

BIODIVERSITY CONSERVATION BILL 2015

Committee

Resumed from an earlier stage of the sitting. The Deputy Chair of Committees (Hon Liz Behjat) in the chair; Hon Donna Faragher (Minister for Planning) in charge of the bill.

New clause 47 —

Committee was interrupted after new clause 47 had been partly considered.

Hon SUE ELLERY: I would like to ask a question of Hon Lynn MacLaren, who has moved the amendment to insert this new clause. There was an article in *The West Australian* this morning that referred to green groups being supportive of the change. That is not the information that has been provided to me through Chris Tallentire, our shadow minister for environmental matters. I do not know where the journalist who wrote that story got that information from. If it was through the mover of the amendment, I would like the member to advise us which environmental groups are supportive.

Hon LYNN MacLAREN: I am happy to respond to that. I have no idea who he was talking about.

Hon Sue Ellery: I don't think he did either.

Hon LYNN MacLAREN: I can say that I definitely have had lots of congratulations for this amendment from green groups today. However, I certainly do not know. I have not even read the article. Was it in *The West Australian*?

Hon Sue Ellery: Yes.

Hon LYNN MacLAREN: I do not know to whom he refers, so I can only guess.

Division

New clause put and a division taken, the Deputy Chair (Hon Liz Behjat) casting her vote with the ayes, with the following result —

Ayes (19)

Hon Ken Baston	Hon Peter Collier	Hon Col Holt	Hon Michael Mischin
Hon Liz Behjat	Hon Donna Faragher	Hon Peter Katsambanis	Hon Helen Morton
Hon Jacqui Boydell	Hon Nick Goiran	Hon Mark Lewis	Hon Simon O'Brien
Hon Robin Chapple	Hon Dave Grills	Hon Lynn MacLaren	Hon Phil Edman (<i>Teller</i>)
Hon Jim Chown	Hon Alyssa Hayden	Hon Robyn McSweeney	

Noes (8)

Hon Stephen Dawson	Hon Sue Ellery	Hon Martin Pritchard	Hon Sally Talbot
Hon Kate Doust	Hon Adele Farina	Hon Amber-Jade Sanderson	Hon Samantha Rowe (<i>Teller</i>)

Pairs

Hon Brian Ellis	Hon Darren West
Hon Martin Aldridge	Hon Ken Travers

New clause put and passed.

Clauses 48 to 53 put and passed.

Clause 54: Listing of critical habitat —

Hon ADELE FARINA: Clause 54(4) states —

An order made under subsection (1) may describe or identify habitat by reference to a map or plan held in the Department.

Is it the intention that the map or the plan is actually part of the order so that it is an attachment to the order? When an order is made, the department has control of the plan or the map but it could change at any time. We need to know that the map or the plan that the department refers to was the map or the plan at the time the minister approved the order.

Hon DONNA FARAGHER: The intention is that the map would be attached to the order.

Hon ADELE FARINA: I appreciate the minister saying that that is the intention, but there are no express words to that effect in the bill. This issue has come up in another jurisdiction, which is why I raise it; it is not simply fanciful. I wonder whether some amendments should be considered to make that very clear.

Hon DONNA FARAGHER: I refer the member to clause 55(b), which states —
its listing is otherwise in accordance with the ministerial guidelines.

I understand the ministerial guidelines will identify the process that I have just referred to.

Hon LYNN MacLAREN: Is the concept of “critical habitat” currently in the Wildlife Conservation Act or will this be a new concept introduced by the Biodiversity Conservation Bill?

Hon DONNA FARAGHER: It is a new concept. It is not in the current act.

Hon LYNN MacLAREN: How would critical habitat be protected under our current conservation laws?

Hon DONNA FARAGHER: It is currently not protected.

Hon LYNN MacLAREN: Will this clause, under part 4, “Critical habitat”, increase the protection of critical habitat in Western Australia?

Hon DONNA FARAGHER: Yes.

Hon ADELE FARINA: I suppose the obvious question to ask the minister is how this improves the protection of critical habitat.

Hon DONNA FARAGHER: First, it provides for the listing. We have not got to these clauses yet, but it also provides for consultation, it provides for a register and it provides for habitat conservation notices to be established.

Hon ADELE FARINA: Once a critical habitat is listed, if a variation is needed to the boundaries of that critical habitat, because it will be identified on a map or a plan, would a fresh order need to be made or an amendment to the order need to be made; and would that be tabled in both houses of Parliament and be a disallowable instrument?

Hon DONNA FARAGHER: It is not disallowable but it would be tabled in Parliament. If it was amended, that would also have to be returned to Parliament.

Hon ADELE FARINA: Can the minister point to the provision that requires that to come back to Parliament and could the minister explain why it is not a disallowable instrument?

Hon DONNA FARAGHER: Clause 54(2) refers to “amend”, so that is the reference. Subclause (5) reads, “Section 258 applies to an order made under subsection (1).” If we one day get to clause 258, we will see that it identifies what the minister must cause to lay before both houses of Parliament. Why is it not a disallowable instrument? The legislation goes through the listing, the register and all those sorts of things. I suppose I could put it this way: why would the Parliament want to disallow protecting critical habitat? I think that is what the member is actually saying.

Hon ADELE FARINA: The Parliament could want to disallow an amendment to a critical habitat area that reduces that critical habitat area. That is what I am concerned about. It does not seem to me that there is any public process by which these are determined for listing and there is no capacity for the public to comment on whether the diagram on the map is large enough to cover all the critical habitat, or whether some of it is missing and should be added to the map. There is no capacity for any of that to happen, so the minister will make the listing and then it will be tabled in Parliament. If we are dealing with an amendment, it could reduce the critical habitat area and we will not have any input into that process whatsoever, so it is not exactly all that transparent until the end, when we cannot do anything about it. There is no opportunity for any community consultation through that process.

Hon DONNA FARAGHER: I refer the member to clause 57, “Register”. Subclause (3) states —

The register must be made available for public inspection in accordance with the regulations.

I refer also to clause 56, which refers to consultation.

Hon ADELE FARINA: The only person who is given notice is the proposed owner. All the conservation groups and all the experts who have the scientific expertise in this field will not have an opportunity to make any comment about whether a critical habitat area should exist beyond the boundary of the lot owned by an owner. We need to be clear here. We are not dealing with clause 56; we will come to it in due course. That consultation is purely with the owner of the property and not anyone else who may be able to provide expert advice to government on this issue.

While I am on my feet, is there any limitation on the size of a critical habitat? For example, could the whole of the south west region be determined to be a critical habitat? After all, it is a biodiversity hotspot.

Hon Donna Faragher: There is no specification.

Hon ADELE FARINA: The minister did not comment on my concern about the lack of public consultation through this process. The only consultation is with the owner; there is no consultation with any experts or stakeholders who might feel that the boundaries of the owners’ landholdings are not sufficient to protect the

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Hon Sue Ellery; Hon Lynn MacLaren; Hon Adele Farina; Hon Donna Faragher

critical habitat that is being looked after. Also, to the best of my understanding, there is no capacity under clause 54 for public nominations to be brought forward. I am happy to stand corrected if the minister can point to a relevant clause. From what I can see, there is no capacity for public nomination. This is really very much a closed-house process, and that is somewhat concerning.

Debate interrupted, pursuant to standing orders.

[Continued on page 5292.]

Sitting suspended from 4.15 to 4.30 pm