

*Standing Committee on Environment and Public Affairs — Forty-first Report — “Petition 42 — Request to Repeal the Environmental Protection (Environmentally Sensitive Areas) Notice 2005” — Motion*

Resumed from 16 September on the following motion moved by Hon Stephen Dawson —

That the report be noted.

**Hon RICK MAZZA:** I rise to make a couple more comments regarding the Standing Committee on Environment and Public Affairs' forty-first report and the government's response to it through the minister. I refer to page 47 of the report and to a couple of answers given by the minister. The second dot point at the top of page 47 reads, in part —

The consent of the proprietor of the land is likely to be difficult to obtain *'based on the views expressed to the current Inquiry about the perceived effect of ESAs on property values'*.

This relates to the environmentally sensitive areas being noted as an encumbrance on a title, so it is obvious that the department is quite aware that it would cause a furore if it had to go and register something on the title. The following dot point reads —

The cost of registering the notification, without any allowance for the administrative resources, is more than \$15.6 million.

I would have thought, with the level of impact on these 98 000 parcels of land, that would be a fairly small consideration when it comes to listing these encumbrances on the title.

Paragraph 9.25 reads —

The Minister for Lands is of the view that it is impractical to enter a record on Certificates of Title but suggests that *some* ESA information could be recorded on the title with a section 70A notification.

That is so that people could be alerted to it.

I read through the government response yesterday and I must say that I am quite appalled that the government has really made no attempt to deal with these ESAs. In fact, the only thing it had to offer was that it would put out a guideline about grazing, which really does not clear up much at all, and the guidelines are pretty lame, to be quite honest. I am disappointed with that response. I think this issue was put forward in a petition from Hon Mark Lewis. It went to a parliamentary committee and we had a debate in this house during non-government business, and there has also been a lot of commentary in the media about ESAs and their effects on the land. The response from the government was pretty much that it is business as usual and that there is really no change. I hope the committee can make some sense of the response from the minister, and that it can come back to this house with some recommendations on where we can go from here in working through this.

**Hon MARK LEWIS:** I was hoping that the Chair of the Standing Committee on Environment and Public Affairs would get up to speak before me to give some guidance on where the committee will take this issue. I, too, want to comment on the government's response to the committee's forty-first report. As the submitter of the petition, I am disappointed in the government's response. I hope that more information was provided to the committee that has not been tabled here, so I am a bit guarded about my words here because I think there is probably some more information that I do not have to hand but which the committee may have.

**Hon Simon O'Brien:** We have got only what was provided to the house today, which was a two-page letter addressed to the chairman and a two-and-a-bit page grid form response. That's what we have. I don't know if the member has all that.

**Hon MARK LEWIS:** No, I do not. I suggest it would have gone to the committee and it will be up to the committee to release that. Having heard Hon Simon O'Brien, I understand there is probably a little more detail, but from the member's tone it is not a satisfactory response to such a complex and important issue. I do not think this issue will go away, and I do not think the government's response will serve anybody out there in the bush with an environmentally sensitive area very well. Landholders with an ESA will be particularly disappointed. It was a one-page response that can effectively be cut down to six paragraphs and which, as I said, is disappointing and in some places is quite disingenuous. The government's response says that permits are given to clear ESAs and it quotes 900 clearing permits, but we know from earlier questions asked by Hon Rick Mazza that they were essentially for public works. It is a bit of a red herring and a bit disingenuous of the government to come back and say that, by the way, clearing permits can be issued. I do not know how many of those clearing permits are for productive purposes, because, as I said, the answer to Hon Rick Mazza's question seemed to indicate they were mainly for public works, widening of roads and those sorts of things within ESAs.

Hon Rick Mazza mentioned the guide to grazing referred to in the committee's report. I raised this point earlier and I feel that is insufficient. I will even go further and say that it more aptly describes what is legal clearing of an environmentally sensitive area, whereas before the guidelines came out it was a virtual unknown and the issue

was cloudy. This guideline is now more prescriptive and actually details what is effectively a legal clearing in an ESA. With just a cursory glance, I have to say that I am still very uncomfortable, because whoever wrote this really should have taken advice from an agronomist or somebody with a plant background. This guideline refers to the most visible indication of substantial damage caused by grazing of native vegetation as death. Substantial damage is classed as clearing. Anybody who has any idea about animal production systems knows there are two basic plants—perennials and annuals. Anybody in the game would know that sheep and cattle will pull out annual plants by the roots and eat them—that is how it works! Even perennials that have not been long established and do not have a root system will be pulled out and eaten. To me, that is death, that is substantial damage; and that is clearing. That means that, going forward, someone can be fined under the act. As I said, because the guideline makes it clearer and more prescriptive, I now fear that if this went to court, there is even more certainty that landholders who do not know that they have an ESA would potentially be charged. I thought I would put that on the record. A bit of work needs to be done and I suggest the Department of Environment Regulation might consult somebody who has some ideas around animal production and plant-based processes.

The government's response also says that people can now get on to the new whiz-bang website and the map viewer. I have been trying to do that over the last couple of days since the government's response was tabled, and there is no way in the world that I can get through the layers I need to, to determine what is an ESA. I assume there must be some glitches in that system, because it is a new interface and there are often have glitches when these land-based geographic information systems are rolled out. I hope that will be rectified so that landowners can identify whether they have an ESA.

I will leave my contribution to debate at that, but I agree with Hon Rick Mazza that a six-paragraph response to this house is disappointing when the committee has undertaken such detailed and complex work.

**Hon Michael Mischin:** Didn't you want to repeal a regulation that had been expired for about 10 years?

**Hon MARK LEWIS:** Did I? It was this house that missed that, and that is detailed in the committee's report. I assume that the AG was in the house. It is obviously one way to go forward. If regulation 6 has not been repealed, it is —

**Hon Michael Mischin:** It has expired.

**Hon MARK LEWIS:** It has expired, but there is some conjecture around the legalities of that and there may be different opinions of law around that. Anyway, if that is still sitting there and has not expired, it would be a useful process to go back and repeal the notice and put regulation 6 back in. I guess that is a discussion that I will not get into. The committee has thought through that longer and harder than I have, and it had access to legal staff sitting behind that committee.

Having said that, I am still a little disappointed by the government's response. I would like to see the follow-up letters provided by the minister, which may well give me some comfort, but until I see those it is still an issue. It is not an issue that will go away.

**Hon ROBYN McSWEENEY:** In the forty-first report of the Standing Committee on Environment and Public Affairs, the committee made one recommendation in particular that should provide the government with teeth. Recommendation 4 states —

**The Committee recommends that the Minister for Environment amend land clearing laws to provide that the grazing exemption at regulation 5, item 14 of the *Environmental Protection (Clearing of Native Vegetation) Regulations 2004* apply to ESAs declared in *Environmental Protection (Environmentally Sensitive Areas) Notice 2005*.**

The government response was that the scheme of the existing legislation provides that exemptions in regulations do not apply to sensitive areas. That is very hard when so many people do not know that they have environmentally sensitive areas on their property and they have been allowing their stock to graze for many years. I took the Environmental Protection Act through when I first came into Parliament and I think people have heard me say in this place before that there were at least 169-plus amendments. It was a terrible piece of legislation. Section 51A of that act defines clearing as —

- (a) the killing or destruction of; or
- (b) the removal of; or
- (c) the severing or ringbarking of trunks or stems of; or
- (d) the doing of any other substantial damage to,

some or all of the native vegetation in an area, and includes the draining or flooding of land, the burning of vegetation, the grazing of stock, or any other act or activity, that causes —

- (e) the killing or destruction of; or

- (f) the severing of trunks or stems of; or
- (g) any other substantial damage to,  
some or all of the native vegetation in an area;

It does not make a lot of sense to me—it never did back in 2004 and it certainly does not now—as someone who comes from a farming background.

The guidelines on the grazing of native vegetation that the government released in 2015 apply to all grazing of native vegetation on lands in Western Australia. The information provided was to be used in conjunction with existing statutes, regulations and industry guidelines relevant to grazing. It states —

Grazing of native vegetation is a common practice undertaken by farmers and pastoralists across Western Australia.

That is not rocket science. It continues —

This guideline is intended to assist those landowners who allow their livestock to graze native vegetation to:

- understand the requirements that relate to grazing that is clearing under the EP Act;

Farmers do not want their land ruined. They are very responsible when they are grazing their stock. Hon Nigel Hallett clearly knows that because he has been a farmer for a long time. He is a St Georges Terrace farmer these days—sorry! Hon Nigel Hallett has been farming for a long time. Farmers are not going to graze, graze and graze until there is no more feed for their cattle and sheep; they are responsible. When they have ESAs put on their land, it takes away the rights of those farmers who own the land. When people buy a piece of land, a property or a farm, they should be able to do what they want, within reason, on that farm that allows them to make a living. Whether that living is planting trees, because of economic necessity, or whether it is grazing cattle or sheep, or a mixture of all three, or whether they are a huge cropping organisation, they should be able to do what they want within reason, without having the government come in on top of them saying no, they cannot use this piece of property because a rare tortoise or something else has been found on it. Perhaps the farmer could negotiate. That would be a better way of going about things, rather than the government coming in on top and saying they cannot touch that piece of land anymore. I have nothing against the swamp tortoise; I am just using that as an example.

The guidelines refer also to declared rare fauna, threatened ecological communities or high-value wetlands. Most of us appreciate our high-value wetlands, and so we should. Whether they be on private or public land, they are our wetlands. When most people buy a property, they value their wetlands, whether they have just bought that property or it has been in their family for hundreds of years. I can cite a wetland on the Phillips' property that is absolutely magnificent. People come from miles around to have a look at that wetland and the owners would not dream of harming it as it is on their property. Most farmers have the same view. But I think where the current government and previous governments have gone wrong is that they have used doctrines that are not regulations but that are taken as such. In the past there has been what I would call environmental Nazis going onto property. Not so much in the past, but recently I can cite some cases in which they have gone onto properties and started laying down the law. That to me is certainly not the way to go.

There are exemptions for grazing on native vegetation under the EP act. One is in the pastoral area and the other is that land that was lawfully cleared within the preceding 20 years is exempt also from those clearing regulations, provided the land has been used as pasture or for cultivation or forestry in those 20 years. The clearing is only to the extent necessary to enable the land to be used to the maximum extent it was used in those 20 years. There are exemptions there. I think we really should look at exemptions to ESAs; not at total blanket exemptions but at why that land has an ESA on it. If it is only because there are a few puddles around the place, it is not acceptable for there to be an ESA on it. We could call the whole Swan coastal plain a wetland and put an ESA across that, which I think at one stage they were trying to do, but that is not acceptable. A person has a right to use their property for an economic purpose and as long as they are sensible about that land usage, which 99.9 per cent of farmers are, they should be able to carry on doing what they are doing without the government coming in over the top. If there is flexibility under the act for exemptions for the grazing of native vegetation, then there must be exemptions for ESAs. I urge the Minister for Environment to take a closer look at that. Albert Jacob is a very genuine and very good Minister for Environment and I urge him to look again at the submissions from Gingin and the Pastoralist and Graziers Association—there was one other—to see whether there could be room for flexibility on an individual case-by-case basis.

**HON SIMON O'BRIEN:** It gives me no pleasure to rise on this occasion to acquaint the Committee of the Whole with the following: I am the Chairman of the Standing Committee on Environment and Public Affairs that provided this report and I can vouch for the amount of work that went into this inquiry that meant a lot of

things to a lot of people. It was a great deal of work about some very serious matters. I was disappointed at face value when the representative minister in this place tabled the government's response to the report yesterday.

I and my colleagues on the Standing Committee on Environment and Public Affairs will no doubt read and consider that report with interest. Who knows? The committee might even provide the house with a further report. I do not know; that is a matter for the committee to consider.

At face value there are some serious, serious inadequacies in the government's response to this report. I refer in the first instance to my remarks about a previous report from another committee discussed today, when I spoke about governments paying lip-service only to reports about serious matters of the day that have been subject to inquiry. When it comes to that genre of offences, I am looking at a classic example right now. The committee made a number of findings and recommendations, and it is easy enough for an agency, trying to cover its backside, to provide some sort of sanitised, very brief response that glosses over so much of the report and gets away with just the minimum that can be done so that it can be tabled in the house and then, hopefully, it will just go through to the keeper and disappear. I advise the house that the committee I chair is very, very diligent, and we will not be fobbed off in that way. I am deeply, deeply disappointed that the minister has apparently allowed himself to be fobbed off in this way, and I am disappointed, by extension, that the cabinet has allowed itself to be fobbed off in this way, because presumably government responses do go through cabinet. In a previous address, I drew to this house's attention my concerns about this report and the response we would get from the government. I warned, through ministers in this place, the Minister for Environment what his agency would try to do to fob him off, and what he should be aware of. Lo and behold, that is exactly what his agency served up to him. I can go through the letter with a highlighter pen and through the *Hansard* and point out the similarities between what I said the agency would dish up to him and what it did dish up to him, and what he has now dished up to us. I am very disappointed. But I told him that, through this house, in advance, and still we get served up with this.

This house now has to consider its options as to what it should do when it provides a report that is referred to the government, and the government sticks two fingers up at us. That is what we have to consider. Just to be going on with, I will give members a couple of examples of some of the serious matters that this government has sought to insult this house, and every member in it, on by giving this glib and puerile government response. Recommendation 5 is dealt with in chapter 4 of the report. It refers to the matter that Hon Robyn McSweeney was just addressing, and whether what was then the draft guide to grazing was going to be the panacea for one of the problems identified in the course of our inquiry. We relay to the house at paragraph 4.28 —

The Department has forwarded the draft to the Pastoralists and Graziers' Association (**PGA**) and WA Farmers' Federation (**WAFF**) for their comment. During the hearing with representatives from the Department, Hon Paul Brown MLC asked why the Department did not undertake broader consultation. The Department suggested that they may conduct '*broader whole of public consultation*'. This hearing exchange follows:

The exchange was recorded, and I will now recite it for the benefit of the house. The exchange reads —

**Hon PAUL BROWN:** *Why just WAFF and the PGA?*

**Mr Banks:** *Primarily because it directly impacts their members.*

**Hon PAUL BROWN:** *Why not the Gingin Private Property Rights Group? Why not a whole host of other groups along the coastal plains that are directly impacted? They have different membership to WAFF and the PGA and their membership is actually directly impacted. They are actively campaigning on this issue. I would suggest that perhaps there would be a wider list. Perhaps a better way to do that would be for the local members of Parliament, both upper house and lower house, to be notified because most members of Parliament are in direct conversation with all of those groups. We can probably give you a better understanding of who you should be asking for submissions from.*

**Mr Banks:** *I am happy to take that on board and probably happy to look at doing a broader whole-of-public consultation process on it.*

**Hon PAUL BROWN:** *That would be very appreciated by all those groups.*

**Mr Banks:** *Fair enough. We will take that statement on board.*

**Hon PAUL BROWN:** *Thank you.*

We are very civilised in our hearings, and we look for positive outcomes.

At paragraph 4.29 we state that we thought we had given the department an easy goal so that it could get back on track with its constituency. We state —

The Committee supports the Department better engaging with the public to ensure an understanding of clearing laws. The Committee highlights the Department's intention to also engage with Members of

Parliament in relation to the Draft Guide to Grazing as stated in evidence to the Committee. The Department's engagement with the community is further canvassed at paragraphs 8.1 to 8.19.

Recommendation 5 states —

**The Committee recommends that the Minister for Environment ensures that the Department of Environment Regulation conducts broad consultation with the public and Members of Parliament on the draft *A guide to grazing, clearing and native vegetation under Part V Division 2 of the Environmental Protection Act 1986*.**

That is, we recommend that the Minister for Environment ensures that his department does that.

Recommendation 6 reads —

**The Committee recommends that the Minister for Environment (in the Government response to this report) advises the Legislative Council of the details of consultation undertaken, or to be undertaken, and the outcome of the public consultation process.**

It sounds pretty easy. By the way, that exchange took place on 11 March this year. The response advised —

DER released a 'Draft guideline: A guide to grazing and clearing of native vegetation' for public comment between 24 June and 22 July 2015. DER also wrote separately to seek comment from the Pastoralists and Graziers Association, WA Farmers Federation and the Gingin Private Property Rights Group.

That was one extra one. The response continues —

Four submissions were received. The submissions received, a consultation summary addressing submissions and a final guideline are available on DER's website and are attached to this response.

And that was it. There was no intention, apparently, of getting in touch with the local members and no intention of doing a real consultation. That is what we are trying to alert the government to; that is the "blow it; we'll do it our way" attitude of this agency, and it is something I tell members that I will be looking at a lot more closely.

I am staggered by something I will mention in the brief time available to me. We also raise in this report two separate occasions when the minister of the day provided materially false information to the Joint Standing Committee on Delegated Legislation. What is going to happen there? Apparently, the government does not even want to acknowledge it. But I think the house may well have to follow up that particular matter because someone has to.

**Question put and passed.**