ENVIRONMENTAL PROTECTION AMENDMENT BILL 2020
ENVIRONMENTAL PROTECTION AMENDMENT BILL (NO. 2) 2020

Second Reading — Cognate Debate

Resumed from an earlier stage of the sitting.

DR D.J. HONEY (Cottesloe) [2.58 pm]: Just to remind members, as I know they have been riveted by the debate on the Environmental Protection Amendment Bill 2020 and the Environmental Protection Amendment Bill (No. 2) 2020 so far, I was considering proposed section 45A on page 76 going over to page 77 of the blue Environmental Protection Amendment Bill 2020. There is an industry concern, and it is something I saw in my previous career before I came to Parliament, that there is a creep in offsets. For example, the original ratio used to offset bush being cleared was about three to one. That ratio suddenly seemed to creep to four to one, five to one, six to one and even higher. It was clear that the Department of Water and Environmental Regulation had a wish list of land that it wanted to buy, and it appears that was driving a requirement for higher and higher offsets. That concerns me on a couple of levels. Firstly, I think the Shire of Gingin will end up being offset. I do not know how many operational farms are left in Gingin. I suspect there are none left because they have all been bought principally as offsets as a consequence of property development in Perth. Those offset properties cause a great deal of concern for the people who are trying to run farms. It appears that there is not an adequate control program for vermin or introduced weeds on many of those properties. That has to be dealt with. Simply clearing the coastal plain and transferring all the offsets to the wheatbelt or areas close to the city is not necessarily the best outcome. In particular, we need to control the ratio of those offsets; otherwise, it will end up being a hostage situation. When a proponent is trying to put forward a project, time is money. Businesses might be compelled to deal with offsets that are becoming more extreme but do not actually deal with the environmental concerns at the time. Pragmatically, developers will just push ahead with them. We perhaps need to have a better look at that area in terms of the appropriate offset ratio, so that we do not get offset creep, whether it is of land, money or some other thing.

I want to talk next about proposed division 2A, "Payments relating to proposals", on page 95 of the blue bill. I touched on this a little earlier in my introductory comments. Proposed section 48AA(1) allows for the prescribing of —

> … fees or charges that are payable by proponents in prescribed circumstances in relation to the referral, assessment and implementation of proposals under Division 1 or 2.

I am sure that the departmental secretary and the minister have had some solicitations on this. This really is an area in which there has to be performance to match. I have great respect for departmental officers, but I also know that departments want to grow. That happens in all organisations. People in private enterprise also want to grow their area. This is obviously a way for the department to get money. It may be for research programs or officers to do particular things, but there is a risk of agency creep and it needs to be controlled. I understand that these fees will be set by regulation and will be disallowable, so I guess the minister has included some form of control to make sure that there is some parliamentary review of those fees. That is a positive in the bill.

The other part of the Environmental Protection Act that I wish to talk about is part V, "Environmental regulation". Section 49, on page 110 of the blue bill, is headed "Causing pollution or unreasonable emissions". I am a little perturbed by the definition of "unreasonable emission". I will read it for members. It states —

> ***unreasonable emission*** means an emission or transmission of noise, odour or electromagnetic radiation which unreasonably interferes with the health, welfare —

This is the bit I am concerned about —

> convenience, comfort or amenity of any person.

That is an enormously broad definition, and I will explain why. An unreasonable emission includes something that impacts the convenience, comfort or amenity of any person. The breadth of that definition causes me a great deal of concern because there will be serious consequences for causing an unreasonable emission. I will go a little forward and perhaps then come back. Section 49(4) states —

> A person who intentionally or with criminal negligence —
>
> (a) emits an unreasonable emission from any premises; or
>
> (b) causes an unreasonable emission to be emitted from any premises,
>
> commits an offence.

Furthermore, subsection (5) states —

> A person who —
>
> (a) emits an unreasonable emission from any premises; or
>
> (b) causes an unreasonable emission to be emitted from any premises,

commits an offence.

Subsection (4) deals with someone who is perhaps careless or does not care, but subsection (5) effectively says that it does not matter how it happens—if it happens, someone will have committed an offence, whether they knew it or not. These are serious offences. The offence they could commit is to affect the convenience, comfort or amenity of any person. That is a low bar. What is "amenity" of a person? Let us say I am walking past a fish factory and I can smell the odour of processed fish coming out. I might find that extremely unpleasant and it affects my comfort. I might feel very uncomfortable. It might even make me feel nauseous. I might say that it is affecting my amenity. Someone could potentially be committing an offence. With environmental regulation, we seem to be heading to a position in which businesses can have no impact or effect whatsoever. If that is the measure, it will shut down businesses. I could talk about people sitting in this room. The Leader of the House is currently eradiating me with potentially fatal radioactive emissions from his body. I hate to tell the Leader of the House this, but he has polonium, uranium and thorium inside him. The photons, or at least the particles emitted, could potentially cause a cancer in me. I am obviously giving a ridiculous example. It is a true example, but it obviously takes something to a ridiculous extreme. The thrust is that we have an impact on every other person in this room. The emissions from driving our cars impact on the environment. Some of those emissions could potentially harm a person. We will see how this is dealt with in the upper house, but I am very concerned about this provision. I think it risks being too broad. I think it risks creating offences when no offence has occurred. I appreciate that this is an existing provision in the act, but perhaps there is an opportunity to improve it. I do not think we could amend it through this bill unless we inserted another clause in the bill by amendment, but I wanted to highlight my concern that there is a progressively lower and lower hurdle for creating an offence.

I go to proposed section 51DA on page 117 of the blue bill. I want to make a brief comment on this. It is titled "Referral of proposed clearing to CEO for decision on whether a clearing permit should be obtained". I believe the intention of this proposed section is to simplify that process. It is something that needs simplifying. There is a real concern, particularly in regional areas but also in Perth, that sometimes doing simple acts—we have talked today about the need to get things done faster—becomes too complex. As I said, I understand that the intention of this proposed section is to simplify that process. I certainly hope that that turns out to be the case. Later on I will make specific comment about fire permits, because I think there is a major problem with obtaining fire permits.

I will move on to division 3 and proposed section 52, which is on page 141 of the blue bill. Licences is a topic all of its own. Some of the parliamentary secretary's departmental officers would know that in my previous life I had some reasonably intimate involvement in this area. I hear what is being said about how licences are going to change and progress and how we are going to get unification, but I am not sure—certainly based on the conversations I have had with industry—that that is happening. There is a major issue that was supposed to have been dealt with, and, hopefully, it will be progressively dealt with by the department—that is, idiosyncratic conditions. A field officer can come out and set a condition and, to set a condition, it takes that field officer about as long as it takes to write a few words on a bit of paper, but removing that condition, regardless of its substance, takes an enormous amount of effort. In fact, many organisations simply give up; it is so hard and they are so concerned that they might offend the department and lose the ability to negotiate on other conditions that they give up on it. We see highly idiosyncratic decisions that do not have a basis in science if they are examined in any detail. I will give members an example. I remember vividly in my previous life Alcoa's environmental people having an argument with an officer—who had a degree, apparently—who insisted that the water level in a lake be measured in multiple locations and then the levels averaged in case there were differences. This was a small body of water.

Mr R.S. Love interjected.

Dr D.J. HONEY: The member knows how water is; it is sort of up and down like the Himalayas. I doubt that any of the learned people in this room would have done that; nevertheless, that was done and it required some argument to remove that condition from the licence.

The other thing we see is pattern bargaining. For example, a company that does not have its own internal resources or consultant resources to deal with matters may agree to a condition that is a want, not a scientific need, but then that is used as a basis for future licences and the justification is that it was in the previous licence. Pattern bargaining is very common with licences. We see particular bents in a department, as there are naturally—people have different views of the world—creeping into licences when, in fact, if there was a genuine, hard scientific analysis of it, there would not be a justification for it. We see a proliferation of conditions in licences and it seems that the more conditions there are, the better. It just becomes destructive, and I will talk a little about that in a summary at the end.

There is unnecessary monitoring. We end up with monitoring that is simply not required; there is no purpose to it whatsoever. It is not reasonable. The particular emission does not occur or has not occurred for a significant time and is not likely to, but the monitoring is still required. What does the cost of compliance boil down to? I spent 24 years working for mining companies, but I spent the last 18 years of my career outside of this place in line management roles. In the areas that I worked in, we employed a significant number of environmental staff who spent most of their time improving the environmental performance of the particular plants and locations. Sometimes it

is funny when you hear an external view of organisations, but I can tell members that, typically, the environmental staff and managers in mining companies are environmental zealots. These are not hired guns who just do their master's bidding. These people in these organisations are passionate about improving the environment, and I think of some of the large plants in the south west. However, now the environmental staff spend almost all their time simply dealing with compliance, with no focus on environmental improvement because they simply do not have time. There is so much effort and focus on compliance. The problem with compliance is that if something is not done, either by mistake or inadvertently, it is potentially a serious offence. The overwhelming majority of companies in Western Australia and Australia take compliance very seriously. Again, in my previous life, it was one thing that went all the way to the very top of the organisation. If there was noncompliance, the board, in fact, was informed about it. These are very serious things in businesses; hence, they put enormous focus on it. Those resources were not going into improving environmental performance in the plant, even though, year on year, nothing changed. The cost is phenomenal—millions of dollars for one of the locations on the Kwinana strip. Each of those locations would spend millions of dollars purely on compliance monitoring. That does not help the environment. Nothing is changing. In fact, I am sure that the minister's excellent staff would know that the officers here today would know that emissions have reduced substantially in that area, but that is true for most businesses. Most businesses have a big focus on reducing emissions. I think that ends up being a waste of resources. I have heard lots of words to say that this will be improved. I hope that one of the outcomes of this change to division 3 of the act is that there is much more focus on conditions that will prevent a real risk to the environment. Otherwise, let those organisations spend their environmental budget on improving environmental performance, not simply reporting on this increasing list of compliance requirements over time.

The parliamentary secretary will be pleased to know that I am moving on in reasonable chunks. I move on to division 5, "Defences", on page 193. I certainly welcome that. It is a very positive thing to see that clarified. The defences referred to in that division are sensible and provide a basis for reasonable people, or for good people who are doing the reasonable thing, to defend their actions. I know it is not the intention of the parliamentary secretary or the minister to punish people who are trying to do the right thing but maybe make a mistake. However, clearly, people who do the wrong thing knowingly and belligerently, and perhaps for profit, should be punished. It is certainly good to see that clarification in the legislation.

I now move on to section 79, "Unreasonable noise emissions from premises", which is outlined on page 203 of the blue bill. I do not have any recommendations or suggestions about improving that, but I thought it was worthy to make the comment that that is an enormously difficult area to manage. Perhaps my colleague in the other place Hon Dr Steve Thomas will have some ideas. I think this area needs work over time. Is there a better way to do this? It is so subjective. The costs of complying with this issue are enormous for some businesses. Equally, I appreciate that a noise that some of us may ignore can place an unbearable burden on someone's life and make their life a misery. Perhaps it is an area that needs more science. I do not have any suggestions on how that section can be changed. It is an existing section in the act, with some very small amendments. It is certainly a vexatious issue for industry to deal with.

Part VB, "Environmental protection covenants", is a new section, and set out on page 216 of the blue bill. That seems to be a sensible change. As with all such things, the devil will be in the detail. It seems to be a reasonable way for the minister to satisfy himself or herself that the proposal will protect the environment.

I move to part VI, "Enforcement", and section 87, on page 223 of the blue bill. This is an existing section of the act, with some minor amendments. There has been some strengthening of the entry powers. I am not sure whether it needs reference in the act or whether it is part of a procedure. There are very substantial safety risks for untrained people entering industrial facilities. Although it may seem wise for people to enter a site, I have been in the situation of a potentially collapsing dam when government officers wanted to encroach on the area, and it was simply profoundly unsafe for them to do so. As I said, I am not sure whether that needs to be in the bill but it needs to be taken care of. It is very legitimate that organisations may say that an untrained person simply cannot enter an area. However, we recognise that it is very important that businesses exclude people from sites to prevent discovery of their acts. Clearly, we need that entry power.

Also, enforcement needs to be timely and done in a proper way. I was aware of one incident in which it was asserted that there was a serious contamination of the environment. The department of environment officers chose to let that apparent emission—it turned out not to be an emission—occur for 24 hours just so they could come down in person and nab it happening. In that case, if it had been an emission, as the officers suspected it was, it would have ended up contaminating Peel Inlet. It would have been very serious. Rather than ringing up the organisation and asking whether it was an emission; and, if so, asking the organisation to stop it, the officers waited almost 24 hours before they flew down in helicopters and whatever to catch them in the act. I was profoundly shocked by that action. I thought it was highly irresponsible at that time. Enforcement needs to be timely. I hope that is the worst example that any of us have ever heard of. At the time, I was pretty taken aback by that.

I wish to dwell a little on the landfill levy. I refer to part VIIA on page 276 of the blue bill. The legislation was introduced by a previous Liberal government.

Mr W.R. Marmion: Yes.

Dr D.J. HONEY: I thank the member for Nedlands. Obviously, there has been bipartisan support for this. The clear aim of the legislation was to force people who generate waste to maximise the amount of material that is recycled and reused. However, a matter that has been brought to my attention is a major concern about levy avoidance. I have been informed that the levy avoidance is so significant that the economic viability of reputable companies that responsibly recycle materials or otherwise landfill unrecyclable material is being threatened. It is being threatened because unscrupulous operators are receiving material as recyclable material that is not recyclable. It has been put to me that in some cases very substantial volumes of material are utterly unrecyclable or only a very small part of it can be recycled. Because it has been claimed as being recyclable material, no levy is applied. In fact, I was told that as of almost today, some operators are charging only $26 a cubic metre for material that is not recyclable; it is all going to landfill but is being claimed as recyclable.

I have raised this matter with the Minister for Environment. He is a very hardworking and good minister who works hard to do his job properly. The minister has passed that information on to the department, and I will follow up with some more information. This relates a little bit to penalties for avoidance of that levy. I think there needs to be a substantial review of penalties for avoidance of that levy. Some excellent businesses operate in Western Australia, which are outstanding in the way they recycle material. They have invested millions of dollars in recycling plants. Because of this large-scale avoidance that is occurring, those plants are sitting there almost idle. Organisations that should know better and should do more due diligence are taking advantage of these very low-cost operators that patently are not recycling material. As I said, I have certainly passed specific details on to the minister. I know that the minister takes that very seriously and is very concerned. I am making no assertions about the lack of willingness on the part of government in this matter. I believe that the people I have spoken to are reputable. I believe that this is occurring on a significant scale.

I turn to section 110G, "Evading levy", of the act. I think the levy is about $90 a cubic metre for landfill material or something like that. It is a very significant amount. It is a very significant disincentive for people to dump material that could be reused or recovered in some way.

Mr W.R. Marmion: They drive it across the border.

Dr D.J. HONEY: That is right; they drive interstate.

It is a very significant levy. I think everyone in this place supports it as being very sensible. The penalty is set out in the second paragraph of section 110G(1). It was not amended in the bill. The penalty is $5 000 and treble the amount evaded or attempted to be evaded. I say to the parliamentary secretary that perhaps in a future revision of the bill, we could look at that penalty and perhaps make it far more substantial. It has been put to me that the people who are avoiding this levy are making considerable profits because of what they are doing. What is far more concerning is that it threatens the economic viability of some excellent companies that have excellent sorting and recycling facilities.

I move on to proposed part VIIB "Environmental monitoring programmes" on page 281 of the blue bill. This new part is trying to look at those situations in which there are many emitters in an area; for example, in Port Hedland there are many potential emitters of dust. I understand this proposed part was perhaps inspired by the issues Port Hedland is having with dust. The department could set up a monitoring program and then apportion those charges out to various businesses. That sounds like a reasonable thing to do. For members who have been actively involved in this area, they would also know that the department will sometimes enter into an agreement with an organisation. For example, one of the reasons the Kwinana Industries Council—the parliamentary secretary is very familiar with the Kwinana Industries Council—was set up was to facilitate joint monitoring initially for sulphur dioxide emissions, and then it perhaps broadened to some other things, and that was done with the department's agreement. My only caution is that there has to be strong ministerial oversight; this must be a genuine service. This cannot be monitoring for a whim, it has to be monitoring for a genuine emission concern, not part of someone's research project or their general thesis. I do not think anything could be written in the bill around that, but it is something that needs continuous ministerial oversight to make sure that the appropriate amount of monitoring is being carried out.

I move on to proposed part VIIIA, "Bilateral agreements with the commonwealth", on page 302 it of the blue bill. We talk about things that will help business in this state, and I would say that all industry is metaphorically leaping with joy and doing cartwheels about this prospect because, as many members in this place who are interested in this area would know, there are cases that effectively go through a thorough and complete environmental review at the state level and then a duplicate process occurs at a commonwealth level, which is enormously frustrating and costly. There can be nuance, and what is presented to the commonwealth is not necessarily a regurgitation of what was presented to the state; it may have some subtlety to it that requires something else. However, the worst

part is the timeliness of it. It is crippling. We are very strong supporters and applaud the inclusion of this in the legislation. It is very important to get this going. I understand that this is only part of the equation and that perhaps the commonwealth was very enthusiastic about it at the start, but once perhaps some empires were challenged, there has been some slowdown in the progress of it. I would very strongly encourage the parliamentary secretary and the minister to pursue this with our full support, in any way that we can help. Industry is very excited to remove this burden. Removing a year's delay on a major project can be worth millions and millions of dollars to the state. We all know that time is money, but doing things in a timely fashion also means it can get up. We have seen the situation at the moment with Albemarle putting its project at Kemerton not on hold, but slowing it right down because the lithium market has peaked and fallen off the peak. I understand that the state government did an enormous amount of work to facilitate very fast approval for that project, so it is not a criticism of the state government, but if that project could have got going more quickly, that plant would now be running and have hundreds of people employed. Collie and at least Bunbury and other towns would be benefiting right now from that extra money flowing into their coffers, and the state would be benefiting from its exports. Anything that can be done to improve the speed of these approvals is good, and clearly the bilateral agreements, in which the state could carry out those critical federal approvals or it could be done in parallel in a very timely manner, is something that will benefit this state and all of us. I certainly welcome the inclusion in the legislation.

I move on to page 332 of the blue bill, schedule 2, proposed item 36B, which states —

> Establishing or recognising the scheme or system for the accreditation of persons as environmental practitioners for purposes related to this Act.

That is an area is that has caused considerable concern amongst industry in the state. The minister has apparently said that registration of in-house personnel would be voluntary; however, it appears that that is not in the bill. It may be implicit, but it is not implicit. I am intrigued to know what guarantees have been given.

Mr R.R. Whitby: What part are you referring to?

Dr D.J. HONEY: Proposed item 36B —

> Establishing or recognising the scheme or system for the accreditation of persons as environmental practitioners for purposes related to this Act.

Mr R.R. Whitby: It will be voluntary.

Dr D.J. HONEY: I just want to understand, by what mechanism? It is not clear in the legislation that that is the case. I am very happy to be educated. As the parliamentary secretary knows, we go through these things as best we can. Industry has expressed concern to me and our shadow minister about this.

Mr R.R. Whitby: We have acknowledged that feedback, and as a result it will be voluntary.

Dr D.J. HONEY: Thank you very much.

I am almost there. I am moving on to schedule 6. I want to use this as an opportunity to discuss the issue of clearing permits in proposed items 15 and 16, on page 345 of the blue bill. I do not have a particular concern with those items; however, there is extreme consternation in regional communities and on regional farms about how difficult it is to gain a fire permit in those areas, and the requirements for flora and fauna studies. Because the shires are administering it, the shires are taking a cautious approach as they believe they have to do this to satisfy the department's requirements. The shires are requiring 25 page submissions for people to carry out burning on parts of farms or around buildings, and that is a significant concern in some of those areas.

Some members will be pleased to know that I do not have any more parts of the legislation to go through. As I said at the outset, we support this legislation and recognise that it represents a body of work that has probably gone back six or five years at least, with enormous effort from the department. I certainly thank the departmental officers and ministerial officers who have been involved in these changes. I recognise that the great majority of this legislation represents a significant step forward, and I reaffirm our support for it.

MR W.R. MARMION (Nedlands — Deputy Leader of the Opposition) [3.39 pm]: I would like to add some comments on the Environmental Protection Amendment Bill 2020 and the Environmental Protection Amendment Bill (No. 2) 2020, which we support. I think any work done on the current environmental regulations and legislation would be an improvement. Indeed, a lot of this process started when the Liberal government was in power. I have a fair bit of background in environmental matters, so I will try to keep my comments to practical examples. I will try to avoid looking at the bills, but I have some points to make on them.

I go back to my Main Roads days, when we did not have environmental approvals. I have designed and built roads and done my own environmental approvals. In fact, environmental approvals came into Main Roads in the early 1980s, and we did them in-house. I remember the one-pager with five boxes to tick, and I just ticked them all—no problem. A brand-new level 3 enthusiastic young environmental gentleman—incidentally, his father was a director

at Main Roads at the time; I will not mention his name, but I have a good memory for names—came down to go through my environmental assessment. He said, "You've ticked A", meaning there was no environmental impact on any of the aspects of the Great Northern Highway between Sandfire and Port Hedland. We reached the water course aspect. He said, "Aren't you cutting off the flow of water from one side of the road?" I said, yes, but I had a culvert going that would pick it up. He said, "Okay", and went away. That was the extent of the environmental approval for part of the Great Northern Highway.

We roll along to about 1985. The Environmental Protection Act came in around then. Main Roads was building the Great Northern Highway a bit further south of Port Hedland through the Karijini National Park. It was not my project. I think Main Roads did the very first, what I would call, very large public environmental review. In fact, the Commissioner of Main Roads was very proud of it. It was a very thick, massive document; it was probably the biggest document Main Roads had ever put out for a project, and we had not even built the road, which was to go straight through a gorge. The Great Northern Highway runs over a plateau and cuts straight through a gorge, which I do not think would be allowed today, but the cutting was such that it looked a bit like the surrounding environment. In fact, the engineering fraternity at Main Roads, which included me, was very proud of the engineering aspects of this road.

I have seen the environmental assessment process evolve since that time. I guess the most significant aspect that I was involved in was the Regional Forest Agreement, which I think started in 1997 and concluded in about 1999. It was a massive process. In fact, I was quite surprised when I looked on Google because I could get hold of about 40 documents from the 1990s on these small aspects of all forests in the south west. It is a good example of the massive amount of work that went into those projects. I think the aim was 15 per cent old-growth forest. There was a target of 15 per cent old growth of nominated species of trees. Karri and jarrah were the predominant ones, and I think tuart might have been, too. Interestingly, wandoo was not included. As the member for Cottesloe knows, wandoo is in the Darling Range over bauxite. A wandoo tree is a good indicator of where there is bauxite. Interestingly, wandoo was excluded. I was part of a four-person Western Australian committee. There were two people from what was called CALM or the Department of Conservation and Land Management—Syd Shea, who ran that department, and his tree expert—someone from the Department of Resources Development, and me from the Department of the Premier and Cabinet. Interestingly, Alcoa had a strong interest in wandoo not being included as one of the tree varieties, and it explained that a square metre of soil is about a hundred times more valuable as bauxite than a wandoo tree. Alcoa was very good because it was very environmentally conscious. It was very good at rejuvenating the Darling Range areas that it excavated. Indeed, I will not mention the name, but the person at Alcoa who ran the environmental side—Brian somebody—was a member of the Conservation Council of Western Australia, and I think he was the president of the World Wildlife Fund. The company had great environmental credentials, and I think it contributed to the Conservation Council in some monetary way. It was interesting to me that wandoo was not included.

On this issue, karri trees were the problem. Basically, someone logging for karri trees clear-fells. It looks terrible when a photo is taken. I think they leave a tree every 200 metres, and then they burn everything as the heat makes all the seeds rejuvenate. Syd Shea explained the process to me. I went to see it and it looked terrible. A photo of a karri area after it has been clear-felled for logging looks terrible. There was a big push.

One of the biggest environmental issues of the last three decades was the Regional Forest Agreement in Western Australia. Interestingly, the Liberal government lost the election after that agreement was signed and parties such as Liberals for Forests contested the election. It was a huge issue. Campaign advertisements containing pictures of trees were placed in *The West Australian.* The Boranup forest area of the south west was used as an example of why karri trees should not be cut down because they are so nice. Karri trees are wonderful; it is probably my favourite tree. The interesting thing is that Boranup is a regrowth forest. It looks so nice because all the trees are big and a uniform size. I remember going through this process. I worked for the then Premier, Richard Court. Environmental people came into this process. Syd Shea explained the 100-year life cycle of trees and how we managed our trees really well and that there was no problem. The environmental person we met said, "No, the life cycle of a tree is 600 years. It falls down; it rots; and there are animals." I could see that the then Premier decided that that was it; he was not going to meet anymore! We could not do a 600-year cycle in forestry, so that was the end of that argument. I remember that very well, as members can imagine.

As a private sector consultant, I sought Environmental Protection Authority approval for a Formula One–standard motor racing track beside the Preston River in Bunbury, and that got across the line. I have experience in using the EPA system and getting projects approved. Unfortunately, I also have other experience: when we started to subdivide land, there were banksias on another part of the land. The issue arose when we put the boundary through the large parcel, which had two bits. A rare orchid was found right on the boundary, so from an environmental aspect, the whole process stopped. The commerciality of it was a problem. If I had three hours, I could explain all that to members.

I became Minister for Environment in 2010. I had just become Minister for Environment, and I went on holiday at Christmas time, and then we had the Magellan Metals lead incident, and I had to come back from my holiday. I had taken the whole family down to Abbey Beach Resort for my five days of holidays. Two days in, I had to drive back to Perth and there were all these cameras to meet me. Ironically, there was no issue. The National Association of Testing Authorities had credited a laboratory that had forgotten to divide the results by 10. All the data that showed there was 10 times the lead pollution that there should be along the railway line between Kalgoorlie and Perth was the result of the NATA laboratory using a different filter and forgetting to divide the results by 10. There was no issue. They did isotopic testing of the lead and it was not even Magellan lead; it was from the red paint that had come off the trucks. Of course, that was never reported. When I became Deputy Leader of the Opposition, a young journalist from *The West Australian* said to me, "You've got a pretty bad track record as a Minister for Environment. That Magellan issue was terrible!" Anyway, I have a fair bit of experience in the environment portfolio.

I will very quickly go through some of the main areas of reform mentioned in the second reading speech. I congratulate the minister and the parliamentary secretary for a good second reading speech. I could read it and get the main points; it was not just motherhood statements. It was very good. I congratulate probably the staff for doing that.

Firstly, what are we trying to achieve with this legislation? We are trying to improve the process, because that is what frustrates people. Stopping the clock is a big thing. It was mentioned today in relation to local government, but it is worse for state government departments. Stopping the clock is one of the biggest things that happens. When we were in government, one of the things that frustrated me—I know it has been mentioned in press releases recently—was that documents produced by environmental consultants, which cost quite a lot of money, were repeated. Someone might do an assessment of a plant or some fauna and write a report, which might cost $30 000, and then three years later, someone does another project close by and they get the assessment done again. This data needs to be captured and put on a database that everyone can access. We tried to do that—it was a failing of ours—so that all data could be captured. We wanted to capture data for not only the then Department of Environment and Conservation, but also the Departments of Mines and Petroleum, Water and Indigenous Affairs. We wanted to put all the data on one database so that a person wanting to do a project could go to the database and see all the information. The department would also know that the information was there. The department could see whether it needed a report on noise or whatever and could target the environmental information needed, rather than just telling the person to analyse everything. I understand that is one of the things the government will do to improve the process. I think that is a great idea.

I will just point out that one of the problems we had was that each department said that its database was the best. The department of mines would say that its database was the one we had to use, and the environment department would say that its was best. It got too hard. It must be so easy now; a first-year engineering student could develop an app to put it all together in one week. Surely, it can be done now.

My second point is on cost recovery. I was not the Minister for Environment when this was promulgated; I was Minister for Mines and Petroleum. I was a bit concerned about this, but we went through a bit of a consultation process. At the time, industry was not very enthusiastic about that. As the member for Cottesloe asked, will this mean that the approval process will speed up over time? This is always the problem. There is a suggestion that the department could get more money and put on more staff to speed up the process, but then analyse the project more. It is an issue for someone to manage. It is up to the CEO. It is up to the Syd Sheas and Keiran McNamaras of the world. I had many conversations with Keiran McNamara over many decades. Unfortunately, rest his soul, he passed away.

It is the triage effect. We need someone in the department with the knowledge of a person like Keiran McNamara and who has been around for a couple of decades and can look at a project and put it into category A, B or C. Category A could be projects with serious environmental impacts and the department it goes to would have to have a hard look at them. Category B could be projects that could have some implications, so the department should maybe look at noise or whatever aspect it is. Category C could be for projects that are going to go ahead, such as just dredging a port, which happens every five years—it is a state asset and we are not going to close down a port, so for goodness sake, the department should not spend too much time analysing the hell out of Esperance port. The department should have some commonsense when doing those assessments.

[Member's time extended.]

Mr W.R. MARMION: I will try to speed up. It is horrible being one of the last speakers on Thursday afternoon.

Again, it is terrific if the government is going to improve strategic assessments. I think BHP has done this on its iron ore projects, so it has a steady stream of projects that have gone through the majority of the environmental assessment process. It does not want to do that and then find, when it gets to the specific project, that it still has to go through the normal process. Strategic assessments are important but they need to be looked at by the CEO.

Clearing provisions are very important. This document is just the guidelines on clearing. People can download the instructions on clearing. Indeed, back in my Main Roads days, we used to clear everything. We did not talk to anybody. We got the material off the side of the road from a burrow with a scraper and dumped it on the road to build up the road. Then we tied it down as best we could. In fact, if members were to fly over the Great Northern Highway in the Kimberley, they would see where the burrows were—we probably could have done a better job. It is neither here nor there, really. If we were in the south west and needed material to build a road, we would just go to a farm and find out if the farmer had taken out any gravel and take it from the farm. People cannot do that now, although there are exceptions.

I will give members one frustrating example on clearing. It is to do with landing an aeroplane at Bunbury Airport. Some Japanese investors were coming down to Bunbury to invest in a Formula One motor racing track in Picton, just out of Bunbury. We could not land at the Bunbury Airport because of the vegetation on the side of the road. I call it the North Boyanup road, but I think it might be part of the South Western Highway now. The vegetation had grown up on the side of the road right next to Bunbury Airport. The Civil Aviation Safety Authority said that only Cessnas could land. Planes that were the next size up, which could normally land there, could not. There was a V-shape that had to be complied with and a couple of tree branches had grown up. The local office of the Department of Environment in Bunbury said that the airport could not get a clearing permit. That was in about 2006, and it was really frustrating. What did we do? We landed the plane in Busselton, got a bus, and bused them up. The motor racing circuit was 400 metres from Bunbury Airport. We would have had to drive them around, but it was very close, so it was very frustrating. I got that off my chest!

Anything to do with clearing is an issue, especially in the Kimberley. In the Kimberley, if it rains, the clearing cannot even be found the next year. It depends on the situation. For Main Roads' camps, we always cleared to put a camp on the side of the road. In the south west, a clearing could not be found after a couple of years, but in the Kimberley it could not be found after one year.

The amendments to division 3 of part V are to improve the efficiency of regulations around emissions. I have an interesting story about that too, which is about Cockburn Cement. When I was the Minister for Environment, the member for Cockburn used to get up every single day and rattle on about all the pollution that Cockburn Cement was causing. I got in the car and drove down there. I noticed that the company had won a Golden Gecko award, by the way. In the foyer was the Golden Gecko award that it had won, but the member was jumping up and down. It had some good environmental credentials, with the Golden Gecko award, but I drove around the area. I met a lady who lived 900 metres away from the facility who was crying and was in tears. She said her health was suffering. She was 900 metres away, so she was inside the one-kilometre buffer. It was a brand-new house. The Minister for Planning, Hon Alannah MacTiernan, had approved a development that was within the one-kilometre buffer zone and that lady was really upset. I remember that very well. She would have had to leave.

Someone in the Department of Environment lived about two or three kilometres from Cockburn Cement, so I went to their house. They were an insider. They told me that there was dust there too, and there was. I went onto the roof. It was a Colorbond roof, but the emissions were corroding the roof. I went up the ladder and saw that he was dead right. Ironically, if someone had been really close—a certain distance—they would not have had the fallout, so the one-kilometre buffer was probably really a nonsense, because the emissions went further than that. Of course, it depended on which way the wind blew. Anyway, we solved the problem with a baghouse filter. The company spent $24 million on a baghouse filter to reduce the emissions, and it worked fantastically. Cockburn Cement put real-time emissions data on its website so all the people around there who used to grizzle about it could see the data. From memory, the trigger to shut down the plant was about 150 parts per million at the stack.

It put a baghouse filter on it, for $24 million, and at the stack it was emitting nine parts per million. The filter reduced the emissions to nine parts per million. I was the Minister for Environment, who was looking after part V of the act. Some paperwork came up and I asked what it was. I was told that the department wanted to reduce what it was to achieve in the regulations. I cannot recall the exact figure, but it was something like 20 parts per million. I asked why the department wanted to do that and was told that because the company was now achieving nine parts per million, the regulations were to be changed so that if the emissions reached 20 parts per million—do not hold me to that, because it could have been higher—the department could tell it off, or shut it down or whatever. I thought, "That'll look great in the press!" People do not understand what 20 parts per million, 50 parts per million or 150 parts per million means. They would just know that Cockburn Cement had exceeded the limit and it would be a front-page story. Anyway, to cut a long story short, that did not happen. The regulation stayed the same. Creep is a problem, and if the minister does not know the science and someone tells them to sign something, they could make the standard better than anything else in the world. Ministers have to be alert to that. I have some other examples but I am not going to mention them now.

Dr D.J. Honey: That is a powerful example, member, of why we need to maintain adequate buffers and not let people build houses inside them.

Mr W.R. MARMION: That is dead right.

Mr R.S. Love: That's the opposite of what you just said! You said it'd be okay if you were in the one-kilometre buffer.

Mr W.R. MARMION: The buffer should have been three kilometres.

Mr D.A. Templeman interjected.

Mr W.R. MARMION: I have only five minutes. I have four other points, but I will pick the best one. The CEO may enter into environmental protection covenants under the conditions in part IV, proposals—which is negotiation that can be done for a part IV approval—and part V, division 2, clearing permits. I imagine that this is an opportunity for a trade-off covenant. Someone needs to keep a handle on this. The member for Cottesloe mentioned this when he raised the subject of the town of Gingin. The parliamentary secretary will know that an offset quite often means an area 23 times the area that is being cleared. That is one of the worst-case scenarios. It may be more now, but in my day I think 23 times was the biggest. There can be offsets for a proposal and covenants that can be put on. There are a hundred national parks and the Minister for Environment will never get to them all unless they are the minister for 30 years. I think I went to about three national parks.

Mr D.A. Templeman: What was that? Which ones?

Mr W.R. MARMION: If there are a hundred national parks, how many did the member visit when he was the minister?

What are we doing? We are actually increasing them by 10 or 20 per cent. We are locking up more of Western Australia. I do not know how many hundreds of years from now it will be, but there will be no land left that is not in an offset or a covenant. There is a limited amount of land, so I think we have to be fairly strategic in this area. I hope someone is keeping a register and monitoring that, but I know that they are not.

Mr R.S. Love: I'm sure they are.

Mr W.R. MARMION: Yes, but not all of them. There is Bush Forever land and others, but I meant it needs to be done strategically. I know that there is a register for each one individually. It is a bit like medical research. The state puts a lot of money into medical research—the Harry Perkins Institute of Medical Research does some research and the University of Western Australia does research, but who has a handle on all the different bits of medical research? Three lots of medical teams, including researchers in the private sector, may be doing the same research and there is no collaboration. I am using that as an example. If we lock up areas of Western Australia in whatever way, with one department doing this and another department doing that, where is the strategy of someone looking at the big picture?

Mr D.A. Templeman: You're dancing around the table!

Mr W.R. MARMION: I know. I have been watching the member. I will start using my hands as well!

Mr D.R. Michael: I didn't know you liked centralised planning that much, comrade!

Mr W.R. MARMION: It is not centralised planning; it is coordination.

I will finish on bilateral assessments. It would be fantastic if we could get that across the line.

Mr R.S. Love: Except they are not across the line.

Mr W.R. MARMION: They will not get there, because, unfortunately, the commonwealth legislation overrides state legislation. I would love it to happen. I got involved in an intergovernmental agreement on exactly this and it lasted for about three months. Jim Limerick was the director of the Department of Industry and Resources and wrote the Intergovernmental Agreement on the Environment with the commonwealth. We signed off on it, but it had no statutory power. The idea was that either the state or the commonwealth would do the assessment, but when the first major project came along, the Australian and New Zealand Environmental Conservation Council was not happy with the state government assessment and went straight to the federal minister, who bought in and it was all over red rover.

MR R.S. LOVE (Moore — Deputy Leader of the Nationals WA) [4.09 pm]: I am very pleased to be here to contribute to the debate on the Environmental Protection Amendment Bill 2020 and the Environmental Protection Amendment Bill (No. 2) 2020. When I say I am pleased, I am pleased that I will finally get to discuss a matter that has been something of a dread to me for the past two weeks, because for the last 20 years I have been living the nightmare of being a farmer who has tried to operate under the clearing system that we have in this state. The proposed system is a great improvement and will bring some clarity that we perhaps did not have a few years ago. Where I come from in the Shire of Dandaragan, bush is still the predominant state of vegetation, and land for people to clear for agriculture was released as late as the 1970s. A number of farmers were hit with the changes that came in, and, sadly I must admit, there was a National Party agriculture minister at that stage. Many people throughout the region were unable to continue the clearing program that was essential for their business to thrive. A particular friend of mine was put in such a position that he was looking at going to jail because he was simply trying to do his job of running his farm. As it was, in the end he was not found guilty of the offences that the department had

accused him of, and the long letter that I wrote as shire president extolling his virtues as a human being and a decent citizen was not necessary to mitigate the sentence that we felt it was inevitable he was going to get. That is the sort of pressure that people have been put under for many, many years.

I think the member for Cottesloe touched upon environmentally sensitive areas in the electorate. I have all this down in my notes and I was going to go through it in a more structured way, but I will get this off my chest. Farmers back in the early 2000s were faced with a wetlands policy that was going to take in the Swan coastal plain from the boundary of the Shires of Coorow and Dandaragan all the way to Perth. All the wetlands in that area were going to be controlled and farmers would not have been able to access them. There was virtually a mini-revolution, there were meetings, and finally the policy was abandoned. What nobody knew was that a system of environmentally sensitive area registrations had been developed. That was introduced in 2005, and it was not until the unfortunate circumstances illustrated by Peter Swift and his troubles with clearing regulations came to light that many people realised that they were affected by these environmentally sensitive areas. When I was elected, I advocated on behalf of my constituents, a number of whom were very concerned when they found that they might have been in environmentally sensitive areas and what that would mean for their ability to carry on their business. There was no clarity about whether running cattle, for instance, on a declared environmentally sensitive area would be considered an offence under the provisions of the act. There was not much advice coming from the minister or the department at that time to alleviate people's concerns. What was even worse was that no-one had been notified that they were to be involved in this environmentally sensitive area and nobody could find out where to go to find out whether they were. There was a website, but my research officer, who is not without skills on a computer, spent weeks trying to access the maps on that website and could not get through. It was virtually impossible. It was virtually impossible for a person, a farmer, to understand whether they were in an environmentally sensitive area and what that meant if they were. All that time they were living under the cloud of possibly being found guilty of an offence and facing a severe penalty by simply going about the business their family had been doing in that area for up to 100 years. That is the type of circumstance that people in my electorate have gone through with some of the provisions of this act.

My well-structured contribution to this debate has now gone out the window, and I have forgotten where I am up to.

Mr D.A. Templeman: You are following on the same theme as the former speaker.

Mr R.S. LOVE: Yes, the same theme, but with much more lived experience.

Members were talking about the offset program, and I have a slightly different view on the offset program's effect throughout the area that I represent. Of course, for many people who were caught in that invidious situation of being unable to clear their land, the offset program became a form of de facto compensation for the purchase of some of their land, which was by then quite worthless to them. In fact, the Valuer-General had altered the unimproved valuations of their blocks so they would not have to pay rates on that portion of the land, which then made it quite difficult to understand how much the land was worth when they did come to purchase it. But at least it was some form of compensation for those people who had lost the ability to clear land. I put on the record that I was one of those people, and I had around 2 500 acres in that situation.

I will say this much for the current government about environmentally sensitive areas in the Shire of Gingin. One of the most oppressive policies to come forward in recent years in the time I have been involved in public life was the development of the Perth and Peel growth plan. It set out a pathway for development in the Perth and Peel area using a system of offsets that would involve the purchase of those environmentally sensitive areas in the Shire of Gingin and some of the shires surrounding Perth. That would have left large areas of the Shire of Gingin excluded from any economic activity. It would have affected the rate base of the Shire of Gingin and would have effectively stymied any economic growth in some of the electorate that I represent on the basis of enabling growth in the Perth and Peel area. When the Minister for Planning came in, she set that policy aside, and I wake up every day and thank her for doing it, because it has alleviated the problem that the Shire of Gingin, especially in my electorate, and the Shire of Chittering had under that circumstance.

With that, I will get back to the speech I have prepared. The Nationals WA will support both bills overall—the Environmental Protection Amendment Bill 2020 and Environmental Protection Amendment Bill (No. 2) 2020—which we are debating cognately. We will participate in consideration in detail, and no doubt when the bill gets to the other place, my colleague Hon Colin Holt will look at it with a great deal of interest. This bill upgrades an act that has been around for many years. It aims to simplify and reduce some of the unnecessary regulatory processes that we face. An exposure draft was released on 28 October 2019, and submissions closed on 28 January 2020. Again, as a farmer, I have to say that releasing a consultation program in the middle of harvest and closing it during the Christmas school holidays is probably not the best time to get some response from farming communities. I wonder why those times were chosen. Nonetheless, it has been done. There were 101 submissions received, and the summary report appeared on the website after the bill was introduced. I went looking for it and initially I could not find it,

but I found it a bit later. It is not a bad outline of some of the things that were discussed and will no doubt inform the debate during the consideration in detail stage.

We have heard from other members about some of the major changes. I will not again run through a whole list of things that are in the explanatory memorandum, but something that will be of particular interest is the cost-recovery processes. I know that local government has some concerns about its involvement in some of those cost-recovery processes, but in other ways I think it is a justifiable situation. As the member for Nedlands pointed out, the trick will be to ensure that this does not lead to a massive increase in the burden, simply because there is no downward pressure on the department in a cost sense to try to make sure that the approval requirements do not grow inordinately.

There are also changes to the clearing provisions. The ability to make a referral to the CEO about whether a permit is needed will be interesting. This will not affect the regulatory framework around some of the current exemptions for farmers. I know that consultation on native vegetation clearing was done around the same time as this wider consultation. Some of the comments I saw from that were a bit worrying, such as about trying to limit the five-hectare rule and other things in those regulations. From a practical point of view, it would be quite a disaster if farmers were to lose those things. There are changes to some of the defences. There is the ability to provide modified penalties. There is quite a steep increase in some of the penalties for certain offences and also some recognition or clarity around the use of satellite imagery for detection, enforcement, monitoring and what have you. The introduction of the environmental protection covenants will be interesting, although, in reality, soil conservation notices have been attached as conditions in some other circumstances. It is not a radical departure and it could be quite a useful tool; it will be interesting to see how it will manifest. I am not entirely sure how it will work in practice on the ground, but it looks to be reasonable at the moment. We were given examples of the development of environmental monitoring programs, but these were mainly around large industrial sites. It has been raised with me that there could be some implications for agricultural areas. For instance, if salinity were to become an issue, would that somehow affect other people? I understand that someone will have to be a licence or permit holder to contribute to that, and maybe that would exempt farmers from being worried about that.

This bill facilitates, streamlines and lays the groundwork for a possible bilateral assessment and approval agreement with the commonwealth, which is welcome. That would meet all the requirements of the commonwealth as well. We would like to see that come to fruition. I understand that the commonwealth has to alter the Environment Protection and Biodiversity Conservation Act to make that work, so it is not just up to the Western Australian government and this bill to do that.

The bill also makes some changes to the publication requirements and to the way in which environmentally sensitive areas are notified. That is being put in the regulatory framework. There is also a head of power for the development of a program of accreditation of environmental practitioners, which other members have spoken about. There is a bit of uncertainty about what that means. I do not think it is a bad thing to recognise the expertise of people in that field. In some ways, I am quite happy to see that. At the same time, I understand there is some concern about what that might mean in practice and whether, over time, it will limit the ability of people to make applications without going to a limited pool of expensive consultants, which might make the process even more expensive than it is at the moment.

Nationals WA members are all regional members of Parliament. We all know that land use is a key issue in our electorates. It is not just about clearing; it is about all sorts of activities on the land. Clearing is an issue for farmers. It is an issue that impacts the ability of mines to operate, industry to be developed, infrastructure to be developed and town sites to be developed. A number of towns are surrounded by large areas of bush and crown land, so the expansion of town sites is somewhat difficult and tricky in many circumstances. There is a need for that to be recognised as well. Of course, we all acknowledge that the preservation of the environment is very important, not only because of its intrinsic value, but also because of the amenity it provides. Many people live in my electorate because of the environment. They enjoy the environment, as well as work and live in it. This bill addresses some of the issues that come across the desks of all MPs. I have spoken already about environmentally sensitive areas. That has been a huge issue in my electorate, along with other clearing circumstances. This bill is a way to recognise some of those issues.

The Shire of Gingin has been mentioned. Members may be aware that underneath the Shire of Gingin is a very large amount of groundwater. Extensive irrigation has been developed in some areas, but I have seen some ridiculous things happen, such as people not being able to clear the last couple of acres within a pivot-irrigation circle—they simply cannot get a clearing permit processed.

[Member's time extended.]

Mr R.S. LOVE: These are the types of issues where I think this process falls down. I will not name this person, but I will go through a precis that my office developed about this case. This family had established a market garden south of Perth and needed to expand. They knew Gingin was an area in which water was available, so they moved north to Gingin and started growing sweet potato, parsnips, eggplants, zucchini, broccoli and garlic. Coles, for one,

was knocking on their door and pleading with them to expand their production as it could not get enough of these products locally. Without going looking for extra markets, they knew they could sell more than they could produce, but they needed to develop some of the additional land to meet that demand and allow for crop rotation et cetera. They had the necessary water licences. They had land with a rural zoning. They had 14 hectares in production. They initially wanted to clear 12 hectares of the remaining 21 hectares of bushland on this property and offered to place a covenant over the balance. They were told that it would not be sufficient and that they would have to purchase offsets somewhere else—an additional 40 hectares on top of that. This was a small family business that was starting up and was already facing significant capital costs to expand. It had bought the property and wanted to expand the production area, which would probably involve putting in extra irrigation facilities. It just was not possible. There was a lot of argy-bargy going backwards and forwards. This is an area in which the local native vegetation content and cover is about 57 per cent of the landmass. This family's operation was in the wheatbelt. I know there has been discussion in here about cumulative impacts; they have been part of the assessment process for a long time. Farmers in that western area of the sand plain have been very poorly judged because they are trying to clear in a region that largely comprises salmon gum and other woodlands that were cleared generations ago. Nominally, they are in the same region. In fact, they should be assessed in a completely different region. The region in which the cumulative impact has been assessed needs to be looked at very carefully and not just assessed on development commission regions or by some other convenient measure. This person—he is in a large shire—has 57 per cent native vegetation clearance in his area. It got to the point that it was so costly, so bad and so hard that he abandoned the project and ended up selling. I do not think that is a great outcome. Potential business development in that area is lost and that person is no longer able to meet that extra demand that the supermarkets were looking for at the time. I do not see how that is a great outcome.

I will quickly read through some extracts of a letter I received from another farmer. This farmer is not in my electorate, but in that wheatbelt area that I spoke about. It states —

> The Environmental Protection Act … restricts the clearing of native vegetation by farmers on private property for agricultural purposes. While there are improvements in the approval processes for well-resourced land developers and mining companies, there is no relief for family farmers. Applications and appeals from farmers are doomed to fail as the legislation is structured to deny, delay, deter and discourage farmers by imposing costly reports and offsets.

As members would be able to guess, this guy has tried and failed to get a program up. As I recall after discussing it with him, he was trying to grow jam trees and sandalwood on some country that was not much good for wheat farming in the area. I do not have much time to run through the whole of his circumstances, but he goes on to say —

> The current and proposed legislation is structured to protect DWER from criticism and scrutiny while ruthlessly applying Schedule 5 and 6 of the EP Act. DWER should be required to detail the full economic and social cost being imposed on farmers and small businesses in wheatbelt communities when clearing applications and appeals from farmers are rejected.
>
> Currently the appeals process is flawed and needs to be amended. The Appeals Convenor's role is not independent, transparent or accountable.
>
> Nothing will change for farmers unless a new Application and Appeals system for farmers on private property is introduced.
>
> Private property rights need to be recognised and compensation paid when DWER applies legislation that diminishes the value and productivity of privately owned farming land. Current and proposed legislation condones private property theft …
>
> Farmers have limited time, expertise and resources to address the complexities in submitting clearing applications and dealing with appeal issues. A farmer cannot match the legal, human and financial resources available to DWER. Consequently, for farmers to be treated in a fair and equitable manner, a different approach to clearing applications and appeals is needed.
>
> The State Government is well resourced to find alternative solutions by finding or regenerating rare flora and fauna on the …

Large percentage —

> of the land the State currently owns.
>
> …
>
> It is appreciated the environment must be protected and conserved. There are better alternatives that should be considered rather than arbitrarily restricting farmers on private property. Farmers are also committed to protecting the environment, as their sustainability is directly dependent on soil and water conservation for yield. Effective legislation needs a pragmatic distinction between environmental protection and

> agricultural production. Local rural economies need to drive job creation and investment opportunities to enable regional centres to remain attractive places to live, visit and in which to do business.
>
> After WWII and prior to the mineral boom, WA's economy prospered due to wheatbelt farmers. The EP Act's schedules and guidelines must work towards an outcome that produces opportunities for employment, investment and income growth in rural communities.

That was the letter addressed to me as the environment spokesperson for the Nationals WA from a person who had that lived experience of trying to expand the family business, meeting considerable headwinds and, as I understand it, ultimately not being successful.

Both anecdotally and objectively, the current clearing permit system is frustrating and slow. The published performance target assessment for the department's handling of these assessments is 60 days. I think only 49 per cent of applications were dealt with in that time frame in 2018–19. This is an important matter for farmers, industry and, tellingly, in regional areas, it is important for roads et cetera for local governments. Again, that goes back to town site expansion and everything that local governments are involved in.

Local government is understandably concerned about the cost recovery provisions in this pair of bills. The activities undertaken by local government for which approvals, permits and assessments are required are generally for public benefit. There is no private benefit for a local government involved in any of this. It is not often a discretionary type of situation. A road improvement might need to occur for road safety. The benefits of that may extend well beyond the local government. It can extend to travellers coming through the area, so a range of people benefit from this local government expenditure. I think there is merit in exempting local government from the majority of these possible charges.

I have spoken already about the Perth and Peel growth plan and the situation relating to private property rights for rural landowners. I will briefly pay tribute to a former member for Moore—not Hon Grant Woodhams so much, my predecessor—the shire president of Dandaragan, Gary Snook. When Gary Snook was involved in Parliament, he was tireless in bringing together an understanding of just what was happening for farmers and their communities in the electorate of Moore. The electorate has expanded somewhat. The former Nationals member, Grant Woodhams, also had concerns in this area.

There is a long history in the electorate of this issue having a significant impact on residents and businesses, partly stemming from the fact that, as I said before, a lot of the country was released only in the 1970s. From the 1950s right up until the 1970s, a lot of that sand plain was released. People who own the land now and who are still farming that land were going through a gradual process of developing the country. Some people do not come in with a lot of money and they do what they can. It takes a lifetime to develop a farm when people have no money to come in with huge machines and just bowl everything over and develop it in a couple of seasons. For most of those families who came onto that scene later, on those last blocks, this had a devastating impact.

With the developing industry in the electorate, such as irrigation and other technologies, enabling farmers to move to different methods, even in broadacre agriculture—now there might be guidance mechanisms on machines and they are wider machines—there has been an awful lot of problems with people who, from time to time, have been in trouble over clearing isolated paddock trees, for instance, which is necessary. Once upon a time, farmers might be going around a paddock with a 14-disc plough and a 20-run combine, but now people are running 100-feet wide machinery and have machines that are satellite guided. Therefore, having trees in the landscape in the way they were traditionally cleared, especially on some of the country where large trees were left for shade when livestock was much more of a consideration, has come back to curse some of those farmers. I think there needs to be more consideration for programs without the hugely expensive offsets, such as I illustrated with the guy in Gingin; for instance, a covenant could be agreed for a like for like within the farmer's own land. An area of land that has a lesser value could be set aside for flora and may be even planted back, which would allow the more productive land to be developed without the need to really put the farmers through the mill in the way that they have been over the last generation.

MR C.J. TALLENTIRE (Thornlie — Parliamentary Secretary) [4.39 pm]: I am very pleased to give my reasons for my support of the Environmental Protection Amendment Bill 2020 and Environmental Protection Amendment Bill (No. 2) 2020. I am somewhat heartened by the tone of contributions from those opposite who are generally supportive of environmental regulation. I want to talk a little about environmental regulation. I also want to touch on how our Environmental Protection Act 1986 deals with matters of climate change, how it deals with biodiversity, and touch a little on the notion of a central repository for all the state's geospatial information.

Turning to the issue of environmental regulation, I often hear from people outside this chamber who I might describe as of a gung-ho pro-development mindset. Their view is that environmental regulation is green tape and something that should be got rid of. It is incumbent on every one of us here, all 59 of us, to be the advocates for good, sensible regulation that counters the many sad events and neglect of our environment across this state. When I think of the extent

of soil and land degradation across this state, I still hear that the land degradation extent is across 18 million hectares of cultivated land, with the potential for about six million hectares, one-third of that, to go to salinity or some other form of degradation. The salinity problem was talked about a lot in the 1990s, and we even had a State Salinity Council. The rural sector, the farming community in particular, seemed to be saying that it is not such a problem, or were they in denial of it? I do not think the situation has changed. We do not have the miracle crops that can grow on highly saline grounds; that never eventuated. We still have a huge problem with salinity. We have introduced techniques around deep drainage that have limited the problem to some extent but that has shifted the problem from one property to another. That is a perfect example of why we need environmental regulation; we have to accept that what happens on one person's farm will have an impact on another. If we do not regulate the whole of the land across a landscape scale, we will see unfair outcomes for other farmers, but also for other environmental values, which will be damaged or lost. Generally the trend is unfortunately downwards, but there are many other indicators as well: species lost; the number of species listed; matters of water and air quality; and climate change—which I will come to.

I want to focus on the issue in the legislation around the so-called clearing provisions, which I would much prefer to see described as native vegetation protection laws. When it comes to the best surrogate we have for monitoring the health of biodiversity, if we want a quick snapshot of biodiversity health across the whole of the state of Western Australia, probably the simplest way to do it is to see what habitat is there and to do that, a quick assessment of the quality and health of vegetation types across the state—and I said types. I notice the member for Moore talked about his area, an area that is incredibly rich in biodiversity. I am sure he is rightly very proud of that. He talked about how across those kwongan vegetation types, sometimes he sees clearing proposals going through and people talk about how much vegetation remains in the Shires of Gingin and Dandaragan. That has to be done in a far more scientific way than looking at the arbitrary boundaries of local government areas. We have to be very scientific about it, in terms of ecosystem types and vegetation types, really distilling it down and seeing how much of a particular ecosystem type remains before we contemplate allowing someone to destroy more of it.

That is when we get into this interesting question of how much more we are prepared to lose. Of course, I have sympathy for those farmers who feel that they bought properties with an expectation of being able to clear land and destroy more environmental value and then have some sort of business activity, but it has to be said that—we have only to look at a satellite photo of Western Australia to see this—we have an abundance of cleared land. If somebody has ideas for a sandalwood plantation or some new crop that they want to try out, there is an abundance of cleared land available for them. They simply need to have the business capability to do a deal with the current owner to access, rent, share farm or enter into some sort of arrangement to develop their business. It is curious that the agricultural sector always has this mentality that people have to own land to have some sort of business. We need to go beyond that. If people have the business nous, they can develop it. It is interesting.

I do not want to focus on just the rural sector here; some of the most egregious examples of abuse of environment regulation, and this criticism of environmental regulation, has come from the very biggest corporations. I recall when the Gorgon proposal was first talked about for Barrow Island. It was couched as being a $9 billion project. That was in the mid-2000s. By about 2015–16, I think it was up to a $60 billion project. One of the explanations given by the senior executives of Chevron for this incredible cost blowout was environmental regulation. To go from $9 billion to $60 billion and then blame that on a combination of environmental regulation and I think the industrial relations issues that it had is absurd. When we hear people saying that they cannot cope with environmental regulation, often it is the case that the real problem is poor business management. Having established that environmental regulation is a good thing, it is something that we can be proud of and we can talk about as our antidote to the serious environmental loss that we have faced in this state. It is very important.

The new capability to look at cumulative impact assessments is very important, because under the environmental impact assessment process, part IV of the legislation, there has often been a tendency for a project to be looked at in isolation and for us to not have considered what might be happening in the whole region. That is when we have to take that cumulative impact, otherwise we could have a death by a thousand cuts scenario, which is very damaging and worrying. I first became aware of the need for this cumulative impact assessment approach when I was on a task force convened by Hon Alannah MacTiernan in, I think, 2003, looking at coastal developments and the need for us to be really careful about where we place coastal developments so that we did not have a cumulative impact. It is really heartening to see that at long last we have amended our legislation to include cumulative impact assessment.

I want to turn to climate change and especially relate this to the bilateral agreement process. This will be very interesting. One very sad bit of Western Australian, indeed Australian, history was given a great exposé on *Four Corners* on Monday night, in an excellent report by Michael Brissenden called "Climate Wars". It had some really great thinkers and contributors to Australian society and Australian public service, people such as Ken Henry, Peter Shergold and Martin Parkinson talking about, to use Ken Henry's words, how "power and ambition triumphed over the national interest", and that it was not about ideology. The failure to have decent climate change policy—in the words of Martin Parkinson, "What climate policy?"—has been power and ambition triumphing over the national interest.

I relate that to this legislation and the bilateral agreement because of an episode that happened in I think 2012. The Wheatstone project was a massive LNG project with 10 million tonnes of CO_2 emissions attributable to it annually. The then Minister for Environment, Hon Bill Marmion, was given advice by the Environmental Protection Authority that the state EPA should have some conditions on greenhouse gas emissions. Hon Bill Marmion saw that, at the time, we had an emissions trading scheme coming in federally under the Gillard government, and rightly said that the federal emissions trading scheme would control the emissions from this Chevron project, so we did not need greenhouse gas emission control provisions in the state approval. That was reasonable up until the disaster of the Abbott government that came in. Ken Henry was talking about this on Monday night. He said how angry he was at the grotesque events of mid-2014, when the Abbott government removed the ETS. All the comments were that it was an extremely grim day for Australia. Once that happened, there was no longer an ETS to control projects like the Wheatstone project with its 10 million tonnes of emissions annually. There was no control. Did the state government of the day immediately seek to reinstate the controls on Wheatstone? No, it did not. I understand that there is an EPA investigation and report into this that is still ongoing; I am sure the matter will be dealt with in due course. But we had that frenzy climate change craziness around "axe the tax" and all that stuff. It just whipped up a whole frenzy of very low-grade debate, if we can barely call it that; I do not think we can. It was just a succession of populist slogans that have got us into this terrible impasse. I am hopeful that with this legislation and the connection that can be established with the assessment of major projects under the Environmental Protection Act and the Environment Protection and Biodiversity Conservation Act, the commonwealth legislation, we will not have an impasse like this arise again.

I am aware of the time. I just wanted to make some general comments on the need for a central repository of information—data that is gathered through the environmental impact assessment process, things like the geological survey, and all sorts of groundwater assessment studies that are done by the Department of Water and Environmental Regulation. There are all sorts of good studies. We need those to come together and be as accessible as possible. But that should be accessible using all the latest geographic information systems and technology. I have been hearing about this for years. There was the land monitor program of the CSIRO, the Western Australian Land Information Authority—all these things continue on in various guises. The actual information that can be fed into some overarching body gets better and better with the quality of remote sensing. We can have drones flying over areas with cameras using various remote-sensing equipment to detect and determine what species are present in an area. The powers are absolutely incredible. Some brilliant research is happening on this at our various universities. One faculty in particular—an engineering faculty at the University of Western Australia that I am soon to visit—is doing some really exciting stuff so that we can continue to enhance and share the knowledge of our state. It is public knowledge; it should be shared. I know that there is some question about equity—a company may pay for some very expensive environmental reporting that can then be shared with perhaps an opponent—but I think we have to find a way around that. After all, the company is paying for that expensive environmental information so that they can exploit a natural resource that belongs to us all. That is a very reasonable thing.

That reminds me to touch on the issue of cost recovery, which is something that I fully support. Interestingly, the Barnett government did a curious thing here. I think in around 2014 and into the forward estimates, it built or put into the state budget $3 million coming in from cost recovery on environmental impact assessments. It had that over three or four years but did not ever get around to bringing in the legislation to enable the cost recovery to take place. At last, we are going to see cost recovery, and I think that is very sensible. It is not only the proponents that go to great expense to get their projects up and pay for the environmental and consultancy work to be done, but also the state. Each time a proposal lobs into the office of the Environmental Protection Authority, a very extensive assessment is done, causing an enormous amount of public service time to be expended on a particular project. Regardless of its merits, it gets this incredibly expensive treatment from the state. I think it is only reasonable that the people who present these projects for assessment should be contributing to the cost, and there should be a cost recovery process in place.

I am very pleased that there is this interest in the house around environmental protection. I want to conclude by saying this. We must stop the silliness about getting rid of green tape. Necessary environmental regulation is a very good thing. Western Australians expect it from us, they expect no less, and this legislation will help us to deliver it.

MR R.R. WHITBY (Baldivis — Parliamentary Secretary) [4.56 pm] — in reply: I want to acknowledge the contributions this afternoon of all members who have spoken on the Environmental Protection Amendment Bill 2020 and the Environmental Protection Amendment Bill (No. 2) 2020. I note that all members have said that they support the legislation. We heard from the members for Cottesloe, Nedlands, Moore and Gosnells. I want to thank them all for their valuable contributions. I have listened to all their comments and I will respond to each member shortly, but, in general, there was wide support for the changes that we are bringing in.

It is important to remember that these bills form some of the most important pieces of legislation on the state's statute book, because they serve two vital key roles. Firstly, they seek to protect our unique and valuable Western Australian environment on behalf of all the people of the state. Of course, they establish processes by which vital projects can

proceed, as well as other economic or industrial endeavours that underwrite the wealth and prosperity of our state. These are two vital considerations for us all and, of course, it is about finding the right balance.

This legislation dates back 30 years to the 1980s and was updated in the early 2000s during the Gallop government. The bills before us today are an accumulation of reviews, recommendations and consultations dating back to that last update. Much of the work that is evident in the bills today did indeed come from the Barnett government during its term. That work continued into the McGowan government, which has consulted widely and deeply with all stakeholders. This process included the release of an exposure draft bill, a discussion paper, and many meetings with stakeholder groups. It generated 101 submissions and there was broad support across stakeholders. Indeed, there is a keenness by many for these amendments to be enacted in the interests of efficiency, clarity and timeliness in the process for assessing applications, as well as providing certainty in protecting our environment. Essentially, the bills seek to modernise, update and streamline processes; introduce a cost recovery process based on the fairness of "user pays"; provide better clarity for all; provide more flexibility; improve investigation enforcement powers; provide for cumulative impact to be considered and monitored; streamline the operation of bilateral assessments and approvals with the commonwealth; and provide consistency in terms of transparency with publication requirements noting modern day communications.

The added importance to this bill is the need for greater efficiency and timeliness. In the time of COVID-19 we need to ensure appropriate mining and resource projects that employ thousands of Western Australians and that meet the environmental standards we expect can be delivered in a timely and efficient manner.

I want to go through members' contributions this afternoon. I note that the lead speaker, the member for Cottesloe, had a lot to say, and I will come to the member's contribution in a moment. After the member for Cottesloe, we heard from the member for Nedlands, who said he supported the reform. As is often the case with the member for Nedlands, he took us on a nostalgic journey to a time when the Main Roads Department was effectively the Environmental Protection Authority. Is was a very interesting time, when people could just bulldoze a road through a gorge in our north west, and as long as a box had been ticked in the member's then office at Main Roads, it would all be okay. He reminded us of Syd Shea and the forest wars. In his time as Minister for the Environment, there was of course the Magellan Metals lead fiasco.

Mr W.R. Marmion interjected.

Mr R.R. WHITBY: It was a fiasco in the way it turned out for the member, I guess. It just goes to prove once again that if you are a minister, you do not go away on holidays! In the member's case, it was not Hawaii; it was only Abbey beach, and just as well.

The member explained that there are a lot of things to like about this legislation, as indeed most members have. The member for Nedlands had some concerns, but overall praised what is being proposed.

The member for Moore drew on his experience as a man from the land, in Dandaragan, and pointed out some key concerns, including the impact of offset purchases on Gingin and other parts of Western Australia. The member had a concern about cost recovery and how that might lead to increasing the burden for farmers and other industry participants. The member expressed a concern about cumulative impact and the way that would be interpreted for historic clearing in parts of the wheatbelt. He then read the letter from a farmer, which we were eager to hear—someone with real experience as a man of the land. I want to tell the member for Moore that there is currently an inquiry into private property rights that also deals with environmentally sensitive areas, and we await the outcome of that inquiry. The changes to the clearing provisions, including the referral system and the making of regulations for ESAs may, or are intended to, address many of the concerns the member raised.

I will also mention timeliness. The member for Moore talked about timeliness. The new referral system in this legislation will help improve timeliness by ensuring that regulatory resources are focused on clearing that has a significant impact. We do not want to be bogged down with minor issues; we want to put our energy and resources into major clearing. For farmers there will be the ability to refer clearing without the need for an application. That would also be welcome.

We all know that the member for Gosnells is a very passionate advocate for the environment, but as he let out in this chamber the other day —

Mr C.J. Tallentire interjected.

Mr R.R. WHITBY: I get confused. Sorry, member for Thornlie.

A member interjected.

Mr R.R. WHITBY: I am trying to catch up. I think the member for Thornlie was referred to as the member for Gosnells earlier today.

We know the member for Thornlie is a passionate advocate for the environment, but he understands that we need to strike a balance. The member let loose in the house, the other day I think, that he owns a chainsaw! That might be a revelation for many.

Mr C.J. Tallentire: It's a very important conservation tool.

Mr R.R. WHITBY: Indeed. The member also believes in that balance, and I was interested to hear his views on the *Four Corners* report, which I found very interesting as well.

I go to the member for Cottesloe. I certainly acknowledge and appreciate the contribution made by the member, given his many years in his former life involved with a sector that has a lot to do with the environment, working for Alcoa and the mining industry. The member endorsed a range of features of the bill and welcomed the improvements, some of which have their genesis, as I said, in the former Barnett government. The member also acknowledged that this legislation will have important COVID-19 stimulatory impacts on our economy and jobs, which we all welcome. We also agree with the member's comments that strong ministerial leadership is needed to deliver improved regulatory performance, and that is what we have in this bill.

I will go to some of the member specifics, because there were a couple. The member for Cottesloe raised concerns about proposed part VIIB and cost recovery for monitoring programs, and that changes may become excessive, that agency studies may be seen as essential and that there needs to be strong ministerial oversight. My response to the member is that all charges will be set through regulations and as such shall be the subject of scrutiny by Parliament. There will be consultation with stakeholders in developing the regulations and it will also only apply to part V, licensed premises. Like many of the head powers in this legislation, there is a commitment to consult in the development of these regulations.

I will continue to go through the member's contributions, but I would like to allay some of the concerns he raised today. It was certainly valid to raise them, but I think I can help to put the member's mind at ease on a number of them. In relation to cost recovery and the importance of ensuring improved time line performance, it is actually the certainty of funding that assists in improving time frames and allows the department to increase its effort with demand. The member for Cottesloe was concerned that section 38 of the act, in terms of referrals, which mentions the proponent or "any other person" could allow anyone to refer a proposal. He considers that that seems loose and would like an explanation for that. The response to that is that this is actually an existing provision that seems to have worked well for 30 years. We do not get strangers from some far-off place like Kazakhstan making referrals, and checks and balances are done by the Environmental Protection Authority before a project is considered to be a valid proposal.

On proposed new section 38G, on timing to assess proposals, the member for Cottesloe raised concerns that industry would be concerned about the stop-the-clock proposals. Indeed, that is a concern. The concern is that proposals could take years to be resolved if that stop-the-clock system is abused. The response is that there is a new stop-the-clock provision in proposed new section 38F that will tighten the use of the existing provision. It can be used for only a specified period, and if not met, the clock restarts regardless of whether it is received. We agree that timeliness of decision-making is important and timeliness of decisions is a key focus of these reforms. For example, cost recovery will support resourcing of assessment processes and timeliness is a key performance indicator for the EPA, so we are addressing the member's concern via this legislation. I might add that my own experience is that it is a key desire of the minister at every turn to increase the timeliness of responses for things like native clearing and other parts of the legislation he is responsible for. He is incredibly keen to build up that timeliness. It was a concern before COVID-19 and it is especially so now.

Proposed amendments to section 48A relate to the member's comments about proposed new 45A and the implementation of conditions and offsets that this could be used by agencies to force proponents to implement idiosyncratic views of individual officers. The response is that it is important to remember that under part IV of the Environmental Protection Act, these are ministerial decisions—government, not the agency—on consideration of the advice and recommendations of the EPA. The minister makes these decisions and any conditions of approval with other decision-making ministers.

The member raised that there is an industry concern of a creep in offsets. That issue was also raised by the member for Moore in terms of having a three to one ratio go up to six to one.

The issue was raised of the Environmental Protection Authority having a wish list of driving higher and higher offsets—an example given was that farms are being bought in Gingin to offset Perth development and that poor management of these properties leads to weed and vermin problems. I think that was the member for Moore's point.

Mr R.S. Love: I think I might have spoken about the weeds.

Mr R.R. WHITBY: In response, I am assured that these offsets are determined by science and that an offset calculator that considers a range of factors is used to determine the necessary offset. I also imagine that, regardless

of conditions of ownership of an offset, there would still be some regulatory requirement for someone to control weeds and vermin on the land.

Dr D.J. Honey: The concern has been that although there may be a calculator, the calculator seems to be growing.

Mr R.R. WHITBY: Or that it is all in the same place.

Dr D.J. Honey: The formula is changing. That's the concern.

Mr R.R. WHITBY: Okay.

Mr R.S. Love: In terms of weed control, what is happening is that isolated pockets of land are being bought by the department all over the place and they do not manage these isolated pockets.

Mr R.R. WHITBY: I see. So the obligation would be on the state to maintain those and to do a better job of that.

Mr R.S. Love: That's the issue.

Mr R.R. WHITBY: Sure. The member for Cottesloe gave an interesting example about section 49 of walking past a fish factory and an unreasonable interference with someone's comfort. I am advised that would not meet the test. That would not provide the ability to shut down a fish factory. The provisions have not been changed by this bill and have been in place without issue since the Court government in 1998. The member raised a concern that simple clearing is too difficult. The changes that this bill delivers are intended to address this issue. The member mentioned about section 52 licences, he considers that concerns with idiosyncratic conditions have been addressed. The example was of water levels being in multiple locations. The response was that we agree that there is need for consistent licensing practices and the department has been working on improving its practices. Changes in the bill will help improve the administration of regulation.

I refer to part VI section 87, regarding safety risks of entry. We have consulted with the Department of Mines, Industry Regulation and Safety on the provisions dealing with powers of entry to ensure safety concerns can be addressed. The Department of Water and Environmental Regulation currently gives notice and complies with safety training requirements, except in circumstances of environmental emergencies. There is an awareness of the need for people who are not familiar with certain sites to be aware of safety issues involved that need to be addressed.

Issues with the landfill levy were raised. These are saving provisions and have been replaced by the waste levy, which is under the Waste Avoidance and Recovery Act. In time, we expect that these provisions will be repealed. We recognise that the levy can be improved and are consulting now on how to improve application of the levy and prevent levy evasion. A discussion paper titled "Closing the Loop" has been released and comments from stakeholders are being sought. Those concerns are being addressed elsewhere in government as we speak.

I refer to proposed item 36B, which will be in schedule 2. Accreditation has caused concern. The response is that the capacity to establish an accreditation scheme has not been included because industry, particularly the Association of Mining and Exploration Companies, has sought this provision for accreditation. This is also supported by environmental groups, who see the value in improving the integrity and quality of environmental reports. There are no provisions to make the scheme mandatory, as stated in the second reading speech. The scheme will be designed in close consultation with stakeholders.

Members made comments about clearing causing consternation because of the difficulty in obtaining fire permits. The response is that there is already an exemption in place to support burning for fire prevention outside the limited period under the Bush Fires Act under item 3 of regulation 5 under the Environmental Protection (Clearing of Native Vegetation) Regulations.

In closing, this legislation is about updating a very important piece of legislation. It is about creating a more efficient piece of legislation. This is a long-awaited reform and is supported by industry and environmental sectors. It has many welcome improvements on what we have now. I note today that it was supported by all speakers. I welcome that support and I commend the bill to the house.

Question put and passed.

Bill (Environmental Protection Amendment Bill 2020) read a second time.

Leave denied to proceed forthwith to third reading.