BIODIVERSITY CONSERVATION BILL 2015

Second Reading

Resumed from 30 June.

HON LYNN MacLAREN (South Metropolitan) [5.10 pm]: As members know, the Greens have a proud history of advocacy for stronger environmental protections, including the ongoing promotion of the need for a modern legislative framework to conserve our precious biodiversity. In fact, way back in 2002, my esteemed colleague Hon Dr Chrissy Sharp stood before this chamber and introduced the Wildlife Conservation (Fauna Protection) Amendment Bill. The purpose of that bill was to close, as she put it —

> … the current glaring loophole in the Wildlife Conservation Act 1950 so as to bind or commit the Crown to apply the protections of that Act to native fauna.

During her introductory speech, Dr Sharp noted —

> In time the entire Act will be replaced and updated.

However, having at the time already been promised for 11 years, she felt that the wildlife of this state could wait no longer for improved biodiversity legislation. I cannot imagine the despair that Dr Sharp would have felt at the time if she had known that it would be another 14 years before a government even introduced a biodiversity bill into Parliament. At that time, Dr Sharp's bill was voted down by the Labor Party, the Liberal Party, the National Party and One Nation. As I have noted before in the Legislative Council, I found Labor's opposition to that bill particularly puzzling as the then Premier, Hon Geoff Gallop, came into office in 2001 promising the introduction of a biodiversity conservation bill as a priority for his government. In the 2005 election, this reform was again promised by Labor. However, not even a draft bill was released during the two terms of that government.

The Liberal–National government also has a long history of promising biodiversity legislation to protect Western Australia's wildlife.

Several members interjected.

The ACTING PRESIDENT (Hon Simon O'Brien): Order!

Hon LYNN MacLAREN: Thank you, Mr Acting President.

Dr Sharp's bill was not the only bill that the Greens introduced in that long period. Members will recall that in 2014 I introduced the Biodiversity Legislation (Priority Reforms) Bill into the Legislative Council. That bill has been in abeyance since I introduced it in 2014, I believe in part because Premier Colin Barnett came to government in this term promising to do something about it. The Greens put something on the agenda in the hope that at least those priority reforms would progress. In the years between Dr Sharp's and my own constructive attempts to introduce legislation, another of my esteemed colleagues, Hon Giz Watson, also worked tirelessly to bring biodiversity legislation to bear. She introduced the priority reforms legislation in the last months of the 2012 parliamentary sitting, I think it was.

As I have briefly recapped, the need to protect Western Australia's biodiversity through better legislation has been an issue that the Greens have advocated for, for many years, with very little gain. Members will understand that I am somewhat bemused to find myself before them representing the Greens' position on a biodiversity conservation bill that was introduced by the current government. One of the problems with this legislation is the word "biodiversity" because I think that it tends to turn people off. The original bill used the word "wildlife" and people immediately connected with the idea of small furry animals. Unfortunately, that bill was originally to curtail hunting. The Biodiversity Conservation Bill is a much broader bill in its intent and it is a scientific bill. It is hard for members of Western Australia's general population to get all excited about it. A former colleague, Cameron Poustie, was hired by the Conservation Council of Western Australia during the time of consultation in the Gallop government years. He worked tirelessly to develop a position on biodiversity conservation and produced quite a high-quality report. However, could people get excited about it and march in the streets? It was really difficult. I think one of the reasons is that it is hard to imagine what we are dealing with.

I brought an example of one of the creatures we are talking about. This is a numbat as interpreted by soft toy manufacturers in China. This numbat is possibly one of the only numbats that many members here might ever see. How many members have seen a real numbat in the wild? We have a couple—one, two, three. It is very rare to see a numbat in the wild so I thought that I would bring one here in captivity for just a short time so we can see a very small example of what we are dealing with. In fact, this example is used quite frequently because, as members would well know, the numbat is Western Australia's wildlife emblem. As our emblem, many people around the world know what a numbat is from its picture on Western Australian tourism documents. It is used to draw people to Western Australia because it is a pretty exciting, cute little fluffy animal. That is why one of the

benefits of biodiversity conservation is protecting these little critters and making sure that they have a place where they can thrive. Western Australia puts quite a lot of effort into ensuring that they have a place where they can thrive. In fact, the Zoo has a big program that introduces numbats into the wild. As members well know, my office has been working quite a bit to try to save a little patch of numbats from extinction in Dryandra Woodland. It has one of the few remaining populations of numbats in the wild. It is at risk partly because of our poor environmental protection laws. Why we would let this little creature go extinct is beyond me because it is not only valuable in itself but also as a drawcard for a transitioning economy into nature tourism.

Over the winter recess, we had a little debate about the significance of nature tourism, Western Australia's investment in nature tourism and how it is really important to ensure that there is some nature there for tourists to see when they get excited about coming to see little furry animals. I thought that today we would remind ourselves that when we talk about biodiversity, it is living beings. They have a value, intrinsically from my policy perspective, but also extrinsically as features of our economy and as important drawcards to Western Australia. As I have briefly recapped, the need to protect Western Australia's biodiversity through better legislation has been an issue that the Greens have long advocated for, for many years, with little gain. I am a bit perplexed and bemused that here I am speaking on the Biodiversity Conservation Bill at long last, after many years, and I feel quite privileged to be able to do that.

I want to bring into the debate some facts and figures about what is at stake in Western Australia when we talk about our biodiversity. It is clearly important to those of us who live here and it plays a vital role nationally and internationally. I will briefly refer to the Australian government's Department of the Environment and Energy biodiversity hotspots report. When people hear the term "biodiversity hotspot" they may think that means lots of different types of species living in a small area, but they might not actually recognise the significance of that term. Conservation International, a non-profit environmental organisation based in Washington DC, has identified more than 30 biodiversity hotspots around the world, including one in the south west of Western Australia. When I say it is in the south west, it is not actually down south; it is the south west corner. We sit here in the midst of that biodiversity hotspot. Our encroaching city and our urbanisation of this area is a reason it is a hotspot. It is a hotspot because our biodiversity is at risk due to how we live in Western Australia. Conservation International puts it this way —

> The unique biogeographic region of Southwest Australia, stretching from Shark Bay in the north to Israelite Bay in the south, covers over 300 000 square kilometers and is recognised as an international biodiversity hotspot.
>
> Separated from the rest of the continent by desert, the plants and animals in the hotspot have evolved in isolation for millions of years.
>
> As a result, the area is teeming with life—it is home to over 1500 plant species, most of which are endemic. These include the majestic marri and karri eucalypt trees that can grow to over 30 and 70 metres respectively.
>
> The hotspot is home to the endangered western swamp turtle—possibly the most threatened fresh water turtle species in the world.
>
> There are also several endemic mammals in the hotspot, including the numbat, which is a rabbit-sized marsupial anteater now endemic to the hotspot having disappeared from the rest of its range in Australia, and the Dibbler which had been thought extinct for 83 years.
>
> Land clearing, salinity, feral animals, weeds and the root-rot fungus *Phytopthora cinnamomi* threaten the biodiversity values of the hotspot.

As I have mentioned, Western Australia is home to more than half of the biodiversity hotspots in Australia with eight of the 15 identified sites being in our state. I cannot help but lament what has been lost due to our inability to put effective legislation in place to protect our unique flora and fauna. Mr Acting President might be aware of the questions that I recently asked in question time that gave us the latest numbers for the species of fauna and flora presumed extinct and threatened in the past 15 to 16 years. The numbers are devastating. I will go into detail a bit later.

Fifteen years ago, in August 2001, when work was beginning on a new biodiversity bill to replace the by then already archaic Wildlife Conservation Act, then Liberal MLA Bernie Masters asked the environment minister, Hon Judy Edwards from the Australian Labor Party, about the processes pushing WA's plants and animals to extinction. At that time there were a total of 135 animal taxa—"taxa" means species—specially protected under the Wildlife Conservation Act 1950 as being likely to become extinct, that is threatened in WA, and a total of 337 plant taxa. Those figures were slightly different from the ones just provided to me but pretty much in the ballpark. The total number of flora species listed under the Wildlife Conservation Act as presumed extinct in 2001 was 22, and the total number threatened was 334. If I fast-forward six years to the Carpenter government,

Western Australia had 14 presumed extinct species and 378 fell into "threatened". I guess that means some of the extinct ones improved their status and went to "threatened". In 2016 in Western Australia there are 15 presumed extinct species and 425 threatened species. In relation to fauna species, in 2001 there were 13 presumed extinct and 120 threatened. These numbers climbed astronomically by 2007 because the presumed threatened fauna species rose to 204 and the number presumed extinct rose to 18. It has climbed again because the recent 2016 figures show that 23 fauna species are presumed extinct and 245 are threatened.

Today, as the Wildlife Conservation (Specially Protected Fauna) and Wildlife Conservation (Specially Protected Flora) Notices on the Department of Parks and Wildlife's website state, a total of 245 animal species are considered threatened or likely to become extinct, and a total of 425 flora species are considered threatened—that is, likely to become extinct. In other words, in the 15 years that have languished since work began on this bill under successive ALP and Liberal governments, 110 more animal species and 88 extra plant species have become recognised as threatened. That may just be the best-case scenario because one of the problems scientists and environmentalists have long recognised in WA is that there is inadequate research funding and checking on the population status of many species and subsequently their threatened status is not always upgraded when it needs to be. Sadly, due to the addition last year of eight new species, 23 animals are presumed extinct in WA. That is 10 more than in 2001. These 23 animal species include molluscs and birds as well as a wide range of mammals including species of bettong, bandicoot, hare-wallaby, bilby, hopping mouse, potoroo and echidna. To keep members awake: on the topic of bilbies, I have with me the Chinese interpretation of the bilby. I have seen bilbies. This is a baby bilby.

Hon Sally Talbot interjected.

Hon LYNN MacLAREN: Does Hon Sally Talbot not agree? I would call this a baby bilby. I have never seen a bilby with that clean a nose! If any members want to —

Hon Peter Katsambanis: Where was it made?

Hon LYNN MacLAREN: I have already said; I think it is China.

Hon Peter Katsambanis interjected.

Hon LYNN MacLAREN: I know members will want these for their constituents!

The ACTING PRESIDENT (Hon Simon O'Brien): Order! We can hear from only one member at a time, and that is Hon Lynn MacLaren. Do not wake the baby up!

Hon LYNN MacLAREN: Thank you, Mr Acting President, because I know members are keen to know where they can get these adorable little Australian mammals. It is not easy to find ones with this detail of reality; it is one of the better quality ones. I found them at the Zig Zag Cultural Centre in the hills, if the minister wants to know.

Hon Donna Faragher: Good advert for my electorate.

Hon LYNN MacLAREN: It is in the minister's electorate.

Hon Donna Faragher: Do they have woylies, because woylies are my favourite?

Hon LYNN MacLAREN: I think they did have woylies, but I have one more treat to show members to keep them awake. It is not a woylie, and I do not think it is the right size. I have never seen one of these, but I think it, too, is not to scale. Members can see bilbies if they go to the Barna Mia sanctuary in Dryandra Woodland. They are little bit bigger than this example and they are a lot dirtier, but I have a bilby to show members because we may not be able to see them in the wild unless we pass this bill and get some decent laws to protect our biodiversity. Now that I have members' attention, I have to do something with it.

In 2009 the Auditor General provided further evidence and analysis about the failings of existing legislation to adequately conserve our unique biodiversity and of the urgent need for a modern legislative framework. This is not the first time I have quoted from this report, and I will do so briefly because I hope that members who were elected in this term will have read it by now. I think it was tabled in the first days of the previous term of this government. Again, we have had this detail for a while.

Hon Donna Faragher: If that is the Auditor General's report, it was just after we came into government.

Hon LYNN MacLAREN: Yes, it is the Auditor General's "Rich and Rare: Conservation of Threatened Species" report of June 2009. Members can look it up on the Auditor General's website. I want to refer members to what the Auditor General found when he looked at this. The report states —

- ***Since 1987 DEC and its predecessor agencies have sought to replace the 1950 Wildlife Conservation Act with new legislation that would provide greater support for conserving biodiversity.***

- ***Current legislation does not include a process for listing species as threatened and for recovering those species. Instead, threatened species are identified and recovered using DEC's internal processes, but these processes lack the transparency and accountability of legislated processes.***

Members might recall that the Biodiversity Legislation (Priority Reforms) Bill 2014, which I have tabled, included those specified processes. That is one of the key reforms that the Greens are calling for in biodiversity conservation.

The Auditor General's recommendations state —

> DEC should:
>
> - **continue its efforts to replace the *Wildlife Conservation Act 1950* with a new Biodiversity Conservation Act**
>
> **The ... Act restricts DEC's ability to effectively conserve threatened species.**
>
> > The Wildlife Conservation Act 1950 ... is the primary Western Australian legislation for the conservation of threatened species. The Act is nearly 60 years old and does not support the majority of DEC's threatened species conservation activities. In particular, the Act does not establish a process for listing and recovering threatened species and does not provide species with adequate protection.
> >
> > DEC has developed policies and processes to support its activities where legislation does not. However, the use of internal processes is less transparent and accountable than legislated processes.
>
> **DEC has taken steps to update the Act; a replacement Act was first released as a green bill** —

Can members guess the year? —

> **in 1992**

We had a green bill in 1992. This is 2016, and we finally have a bill to debate, so I commend the government for giving us a bill to debate. The report continues —

> DEC has taken steps to have the Act replaced and was given approval to amend the Act in 1987.

This goes back even further to 1987! It took from 1987 to 1992 get a green paper out. The report continues —

> This bill did not progress. In June 1999, approval was granted to draft a Biodiversity Conservation Bill. Although public consultation occurred and DEC has developed drafting instructions, a Bill was not presented to Parliament prior to the change of government in September 2008.

Again, it is a special day that we are able to debate this bill. I want to talk about one of the case studies, which is the Swan coastal plain quokka. The report is not a big report and if members have a chance to review it, it is a commendable report. One of the case studies is the quokka.

Hon Ken Travers interjected.

Hon LYNN MacLAREN: It is not a quokka, Hon Ken Travers—keep guessing!

The report continues —

> For several years DEC suspected that the last surviving quokkas on the Swan Coastal Plain were on private land north of Busselton. However, the owner of the land would not allow DEC access to confirm the existence of the quokkas.
>
> DEC recently confirmed that quokkas are on the property through the use of motion-sensing cameras on neighbouring DEC land.
>
> Despite confirmation of the quokkas' presence, neighbouring landowners have cleared land and set fires, damaging the quokkas' habitat.
>
> DEC is pursuing the landowners for illegal land clearing and fires, but is unable to take action in relation to the destruction of quokka habitat.

This is one of the telling cases in which gaps in our legislation have caused devastating impacts on biodiversity.

The report gives us an even more sobering insight into how long this legislation has taken to come to bear. Public servants have been trying to replace the Wildlife Conservation Act since 1997. For nearly 30 years there have been moves afoot to modernise legislation. How can it be that it has taken 30 years even to get a government bill into the chamber? It is clear that all sides of politics were keen on this and, in fact, the public servants had been given the go-ahead to draft something, yet a bill still could not get into Parliament. How can it

be that the Labor Party and the Liberal and National coalition parties have shown so little regard for the environment and have not been held to account thus far?

After having acknowledged the somewhat chequered history that has preceded the introduction of the bill before us, I want to focus on the content of this bill. I will give a brief overview of what I consider to be the strengths of the bill before outlining my concerns about other aspects of the legislation. Before I do, I thank the minister for allowing departmental staff to provide briefings on this bill to me on several different occasions. On the positive side, I am pleased that this bill contains provisions for members of the public to be able to nominate a species for listing as a threatened species and will allow for the listing of key threatening processes. These are two really important positive features. Under the bill, the taking of threatened species is treated differently from the taking of other species. That is a major change from the Wildlife Conservation Act that makes the taking of all species subject to the same offence provisions, although with some differences between flora and fauna. The introduction of a higher level of protection for threatened species, as against other native species, is very welcome. The major difference between the licensing regime for threatened and non-threatened fauna under the bill is that there is no defence to the taking of threatened fauna other than an authorisation under clause 40; therefore, an authorisation must be obtained for the taking of threatened fauna, even if the taking is an unintended consequence of another activity and that activity is separately authorised. This is an important protection mechanism.

Part 4 division 2 of the bill creates a new and very significant regime for the protection of critical habitat. It gives the department the power to issue a habitat conservation notice to prevent habitat damage on private land, even if what is occurring on the land does not otherwise need approval and does not trigger an environmental assessment process. This is likely to be a very useful tool for protecting threatened species habitat. The obligation under clauses 49 and 53, enforced by criminal penalties, for consultants to report the occurrence of a threatened species also represents an improvement on the current regime.

The Biodiversity Conservation Bill introduces other new offences. It provides that disturbing fauna or modifying a threatened ecological community will attract a penalty of $500 000 for a person and $2.5 million for corporations. The legislation applies largely in the same way to crown land and private land. The only substantial difference is that taking non-threatened flora on crown land requires a lawful authority or a clearing in accordance with section 51C of the Environmental Protection Act. Under clause 171 of the bill, taking non-threatened flora on private land requires only the permission of the owner–occupier of the land. This continues the approach under the Wildlife Conservation Act. Under clause 53, owners or occupiers who have been given notice by the minister that a threatened species or ecological community is on their land must advise visitors to the land who might impact threatened species or ecological communities. Under clause 52, owners must also advise the Department of Parks and Wildlife of any change of ownership or occupation. Clauses 56 and 141 provide that owners and sometimes occupiers issued with an environmental pest notice or a habitat conservation notice must advise when they cease to be the owner or the occupier. Conversely, the Greens have significant concerns about other aspects of the bill as well as the process around its drafting.

We are extremely privileged in WA to have a strong conservation sector made up of many dynamic and talented individuals represented across a number of agencies. They bring to the table a wealth of experience and knowledge. In preparing my contribution to this debate I consulted widely with these people. I cannot say the same about the government ahead of the introduction of this bill. I have met with representatives of the Conservation Council, the Urban Bushland Council, the Wilderness Society, the cockatoo coalition, the Worldwide Fund for Nature, the WA Forest Alliance and the Leeuwin Group. I have named just a few of the people I have met. I have attended forums, presented on panels and convened a round table of experts in establishing our position. I have read the Environmental Defender's Office briefing paper on the legislation and sought advice from others with a long history of environmental law advocacy. My point is that the process of engaging with and taking on board the feedback of those on the front line is imperative when drafting or considering legislation. We take that responsibility very seriously. Again, I cannot help but lament that the government has neglected to engage with the sector in a meaningful way on this legislation. We now find that we finally have the Biodiversity Conservation Bill before the Parliament, which has been roundly criticised by the conservation sector despite the inadequacy of the current archaic Wildlife Conservation Act.

I want to take this opportunity to give voice to the critics of the bill. I will read a couple of media releases into the record. Many people will know Piers Verstegen, the head of the Conservation Council. He put out a press release on 21 March this year headed "Biodiversity bill must not allow extinction: Conservation groups". It reads —

> Conservation groups have welcomed Premier Barnett's statement that the government would accept amendments to new biodiversity legislation tabled for debate in the State Parliament this week. Without

> significant changes including specific provisions to prevent wildlife extinction, conservation groups say the Bill should be withdrawn.
>
> The *Biodiversity Conservation Bill* 2015 was initially welcomed by conservation groups after being introduced into the Parliament without consultation; however independent analysis by the WA Environmental Defenders Office has since shown that the bill falls well short of contemporary practice for environmental law.
>
> CCWA Director Piers Verstegen said "WA's unique native wildlife is under huge pressure from climate change, land clearing, logging, mining, gas fracking, feral animals and other impacts.
>
> "Now is not the time for the Government to be putting forward half measures that will fail to address the decline of our unique biodiversity, or creating extraordinary new powers to allow Ministers to approve extinction.
>
> "There is no provision for an independent Biodiversity Authority, no requirement for scientific advice, no targets for wildlife recovery, and no requirement for the Minster to use any of the powers in the legislation or to publicly report on the condition of wildlife. Instead the Bill creates new powers for a Minster to play God by allowing the extinction of an entire species.

This criticism has been repeated throughout the conservation sector and it has caught fire, if you will. It continues —

> Like the 1950's legislation it seeks to replace, the Bill is full of loopholes and exemptions for certain activities and classes of animals.
>
> Wilderness Society Coordinator Peter Robertson said, "This Bill was drafted without consultation and contains many fundamental flaws and omissions.
>
> "In its current form it is not "fit for purpose" as 21st century biodiversity conservation legislation. The lack of any statutory public involvement, including third party enforcement rights, shows this legislation is outdated before it is even law.
>
> "In our view the legislation is so deeply flawed that it should not be passed unless there are major amendments."
>
> "Arresting the decline of our native wildlife demands a comprehensive package of reforms including funding, increased protected areas, major changes to the management of forest and other public lands, and contemporary legislation," concluded Mr. Verstegen.

I want to read one more press release into the record, from around the same time, 20 March, headed "Proposed WA 'conservation' law could send state's species to the point of extinction". It reads —

> **The WA Government's *Biodiversity Conservation Bill 2015*, due to be debated by state parliament this week, is a retrograde step for WA's environment and should be put on hold, WWF-Australia said today.**
>
> The proposed new laws:
>
> - Allow the Minister to authorise actions that would cause a species to become extinct;
> - Fail to provide a strong emphasis on protection and enhancement of biodiversity;
> - Severely limit transparency and independent science-based decision making with excessive Ministerial and CEO discretion;
> - Increases fines for the killing of threatened species, but at the same time undermines this action by removing prison time as an option for the most serious of offences.
>
> WWF's concerns follow from the WA Environmental Defender's Office, which found the bill in its current form should be abandoned.
>
> WWF-Australia's Species Conservation Manager for Southwest Australia Merril Halley called on the Government to put the Bill on hold, so that proper consultation could occur before the laws were changed.
>
> "New biodiversity legislation was an election commitment of the Barnett Government—a commitment that was supported in principle at the time by WWF," Ms Halley said.
>
> "While the Government's intentions appear to be good, and there are some good initiatives within the Bill, this proposal will amount to a "biodiversity conservation" law in name only. "The last thing any government would want to do is to undermine key protections for WA's precious native animals,

> landscapes and plants—many of which are found nowhere else on Earth. But if passed in its current form, that's exactly what this Bill will do.
>
> "By simply pressing the pause button and consulting with the community, the WA Government has a great opportunity to replace our state's aging environmental laws with something much better—and we're ready, willing and able to help them with that."

On the lack of consultation, I go back to what happened earlier today. On the steps of Parliament, Hon Sue Ellery and I accepted petitions on behalf of the conservation sector asking for this bill to be sent to a committee. I understand the complexities of receiving a petition on the day that a bill is being debated. It is a kind of last-minute thing, but members should be aware that there is a push to send this legislation to a committee and that the conservation sector is not happy about not being consulted. In fact, every time I have had the privilege of meeting with the department or the minister's adviser to talk about it, I have brought to their attention that it would have been much better had the bill had been proceeded in a much more open and transparent way and that the conservation sector could have felt it had a stake in it. Be that as it may, on this day we find ourselves making second reading contributions to the debate on the bill with only 10 weeks left of this Parliament to progress the legislation.

Hon Donna Faragher: Having said that, in 1992 the first lot of public consultation occurred—when I was in year 12. Seriously, there has been a great deal of public consultation at various times. I accept what you are saying about this specific bill, but there is absolutely no doubt that discussions surrounding the biodiversity bill have been ongoing for a number of years—as you have said, dating back to 1992. It's about time you acted on it, and that's what we're doing.

Hon LYNN MacLAREN: That position has been put and those two positions are out there. That is what this chamber is doing right now—debating those two positions. We can debate the two positions, but given our long history of advocacy for biodiversity conservation laws, the Greens would certainly not have progressed this bill in this way. Although we acknowledge that it has been a long road to get here, it is not the course that we would have chosen. I believe that with the input of experts in environmental law, we may have had a better bill before us—in fact, I can say that it would have been a better bill.

However, this bill is before us, and I have to wonder what has made it so difficult to get it here. It is clear that many interest groups have been involved, which has curtailed the bill's progress to this point. We do not know what interest groups they are. From my perspective, speaking up for the environment has been steadfast and longstanding, so one can only guess what other interests have curtailed it. My point is that the bill has now gone through cabinet and has come to this chamber after passing through the lower house, so it is really at the eleventh hour that we have to pass an update to the 1950s law. We want to make sure that it is the best we can do. At this point I flag that the Greens have amendments on the notice paper and that we hope the chamber will consider seriously and support those amendments to make this legislation better.

As members know, I accepted a petition on the steps today. Tomorrow, I hope to table those signatures. Those signatures will have a course to take in this Parliament. I am very proud of the system in place in the Legislative Council to examine that petition. In this circumstance, the Standing Committee on Environment and Public Affairs will examine this legislation. The petition, on behalf of the WA Forest Alliance, requests that we hold up the progress of the bill so that it can be examined carefully and improved. I have read into the record two press releases that contain the serious concerns that the Forest Alliance wants pursued in the committee. The sector, in fact, is almost unanimously of the opinion that the bill requires extensive amendment and that these amendments should be developed in consultation with science experts, the conservation sector and the broader community. Lack of consultation is not only an issue ahead of the introduction of this bill, but also a weakness of the proposed legislation. The minister will have too much power and there will be no imperative for the minister to seek scientific advice when making decisions about threatened species and communities and threatening processes. This approach is out of step with other jurisdictions in Australia. For example, the Environment Protection and Biodiversity Conservation Act 1999 provides for a threatened species scientific committee. That committee is independent and made up of eminent conservation scientists. The committee provides the Minister for Environment with advice on matters relating to listing, conservation and recovery of threatened species and ecological communities, and listing and abatement of key threatening processes. The minister can make the final listing decision, but only after receiving advice from the scientific committee. One of the amendments that I have on the supplementary notice paper is directly related to this. In the equivalent act in New South Wales, the scientific committee is the final listing authority. The scientific committee's rulings relate only to listing decisions, not to decisions relating to approvals. I would have liked something equivalent to these approaches within the WA bill. I do not know why we would not ensure that the minister is guided by expert advice, with every reason to ensure the involvement of scientists codified in this legislation.

Another glaring omission in the bill before us is the lack of provision for a statewide strategy and, necessarily, monitoring. Currently, it is inordinately difficult to track trends in biodiversity over time in WA. That is something I hope to hear from Hon Adele Farina, who I know will be making a contribution on this, because during the term of the former Labor government, some significant progress was made in the state of the environment reports on monitoring the health of biodiversity. That is something that went by the way when governments changed. We could look at codifying that in this legislation and I think there is an amendment that may do that.

Through the years, governments have attempted to do that through different approaches, such as the state of the environment report. However, that approach has been inconsistent and subject to the whim of politics. WA must catch up with the rest of Australia and put in place a mechanism to develop a statewide strategy and ensure that ongoing monitoring is undertaken. Legislation is not the only tool for doing this, of course. I am thinking here of the overarching Directions 2031 report. The minister representing the Minister for Environment is also the Minister for Planning, who would know well that there is a structure within that department in which there are overarching documents that set the tone and the direction. They go out to public consultation, get buy-in of all stakeholders and can produce quite detailed recommendations for planning. However, they are not in and of themselves legislative instruments; they are policy directions—overarching visions and strategies. That is lacking in the environmental policy area. I note that the Gallop and Carpenter governments' approach was to try to seek out overarching strategies that could be monitored and tracked. The bill provides a mechanism to put in place environmental laws but it does not point to any overarching strategy such as that. There would be great benefit in that, as we see when we look at other states' legislation. However, as I say, it does not necessarily have to be a legislative instrument as is the case in the planning system.

Under the federal EPBC act, the Minister for the Environment has to take into account any state strategy when making a decision, but because WA does not have a strategy, the unique issues impacting WA's biodiversity are not easily accessible in the federal assessment processes.

I am thinking, Mr Acting President, that I might save my other furry animal in the hope that members might want to come back after the break, which we hopefully will get. They might still be wondering what I have in my bag. It is a threatened species and it is in the south west and, as I have said, it is out of scale. Of course, if anyone else wants to bring in their favourite ringtail possum, that, too, would be welcome.

Hon Stephen Dawson: Do you want to give us a letter?

Hon LYNN MacLAREN: No, I am not telling members the letter; that would give it away.

As I said, when we are looking at what might be considered fairly detailed legislation that sets in place policies and procedures, the detail sometimes gets lost. I hope that we think about the impact of this legislation, which is hopefully that we will have these little furry animals long into the future and that our grandkids and their grandchildren can enjoy a bilby.

Sitting suspended from 6.00 to 7.30 pm

Hon LYNN MacLAREN: Just before we had our dinner break I made that point that the need for a strategy has been well-recognised. During the break I also took some time to pull up some of the most recent expert advice from scientists in Western Australia who are advocating for such a strategy. In fact, these are some of the people whom I have consulted with on the Biodiversity Conservation Bill 2015. I made the point that the strategy does not always have to be legislated for; there are other mechanisms. In fact, this particular group is calling for Australia's south west to be given world heritage status. Professor Hans Lambers, who is head of a school at the University of Western Australia, and Emeritus Professor Don Bradshaw, also at UWA, published an article in February this year on their call for the south west to be given world heritage status. Many members might have heard of the Kwongan Foundation. I want to mention it here because previously I have mentioned that the internationally recognised biodiversity hotspots include several in Western Australia. This article puts the biodiversity of the south west in context with the global picture. It states —

> Southwest Australia is one of 25 original global hotspots for wildlife and plants, and the first one identified in Australia.
>
> Since the first analysis identifying biodiversity hotspots in 2000, the list has expanded, and now 35 hotspots are recognised, two in Australia: the Southwest and the forests of east Australia.
>
> Biodiversity hotspots are defined as regions "where exceptional concentrations of endemic species are undergoing exceptional loss of habitat". As many as 44% of all species of native plants and 35% of all species in four animal groups are confined to the original 25 hotspots, which comprise only 1.4% of Earth's land surface.

> This opens the way for a conservation strategy, focusing on these hotspots in proportion to their share of the world's species at risk.

I will not read out all of the article but it goes on to refer to when Australia was part of the ancient continent Gondwana, which began to break up more than 154 million years ago. The bit that I want to put on the parliamentary record during the debate on this bill is this —

> Southwest Australia, also known as the Kwongan, is therefore an old landscape with a stable climate. It has not seen glaciers or ice for more than 200 million years. This has allowed species to evolve without the major extinctions seen elsewhere in the world.
>
> The region is about the size of England. England has about 1,500 species of vascular plants (all plants except ferns and mosses), 47 of them found nowhere else.
>
> Contrast that with Southwest Australia, which harbours an astonishing 7,239 vascular plant species, almost 80% of which are found nowhere else in the world.

That got me thinking about how I came to Australia and was really taken with its biodiversity during my year as an exchange student in Albany. I was lucky enough to meet one of the wildflower enthusiasts of the region, Spike Daniels. Spike took me into the forest and he was the first person in Albany to show me a pitcher plant, which is a carnivorous species that belongs to its own family and is not related to any other carnivorous pitcher. I still have a photo of a pitcher plant from those times and also the pollen-eating honey possum, which we have talked about before. Members might be wondering if I have a honey possum stuffed animal in my bag. It is not a honey possum. I have already shown members the termite-eating numbat, which has a sentinel behaviour that is similar to that of the African meerkat. Some members then asked if it was the woylie, which is also known as a brush-tailed bettong. They were once very abundant in the south west but starting in 2006 suffered a dramatic decline—nobody knows why—and are now listed as critically endangered.

This Parliament has considered many proposals for land use that affect the woylie and I have brought that up many times during debates about whether we should urbanise land or clear a forest. We often bring to the attention of Parliament the endangered species that are endemic in those areas, and the bettong and western ringtail possum are two of those species that we have raised. These two eminent scientists are saying that we can protect the south west forever. The articles states —

> Our main aim is to secure UNESCO World Heritage Listing for the entire Southwest Australian Biodiversity Hotspot, focusing on national parks and existing reserves, without impinging on farming, forestry and mining activities.
>
> UNESCO inscription would raise local awareness, offer better protection, and boost the tourism industry, which is worth billions to the state, with the "nature experience" one of the top drawcards for foreign visitors.

At the time of the article, the scientists said —

> We're hoping any WA minister for the environment or tourism will embrace the plan and wish to own it, as well as scientists. One thing is certain, without action soon, Australia's most important biodiversity hotspot will be gone forever.

At that time we were beginning to understand and get glimpses of the bill now before us. These were two scientists who had obviously seen over time the government failing to update its biodiversity conservation laws, and in their efforts to try to protect and preserve our biodiversity have called for world heritage status. That is another mechanism that is certainly available to us to protect our wildlife and plant diversity in those areas.

Before we had our dinner break, I talked about the significance of a conservation strategy and noted the amendments on the notice paper that might establish such a strategy through this legislation. I can assure members that there is considerable support for that, but it leads me to another key concern that I have about the legislation, which is this lack of integration between other key environmental assessment processes and this Biodiversity Conservation Bill.

Under this bill there is no enforceable requirement to take biodiversity or threatened species into account under the Environmental Protection Act 1986 or the Planning and Development Act 2005. Although the bill before us has provisions for listing threatened species and communities and to make recovery plans for them, these mechanisms do not serve to properly protect threatened species and communities if they do not have to be taken into account for decisions made under those other acts. It is up to the discretion of the decision-maker whether they choose to do so. Land clearing is a good example of this. I am flagging that I have another amendment on the notice paper to do with this very issue. Even if the bill before us is passed, there is no additional requirement to take threatened species or communities into consideration when issuing a land-clearing permit so long as the decision-maker has complied with the EP act. This seems to make no sense when considering that processes

such as land clearing that have the potential to affect threatened species and communities do not have to make any reference to the objects of the biodiversity bill. The listing of the threatened species should trigger additional safeguards under the EP act.

Integration issues do not apply only to state legislation. There are also implications on how the proposed bill would interact with the federal Environment Protection and Biodiversity Conservation Act 2000. Currently, this lack of integration between biodiversity law and environmental law in WA means that state environmental assessments need to be supplemented to meet commonwealth requirements. Further clarification is needed about whether the bill before us would change that requirement in any way. On the face of it, it would seem that the lack of a corresponding amendment to the EP act to ensure a formal process for considering threatened species would mean that this supplementation would need to continue. However, I note that in her second reading speech the Minister for Planning may have flagged a different interpretation from what I am saying. She said that the biodiversity management programs and the recovery plans provided for in the bill will provide —

> … opportunities for state management arrangements to be accredited under the commonwealth's Environment Protection and Biodiversity Conservation Act 1999, meaning that operations undertaken in keeping with such arrangements can be exempt from approval requirements under the commonwealth act.

This statement appears to foreshadow use of these new instruments as bilaterally created management arrangements under the EPBC act. I would like further clarification about the government's position on this point. This could preclude the need for commonwealth approval of actions having a significant impact on threatened species, endangered ecological communities and listed migratory species otherwise protected under the EPBC act. If this is indeed the case, I would have concerns that the removal of the commonwealth role could be a step backwards for biodiversity conservation in this state without at least addressing the need for integration between the biodiversity bill and other relevant state legislation.

I turn my attention to an aspect of the bill that has generated a great deal of concern amongst the conservation sector as well as being reported widely in the media, as quoted earlier in those statements from the media, and that is the God clause whereby the bill will allow the minister to provide approval for an action that would likely result in the extinction of a species or the destruction of a threatened ecological community. The clauses that allow for this provide the starkest example of how much discretionary power this bill puts into the hands of the minister of the day. Clearly, decisions of this magnitude should not rest in the hands of only one person. Although I support the fact that in this bill, unlike the Wildlife Conservation Act, the taking of threatened species is treated differently from the taking of other species, this benefit is all but cancelled out by the corresponding power of the minister, particularly given that the bill lacks mandatory considerations for the minister to take into account when making such a decision. In a bill that has biodiversity conservation at its heart, this is obviously problematic.

The God clause is not the only part of the bill that lacks sufficient detail about how the bill will be implemented in action. It is a consistent theme throughout the bill that much of the detail is to be contained in regulations. This trend for putting more and more into the regulations is broader than just in this bill. I have made this point recently when debating other legislation, but it would be remiss of me not to draw attention again to the difficult position that this trend puts members of Parliament in. We cannot comment on what we have not seen yet and the substance of the regulations will greatly impact on our assessment of this legislation and its implementation. An example of this is the listing of threatened species.

The Greens' position is that the listing of threatened species should be according to the International Union for Conservation of Nature guidelines. I have been told, and I have been led to believe by government representatives, that this will indeed be the case. However, because it is not written into the bill, I have to rely on the government to act in good faith and ensure that this requirement is stipulated elsewhere in an instrument that will necessarily be much more easily subject to change than if the requirement had been enshrined in this legislation. Questions around how "critical habitat" is defined also fall into this category.

The listing of critical habitat within this bill is subjective and open to ministerial discretion. Clearly, there must be provision for scientific input into decisions of this nature as well as clear definitions. We do not know whether these provisions are in place, because they are simply not contained in the bill. Resourcing is another core aspect that falls outside the legislative process but is nonetheless fundamental in determining the success or otherwise of the legislation achieving its objects. We can have the best legislation in the world, but if a government department is not adequately resourced or the resourcing is not prioritised correctly, the desired goal will not be achieved. We just know that is true.

I had a quick look at compliance and enforcement in Western Australia to get a picture of what the department is managing to achieve in this regard because one thing I mentioned earlier in my contribution to the second reading debate is the need to continually monitor the health and wellbeing of our biodiversity. That means that

sometimes we need to apply those penalties. The government has not taken the step of having jail terms as penalties, but it has dramatically increased the penalties in many cases throughout this bill. But looking at a jurisdictional analysis in Western Australia and compliance and enforcement, I want to put on the record some of the prosecutions under the Wildlife Conservation Act. In 2011–12, there were nine prosecutions under that act with 24 matters pending. A further 552 infringement notices and 435 cautions were also issued in this period. The environmental enforcement unit initiated 21 prosecutions, six of which are subject to final determinations and 15 remain before the courts. The Department of Environment and Conservation received 544 applications to clear native vegetation and made 492 decisions in 2011–12. Overall, 18 413 hectares were approved to be cleared and 39 hectares were refused. In Simpson v Department of Environment and Conservation (WA) a man was fined $2 000 for taking various reptiles contrary to section 16A(1) of the Wildlife Conservation Act. These reptiles included the pygmy python, blue-tongue lizard, death adder and Stimson's python. A subsequent appeal to the Western Australian Supreme Court was rejected with no reasonable prospect of succeeding under section 9(2) of the Criminal Appeals Act 2004.

In terms of examining the enforceability of provisions set out in the Wildlife Conservation Act, the number of infringement notices compared with subsequent litigation suggests that a majority of infringements are simply paid by the offenders. When the report was written, the Western Australian Department of Environment and Conservation was statutorily bound when issuing modified penalty notices to first-time offenders of a penalty no greater than 10 per cent of the maximum possible penalty. We also know that all environmental offences in Western Australia are dealt with in the local courts, which do not publish their judgements. Therefore, reasons for decisions appear online only when there is an appeal to a higher court, as happened in the Simpson case. The difficulty of prosecution remains, even with stiffer penalties. It would be good to hear the minister address how the government hopes to enforce the act if this Biodiversity Conservation Bill is passed.

Resourcing is of particular relevance to us in WA where, since 2013, there have been overall staff cuts of nearly 20 per cent from the Department of Parks and Wildlife. Of that 20 per cent, the science and conservation division experienced the harshest cuts of all. At the same time, the Department of Parks and Wildlife has budgeted an extra $3.8 million for building and maintaining recreation sites, campgrounds and trails. In particular, I find it extremely ironic that the government is committing $600 000 to another campground at Dryandra Woodland, which is home to the numbat. Here is a soft toy numbat. It is home to the numbat.

Hon Alanna Clohesy: That numbat?

Hon LYNN MacLAREN: This numbat can go there.

Several members interjected.

The DEPUTY PRESIDENT: Order, members!

Hon LYNN MacLAREN: When in December the listing for numbats changed from vulnerable to endangered —

Several members interjected.

Hon LYNN MacLAREN: I do have other ones; members just have to wait.

Several members interjected.

The DEPUTY PRESIDENT: Order, members! There is nothing like a furry stuffed animal to get everyone excited! Hon Lynn MacLaren.

Hon LYNN MacLAREN: The point I was making was that in December, the listing for the numbat changed from vulnerable to endangered. The numbats are among a dozen mammals —

Several members interjected.

The DEPUTY PRESIDENT: Order, members! Hon Lynn MacLaren has the call and should be heard in silence.

Hon LYNN MacLAREN: Numbats are among a dozen mammals that are at extreme risk. They live in the areas in which the government is spending a lot of money on tourist facilities but is not putting enough effort into conservation to protect their habitat.

The DEPUTY PRESIDENT: Order, members! There are too many audible private conversations being held in the chamber, which is making it very well difficult for me to hear Hon Lynn MacLaren. I am sure Hansard is also struggling.

Hon LYNN MacLAREN: I want to look at the habitats within the international hotspots that the federal government recognises. Members may realise that they have been to some of the biodiversity hotspots that have been internationally recognised. In doing so, I will introduce the habitat in which the next furry animal lives. Members may choose to interject at that point in time!

The Fitzgerald River, that beautiful piece of coastal property along the south west coast of Ravensthorpe, is one hotspot. Other hotspots include the central and eastern Avon wheatbelt, Mt Lesueur–Eneabba, the sand plains from Geraldton to Shark Bay, the Carnarvon Basin, Hammersley–Pilbara and the north Kimberley of Western Australia. Members should not be surprised by any of those. The hotspot to which I want to pay particular attention is Busselton–Augusta. Madam Deputy President, you may know the area well having come from that region. The heathlands and scrublands of the coastal plains support hundreds of different plants per square kilometre—many of them endemic and endangered—and a wide range of native invertebrates. In the south, forests and woodlands with high rainfall are habitat for another highly diverse range of plants and animals. Overgrazing pressure, changed fire regimes and habitat fragmentation have the potential to affect the landscapes and threaten the viability of species such as the Carnaby's black-cockatoo. Do members know what this one is?

Several members interjected.

Hon LYNN MacLAREN: Yes, this is also known as a chuditch. The chuditch or western quoll lives in that area and is recognised as being at risk. A brush-tail phascogale soft toy would be lovely. If anyone is interested, I would like to put my order in for Christmas.

Hon Col Holt: You see them run around the south west quite often.

Hon LYNN MacLAREN: You do? That is very good.

Hon Liz Behjat: Are they all made in China?

Hon LYNN MacLAREN: Does Hon Liz Behjat agree that the chuditch soft toy is out of scale when compared with the bilby soft toy? They should be the other way around. This is a gigantic chuditch and a baby bilby. These are just a few of the Western Australian mammals that we hope to protect through this biodiversity bill. Let us not forget what it is we are trying to do today.

The area that the chuditch calls home has many cave systems with significant aquatic invertebrates found only in Western Australia. Changes in groundwater movement can potentially cause significant stress to the threatened cave communities. I wanted to bring that to members' attention because it is relevant and timely. It is really important that we keep in mind that we are not talking just about pieces of paper or public servants who are charged with approving clearing permits or developers who want to subdivide. We are talking about this at this time, and it is important that we keep in mind that this has a real impact on our wildlife.

Even with the ambiguity about what will be contained in the legislation and the resourcing aside, Australian environmental laws often provide governments a toolbox of regulatory options without any guarantees that the tools will actually be used. Australian biodiversity conservation laws are no different, as the Australian Network of Environmental Defender's Offenders Offices stipulated in its report on its assessment of the adequacy of threatened species and planning laws. The report reads in part —

> While the laws in some jurisdiction look good on paper, they are not effectively implemented. There are a number of important legislative tools available for managing and protecting threatened species that are simply not used. For example, interim conservation orders and management plans are not utilised in Victoria, no native plants have been declared prescribed species on private land in South Australia, no critical habitats have been listed and no interim protection orders have been declared in Tasmania, and no essential habitat declarations have been made in the Northern Territory.
>
> Key provisions are often discretionary. Critical tools such as recovery plans and threat abatement plans are not mandatory. Time frames for action and performance indicators are largely absent.

Madam Deputy President, I intend to conclude my second reading contribution very soon. In this context, however, the lack of agency-forcing requirements in the bill is of concern. Analysis by the Environmental Defender's Office in WA suggests that consideration be given to stronger approaches that have been adopted in some Australian and overseas biodiversity conservation legislations, including duties on public officers to further the objects of the act; monitor the conservation status of biodiversity components—for example, threatened species—and report annually to Parliament; list threatened species and ecological communities after receiving advice from expert scientific committees; and periodically review such lists to ensure that they are up to date. Although the Biodiversity Conservation Bill 2015 represents a modernising of legislation relating to biodiversity, a number of aspects raise significant concerns and would even go so far as to be considered what I would call fatal flaws. The lack of provisions to ensure scientific input into listing decisions, the God clause, and the lack of integration with other environmental laws, all fall into this category.

I have suggested some amendments to deal with the most critical issues that I have raised in my contribution to the second reading debate. Should those amendments be successful, I would think that the bill before us will be a significant improvement on our current biodiversity protections. It is an opportunity that we should not forgo,

if we can update our biodiversity laws. However, there are, as I say, some fatal flaws. The Greens will support the bill if the amendments that are before us are successful. We believe there are adequate arguments to support those proposed amendments. It is imperative that we put legislation through that will be workable, will not give extraordinary powers to the minister, will involve the scientific community and will ensure that our precious wildlife and our tremendously valuable biodiversity is protected long into the future. What we have before us, in my view, is better than the current Wildlife Conservation Act. However, there are serious flaws in it and we would like to see those flaws addressed before giving it our support.

HON RICK MAZZA (Agricultural) [8.03 pm]: I rise to make a brief contribution to the second reading debate on the Biodiversity Conservation Bill 2015. This bill repeals and replaces two acts: the Wildlife Conservation Act 1950 and the Sandalwood Act 1929. However, in saying that, Western Australia has some very entrenched biodiversity and conservation legislation in place. We do a good job in Western Australia in ensuring our environment is protected. I do apologise—I do not have any stuffed animals from China to display tonight. In fact, I am not talking about terrestrial animals, I am more into the marine environment, but I do have a great white shark that will come through those doors in another 10 minutes or so as a prop!

Hon Alanna Clohesy: Shoot it!

Hon RICK MAZZA: Yes, I might have to do that.

One of my major concerns, and one that has been raised with me, is the lack of meaningful consultation on this bill. This bill has been floating around since the mid-1990s. Hon Lynn MacLaren alerted us to the fact it might even have been since the 1980s, but there has not been any meaningful consultation with stakeholders for about 10 years. Some of the issues that stakeholders have expressed to me are concerns about the lack of defence when inadvertently catching a protected species. If mum, dad and the kids are out in a tinnie trying to catch a few whiting or herring and they inadvertently catch a protected short-nosed sea snake and there is an overzealous enforcement officer, they can come under substantial penalties for catching that sea snake. It is not a defence for them that it was inadvertently caught. The Western Australian Fishing Industry Council has expressed great concerns to me that during general commercial fishing practices, it is not uncommon for commercial fishermen to catch something that is protected and which they do not intend to catch but which happens to get caught up in nets or whatever the case may be. Under this bill there is no defence for them, which is a major worry. It is so much of a worry, in fact, that a letter to the Minister for Environment from WAFIC states —

> If the legislation is passed into law as proposed a number of operators and commercial fisheries will be forced to seriously assess potential liability and risk of prosecution given the inability to guarantee zero mortality or disturbance of fauna due to current fishing practises. A number of fishing operators may choose to not fish given this exposure. In addition a number of recreational fishers will be placed at risk of huge financial penalties.

This bill lacks stakeholder consultation. For some reason it has been presented to Parliament without that consultation. It seems it is being forced through without regard to a number of issues raised by stakeholders such as WAFIC. I have those concerns also.

The Minister for Planning, who is acting for the Minister for Environment, has a number of amendments that will hopefully address some of those issues raised, but a legal opinion provided to WAFIC suggests that they do not. When there is a $2.5 million fine for catching protected wildlife, whether that be marine or terrestrial, and there is no defence for catching that particular species of animal, there could be drastic unintended consequences for the commercial fishing industry and, as I mentioned earlier, significant penalties could be imposed on recreational fishers. There needs to be more consultation on this and more thought put into it. I feel that this has been forced through Parliament without that real consultation. The Shooters, Fishers and Farmers Party will not support this legislation in its current form, and I am hopeful that some amendments will take place as we go along to ensure that those stakeholders are protected.

HON ADELE FARINA (South West) [8.08 pm]: I would like to put on the record that I am the lead speaker for the opposition on the Biodiversity Conservation Bill 2015 and I am pleased to be given the opportunity to speak on it. When a bill has been waited for as long as this bill has been, one would expect it to be greeted with strong community support. Sadly, that is not the case for this bill and there are a number of reasons for that, all of which I will address during the course of my presentation. The bill repeals and replaces two outdated and inadequate acts: the Wildlife Conservation Act 1950 and the Sandalwood Act 1929. The dates of the two acts give members a very clear indication of just how outdated they are. My colleague the shadow Minister for Environment, Chris Tallentire, tells me that there are about 13 000 different plant species in Western Australia and about 3 061 plants species are listed as priority plants on the Department of Parks and Wildlife website. That is more than 23 per cent of the plant species. In addition, some 190 animal species are listed as priority fauna. He rightly argues that these figures alone illustrate the need for biodiversity conservation legislation, and I have to say I agree with him. The figures paint a pretty

concerning picture of failure and clearly illustrate the need for stronger biodiversity conservation legislation in this state. I believe that few in the community would argue that biodiversity legislation is not needed and I think there is widespread agreement on that point in the community. Despite the wide support for biodiversity conservation legislation, there is not strong support for the bill in its current form; in fact, there is strong opposition to the bill in some quarters. As with most pieces of legislation, there is always a need to strike a balance between competing interests. With this bill there are those interested parties who want to perform activities on land that may put in jeopardy the habitat of some species or may actually put the species itself in jeopardy. Those views need to be taken into account, as many of these activities are usually of benefit to the community in some way or another be it through agriculture, mining or urban development. However, this legislation should first and foremost be about conserving the biodiversity of our state, and that should be the stated objective and policy of the bill. There is a strong view in the community that the bill lacks the legislative might needed to protect our flora and fauna and that it is fatally flawed, and I will go through those issues one by one. Our role in this place is to make laws for the good governance of society. Our democracy is based on the principle of government of the people by the people for the people. There is an expectation that the community will have a say and help shape the laws that govern our society. Good government is about understanding this and consulting widely in the preparation of legislation, ensuring all views are considered and that everyone who wishes to has an opportunity to put their views. In her second reading speech the minister stated the following —

> This bill is the result of an extensive consultation process that started in 1992 with the release of a green paper for public comment. This was followed in 2002 with a consultation paper that attracted widespread community support. In 2004, comments were sought from 50 government agencies. These were incorporated into draft bills prepared in 2005 that have provided the basis for the current bill.

Further, the minister went on to say —

> The bill I present today is the result of many years of hard work and effort, building on previous work undertaken by both sides of Parliament, as well as extensive community and stakeholder consultation.

These statements by the minister paint a very pretty picture of consultation, but gloss over significant detail that demands exposure. As the minister indicated, the process dates back to 1992, and more detailed community consultation occurred in 2002 when the environment minister under the Gallop government, Dr Judy Edwards, undertook to consult with stakeholders to produce the biodiversity bill. The consultation paper prepared in 2002 referred to in the minister's second reading speech received widespread community support. It was prepared under the Labor government and was very different from the bill currently before us. For the minister to suggest that widespread community support for the 2002 consultation paper translates to widespread community support for the bill before us is disingenuous. The bill before us is a very, very different instrument and it is different in its content from the 2002 consultation paper. The 2005 draft bill referred to in the minister's second reading speech, which the minister says forms the basis of the current bill before us, was prepared, again, under a Labor government and was very, very different from the bill before us today. To suggest that the 2005 draft bills form the basis of the bill before us today is at best a stretch. About the only thing they have in common is, maybe, the title, and I am not even 100 per cent sure of that, because I have not checked what the title was for the 2005 draft bill. The truth is that the 2002 consultation paper and the 2005 draft bill are very different from the bill before us, and the widespread community support they received does not and cannot translate to support of the bill before us today. The comments on the 2002 consultation paper called for the state to have a biodiversity commission, a biodiversity conservation strategy and biodiversity regional planning. None of these have been incorporated into the Biodiversity Conservation Bill 2015.

The Minister for Environment is on the public record as saying that the last time there was public comment on the bill was in 2007–08. This, again, was at the time of the former Labor government and was in fact a comment on the biodiversity strategy and not a biodiversity conservation bill, which is an entirely different instrument. The time of the 2005 draft bill was the last time the people of Western Australia had an opportunity to comment on a proposed biodiversity conservation bill and that was very different from the bill before us. The 2005 draft bill included regional conservation plans, scientific advisory panels and a science hierarchy that would culminate in a biodiversity commission, all of which are absent from the bill before us today. For the minister to suggest that there has been widespread community consultation on the bill before us based solely on the consultation that took place in 2002 and 2005 on very different draft bills is a distortion of the truth. I feel for the Minister for Planning as she was given a draft second reading speech that she just had to read out. I feel for her and the position she has been put in, but under our system of representative democracy she needs to claim and be accountable for that speech now that she has made it. I note that it puts the minister in a very difficult position.

In her second reading speech the minister went on to say —

> Even though some of the public consultation occurred several years ago, the policy issues that the bill addresses remain relevant.

On this point I agree with the minister. The policy issues remain relevant; however, the minister failed to add that the implementation measures to address these policy issues are very different and in some cases the issues are not addressed at all in this bill. In her second reading speech the minister also said that the bill provides the regulation and protections necessary to meet community objectives and expectations about the conservation of this state's biodiversity. This is an extraordinary misrepresentation of the truth of the matter. Significant community and conservation groups and individuals have expressed concerns with the bill and its failure to meet community objectives and expectations. The truth is that the draft bill is very different from the 2005 draft bill that received widespread community support and falls well short of community expectations. The truth is that the Minister for Environment did not consult on the bill before introducing it into Parliament. The truth is that the Minister for Environment spun a convenient web of deceit in the second reading speech and got tangled up in that web.

Hon Donna Faragher: That is going little bit over the top!

Hon ADELE FARINA: The minister is entitled to her view and I am entitled to mine.

I will continue. This is a fact that the Minister for Environment finally conceded in the other place on 23 March 2016 when he said —

> I made it very clear to all stakeholders that for this bill to have any chance to get into this Parliament, I would need to be working on the drafting and that I would not be consulting until I got it into this place …

The Minister for Environment stated very, very clearly that he had no intention of consulting with stakeholders on this bill. He just made a decision that if it was going to happen at all, it was going to happen on his terms and he knew better than everybody else and he did not need to consult with anyone else. What an extraordinary statement for a minister to make in a democracy. He said, "I have no intention of consulting —

Several members interjected.

The ACTING PRESIDENT (Hon Liz Behjat): Order!

Hon ADELE FARINA: He said, "I have got no intention of consulting with you, regardless of your experience or expertise in this area. You will not have an opportunity to be involved in the legislative process under a Liberal government."

Hon Michael Mischin: Are you quoting?

Hon ADELE FARINA: I am quoting myself; I am giving an opinion.

Hon Michael Mischin: You are quoting yourself?

Hon ADELE FARINA: I am giving an opinion. This is what the minister is effectively communicating to —

Several members interjected.

The ACTING PRESIDENT: Order! One at a time, please. Hon Adele Farina has the call.

Hon ADELE FARINA: In the statement that the minister made in which he said he had no intention to consult until he had already introduced the bill into Parliament, which is exactly what he did —

Hon Alyssa Hayden interjected.

Hon ADELE FARINA: Those were his words. That was a clear message to the community that he knew better than everyone else and did not need to consult with anyone else. Under the Liberal government the community is not entitled to be part of the legislative process because the minister knows better; he knows what is best, and he will not be held to account. In his words, we will see the bill when it is tabled in Parliament. What extraordinary arrogance from the Minister for Environment.

Even by the standards of the arrogance displayed by this government, the minister's arrogance in this instance is breathtaking. This is a man who treats the public with contempt and has no regard for good government and the right of people living in a democracy to have an opportunity to participate in the lawmaking process. He has little regard for his parliamentary colleague the Minister for Planning when he asks her to spin his fanciful illusion of consultation after declaring in the other place that he never had any intention of consulting with or listening to stakeholders or the people who elected him to represent them.

If the people of Western Australia needed a reason not to vote for the re-election of the Barnett government at the next state election—they have been provided with many reasons—the arrogance of the

Minister for Environment and his handling of this important bill provide a good illustration of why this government should not be returned. The Liberal government has no regard for the people who elected it, the people whom it is duty-bound to represent. The Minister for Environment believes he knows better than people with more experience and expertise in biodiversity. The only contact the minister had with stakeholders on this bill—this is on his own admission—was a briefing held after he had brought the bill into Parliament. That is not consultation. The fact is that the bill falls very short of community expectations. One has to ask why a government that is allegedly committed to introducing a biodiversity conservation bill into Parliament would do so without consulting the very stakeholders that will be impacted by the bill and ensuring that it has them on board, supporting the bill, before it is introduced into Parliament.

This government talks a lot about delivering world's best legislation and about transparency, but that is all it is—talk. There has been no government in the history of Western Australia less transparent than the current government. Transparency means being held accountable, and that is something this government tries to avoid at all costs.

Several members interjected.

The ACTING PRESIDENT: Order! You may not like what somebody is saying, but they have a right to say it and to be heard in silence in deference to Hansard being able to take down those words. It is the first day back, there are 10 sitting weeks to go, and Hon Adele Farina has the call.

Hon ADELE FARINA: I would like to turn now to some of the views expressed by various community groups that are very concerned about the bill that is before us. In a media release dated 30 June 2016, the Conservation Council of Western Australia expressed its concerns with the bill. It reads —

> A long list of environmental experts, conservation organisations and scientists has called on the Minster and Parliament not to pass this legislation in its current form. These organisations include:
>
> - Conservation Council of Western Australia
> - The Wilderness Society
> - World Wildlife Fund (WWF)
> - The Environmental Defenders Office
> - WA Forest Alliance
> - The Llewin Group of Scientists

They argue the bill is fundamentally flawed. Piers Verstegen, director of the Conservation Council of Western Australia, is quoted as saying —

> "Rather than preventing the extinction of wildlife, Minister Jacob's legislation creates for a single Minister to approve the extinction of an entire species. With no independent scientific body or agency to oversee wildlife protection, Minister Jacob's laws would place the future of our wildlife in the hands of a Minister with no accountability.

The media release concludes —

Hon Helen Morton interjected.

Hon ADELE FARINA: Perhaps if the member's government had consulted, she would not have to listen to this now. The reality is —

Several members interjected.

The ACTING PRESIDENT: Order! I am looking at the notice paper and it is the Biodiversity Conservation Bill 2015 that is up for discussion at the moment. I do not want to hear any references to other matters. Hon Adele Farina has the call.

Hon ADELE FARINA: The media release concluded that critical amendments were required before the bill could be deemed acceptable, and the organisations urged the government and members of Parliament in the upper house to consider these amendments.

The Wilderness Society and Sea Shepherd, in a joint media release dated 30 June 2016, also expressed concerns about the bill. In fact, they condemned the bill and argued that it is critically flawed. It reads, in part —

> Merril Halley, Species Conservation Manager from WF–Australia, said: "While there are some good initiatives within the bill, this proposal will really only amount to a 'biodiversity conservation' law in name only. The last thing any government would want to do is to undermine key protections for WA's

> precious native animals, landscapes and plants—many of which are found nowhere else on Earth. But if passed in its current form, that's exactly what this Bill will do."

Several members interjected.

The ACTING PRESIDENT: Order! There will be ample opportunity for other members to make contributions to this second reading debate. I ask, again, with respect to Hansard, that members try to make those remarks at the proper time.

Hon ADELE FARINA: The media release continues —

> Director of Sea Shepherd Australia, Jeff Hansen, said: "We are highly concerned that fish aren't considered as biodiversity in this bill. It draws a line in the sand between endangered species on land compared with in the sea. The oceans are humanity's life support system, and a healthy ocean is one that is rich in biodiversity, this move does not even consider apex fish species like great white sharks and is disrespectful of future generations that rely on healthy, bio-diverse oceans".

Hon Donna Faragher interjected.

Hon ADELE FARINA: That was Jeff Hansen and it was taken from a joint media release with the Wilderness Society dated 30 June 2016.

Hon Donna Faragher interjected.

Hon ADELE FARINA: Absolutely.

The Environmental Defender's Office Western Australia released a white paper on the bill, comparing the bill with similar legislation in other jurisdictions. The paper is titled "Western Australia's Biodiversity Conservation Bill 2015: Review & Recommendations", and is dated February 2016. The paper concludes that although the bill represents a step forward in modernising Western Australia's biodiversity laws, it represents two or more giant steps back in terms of bringing WA's biodiversity laws into conformity with legislation in other Australian states and territories, or best practice overseas. The paper also argues that in some respects the bill represents a significant step back from the provisions of the existing Wildlife Conservation Act 1950, including that the bill creates broad exemptions from its application and gives the minister unfettered discretion to establish even broader exemptions than those expressly created in the proposed legislation. It also argues that unlike the current Wildlife Conservation Act, the bill would impose duties to restrict from the public the creation or flow of information relating to implementation of the legislation. The third point was that the bill permits short-term declines in species or ecological communities to be considered appropriate to achieving the objects of the legislation. Lastly, the bill permits the minister to allow native species and ecological communities to be taken to the point of extinction or collapse. The paper states that fundamental flaws in the bill make its promise of modernising biodiversity legislation in the state and implementing best practices illusory at best.

The paper notes that the bill represents a business-as-usual approach and a status quo for the Minister for Environment and the Department of Parks and Wildlife. Specifically, the department currently administers a number of non-statutory programs and instruments aimed at biodiversity conservation, including conservation covenants, threatened species and ecological communities recovery, and using International Union for the Conservation of Nature guidelines to list threatened species. The paper acknowledges that the bill proposes to codify and mandate the underpinning concepts and some of the processes around these programs and strategies, which, it states, is a positive step. The paper also acknowledges that the bill provides a process for establishing biodiversity conservation programs, voluntary cooperative agreements, habitat conservation notices and listing of critical habitat and environmental pests.

The paper expresses a view that the bill represents a lost opportunity to create a comprehensive and progressive biodiversity law that consolidates and modernises relevant provisions and functions from other acts to advance biodiversity conservation, especially the inclusion of the Conservation and Land Management Act 1984, the native clearing provisions under part 5 of the Environmental Protection Act 1986, as well as the conservation elements of the Aquatic Resources Management Bill 2015.

The paper identifies a number of omissions from the bill. These include, first, provisions around planning for biodiversity conservation at the state and bioregional scales, particularly mandating for a statewide strategy such as is found under other jurisdictional statutes, and providing cooperative bioregional plans; second, inclusion of protection provisions and recognition of species values, such as significant wetlands and areas of biodiversity richness; third, specific recognition and protection of lower risk categories of species and threatened ecological communities, for example, the IUCN near-threatened, least concerned, data deficient and not evaluated categories; and, last, periodic evaluation and reporting on the state and trends of Western Australia's biodiversity pressures and effectiveness of management interventions. Our state has had a really spotted history and reputation in delivering accurate, fulsome and regular audits of biodiversity, which creates all sorts of problems

for those trying to track biodiversity. In fact, my colleague Chris Tallentire is of the view that the last time a very full and effective audit was undertaken and made accessible to the public was in 2002. That is an absolute disgrace, and the fact that that sort of deficiency is not picked up in this bill is also a disgrace.

The paper goes on to acknowledge the attempt in the bill to mandate several conservation strategies. However, it argues that there are several major shortcomings. For the most part, ministerial and Department of Parks and Wildlife chief executive officer decisions are highly discretionary and lack meaningful public and parliamentary scrutiny. The bill provides no firm obligation for the listing of threatened species, ecological communities and key threatening processes, or making plans, such as can be found in other Australian and overseas statutes. The paper states that a significant omission is the lack of an obligation to consider expert opinion and establish a scientific advisory committee and/or similar expert committee to assist in the implementation of the proposed act. The paper further states that another glaring weakness in the bill is the general lack of public involvement in the implementation of the proposed act and scrutiny by the public and parliamentary processes. Third parties may nominate listings of threatened species and ecological communities, but cannot do so for critical habitats, key threatening processes and environmental pests. Importantly, there is no obligation on the minister to make public reasons for listings or advice received, or provide conservation advice that can be used in recovery management plans at the time of listing. The paper is also critical of the limited consultation with affected parties afforded to the minister and the CEO in making decisions. These are all significant omissions and concerns that are raised in this paper. They are widely supported by large sections of the community and various community groups, and they are concerns that are also shared by the opposition.

In relation to sandalwood, the paper states that the provisions of the bill do not meet international or national best practice, or standards for management of a biological resource or its sustainable use, and omits the necessary principles and activities to ensure the sustainable use of sandalwood. There is a lack of scrutiny and criteria for setting harvest quotas, lack of periodic evaluation of the biological resource to determine its state and sustainable harvest rates, failure to provide for the establishment of a management plan, and a failure to provide for public consultation about periodic reviews of the management plan and harvest quotas.

The paper concludes that the bill should be opposed in its current form unless significant changes are agreed by the government, and goes on to identify a long list of amendments that are needed. These include: first, legislative objects explicit and specific about promoting biodiversity conservation, fair and equitable sharing of benefits, and containing an overarching duty for the minister and officials to promote and advance biodiversity conservation; second, a mandate framework to establish and periodically report on the trends in the state, the condition of biodiversity pressures and the effectiveness of management interventions; third, provisions to establish a statewide biodiversity strategy with periodic reviews; fourth, provisions to establish advisory committees; fifth, providing greater access to public interests and ensuring relevant information is publicly available; sixth, increasing scrutiny of decisions and processes by the public and Parliament, including the establishment of an independent advisory committee to oversee technical functions; seventh, adopting all IUCN categories and assessment guidelines in criteria for listing in full; eighth, provisions for abatement plans for key threatening processes; ninth, ensuring the provision of publicly available conservation advice listing or delisting a species or ecological community that, at the minimum, contains reasons for listing or delisting and functions as an immediate interim recovery plan guiding actions and priorities while a final recovery plan is being developed; tenth, ensuring adequate time lines for listing and delisting proposals, program reviews and public input; and, last, provisions that will ensure sustainability and conservation of sandalwood, including establishing an adequate ecological evaluation program to determine states and sustainable harvest rates, making a management plan, obtaining independent scientific expertise and public consultation before setting harvest quotas and outlining suitable criteria for decision-making, public notification of harvest quotas that provide justification and ability for third-party appeal, and periodic reviews that include public and scientific involvement and scrutiny. This is an extensive list of amendments that are needed before this bill meets community expectations, and definitely before the Environmental Defender's Office and those conservation groups will deem this bill to be acceptable and actually meet biodiversity conservation standards.

Whether or not one agrees with all the proposed amendments, it is clear to see the problems that arise when ministers do not consult stakeholders in preparing bills. It is also clear that the bill does not meet community expectations, contrary to statements made by the minister in the second reading speech. There is community support for biodiversity conservation legislation. That point is beyond doubt, but the bill does not meet those community expectations. The Leeuwin Group, which is a group of eminent research scientists, has also commented on the Biodiversity Conservation Bill 2015. In a media release dated 1 July 2016, the Leeuwin Group called for consultation on the bill and argued that the bill would not be able to protect Western Australia's unique biodiversity without significant amendment. Emeritus Professor John Bailey is reported as saying that although new biodiversity legislation is vital for the conservation of the state's animal and plant life, the bill is not up to the task. He was very clear, very blunt and straight to the point: the bill is not up to the task. The media release states —

> "The lack of a reporting framework for trends in biodiversity and the effectiveness of management remains as a barrier for science-based management to occur" Prof Bailey said.

He also stated —

> … the provision in the Bill that allows the Minister to approve "taking" a threatened species even if it becomes extinct or to allow a threatened ecological community to be destroyed still must be removed.

He said those provisions must go all together. The media release continues —

> … "it is essential that these endangered elements of the State's biodiversity have the highest level of protection".

That is not afforded under the bill. The media release continues —

> The Leeuwin Group believes that protection of the State's unique biodiversity must be underpinned by good science and equally good legislation.

I cannot imagine anyone in the community would disagree with that statement. Surely we want our biodiversity decisions to be based on good science and good legislation. The media release further states —

> There is no scientific case to privilege fisheries legislation over biodiversity legislation. Prof Bailey said, "the Biodiversity Conservation Bill needs to be amended to prevail over present and proposed fisheries legislation".

I would be interested to hear the minister's comments on that. In March 2016, the Leeuwin Group released a paper titled, "Biodiversity Conservation in Western Australia: A Critical Issues Paper prepared in response to the *Biodiversity Conservation Bill 2015*". The paper recommends 16 amendments to the bill in order for the bill to meet the community's expectations on biodiversity conservation. Had the government undertaken reasonable consultation on the bill, it would not be necessary for me to detail the concerns of the Leeuwin Group, but as this is likely to be its only opportunity to be heard I will read in abbreviated form the amendments comprised in the Leeuwin Group's 16 recommendations. The first is that the scope of prosecutions be increased to clearly include government entities. Recommendation 2 is that the objects of the bill be restricted to conserve and protect biodiversity and biodiversity components in the state and that detailed guidelines be prepared to interpret the objects making it clear that to conserve and protect biodiversity includes the restoration of threatened species and ecological communities as well as preventing more common species and communities from becoming threatened. The Leeuwin Group also recommends two further objects: to prepare, promote and regularly report on the effectiveness of a biodiversity conservation strategy—one would think that that is a no-brainer because we want to know that it is working—and to ensure the progressive undertaking of comprehensive biodiversity surveys across the terrestrial and marine environments of the state. They are two further objects that need to be added to the bill in the view of the Leeuwin Group. Recommendation 3 is that clauses 3 and 4 of the bill be amended so that the principles of ecologically sustainable development should be complied with, to reword principle (a) to limit considerations to the environment, and to provide for detailed statutory guidance to be prepared and included in the guidelines mandated under the act as a matter of urgency for all principles and especially principle (b), the precautionary principle. Recommendation 4 is that significant decisions made under the proposed Biodiversity Conservation Act be accompanied by a reason-for-decision statement to be publicly accessible. We require all sorts of decisions in government to be made publicly available, to be written down and for reasons to be provided, but in the modernising of this bill it did not rate a mention. The group also recommends that the use of offsets be prohibited other than as a measure of last resort and not in the case of endangered or critically endangered species or equivalent ecological communities. Recommendation 5 is that the relationship between the new Biodiversity Conservation Act, the Conservation and Land Management Act and the Environmental Protection Act be explicitly provided for under all three acts, and it calls for the objects of the latter two acts to be expanded to reflect and be consistent with the objects of the Biodiversity Conservation Act, as amended. Recommendation 6 is that the objects of the proposed act be supported by a scheme to enhance the availability of existing and the production of further biodiversity and environmental monitoring data and for this to be made publicly accessible. Recommendation 7 is that the bill be amended to restrict the extent of ministerial discretion to only essential circumstances. Recommendation 8 is that the definition of "take" be expanded to include indirect and incidental taking and thereby habitat protection. Recommendation 9 is that civil offences be created under the bill. Recommendation 10 is that all International Union for Conservation of Nature and Natural Resources red list categories be included in the bill and that all higher-level taxa be assigned to one of these categories. Recommendation 11 is the establishment of a statutory ministerial advisory committee—a threatened species scientific committee—that is responsible for evaluating the status of both species and ecological communities and making consistent recommendations concerning the listing of both to the minister. The recommendation of the committee should be publicly available once the minister has made a decision as an attachment to the reasons for the decision, which forms recommendation 5. Recommendation 12 is that clauses

42 and 47 of the bill should be removed. Recommendation 13 is that in the event critical habitat is lost or degraded, provision for restoration with full cost recovery should be included in the bill. Recommendation 14 is that section 12 of the bill be amended to ensure that the proposed Biodiversity Conservation Act prevail over present and future fisheries legislation for not only environmental pests, but also threatened species and threatened ecological communities. Recommendation 15 aims to amend three clauses of the bill. First, that clause 43 of the bill be amended to stipulate a reasonable time frame for reporting and that the reporting be in writing. It recommends that clause 50 of the bill be amended to require the minister to issue a notice to an owner that a threatened species or ecological community is present on their land. At the moment it is discretionary. Clause 132 in the bill before us allows for the Ministers for Agriculture and Food and Fisheries to, in effect, veto a declaration of environmental pests. The Leeuwin Group argues that this needs to be removed together with other loopholes associated with those provisions. Last in its list of recommendations is clause 83, which allows for the chief executive officer to decide not to prepare a recovery plan if he thinks it is too expensive. Understandably, the Leeuwin Group does not support this and is of the view that all recovery plans should bind the Crown, which is not a requirement under the bill. The group goes on to argue that clauses 83 and 103 with regard to the Crown are insufficient and need to be strengthened to require public authorities to at least perform their functions so as not to derogate from the objects of the act or individual programs and plans.

Again, the list of recommendations that has been made by the Leeuwin Group has a lot of merit and has widespread support. The group has not even been listened to by government because government did not bother to consult with it. These are eminent research scientists in the field of biodiversity and their views have just been ignored because this government chose not to consult. I know I have not done the group's paper justice by simply reading out those recommendations, but at least I have put them on the record in this place. I look forward to the minister providing an explanation of why all those recommendations and proposed amendments have not been included in the bill.

I refer to part 3 of the bill, titled "Threatened species and threatened ecological communities". Clause 40 provides for the minister to authorise a person, which includes a public authority, to take or disturb a threatened species. Clause 41 provides for the minister to impose conditions on that authorisation. Clause 42 provides that if the minister is of the view that the proposed taking or disturbance could be expected to result in the threatened species becoming eligible for listing as an extinct species in the near future, the minister must obtain approval from the Governor. The Minister for Environment argues that this is a very high bar and very transparent and includes a sufficient level of accountability. In my view, it does not. All this does is merely require the minister to take the matter to cabinet for cabinet approval. I cannot imagine any circumstance in which members of cabinet would not endorse a proposal presented by the Minister for Environment to cause a species to be listed as an extinct species. I think they would just accept that if the Minister for Environment was of the view that it was okay and whatever they wanted done in their portfolios was able to be facilitated as a result of it, I cannot see them raising any objection. I do not consider that to be a high level of accountability. Once cabinet has approved the proposal, the Governor's approval is automatic. The Governor in Executive Council simply approves whatever the cabinet has recommended be approved.

In making this decision, there is no requirement under the bill for the minister to obtain expert scientific advice. In the event that the minister gets expert advice, there is no requirement on the minister to accept the advice if it is contrary to the minister's proposed action. There is no requirement on the minister to make the expert advice public. There is no requirement on the minister to give reasons for his decision and to make this public. There is no requirement on the minister to make public his intention to give an authorisation that is likely to cause a species or an ecological community to become extinct. There is no requirement for the minister to seek public comment and consider submissions received before making such an authorisation. Indeed, all this takes place in secret. The community will have no idea that this is being considered or actioned by the minister until after the fact. There is no requirement for the minister to refer such an authorisation to the EPA for assessment before making such an authorisation and getting an independent viewpoint on it. It all happens shrouded in secrecy, without transparency and accountability.

Once the Governor has issued approval, clause 42 provides —

(a) the minister must cause a copy of the approval to be laid before each House of Parliament as soon as is practicable after the approval is given; and

(b) the Department's annual report must include details of the approval.

If such an authorisation is approved by the Governor in, say, December, it has effect immediately. The species could become extinct in January. Parliament does not return until February, and that is the first opportunity that the minister will have to table that authorisation and Governor's approval and the first opportunity Parliament and the community has to find out that the minister has approved a species becoming extinct, and it is too late for

Parliament to stop it from happening. There is no accountability in that process at all. There is no transparency and there is no accountability until after the guillotine has been dropped; it is too late.

Any accountability provided by tabling in Parliament is illusionary, as the extinction has already occurred. Parliament is powerless to stop the extinction or hold the minister to account because it has already happened. We cannot turn back the clock. Interestingly, even if the document is tabled in Parliament before the species is extinct, it is not clear to me whether the Parliament would have the power to overturn the decision as clause 42 does not provide a power to disallow. It merely provides a requirement to table. To have such a provision in a Biodiversity Conservation Bill, with no transparency before the event or opportunity for public comment or requirement for the minister to get expert advice, flies in the face of the purpose of the bill and the policy of the bill. It flies in the face of good government. With provisions such as this in the bill, it is little wonder that the minister did not want to consult on the bill before he introduced it into Parliament. As far as biodiversity conservation goes, the bill fails if it allows the minister to make a decision that will lead to the extinction of a species, and that is exactly what this bill does.

At the briefing I was assured that these provisions would be used in the rarest of circumstances, but there is no comfort in the wording of the bill that this will be the case. With no transparency and accountability, what is there to stop the minister using it whenever he likes? There is absolutely nothing. I was also assured that the provisions would ensure that other alternative locations would be identified for whatever the proposal was, but again I do not get any sense from the wording in the bill that that is the case. There is no requirement in the bill for the minister to exercise this power in exceptional circumstances and only after all avenues have been exhausted. If that was the intention of the bill and the use of that provision, those words need to be included in the bill. To include a provision of this nature, a god clause, in a bill and not undertake extensive consultation is extremely arrogant and shows a complete disregard for biodiversity conservation.

Part 3 also provides for the minister to give notice to landowners of the presence of threatened species or threatened ecological communities on their property. However, there is no power in the bill for a public officer to go onto private property to investigate if a threatened species or threatened ecological community exists on that private property. There is no requirement in the bill for the minister to issue such a notice. It is left to the minister's discretion. If a notice is issued, the owner must not do anything that would cause the extinction of the species and is required to take positive steps to protect the species or threatened ecological community. The minister may approve a recovery plan to establish conservation priorities and guide recovery and may authorise taking or impose conditions, including offset arrangements consistent with the state's offset policy. On a number of occasions, the opposition has expressed concern about the state's offset policy being inadequate and not ensuring that the offset is like for like. In biodiversity conservation this is a major problem and needs further examination. If the bill is to allow for offsets based on the current policy, the current policy needs to be reviewed, because the opposition and conservation groups have expressed concern on numerous occasions that the offset policy is completely inadequate.

When a member of the public makes a nomination to the minister to list a threatened species or for a change to such a listing, there is no requirement for the minister to get expert advice in considering that nomination, no requirement for the minister to make public the fact that a nomination has been received and no requirement to seek public comment on the public nomination. This is a deficiency in the bill, again allowing for the process to be conducted in secrecy and without accountability.

The minister will be required to develop ministerial guidelines for the listing process and the criteria. The ministerial guidelines will not be disallowable instruments and therefore there will be no ability for parliamentary oversight and no requirement for ministerial guidelines to be tabled in Parliament even if they are not disallowable instruments. Ministerial guidelines are not formally binding and therefore the minister will have the discretion to disregard ministerial guidelines in the way that the Environmental Protection Authority has disregarded its own environmental policy when it has suited it to do so. The whole process is less than certain. It lacks transparency and accountability and is less than satisfactory.

Part 7 of the bill provides for the making of biodiversity conservation agreements. These agreements may or may not be time limited. If such an agreement is made and there is a change in ownership of the land, it will bind the new landowner. However, there are no penalties in the bill for noncompliance with the biodiversity conservation agreement as was explained to me in the briefing.

Part 8 of the bill provides for biodiversity conservation covenants. These may be permanent or time bound. They will be attached to the title by registration and will bind new owners of the land. They can be amended or withdrawn only by joint consent. There are some concerns about those.

One of the positive things about the bill is the penalties for which, I think, there is generally widespread support. The bill provides significantly increased penalties as a deterrent. For example, the fine for smuggling critically endangered species will be $500 000 compared with the current fine of $10 000. Corporations and individuals

involved in illegal sandalwood harvesting and smuggling will be fined $1 million and $200 000 respectively, which compares with the current penalty of $200. There is certainly support for those provisions and there is support for the ability of the chief executive officer to authorise remedial action if a conservation covenant, environmental pest notice or habitat conservation notice is being contravened and for the introduction of the capacity for courts to impose penalties for continuing offences of $5 000 a day. Those changes have been well received.

The issue of environmental pests, I am sure, is a very important one, but it is interesting that these provisions are designed to facilitate the identification and management of environmental pests that impact on biodiversity when they are not and will not be covered adequately under the Biosecurity and Agriculture Management Act or the Fish Resources Management Act. The usual reason that an environmental pest is not covered by these acts is that there is no money to fund the programs to deal with the problem once it is listed. The bill provides that the Minister for Environment may list species as environmental pests only after concurrence with the above ministers. They have the power of veto. Once listed, the environmental pest must be controlled on Conservation and Land Management Act land within the listing area. Again, that is interesting because unless a bucket of money comes with the legislation, it seems very unlikely that there will be any increase in the listing of environmental pests through this process—but time will tell.

Another aspect of the bill I want to comment on briefly before I finish is ministerial orders. The bill provides for a whole range of ministerial orders. However, it provides that only some of those ministerial orders will be subsidiary legislation and therefore disallowable by Parliament. The advice I received at the briefing is that determinations as to whether animals and plants are flora or fauna for the purposes of the act, the declaration of environmental pests, the transfer of property rights from the state, bioprospecting and exemptions granted from any provisions will be disallowable by Parliament. This raises a whole lot of concerns, because some ministerial orders will be disallowable instruments and some will not. They will all require action, yet some will be scrutinised by Parliament and others will not. That is an unsatisfactory situation. It would have been much better if there were a clear position. My preference, as always, would be to make those ministerial orders subsidiary legislation so that there is capacity for parliamentary oversight. Without parliamentary oversight, things start to go wrong. Also, the difference with using parliamentary oversight is that making those instruments disallowable instruments means that they are drafted by parliamentary counsel, who have experience drafting legal documents and who will use consistent terminology in the ministerial orders, legislation and regulations. That will not be the case when they are drafted by departmental officers who do not have that expertise, which will create a whole lot of uncertainty. It lacks clarification and is best avoided. It is disappointing that the government will create those sorts of problems with this bill.

Another aspect of the bill at part 15 is the exemption power, which provides for the minister to exempt a person, persons or activities from the act that may be authorised subject to binding conditions, noting that the exemption ceases if the conditions are breached. These will be disallowable by Parliament, which is a plus. However, the power to disallow may not be effective, as I previously explained, because if that exemption occurs when Parliament is not sitting and it allows for a species to become extinct, that may well happen before Parliament is notified of the process. Again, there is a fair lack of transparency and accountability in the process. If we want to modernise legislation, surely the primary objectives should be transparency and accountability, both of which are severely lacking in this bill.

I have covered the main parts that I wanted to cover. I am sure a lot more can be said about the bill because it is very complex and detailed. In conclusion, the opposition's position is that we cannot support the bill unless the amendments before the house are agreed to. The community's expectation is that this bill will not be supported by Parliament because it is fatally and fundamentally flawed. It has serious omissions and the only way to ensure that there is the capacity to protect and conserve biodiversity is to amend the bill. The position of the opposition is that we cannot support the bill unless the amendments before the house that will be considered in committee are agreed to.

HON SUE ELLERY (South Metropolitan — Leader of the Opposition) [9.07 pm]: I rise to make a contribution to the second reading debate on the Biodiversity Conservation Bill 2015, which is an important piece of legislation. There is no question that given it has been 66 years since the introduction of the last equivalent piece of biodiversity legislation, we are long overdue for a modern piece of biodiversity conservation legislation. But that legislation has to be the right legislation. I wish it was the case that this legislation is the right legislation to modernise our biodiversity conservation provisions in Western Australia. A lot has happened in 66 years. There is a general level of understanding in the community about the notion of biodiversity and there is an expectation about how to manage biodiversity. There is a general level of understanding in the community that this is an important issue and that government plays a really important role in moving the regulatory levers to ensure that we leave something for future generations. This is a very important piece of legislation, and it is very important that we get it right. The fact that the conservation movement is not able to support this legislation

is a damning indictment of the way the government has gone about putting together the legislation that is now before the house. The conservation movement desperately wants new modern legislation. I have not done the extensive research that has been done by my colleague Chris Tallentire and, after listening to her second reading contribution, I suspect that I have done less research than Hon Adele Farina. Although I cannot claim to be an expert on this issue, people in the conservation movement are and I know that their desire for modern legislation is genuine. After the history of the consultation that took place when we were in government and when the minister in this place who represents the Minister for Environment was herself the Minister for Environment, they were really hopeful we would see a decent piece of legislation in this area. They have made the decision and offered advice to us, which we have accepted. In trying to get the balance right in modern legislation by bringing a 66-year-old piece of legislation up to date versus ensuring that the legislation is appropriate, they have had to err on the side of saying that unless fundamental changes are made to this bill, it should not be passed.

There are several issues at the core of it that have been articulated well by previous speakers. There are some glaring omissions in this bill. Hon Adele Farina and Hon Lynn MacLaren have outlined some of those. There are the so-called minister-as-God provisions and the unfettered decision-making capacity that this bill gives to the minister. The fact that there is no requirement in the legislation to base those decisions on independent scientific advice received from a separate scientific advisory council, or indeed to even publish them or consult on them, makes the unfettered power even more of a concern. It is of some concern to me that there is a contradictory and confused interrelationship between a couple of parts of the bill's objectives. It is claimed by others more expert in this than I that there is a contradictory and confused interrelationship between this and other bits of existing legislation that will remain in place despite the amendments in the bill before us.

On top of the government's cuts to the environment portfolio, it does not have a record to be proud of. Despite that, the Minister for Environment has declared publicly that he is the best environment minister the state has ever had. It is not the kind of language that I think any minister should use about themselves.

Hon Donna Faragher: Out of interest, when did he say that?

Hon SUE ELLERY: I will find the quote.

Hon Michael Mischin: So many times I have heard you lot say, "We'll find a quote", but you never get around to it!

Hon SUE ELLERY: I will give Hon Michael Mischin an undertaking that I will. He may not have had the same internet issues that I and others in this place have had today. My iPad connection keeps going in and out. I can access my emails and then I cannot. It is on my iPad. I will endeavour to find the quote.

Hon Simon O'Brien: It is the environment minister's fault!

Hon SUE ELLERY: I do not know whose fault that is. I came in here on Sunday and yesterday, and in here again today; there are serious internet issues. Anyway, I digress.

The first issue I want to talk about is the notion that has been described as the kind of minister-as-God provisions in the bill. I have printed this article. The Attorney General will be thrilled to know that I have a copy of this particular article from *The Guardian* dated 6 July 2016. This description accurately describes the debate around this. The article states —

> Western Australia's government could have the power to approve activities that could make a threatened species extinct, under biodiversity laws now before state parliament.
>
> The provision has been dubbed "the God clause" by scientists and conservationists, who say giving the environment minister discretion to effectively authorise the extinction of a species contradicts the very purpose of biodiversity legislation.
>
> It is part of the biodiversity conservation bill 2015, introduced by the Barnett government as an update to the 66-year-old Wildlife Conservation Act.
>
> Under that legislation, the environment minister may authorise a person, corporation or government authority to "take or disturb" a threatened species. If the taking or disturbance "could be expected to result in the threatened species becoming eligible for listing as an extinct species in the near future", the minister must also get the approval of the state governor.
>
> …
>
> It does not have the features sought by the scientific community, which is calling for an independent advisory committee on threatened species, similar to the threatened species committee included in the federal Environment Protection and Biodiversity Conservation Act.
>
> Emeritus professor of environmental science at Murdoch University, John Bailey, said the legislation in its current form had the potential to hasten the extinction of WA's critically endangered species.

> "Biodiversity legislation is passed to preserve wildlife and it would be odd to have a provision that has an opposite effect," he said. "The only check and balance is that the minister needs to inform parliament when he's exercised this particular power, and our concern is that would be after the fact."
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> Bailey was the chair of the state-run Conservation Commission for nine years and is considered an authority on wildlife conservation in WA. He has joined 12 other scientists, including Prof Fiona Stanley, to form the Leeuwin Group to lobby against the legislation

As an aside, Hon Adele Farina referred to the Leeuwin Group's work, and I will as well —

> He told Guardian Australia the broad ministerial discretion in the legislation would give developers and governments an "easy out" for approving projects that could otherwise have been challenged in court.
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> It would also allow the minister to decide what species are most worth protecting, which meant high-profile critically endangered species, including numbats, were probably safe, while less well-known species, like subterranean fauna (fish, invertebrates), may not be. WA has 4,000 species of subterranean fauna, most of which are endemic and 40 of which are listed as threatened.
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> "We think that the 'God clause' was put in there for species like the subterranean fauna," Jenita Enevoldsen, WA director of the Wilderness Society, told Guardian Australia.

I apologise to Jenita for my pronunciation of her surname; I met her for the first time today —

> "Some of those subterranean fauna have stopped mines going ahead, but they are unique species.
>
> "We don't think it should be up to a minister to allow the destruction of a species."
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> Enevoldsen said the legislation did introduce some positive changes, like increasing the penalty for taking an animal from a threatened species to $500,000 and codifying threatened species recovery plans, but counteracted that by introducing other changes such as excluding fish and shellfish from the definition of fauna.
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> The penalty for catching a critically endangered sawfish from the Fitzroy river was only $10,000, 50 times less than the penalty for killing a dolphin.
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> The legislation also provides broad exemptions for activities that could indirectly cause the destruction of the species, such as land clearing, logging or increased carbon emissions.
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> "So it's illegal to go and kill a numbat but it's perfectly legal to go and bulldoze the habitat of the numbat, or burn it, or destroy it by other means, and, in the process, kill the numbat," Piers Verstegen, director of the Conservation Council of WA ….
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> "But pretty much the majority of threatening processes do not occur when people go and deliberately kill native wildlife ... most of it's indirect.

It is important to note that we are not talking in 2016 and beyond about people deliberately killing animals and flora; we are talking about the destruction of habitat. Therefore, a piece of legislation that does not address the protection of the habitat and the environment kind of misses the fundamental point. He went on to say that if it does not address any of those most serious threats, it is not worth much as a piece of biodiversity legislation.

Much has been made about consultation or no consultation, and I do not want to dwell on this, but I want to make the following point. There was extensive consultation by the previous Labor government; however, there has not been any consultation on this legislation other than the groups being invited to a briefing by the relevant minister in, I think, January this year. That was not consultation; that was them being advised of what would be in the legislation. The contentious components of this legislation have not been consulted on. There has not been any consultation on those. The minister might make the point that there has been extensive consultation, and I think perhaps he was making the point that there had been too much consultation, to the point of death by consultation, but that was on a different set of proposals. The most controversial and contentious proposals before the house today have not been the subject of any consultation, never mind excessive consultation. The bill has fundamentally changed from that which was consulted about back in 2002. It is not unreasonable that a different government wants to put a different piece of legislation before the house, but it cannot claim to be relying on previous legislation for an entirely different piece of legislation and it cannot claim to be relying on the consultation for a set of proposals that in fact have never been the subject of consultation. The government can take a different policy path if that is the one it intends to take, but it cannot claim to have done the level of consultation done on an entirely different piece of legislation. Between 2013 and 2015, there was no consultation on the nature of the bill and the matters that form its substance.

I refer to the so-called God clause. I note one point in the debate on 23 March this year in the other house and I will quote from *Hansard*. Chris Tallentire asked the following question —

> Has the minister read clause 42 of his own bill? Let us go right now to clause 42 of the minister's own bill. We will have this conversation again no doubt in consideration in detail, but clause 42 makes it pretty clear to me that the minister would have the powers to send a species into extinction.

The minister, Mr A.P. Jacob, said —

> Yes; I am not denying it.

The minister's response to the question of consultation that has been raised publicly and in the debate is essentially that the provisions that form part of what has been described as the God clause are required to go to the Governor and that that of itself is a very public process. He also made the point that any decision he was to make relying on the so-called God clause would of course be subject to a decision by cabinet. First, there is nothing public about decisions made by cabinet, nor should there be, but this government in particular has made a point of ensuring that it relies heavily on cabinet-in-confidence provisions and we can be assured that it will not release the decisions of cabinet in respect of this. The other notion we are expected to believe is that we should trust this piece of legislation and not claim that it has been done in secret because it will require a decision to be made by the Governor. Are we supposed to take from that the suggestion that we think it is reasonable to call the office of the Governor into a public debate about whether something should proceed? I am sure the minister cannot consider that a reasonable thing to do to the office of the Governor—that all of a sudden we want to drag the Governor into a public debate about what is or is not an acceptable environmental decision. That is not appropriate and that is not the way to conduct things or make decisions public. The office of the Governor would be horrified to know that it was being referred to in that way. That is not at all a sensible or credible proposition. It does nothing to satisfy concerns about decisions made in secret to suggest that we do not need to worry about that because the decision will be made by the Governor and that that is a public process. That is effectively what the minister said in the debate in the other place. In the same bit of uncorrected *Hansard* he stated that it would require that to go to the Governor and it would be a very public process. It is extraordinary to suggest that we should drag the office of the Governor into contentious matters of public policy.

An issue which has been raised already and about which I want to make a point is the question of ministerial discretion. It is not new to this legislation. Plenty of legislation contains elements of ministerial discretion. However, in this case when we are talking about decisions that go to the extinction of a species, or the threatened extinction of a species, it is concerning that there is no requirement in the legislation for the minister to demonstrate that he or she relied on an independent science-based decision-making process to reach the conclusion that said that the minister needed to exercise a particular discretion. It is not just me who thinks that, but many in the conservation community think that also. There is ministerial discretion, but I think the community would be comforted by the notion that the power rests with the minister to make his or her own decision, as opposed to it resting with a senior public servant, for example—I think the community could cop that—if the legislation also required that when the minister exercised that very powerful discretion, the minister had to demonstrate the particular independent science-based evidence relied upon to make a decision. There is nothing like that in the legislation.

At one point in the debate the minister said that for one element—I do not think I have it tagged, but the minister representing him might know—there is a particular Scientific Advisory Committee.

Hon Donna Faragher: There is.

Hon SUE ELLERY: Is that what it is called?

Hon Donna Faragher: Yes.

Hon SUE ELLERY: The minister made the point in the debate that, as minister, he and every environment minister before him had always relied on the Scientific Advisory Committee to assist in making decisions. The minister envisaged that that would continue in the future. If that is the case, the precedent and the way it is going to be in the future, why can we not enshrine a reference to that in the legislation?

In this legislation the minister effectively has given himself unfettered powers; everything is down to ministerial discretion. I started a process and I could not finish it because I ran out of time—the reason I ran out of time is that I was doing it in here on Sunday and the internet connection collapsed and I could not finish it.

Hon Helen Morton: You made it collapse, did you?

Hon SUE ELLERY: Yes; and I broke the census as well!

I was trying to do, for example, a word search in a PDF document to find the number of times that, say, "ministerial discretion" appeared in legislation but I could not finish that search because it would have required me going through the bill page by page, and I have long lost that skill. I could not complete it, but there is an inordinate number of references to the power that the minister has to make a range of decisions using ministerial discretion.

Hon Michael Mischin: You could have given the task to Hon Darren West; that would have kept him occupied and productive.

Hon SUE ELLERY: He was living his life on Sunday; he was not here.

Members have made the point—I am not sure whether Hon Lynn MacLaren did, but I know Hon Adele Farina did—about the lack of published "State of the Environment" reports from time to time. My colleague Chris Tallentire has made the point a number of times that the current report is nearly nine years old, which means that the information the community has about the state of the environment is nine years old. That limits the community's capacity to make a judgement about this legislation and whether the balance is right for the unfettered powers the minister has given himself, because it is not in a position to have the most accurate information on the state of the environment.

The other issue that was raised with me in my conversations with Chris Tallentire, the shadow Minister for Environment, was the relationship between this bill and the Environmental Protection Act. What is missing from this bill is the capacity to express how it will integrate with commonwealth legislation. How will this piece of legislation be implemented with commonwealth legislation and the Environmental Protection Act? It is not clear how these three pieces of legislation will work together. I referred earlier to the fact that one of the reasons we find this bill wanting is that there is a series of glaring omissions. One of those gaps is the absence of clear conservation objectives for the state. They form, if you like, the policy framework so that when interpretation is to be made about how a certain provision is to apply, if that interpretation has to be made in a vacuum and in the absence of a set of conservation objectives, it will make it very difficult for those making the interpretation. We are making it harder for the minister to exercise his discretion and we are making it harder for the bureaucrats who are charged with implementing the provisions of the bill if it becomes an act. We are making it harder for them to do that, because we do not have an overarching framework of conservation objectives. If the legislation does not have, at its core, conservation and biodiversity objectives, how can we measure its success? How can we ensure that the public service is clear on how it is to implement the judgement calls that have to be made from time to time? No matter how prescriptive we make a piece of legislation, from time to time judgement calls will need to be made, and when they are made, the public service will look to the framework in the objectives of the legislation, and this piece of legislation is sadly lacking in that area. Other jurisdictions with similar legislation have all those elements in place.

I turn back to the issue of reliance on scientific advice. There is no reference in this legislation to reliance on independent scientific advice for those decisions. The Victorian legislation makes reference to its scientific advisory committee; the Tasmanian legislation provides for a statewide strategy, abatement plans and a scientific advisory committee; and Queensland's Nature Conservation Act provides for an independent scientific advisory committee. Many jurisdictions around the country have made provision for scientific advisory committees or similar bodies in their legislation. All of those jurisdictions have ensured that science is at the heart of determining the strategy that is undertaken for the recovery of threatened species, which is the point that my colleague Chris Tallentire made.

If we let this bill go through now, unamended, we will effectively be setting ourselves up as the only state in Australia that has biodiversity conservation legislation that does not make reference to a scientific committee. I think it is extraordinary that the government thinks that the minister of the day, whoever that minister might be, should and can have the power to make those decisions without reference to independent scientific advice. Other jurisdictions all have reference to scientific advisory committees that are integral parts of their decision-making and, indeed, it is also a protection for the minister. Environment ministers make decisions that are some of the most controversial and contested decisions in our political environment. It is a hard job—I would not want it—but I was Minister for Child Protection and I would have traded that for Minister for Environment. If a member wants to make hard decisions, make some of those decisions! The point I make is that building into the legislation a reliance on independent scientific advice is in fact a protection for the minister on some of those contentious issues, which some reasonably sized and vocal sections of the community are not going to be happy with. A minister will never make a decision that will make everybody happy. That is why the minister needs to build into the system something that gives him the authority to say that his decision is based on good science. The minister is not giving himself or environment ministers of the future any protection through this piece of legislation. I found the quote where the minister talked about the Threatened Species Scientific Committee. He said —

> Every minister for the environment seeks the advice of the Threatened Species Advisory Committee, and every minister in the future, I suspect, probably will, and I certainly will. The Threatened Species Advisory Committee will continue.

That is reassuring, but if he is prepared to give the commitment that he will continue to rely on the advice from the Threatened Species Scientific Committee, why is he not prepared to put that in the legislation before the house? That is a very serious question. I am not sure what the answer is.

I want to refer to some of the work done by the two organisations that I know others have already referred to—that is, the Environmental Defender's Office and the Leeuwin Group. I want to refer to the Environmental Defender's Office white paper entitled "Western Australia's Biodiversity Conservation Bill 2015: Review & Recommendations". My colleague read out all the recommendations in that paper. I will not read those again, but I do want to refer to the analysis that was done on some of the issues that were identified. The Environmental Defender's Office described the bill in this way —

> If it represents a step forward in modernising WA's biodiversity laws, it represents two or more giant steps back in terms of bringing WA's biodiversity laws into conformity with legislation in other Australian States/territories or best practices overseas.

It spells out how some of the provisions in this bill are —

> … a significant step back from the provisions of the WC Act, including the following:
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> - the Bill, while making the Crown bound with respect to provisions regarding fauna, now grants a broad immunity from liability in tort to both the Crown and private persons acting, in good faith, in the performance of a function under the legislation;
> - the Bill creates broad exemptions from its application and gives the Minister unfettered discretion to establish even broader exemptions than those expressly created in the proposed legislation;
> - unlike the current WC Act, the Bill would impose duties to restrict the creation or flow of information relating to implementation of the legislation from the public;
> - contrary to any norms of ecologically sustainable development, the Bill permits short-term declines in species or ecological communities to be considered appropriate to achieving the objects of the legislation;

Does time not fly when one is having fun? It continues —

> - similarly, the Bill permits the Minister to allow native species and ecological communities to be taken —

The word "taken" literally means to be wiped out or destroyed —

> to the point of extinction/collapse.

The Environmental Defender's Office paper also refers to sandalwood, which I will talk about a bit later. This chamber, through its committee process, has had something to say about the sandalwood industry, so I will come back and talk about those provisions a little later. The paper goes on to state —

> Such fundamental flaws in the Bill make its promise of "modernising" biodiversity legislation in the State and implementing "best practices" illusory at best—a mirage to tempt the unwary into the deep desert.

In fact, the Environmental Defender's Office went on to state that this bill —

> … represents a business-as-usual approach and status quo for the Minister for Environment and Department of Parks and Wildlife … The Department currently administers a number of non-statutory programs and instruments aimed at biodiversity conservation:

It goes on to state that the bill proposes to codify and mandate the underpinning concepts and some of the processes around those existing programs and strategies, which is a positive step and to be commended. The paper goes on to talk about the bill also providing a process for establishing other things, such as biodiversity conservation programs, voluntary cooperative agreements, habitat conservation notices, and the listing of critical habitat and environmental pests. The paper goes on to state —

> While there has been an attempt to mandate several conservation strategies in the Bill, there are several major short comings. For the most part, Ministerial and DPaW CEO decisions are highly discretionary and lack meaningful public and Parliamentary scrutiny. For example, there is no firm obligation for listing of threatened species, ecological communities, and key threatening processes or making plans such as may be found in other Australian and overseas statutes. A significant omission is the lack of an obligation to consider expert opinion and establish a scientific advisory committee and/or a similar expert committee to assist in the implementation of the proposed Act.

In view of what it sees as the flaws in the legislation, the Environmental Defender's Office recommends that the passage of the bill should be opposed in its current form and supported only if significant changes are made. The paper lists the amendments, which have already been listed by my colleague Hon Adele Farina.

In dealing with the comparison with other pieces of legislation that deal with biodiversity conservation matters, the paper provides a good summary, stating —

> For example, in Tasmania and New South Wales, there is separate legislation to that of land management for the listing and recovery of threatened species. Provisions across a number of statutes can create an overlap or omissions in responsibilities when administered by different agencies.
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> In Western Australia, legislative functions and provisions for biodiversity conservation currently reside under three primary statutes, and associated subordinate legislation:

In addition to the three pieces of legislation listed, the Biosecurity and Agriculture Management Act 2007 and Fish Resources Management Act 1994 also have significant bearing on protecting and conserving biodiversity.

Walking through the history of this legislation, the paper makes this point —

> The Department of Parks and Wildlife … has taken the lead role in drafting the Bill and undertaken consultation with government agencies.
>
> Despite a high level of community interest, there was no public consultation by the current Government prior to the Bill being introduced to Parliament—though some members of the conservation sector were provided with a Ministerial briefing about the Bill in late January, after the fact.

I make that point because I think the level of contention about certain elements of this bill required the government to demonstrate that it had consulted. The government might have gone into that consultation process not expecting to get agreement, given the controversial nature of some of what it is proposing here, but there is not even a pretence that the government attempted to consult on very controversial provisions.

On the planning and evaluation of biodiversity, there is a clear deficiency in this legislation when compared with other legislation, both in Australia and overseas. All states in Australia, except South Australia, which has a non-statutory conservation strategy, and the Australian Capital Territory, have mandated statewide jurisdictional biodiversity conservation strategies. Currently, Western Australia has no biodiversity conservation strategy in place, statutory or otherwise. Similarly, mandating the establishment of advisory committees is viewed as best practice, is common in other state and commonwealth environmental legislation, and allows a certain amount of transparency in decision-making.

I want to turn now to what the Environmental Defender's Office has to say about the so-called "God clause". This is what it describes throughout the bill as the excessive ministerial or CEO discretion. The relevant sections of the bill that it gives as examples are 37, 70–72, 83, 88–89, 101 and 104 to 113.

Debate adjourned, pursuant to standing orders.