importantly, the impact was unlikely to be equivalent to material or serious environmental harm. Dealing with the impacts progressively also helps to ensure that we do not end up with unacceptable cumulative issues over time on important environmental values. Details of the various offsets are all available on the public offsets register.

As I indicated previously tonight, since becoming minister, I have initiated a review of the WA environmental offsets framework that was developed by the previous government in 2011 and 2014. The review found that the framework is generally sound but identified a number of opportunities for improvement. Although the government has not finalised the implementation plan, the review did not find any defects in the head powers available, and most of the improvements were already underway. The intra-government internal offset review involved my department, the Department of Water and Environmental Regulation; the Department of Biodiversity, Conservation and Attractions; the Department of Planning, Lands and Heritage; the Department of Mines, Industry Regulation and Safety; the Department of the Premier and Cabinet; and the Department of Primary Industries and Regional Development with the Commissioner of Soil and Land Conservation. The stakeholder working group, which was the external group, had representatives from the department, the Environmental Defender’s Office, the Environmental Consultants Association (WA), the World Wide Fund for Nature Australia, the Wildflower Society

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of Western Australia, Natural Resource Management WA, the Chamber of Minerals and Energy Western Australia, the Association of Mining and Exploration Companies, the Conservation Council of Western Australia, Main Roads Western Australia, the Water Corporation, Western Power, ATCO Gas, the Civil Contractors Federation WA, the Pastoralists and Graziers Association of Western Australia, the Urban Development Institute of Australia, the Western Australian Farmers Federation and the Western Australian Local Government Association. They are all involved in a conversation. If this amendment before us gets up today, I will have the same fear that I had at clause 28, in that this could derail or considerably slow down and make cumbersome the process we are engaged in at the moment on an approval bilateral agreement with the commonwealth. The benefit of having that approvals bilateral is that it could well shave off up to six months of the approvals process, thereby getting approvals through the system quicker and getting these projects off the ground and getting jobs for Western Australians, while at the same time not reducing the focus on the environment.

At an earlier stage of the debate, I undertook to give some information to the chamber on the bilateral process and resourcing, so I will give that now. The commonwealth Environment Protection and Biodiversity Conservation Act sets out the statutory process to enable the commonwealth Minister for the Environment to accredit states and territories to undertake approvals on behalf of the commonwealth. The first step of this process is complete, with the commonwealth minister issuing a notice of intent to draft a bilateral agreement with Western Australia. This notice was published in the *Commonwealth of Australia Gazette* on 7 August 2020 together with a notice of intent for all other states and territories. A draft approval bilateral agreement is then drafted by negotiation between the commonwealth and the state. These negotiations are underway. Once complete, the draft approval agreement will be subject to a 28-day statutory public consultation period. This is an important step to enable community participation and provide transparency in the process. Following consideration of the public comments, negotiations on the agreement will be finalised. The commonwealth minister is required to publish the agreement together with a statement of reasons and a report on the public comments received. The commonwealth minister must table the state's authorisation process before each house of federal Parliament for a 15-sitting day disallowance period. Assuming that there is no disallowance, only then is the commonwealth minister able to accredit the state's process for the purposes of an approval bilateral agreement and the agreement may come into effect subject to the terms of commencement.

I also note that the federal Parliament is considering the Environment Protection and Biodiversity Conservation Amendment (Streamlining Environmental Approvals) Bill 2020 to facilitate legislative changes required to establish approval bilateral agreements with the states and territories, and progress on that will also impact on the timing of implementation of an agreement.

I turn to resourcing. As the negotiations on an approval bilateral agreement progress and the national environmental standards are finalised, the state will be in a position to fully consider the resourcing implications for the state to deliver the agreement. This may require the commonwealth to provide resourcing to deliver the requirements of the EPBC act within the state's environmental assessment process. However, the bill before us also includes the head powers to enable cost recovery. I note that the commonwealth currently recovers costs from proponents for environmental assessments under the EPBC act and it would follow that where the state undertakes these assessments and approvals, costs will be recovered accordingly.

I am confident that the Environmental Protection Authority and the Department of Water and Environmental Regulation are equipped to deliver the requirements of an approval bilateral agreement. The state already undertakes assessments on behalf of the commonwealth through both clearing permit applications and assessment of major projects by the Environmental Protection Authority. An approval bilateral agreement will simply remove duplication, provide a clear and more consistent process and maintain high standards of environmental protection.

I have some steps here in a diagram. I am happy to table that information for the assistance of members in the chamber.

Basically, this stuff is real. We are in conversation and negotiation with the commonwealth about this approval bilateral agreement. This amendment before us essentially puts that at risk.

[See paper [4586](#).]

Hon STEPHEN DAWSON: Again, I appreciate that Hon Dr Steve Thomas is doing what he thinks will help the bill and help legislation in Western Australia. I do not want this to derail our conversations with the commonwealth because the benefits associated with that are significant. I will not support this amendment and I urge honourable members to also not support it.

Hon Dr STEVE THOMAS: I thank the minister for his response. The reality is that in this circumstance, I do not accept that the commonwealth will require the state to have offsets for trivial environmental harm. I suspect that the commonwealth department of environment regulation might not like the idea. I am absolutely certain that the

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state Department of Water and Environmental Regulation does not like the idea, because right now, effectively, those departments just get to say whatever they want on the production of offsets.

Hon Stephen Dawson: Those decisions come to me as an appeal, so it is not the department that gets to decide; it is me as the minister on the advice of the appeal.

Hon Dr STEVE THOMAS: If it is appealed.

Hon STEPHEN DAWSON: Certainly, honourable member, significantly, most of these are now appealed, because groups like the Wildflower Society of Western Australia and others appeal every single time.

Hon Dr STEVE THOMAS: If it is appealed. I am not convinced that the commonwealth government would take violent exception to removing trivial and negligible environmental harm from the offsets component, and I suspect that the departments do not like it. For those reasons, I still ask members of the chamber to support this amendment.

Division

Amendment put and a division taken, the Deputy Chair (Hon Matthew Swinbourn) casting his vote with the noes, with the following result —

Ayes (16)

Hon Jacqui Boyde
Hon Jim Chown
Hon Peter Collier
Hon Colin de Grussa

Hon Donna Faragher
Hon Nick Goiran
Hon Colin Holt
Hon Rick Mazza

Hon Michael Mischin
Hon Simon O'Brien
Hon Robin Scott
Hon Tjorn Sibma

Hon Aaron Stonehouse
Hon Dr Steve Thomas
Hon Colin Tincknell
Hon Ken Baston (*Teller*)

Noes (17)

Hon Robin Chapple
Hon Tim Clifford
Hon Alanna Clohesy
Hon Stephen Dawson
Hon Sue Ellery

Hon Diane Evers
Hon Adele Farina
Hon Laurie Graham
Hon Alannah MacTiernan
Hon Martin Pritchard

Hon Samantha Rowe
Hon Charles Smith
Hon Matthew Swinbourn
Hon Dr Sally Talbot
Hon Darren West

Hon Alison Xamon
Hon Pierre Yang (*Teller*)

Pair

Hon Martin Aldridge

Hon Kyle McGinn

Amendment thus negated.

Clause put and passed.

Clauses 48 to 59 put and passed.

Clause 60: Part V Division 3 replaced —

Hon STEPHEN DAWSON: Honourable members will see that I have a number of amendments standing in my name at 38/60, 39/60, 40/60 and 41/60. It is my intention, hopefully, to move those en bloc if honourable members are happy with that, and I will certainly speak to them all at the same time. These amendments clarify that the CEO is not required to make a decision on an application for a licence or an amendment, transfer or surrender of a licence if the prescribed application fee has not been paid. This is the case under existing provisions. Alternative wording has been drafted to address a recent High Court decision that raised issues with the wording of the current provisions. This is to put the correct terminology into the bill to leave no doubt.

The DEPUTY CHAIR: Minister, you need to seek leave to move those four amendments together.

Hon STEPHEN DAWSON — by leave: I move —

Page 82, line 18 — To insert after “licence” —

and payment of the application fee prescribed by or determined under the regulations,

Page 84, line 3 — To insert after “licence” —

and payment of the application fee prescribed by or determined under the regulations,

Page 89, line 12 — To insert after “application” —

and payment of the application fee prescribed by or determined under the regulations,

Page 90, line 5 — To insert after “licence” —

and payment of the application fee prescribed by or determined under the regulations,

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Amendments put and passed.

Clause, as amended, put and passed.

Clauses 61 to 63 put and passed.

Clause 64: Section 70 amended —

Hon Dr STEVE THOMAS: I refer to the definition of “wetland” in this proposed section. Can the minister give us the government’s definition of “wetland”? We have had discussions before about dampland versus wetland et cetera. The bill states that wetland has the meaning given in schedule 5, clause 2, but can the minister give us a more fulsome description of what a wetland is?

Hon STEPHEN DAWSON: Schedule 5 of the Environmental Protection Act 1986 states —

wetland means an area of seasonally, intermittently or permanently waterlogged or inundated land, whether natural or otherwise, and includes a lake, swamp, marsh, spring, dampland, tidal flat or estuary.

Hon Dr STEVE THOMAS: I obviously read the same thing in schedule 5, but can the minister give us more of an indication? Heavy rain can leave water sitting on almost any low piece of Western Australia, which probably includes the entire Swan coastal plain and a fair bit of the flat part of the north west and the electorate of Hon Ken Baston. How intermittent is intermittent? What are the rules around what a live wetland is if it rains and water is sitting there for 24 hours and then disappears? It is a genuine question, because it is an issue that comes up all the time on the Swan coastal plain. I am happy if the minister wants to come back at a future date with a more fulsome answer to this question, because it is a bit off the cuff. I am interested in how we define a wetland. If it has rained in an area and there are two inches of water on the ground but the next day it has disappeared, under this definition it could be argued that it is a wetland. If it rains in five years’ time and the same thing happens, it is a wetland, which probably means that most of arid Western Australia could be defined as a wetland. I am happy if the minister wants to come back with a definition to give to the chamber later, but I think that definition would be really interesting.

Hon STEPHEN DAWSON: I will do as the honourable member has suggested and take the question on notice. I will provide the answer to the chamber at another time. The definition is in the 1986 act, so I am happy for the agency to work out exactly where the terminology came from when it was put together in the first place. That is not readily available now, but I will give that undertaking to the chamber.

Clause put and passed.

Clauses 65 to 70 put and passed.

Clause 71: Part VB inserted —

Hon Dr STEVE THOMAS: Proposed part VB refers to environmental protection covenants, which I thought was quite poignant, to be honest, given where we are! I think that environmental protection covenants are an excellent new introduction into the legislation. I am very pleased to see them in there. I have no intent to go through environmental protection covenants in enormous detail. They are actually not new in Western Australia. They had a form before by which we had a private contract between the government and an individual landowner that certain pieces of high-value environmental assets would be retained. From memory, that has been happening now for at least 10 to 15 years. The minister might have more information on that. This is an excellent tool that can be used for the government to maintain environmental assets on privately held land. What I like about environmental covenants is that they can only be done under the legislation by agreement, so they cannot be enforced, unlike, dare I say, environmentally sensitive areas, which can be forced upon someone. The covenant has to be done by agreement. Plenty of landowners are interested in keeping those environmental assets strong. It often gives them the opportunity to apply for funding, as Hon Martin Aldridge said earlier, to fence off an appropriate piece of land, a bit of wetland or a bit of excellent residual native forest. I think that is very good.

My amendment to this clause is on the supplementary notice paper at 13/71. It amends line 20 on page 111 of the bill. This is the registration of the environmental protection covenant. Currently the bill says —

The CEO may deliver a memorial of an environmental protection covenant to the relevant land registration officer.

It might interest members to know that the amendment I moved on ESAs effectively took the words of the government’s own drafters, because I took those words on ESAs exactly from the sections in the bill on environmental protection covenants. I thought if they were good enough for one, they were good enough for the other. Before I move my amendment, I might see what the minister has to say about why, in this case, the CEO may deliver a memorial.

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Why would the CEO not be required to deliver a memorial? I think that might determine whether this amendment needs to be moved.

Hon STEPHEN DAWSON: I thank Hon Dr Steve Thomas. The amendment proposed requires the CEO to give a memorial on the title for environmental protection covenants in all cases. The bill currently provides for it to happen optionally, but it is anticipated that it would generally occur in the majority of cases. The impact of this amendment would be relatively minor, as it is not anticipated that there will be a large number of these covenants. The major impact would be the additional costs of survey and registration that accrue to the person entering the covenant. The reason this was not drafted as a requirement is that in some cases the land tenure would not normally be subject to a memorial—for example, in the case of mining tenements—and therefore it may not be needed. I do not support the amendment. It is expected that a memorial will be registered on the title in the majority of cases. However, as I have indicated, it may not be necessary for some sorts of land tenure, such as mining leases. When a memorial is not required, it will save resources for it not to be registered.

Hon Dr STEVE THOMAS: That being said, I think I am satisfied with the response by the minister and I will not seek to move amendment 13/71.

Clause put and passed.

Clauses 72 to 98 put and passed.

The DEPUTY CHAIR: There is a new clause 98A on the supplementary notice paper in the name of Hon Dr Steve Thomas. Does the member wish to move that new clause?

Hon Dr STEVE THOMAS: I know that the minister said at the beginning of the process that we would have a slightly generalised debate and we have come through the bill a little bit, but we sort of jumped over environmental monitoring programs. I refer to proposed division 3, “Collection of levy”. I want to make a couple of quick comments before I get to the amendment itself. The Liberal Party has been a supporter of the user-pays system in this case, but obviously—I think this was raised in a couple of second reading contributions—in the collection of a levy for these services, there must be a definable outcome and the levy must be used in an appropriate manner for a better environmental outcome in Western Australia. I would not mind getting the minister on the record just to reinforce the fact that the levy system needs to be designed with proper oversight in mind. There is something of a history in government of charges being applied and, during the process of charges being applied, their sneaking up considerably. I am not suggesting that that is the intent in this case, but it is incumbent on us to make sure that the minister gives us a rough outline of how he expects that process to be managed. We are supportive of the environmental monitoring programs. Those that are in place are very useful. Perhaps more could be done in the Port Hedland area with the dust, and I am sure that other members for the north west might have more to say on that.

In relation to the levy, we do not oppose any of those components. I will get to new clause 98A, but would the minister mind giving us an overview of how he expects this levy process to be managed?

Hon STEPHEN DAWSON: Can the honourable member tell me which clause he is referring to?

Hon Dr Steve Thomas: No. I was just trying to get a general comment.

Hon STEPHEN DAWSON: We have some great notes, but it is within a clause. We will continue to look for it. Obviously, it is important that when we have a polluter-pays levy, there is transparency around the money.

Hon Dr Steve Thomas: It is probably in proposed section 110N in clause 92. Proposed section 110N basically delivers the levy and the rest of it is pretty much the simple process around it.

Hon STEPHEN DAWSON: It might be clause 92, which we have dealt with. Clause 92 inserts new part VIIB, which enables regulations to be made for the development of environmental monitoring programs to address cumulative environmental impacts in particular areas or from certain industries. Part VIIB provides the head powers and broad legislative framework. The detail of each environmental monitoring program will be set out in its own set of regulations and the regulations will be subject to consultation with applicable licence holders. It is intended to apply only to licensees with relevant emissions in a particular area where there are potential cumulative environmental impacts of state-level significance. I have previously given examples of the Port Hedland Industries Council’s air quality monitoring network for the monitoring of dust levels to the Department of Water and Environmental Regulation and also the implementation of the proposed Murujuga rock art monitoring program, which includes the atmospheric deposition monitoring and ambient air quality monitoring networks.

The cost-recovery framework will require specified licence holders to contribute to the cost of the environmental monitoring programs consistent with the principle of polluter pays under section 4A of the Environmental Protection Act. Proposed section 110K sets out the defined terms used and under the definition of “environmental monitoring

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programme”, the programs are restricted to monitoring of environmental effects of prescribed activities. Proposed section 110L provides the power to make regulations necessary for the development, implementation and operation of environmental monitoring programs, including ancillary matters such as use of data obtained and the public reporting required. Proposed section 110M specifies the purposes for which funds received by way of levy or penalty are to be applied to ensure that cost-recovery charges must be applied only for the purposes related to environmental monitoring programs. It is only for that purpose. It cannot be used elsewhere. I think that is probably the answer the honourable member was looking to have placed on the public record.

The CHAIR: Hon Dr Steve Thomas, are you about to move your new clause?

Hon Dr STEVE THOMAS: I am about to discuss it with the minister to see whether it is required.

The CHAIR: I need a question before the Chair.

New clause 98A —

Hon Dr STEVE THOMAS: I move —

Page 145, after line 27 — To insert —

98A. Section 122 amended

- (1) In section 122(1) delete “may” and insert:
must
- (2) In section 122(1)(a) delete “assessment;” and insert:
assessment, including reasonable timelines for the stages in progress;

Hon Dr STEVE THOMAS: This will amend the “General” part of the act. We are getting through the bill and are at page 145. We have achieved well—or certainly fast, if not well. Section 122, “Administrative procedures, Authority may establish”, is the section under which the Environmental Protection Authority can make the rules by which it operates. The proposed new clause has fairly minor amendments. The minister may be able to explain to me why he feels they are unnecessary. However, I have moved them for the purposes of debate. Section 122 states —

- (1) The Authority may from time to time —
 - (a) draw up administrative procedures for the purposes of this Act and in particular for the purpose of establishing the principles and practices of ...

The act. The question is why the word “may” is used at that point and is not necessarily why the authority should be forced to draw up administrative procedures. Is there a limitation on the authority doing that if it wanted to? I would have thought it would be a requirement for the EPA to do so.

The second part of my new clause is to amend section 122(1)(a), which states —

draw up administrative procedures for the purposes of this Act and in particular for the purpose of establishing the principles and practices of environmental impact assessment ...

I wonder whether the authority should also be required to set up time lines for that assessment. The minister might be able to tell us that that will be done under a different part of the bill or other sections of the act, but I have moved my new clause to stimulate this part of the debate.

Hon STEPHEN DAWSON: This is an area of work that the Environmental Protection Authority does really well. We have a very solid regime in Western Australia. Since the Quinlan review, a number of players, including the commonwealth, have recognised that the procedures that we have in place have been done well. Last year, the EPA won an award for environmental impact assessment. It does this really well.

The new clause proposes to make the preparation of the EPA’s administrative proceedings under section 122 a requirement rather than a power, as it is currently. As the EPA has always prepared administrative procedures, this is unlikely to be an issue in principle, but if accepted, the amendment would need to not apply to revocation. This could include time frames. However, it would be wise to ensure that they were linked to any amendments adopted in other parts of the bill. These indicative time frames are found in the published procedures manual, but could be moved to the administrative procedures. The disadvantage of that would be less flexibility to make changes, as the administrative procedures are gazetted and the procedures manual is simply published. Therefore, we do not support the amendment. As I said, administrative procedures have been in force for many years. There is no need to make the head power mandatory rather than discretionary, as there has been no issue with the EPA failing to make administrative procedures. Indicative time frames for each stage of assessment are currently published in the

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EPA's procedures manual. Because it is not a gazetted document, it can be updated more easily, and this provides greater flexibility to make changes as required. The time frames could be moved to the administrative procedures, which would require updating, based on the changes made to the bill. I am told that, as drafted, the amendment would require the EPA to both make and revoke its administrative procedures, and this would require redrafting if it is supported by the Council. It sounds messy. I do not think this is an area that needs to be fixed. Over the last few years, since the Quinlan review, the EPA has done this stuff really well. This is not an area that I get complaints or feedback about. I think there is general acceptance that the EPA does this well and the member's amendment would risk that, essentially.

Hon Dr STEVE THOMAS: I thank the minister. The minister and I have an amendment to a schedule coming up in which we are looking at specifying time lines for various processes. The minister may feel that is a more appropriate place to address the EPA publishing information around the time lines. The minister is nodding, so I will take it that that is the case. Therefore, I seek leave to withdraw the amendment.

New clause, by leave, withdrawn.

Clause 99 put and passed.

Clause 100: Part VIIIA inserted —

Hon Dr STEVE THOMAS: I want to put on the record that I think this is an excellent proposal. Hopefully, it will be a good outcome. I am always nervous when the commonwealth and the state negotiate these things. I am surprised that I jumped up before Hon Robin Chapple on this clause. Maybe he is keeping his powder dry. I am always concerned because the commonwealth does not have an enormous amount of capacity to assess environmental impacts. Effectively, it goes off the work of the state government, for the most part. That being the case, we would have thought that the commonwealth would be very keen to work cooperatively with the state, but, of course, when one builds an empire, one is very hesitant about pulling the walls down even if it might be demonstrated to be of benefit.

I think we need to be a little bit careful that we make sure that the commonwealth does not overtake the state on the environmental approvals process. It is always easier for the commonwealth to be very distant from those people who are the most impacted by a proposal either going ahead or not. Whichever side of the fence we sit on, it is far easier to mount a political campaign with the commonwealth than it is to mount a campaign at a state or local government level. Undoubtedly, politics plays an enormous role in commonwealth decision-making processes. I think this is a good intention, and I commend the government for working on this. The minister must make sure that when he goes into these negotiations, he takes the view that both sides of politics expect him to take a robust position with his federal colleagues. They might be federal, but that does not make them either higher or more knowledgeable. It is important that the sovereignty of the state of Western Australia is protected.

Before I sit down, is the minister in a position to give us a potential time line for the outcome and conclusion of these negotiations?

Hon STEPHEN DAWSON: It depends on the commonwealth setting the national environmental standards. I mentioned earlier in the debate—maybe when I first spoke—that the federal minister has written to us with the draft set and is looking for feedback. It is fair to say that a bilateral agreement is not a foregone conclusion. It has to benefit Western Australia if we are to go into an agreement with the commonwealth. We need to be confident that we are not going backwards or adding obstacles to the process. That view has been expressed to me by the various stakeholders involved. It is something my departmental people and I are very conscious of.

Hon TJORN SIBMA: Very briefly, I endorse the remarks of Hon Dr Steve Thomas about there being potential pitfalls in any bilateral engagement. I thank the minister for the answer he has provided. We understand that progress is contingent, or will be contingent, probably as of the time we rise tonight, or at least after royal assent, which I imagine will come reasonably swiftly upon the commonwealth getting its act together. I say that with every message of encouragement to my federal colleagues.

I would like to clarify one thing, if the minister is able to do so. Earlier, the minister tabled a document titled "Approval Bilateral Key Steps". I found that to be particularly informative about the stage we are at. I will make reference to that document. The minister can take my copy if he does not have one.

Hon Stephen Dawson: I think I gave mine to you.

Hon TJORN SIBMA: I want to confirm—I hate this phrase—where we are on the journey. Could the minister be given a copy of the document that he tabled earlier? That might facilitate the discussion somewhat.

Hon STEPHEN DAWSON: We are really at just after that first step—intent. The intent has been gazetted by the commonwealth. We are now in the negotiations on the draft agreement. Obviously, as part of that, at the same time the national environmental standards are being negotiated or considered between the various parties.

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Hon Dr Steve Thomas: We have expressed an intent to win the next election, too!

Hon TJORN SIBMA: We campaign in poetry and govern in prose, or something like that—we have ambition nevertheless.

I thank the minister. That is an important part. I say this for reasons of pragmatism. I understand that the government is engaged in negotiation on the draft agreement. However, I imagine from the minister's contribution just then in reference to the national environmental standards that that work is happening in parallel with the draft agreement. Can I confirm that that work needs to be completed before the next stage in the process can continue, which I think is the section 49A commonwealth public consultation draft agreement? Is that a correct assumption on my behalf?

Hon STEPHEN DAWSON: I thank the member. They absolutely are happening in tandem. Those standards obviously are out for consultation at the moment. Where the standards end up will determine how we proceed moving forward.

Hon TJORN SIBMA: I will ask the question, and it possibly cannot be answered, but with respect to the five subsequent stages after the public consultation draft is issued by the commonwealth, what likely time horizon should we expect before we may indeed come to a point at which a bilateral agreement can be confirmed by both parties? I ask this question because I must say a degree of urgency has been placed by industry upon the participants involved in this debate in this chamber. I always ascribe to industry almost an unjustified enthusiasm or optimism for an outcome. It is apparent from the content of the debate that the minister has been a very helpful interlocutor. I do not think we are within 12 months of an agreement being signed, although I concede this is a necessary first step. Would that be a reasonable assumption? I am not asking the minister for a commitment. Would it be a reasonable assumption that we will not be in a position to sign one of those agreements for another 12 months or so?

Hon STEPHEN DAWSON: We are certainly hoping it will be around the six-month mark, noting of course that many of these steps are in the bailiwick of the commonwealth, and it has statutory time lines and a public consultation process, and obviously it will make decisions based on the feedback that it gets. Certainly the will is there between the state and the commonwealth to proceed on this. I think if we get this legislation through the Parliament, it will be a big piece of the puzzle, and obviously the draft environmental standards are another key piece. Once we get those landed, I think we will be able to move quite quickly from my perspective, but noting that the commonwealth has some steps in regulation that it will need to follow.

Hon TJORN SIBMA: This is the final question that I intend to raise on this clause. It is apropos of the national environmental standards. I would like to confirm my understanding that there is some scope for negotiation or consultation on those standards between the commonwealth and the respective state and territory jurisdictions. Is the minister able to identify any issues, encumbrances or divergences of opinion about how the state and the commonwealth are interacting on that particular matter?

Hon STEPHEN DAWSON: I have to say that we are in lockstep in our intent to get this stuff done as quickly as possible. The federal minister has written to me looking for feedback. I think we have a statutory 28 days within which to reply. Certainly we intend to give feedback as quickly as we can. This is a draft, and the commonwealth is looking for feedback. We are working through what the implications might be, making sure that we have proper legal advice, and also, as I said previously, making sure that what is proposed will not send us backwards and make it harder for proponents from Western Australia to get environmental approvals. That is where we are at at the moment.

Clause put and passed.

Clauses 101 to 103 put and passed.

Clause 104: Schedule 1 Part 2 Division 1 amended —

Hon STEPHEN DAWSON: Honourable members will note that I have a series of amendments standing in my name on the supplementary notice paper at 28/104 and 29/105. These are essentially technical amendments. They are necessary to support the phased commencement of different parts of this bill. The changes to penalties have been moved to separate subclauses so that they can commence at the same time as the new provisions creating the offences. That is the case for both these amendments. I move —

Page 165, lines 14 to 16 — To delete the lines and substitute —

- | | | | |
|-----|---|----------|----------|
| (3) | In Schedule 1 Part 2 Division 1 insert in alphanumerical order: | | |
| 2 | 53A(1) | \$62 500 | \$12 500 |
| 3 | 53B(1) | \$62 500 | \$12 500 |
| 4 | 62 | \$62 500 | \$12 500 |
| 5 | 63(3) | \$62 500 | \$12 500 |
| (4) | In Schedule 1 Part 2 Division 1 insert in alphanumerical order: | | |

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11B	86O(1)	\$62 500	\$12 500
11C	86P(2)	\$62 500	\$12 500

Amendment put and passed.

Clause, as amended, put and passed.

Clause 105: Schedule 1 Part 2 Division 2 amended —

Hon STEPHEN DAWSON: I move —

Page 166, lines 3 to 5 — To delete the lines and substitute —

	(3)	In Schedule 1 Part 2 Division 2 insert in alphanumerical order:		
2		53A(1)	\$125 000	\$25 000
3		53B(1)	\$125 000	\$25 000
4		62	\$125 000	\$25 000
5		63(3)	\$125 000	\$25 000
	(4)	In Schedule 1 Part 2 Division 2 insert in alphanumerical order:		
11B		86O(1)	\$125 000	\$25 000
11C		86P(2)	\$125 000	\$25 000

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 106 and 107 put and passed.

Clause 108: Schedule 2 amended —

Hon STEPHEN DAWSON: The amendment standing in my name at 30/108 makes a minor change to terminology in the schedule to reflect the use of the word “charge” in the new cost-recovery head power in proposed section 48AA. It makes no substantial change, but will ensure that the cost-recovery regulations can include all the matters currently included in item 2, such as setting out the method of calculating fees and charges and dealing with matters such as recovery and refunds. I move —

Page 167, after line 15 — To insert —

- (1A) In Schedule 2 item 1 insert in alphabetical order:
fee includes charge;

Amendment put and passed.

Hon STEPHEN DAWSON: I have a further amendment standing in my name at 31/108. This amendment clarifies, for the avoidance of doubt, that the removal of part V division 3 and the reference to applications being accompanied by the prescribed fee does not mean that the power to impose these fees has been removed. This makes no substantial change. It simply clarifies that the existing fees for licences can continue to be imposed. I move —

Page 168, after line 5 — To insert —

- (3A) In Schedule 2 item 2A:
- (a) in paragraph (b) delete “regulations.” and insert:
regulations;
 - (b) after paragraph (b) insert:
 - (c) prescribing fees that are payable before or when the authorisation is amended,
transferred or surrendered.

Amendment put and passed.

Hon STEPHEN DAWSON: Hon Dr Steve Thomas also has an amendment to this provision. I support the intent of his amendment. Following the Parliamentary Counsel’s Office drafting conventions, we are delivering what Hon Dr Steve Thomas wants, but with different words. We support the intent of Hon Dr Steve Thomas’s amendment, but we have done it in a different way. I move —

Page 169, after line 5 — To insert —

- 36C. Specifying timelines for steps in processes contained in Part V.

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Hon Dr STEVE THOMAS: I appreciate the minister taking on the intent of my amendment. I am happy with the wording proposed by the minister. Assuming this amendment passes, I will not be moving the amendment standing my name, which, effectively, does the same thing.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 109 put and passed.

Clause 110: Schedule 6 amended —

Hon Dr STEVE THOMAS: I move —

Page 171, after line 13 — To insert —

17. Clearing that —

- (a) is done to minimise the risk of flames contacting a private dwelling-house; and
- (b) is not more than 25 metres from the private dwelling-house; and
- (c) is done in a way that limits damage to neighbouring native vegetation.

It is probably of no surprise to the minister that I have moved this amendment. It is, in fact, the equivalent of a private member's bill that I moved back in 2017. It is to create something that does not exist in the state of Western Australia, but exists in New South Wales and Victoria, which are both equally fire-prone states. Schedule 6 contains those areas for which a permit is not needed to clear. It allows people to do various things, such as clear a certain amount of land for fencing, and clear under certain circumstances without the need to apply to the state. There are currently 16 circumstances in which a licence is not required to clear. I am proposing that the seventeenth circumstance be that, to keep their family safe, a person cannot be prevented from clearing within 25 metres of their residential dwelling. I could have included businesses or other buildings, but this amendment is about people being able to protect their family. In my view, there is no greater requirement than the protection of families from fire.

I am amazed that we do not already have this regulation in place in the state of Western Australia. In Victoria and New South Wales, specific legislation was brought in after major bushfires to clear up any confusion about whether people are allowed to clear the vegetation around their house. Both of those states have a dual set of rules. People can clear trees to within a certain distance, and low shrubs and underlying vegetation to a certain distance. They have the 25/10 rule. It is 25 metres for trees and 15 metres for shrubs in which people have the absolute right to clear native vegetation to protect their family. That was done in those two states on the basis that it was an absolute fire risk for people to have a large amount of vegetation around their house. That was also indicated in the reports into bushfires that occurred in Western Australia—particularly in the Keelty report.

It has always been the case that having vegetation right up to the edge of a house puts people at greater risk. Driving through places that have had severe fires, such as Margaret River and the Perth hills, we can see where those fires burnt and the vegetation got knocked back. Guess what. If I drive around there 10 years down the track, I will see vegetation right up to the edge of the house again. The amendment that I am placing before the chamber does not require anyone to clear anything. It simply gives people the capacity to do so, free of any confusion about whether it is their right. It is very confusing. In fact, it is so confusing that when I first put my bill up and talked about it publicly, the government said that it was absolutely unnecessary because the current legislation completely and adequately allowed people to clear around their house; that is, people were allowed to clear in order to prevent fire, not when a fire is actually approaching, which is what the legislation said at the time. The government's position was that at any stage, people could clear around their house in case of future fire. I do not think that was the case. As it turned out, neither does the Fire and Emergency Services Commissioner. This week, the commissioner has been in the media. I watched the Fire and Emergency Services Commissioner on GWN on Monday night—only yesterday—telling the people of regional Western Australia that the rules had been changed to allow clearing to within 20 metres of a person's house to remove any confusion. Members may have noticed that I asked about that in my question without notice today, which probably telegraphed what I was going to say tonight. The government said that there was no issue and that people could clear within 20 metres of their house. However, three years later, the commissioner said that the rules were going to change to allow people to do so, but the rules would be changed under other acts, such as the Bush Fires Act.

It is the simplest thing in the world to change the Environmental Protection Act to allow a person to protect their family. It was done in New South Wales and Victoria. The only thing we should be debating tonight, honourable members, is whether 20 metres is a better distance than 25 metres, because the Fire and Emergency Services Commissioner agrees that clearing around one's house is absolutely critical. I suspect that the government has come to that conclusion at some point as well. Obviously, the legislation to date has not empowered that to happen; it has been confusing and it has prevented it from happening, so much so that the commissioner is now saying that

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the rules are changing and we are removing red tape. We must be close to an election because we are talking about removing red tape. We are removing red tape to stop people from being prevented from clearing around their house for fire protection. This amendment is the absolute way to remove all red tape. This very simple amendment allows people to protect their family by clearing land only around their residence to a distance of 25 metres. For fire protection, I would have said that 50 metres is a better figure. If a person has decent-sized trees growing 25 metres from their house that are at least 10 to 15 metres tall, I do not consider that person to be protected. At some point in the future, I suspect that we will discover that insurance will start to become very difficult for those home owners who do not take advantage of the capacity to clear around their homes. I think that the government agrees with me. We are only really arguing about the distance. This amendment gives the government the best chance to make it absolutely clear to every person that they can clear a firebreak around their house and they do not need the government's permission to do so. It makes absolute commonsense. It takes the argument away from government. I think that the commissioner agrees with me and I suspect that, at some level, parts of the government do too, but they are bogged down in the bureaucratic response. This amendment is a very simple cut-through solution that allows people to make their family safe without needing the government's permission to do so. It is a really simple argument.

Hon STEPHEN DAWSON: It will be of no surprise to Hon Dr Steve Thomas to know that I am not supportive of this amendment, but not because I do not support the intent of what he is trying to do. I am of the belief that this is not the right act to do this in. Today, the member referred to the answer I gave on behalf of Hon Fran Logan about recent announcements by the commissioner. That decision stemmed from the Bush Fires Act, not the Environmental Protection Act. We think that the member should deal with this issue in the Bush Fires Act, not in the Environmental Protection Amendment Bill before us. A range of exemptions are available under schedule 6 of the EP act and in the clearing regulations for the purpose of fire prevention and suppression. Each exemption is drafted in accordance with legal advice to ensure that it is certain and narrow enough to authorise only necessary clearing. This is why the exemptions in schedule 6 do not refer to general purposes but to very specific legislative requirements. There are some additional exemptions proposed in this bill. The exemptions reflect requirements in other written laws that deal specifically with bushfire control and prevention. Powers to clear for fire prevention and control are best dealt with in legislation dealing with bushfire control and prevention and administered by departments and agencies that have specialist expertise in this area—my department does not. Any future legislative requirements or powers to clear in relation to bush fires will be reflected in the prescribed enactments under new item 1. The submission from the Department of Fire and Emergency Services identified a number of further legislative requirements to be included in the prescribed enactments for the purpose of new item 1, and this advice will be incorporated into the development of regulations. An additional exemption related to clearing under the Bush Fires Act 1954 was inserted into 10G after consultation following stakeholder feedback. As the member indicated, the Fire and Emergency Services Commissioner had his bushfire risk treatment standards gazetted under the Bush Fires Act 1954. As the member indicated, those standards will allow landowners to clear vegetation within 20 metres around their homes to reduce the impact of a bushfire on their property. Landowners who comply with the standards will be permitted to remove or modify vegetation around their homes without the risk of breaching any other state or local laws. The Bush Fires Act 1954 is absolutely the right place to make these changes. We certainly do not believe that the EP act is the place to do it, and for those reasons, we will not support the amendment.

Hon DIANE EVERS: I just need to say a few words here because I live on a bush block. When I was on the Albany council, too often people were trying to subdivide bush blocks into housing blocks. When this happens, there is a lot of to-and-froing about whether that is good use of the land, how much will have to be cleared and where is the housing envelope in which people can build. This chamber is probably not even 20 metres long, and the member is saying that trees need to be cleared out to a distance even further than that. If a person is that concerned about fire, they should not buy a bush block. Bush blocks burn if a fire gets to them. People have to be careful with them. Other mitigation strategies can be put in place. If we put in place a 25-metre clearance capacity, we will end up losing so much more bushland because people will buy a bush block and then clear half of it. It does not make sense. We need to stop doing that because we are losing too much of our green space as it is. I agree with the minister on this. This is not the place for this amendment. When the member finds the right place for this amendment, I will still argue against it. People should not buy a bush block if they are afraid of fire on their property.

Hon STEPHEN DAWSON: I have a philosophically different view from Hon Diane Evers on this issue; however, I do appreciate her support on this point. I am a supporter of prescribed burning when it saves lives and livelihoods. I am not saying that I do not support prescribed burning or clearing to stop fires around people's homes. This is simply a case of saying that this act is not the right act in which to make this change; it is actually the Bush Fires Act 1954. For that reason, I reiterate that I do not support the amendment.

Hon Dr STEVE THOMAS: I presumed that would be the case, but I appreciate the clarification. This amendment absolutely needs to be made to the Environmental Protection Act 1986 because section 5 of the act deals with inconsistent laws. It states —

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Whenever a provision of this Act or of an approved policy is inconsistent with a provision contained in, or ratified or approved by, any other written law, the provision of this Act or the approved policy, as the case requires, prevails.

The thing is, honourable members, that the Environmental Protection Act overrides not quite but nearly every other act. It is important that this amendment be made to the Environmental Protection Act so that there can be no doubt that a person has the capacity and the right to protect their family. I take the point made by Hon Diane Evers, but the issue is one of planning, not of fire management. If the argument is that a person should not be allowed to build more houses in forested areas, I do not necessarily disagree with that, but we are back to the same old argument that a developer is someone who wants to build a house in the forest, and a conservationist is someone who built their house in the forest last year. I think that is what happens, but I am not necessarily talking about the development of new houses; this is about the houses that already exist. If one drives through Margaret River, an enormous amount of vegetation goes right up to and sometimes touches the houses. These people will probably leave that vegetation there anyway and therefore take a risk. I sometimes question how much danger should we send our firefighters into to protect people from themselves when they refuse to undertake preventive measures that might have actually protected them; that is a much bigger argument.

I make the point about what happens interstate. In Victoria, the distance that home owners can clear any vegetation, except for trees, within a bushfire management area has been extended to 50 metres, which is the distance I mentioned before. In Victoria, it is known as the 10/30 and the 10/50 rule. Anywhere in Victoria, any vegetation can be cleared without a permit to a distance of 10 metres, and then all vegetation, except for trees, can be cleared from 10 metres out to 30 metres. It is called the 10/30 rule. In bushfire-prone areas it is 10/50, so clearing can be taken further out than 30 metres. This stuff happened after the Black Saturday bushfires in 2009, when 2 000 homes were destroyed and 173 people lost their lives. Because of that, the Victorian government established the 2009 Victorian Bushfires Royal Commission. The clearing changes were brought in because of that. In New South Wales, there is the equivalent of a 10/50 entitlement area—that is, trees and vegetation around a person's property can be cleared within a distance of 10 metres and low vegetation can be cleared to a distance of 50 metres.

Hon Diane Evers was outraged when I suggested that because 25 metres was not enough to protect a family and 50 metres was a more appropriate distance. I have tried to keep all the trees on my block far enough away from my house, except the ones my wife plants, which I am trying to get rid of. I have tried to keep them 50 metres out, because that is a safe zone. After the Blue Mountains fires of 2013, in which 250 buildings were destroyed—there were only two deaths at that point—New South Wales reviewed its legislation in 2014 to establish the 10/50 vegetation clearing scheme. Two states with severe fire risk have made, in my view, a completely appropriate decision that people have the right to clear. It is not that people must apply and someone can decide whether they can clear; they have the right to clear to protect their house and family. I think that is appropriate legislation for Western Australia. I am seeking to put that amendment in this Environmental Protection Amendment Bill to amend the Environmental Protection Act, because that act overrides nearly every other act. Therefore, it would mean that people would have no doubt that they have the right to protect their family and their home in the event of a bushfire, because the next bushfire in our forested sections in Western Australia is not a question of if but when.

I agree with the minister; I think controlled burning is very important and I know that he takes it very seriously. The government has invested additional resources in controlled burning. We could have a debate on mosaic controlled burning versus broadscale controlled burning, but that is a debate for another day. This is purely about protecting homes and families and having people take responsibility for their own safety and giving them the capacity to do exactly that. Therefore, I ask members to support this amendment.

Hon STEPHEN DAWSON: One last bite of the cherry!

Hon Dr Steve Thomas: We are nearly done.

Hon STEPHEN DAWSON: I appreciate the passion and what is driving the honourable member in moving this amendment. One of the things that keeps me awake at night, I have to say, is bushfires. I was the chief of staff to a minister in Victoria after Black Saturday, and we sat through the royal commission and the government's response to it. The devastation—the lives, the livelihoods and the communities that were destroyed as a result of a terrible, terrible bushfire—weighs heavily on me. At another stage I was chief of staff to an environment minister in Western Australia after the Boorabbin fire in the goldfields where, again, some truck drivers died. Bushfires are something I focus on deeply.

We have advice that the operation of section 35AB(4) of the Bush Fires Act, which provides that relevant persons may comply with bushfire risk treatment standards despite any other written law, has the effect that section 51C of the Environmental Protection Act does not apply to clearing done in compliance with a bushfire risk treatment standard when that clearing would be otherwise made unlawful under section 51C. I do not think the amendment is needed here, honourable member. I think the Bush Fires Act 1954 is absolutely the right place to deal with issues in relation to boundaries and borders. As I have indicated previously, the Fire and Emergency Services Commissioner

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has recently mentioned in the media the 20-metre rule. This is the difference between 20 and 25 metres, but that is not what I am fighting the member over—it is purely about where it should be, and I do not think it should be in this act. I do not think the staff in my agency are the right people to manage something like this. The professionals who deal with the Bush Fires Act should be managing it on a day-to-day basis.

Hon Dr STEVE THOMAS: I was not going to reply, but I will reply to that briefly. I understand what the minister is saying but I do not agree with it. His department gives permission to clear or not. The local bushfire captain will give people advice. Everywhere I go, the advice is to clear. I do not know any bushfire captain in regional Western Australia who would question whether clearing around someone's house is a good thing.

I make this final point, though. We are basically in agreement. We are arguing the small parts of this, to be honest, and that is a pretty healthy debate. The whole debate on this bill has been pretty positive. I do not see a risk in passing this amendment, because if it is already covered under the Bush Fires Act, which is the government's position—it is not one that I agree with—there would be absolutely no risk in passing this amendment, except perhaps for the distance, because I have sought to add an extra five metres, but it could be amended back to 20 metres. If the Bush Fires Act allows this anyway, I think my amendment would reinforce it. As it is absolutely not in conflict, I again ask members to support the amendment.

Division

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

Ayes (13)

Hon Jim Chown
Hon Peter Collier
Hon Donna Faragher
Hon Nick Goiran

Hon Rick Mazza
Hon Michael Mischin
Hon Simon O'Brien
Hon Robin Scott

Hon Tjorn Sibma
Hon Aaron Stonehouse
Hon Dr Steve Thomas
Hon Colin Tincknell

Hon Ken Baston (*Teller*)

Noes (20)

Hon Jacqui Boydell
Hon Robin Chapple
Hon Tim Clifford
Hon Alanna Clohesy
Hon Stephen Dawson

Hon Colin de Grussa
Hon Sue Ellery
Hon Diane Evers
Hon Adele Farina
Hon Laurie Graham

Hon Colin Holt
Hon Alannah MacTiernan
Hon Martin Pritchard
Hon Samantha Rowe
Hon Charles Smith

Hon Matthew Swinbourn
Hon Dr Sally Talbot
Hon Darren West
Hon Alison Xamon
Hon Pierre Yang (*Teller*)

Pair

Hon Martin Aldridge

Hon Kyle McGinn

Amendment thus negatived.

Clause put and passed.

Clauses 111 to 116 put and passed.

New clause 116A —

Hon STEPHEN DAWSON: This amendment was drafted on the advice of the Parliamentary Counsel's Office to deal with overlapping amendments between this bill and the Planning and Development Amendment Bill 2020. Obviously, we had a time earlier in the year when both pieces of legislation were around at the same time, so this deals with that issue. I move —

Page 180, after line 11 — To insert —

116A. *Planning and Development Amendment Act 2020* amended

(1) In this section —

section 71 means the *Planning and Development Amendment Act 2020* section 71.

(2) Despite the *Planning and Development Amendment Act 2020* section 2, if section 71 has not come into operation before the day on which section 55(1) of this Act comes into operation, section 71 —

(a) does not come into operation; and

(b) is deleted on that day.

New clause put and passed.

Clauses 117 and 118 put and passed.

Extract from *Hansard*

[COUNCIL — Tuesday, 10 November 2020]

p7592d-7615a

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Title put and passed.