

## BIODIVERSITY CONSERVATION BILL 2015

### *Committee*

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

#### **Clause 5: Terms used —**

Committee was interrupted after the clause had been partly considered.

**Hon SUE ELLERY:** When the committee was interrupted to consider questions without notice, I was on my feet making the point that the definition in clause 5 of what constitutes a critical habitat is in fact not a definition at all; rather, it refers us to a series of steps that form part of a discretionary process that the minister can go through to determine whether a particular habitat is critical. The entire thing is discretionary. There is nothing defining about it.

**Hon LYNN MacLAREN:** I also want to wrap up my comments about critical habitat. Can the minister advise whether any mapping or surveying has been done to identify critical habitats?

**Hon Donna Faragher:** I ask the member to repeat the question.

**Hon LYNN MacLAREN:** Has mapping or surveying been done to assess what is critical habitat and what our estate of critical habitat is at the moment? If no mapping has been done, when is it intended to be done?

**The DEPUTY CHAIRMAN:** Order! The question at the moment is that clause 5 stand as printed. A definition of “critical habitat” is listed in the clause. The question of critical habitat is also canvassed in more detail in part 4, division 1, but even then I am not sure whether it is relevant. If the minister wants the call because she wishes to address this issue, I will permit the question.

**Hon DONNA FARAGHER:** I understand that no mapping has been done, but I will have that reconfirmed. It will be done under the auspices of this bill. As the member would appreciate, there are no equivalent provisions for mapping to be done in the current act. Part 4 of the bill provides the mechanism for it to be done.

**Hon ADELE FARINA:** I refer to the minister’s answer to the question asked by Hon Lynn MacLaren in question time about a wetland. The minister informed Hon Lynn MacLaren that the wetland in question is a “multiuse wetland”, a term I have never heard before. I do not know how there could be a multiuse wetland and who would make the determination that a wetland is a multiuse wetland. Seeing we are dealing with critical habitat, is it possible to have a multiuse critical habitat? Let us get that clear up-front.

**Hon DONNA FARAGHER:** A critical habitat would not be in a multiple use wetland. For the reference of the member, there are a number of categories of wetland. There are the conservation category wetland and the multiple use wetlands. My recall on multiple use wetlands is that they are the lowest criteria of wetlands that enable development to occur.

**Hon LYNN MacLAREN:** Minister, thank you for that response. It actually relates to the previous question I asked about the most recent mapping. It is my understanding that that wetland was at one point considered multiple use and that it has now changed in its very nature. Hon Adele Farina raised the matter that I brought up in question time. It is important for us to know whether things are up to date in our assessment of what is critical habitat. There is no more clear example of that than the question I asked in question time about the wetland, which apparently was a multiuse wetland when it was mapped or classified. I would argue that that classification is well out of date.

**Hon ADELE FARINA:** For the record, the question I asked the minister was not whether a multiuse wetland could be a critical habitat or vice versa; rather, it referred to whether the definition of “critical habitat” under this bill allows for a multiuse critical habitat.

**Hon DONNA FARAGHER:** No.

**Clause put and passed.**

**Clause 6 put and passed.**

**Clause 7: Lawful authority —**

**Hon DONNA FARAGHER:** I move —

Page 18, after line 10 — To insert —

*biodiversity conservation conditions* means conditions or requirements relating to the conservation or protection of biodiversity or biodiversity components;

It is proposed to introduce this amendment to enhance the effectiveness of the proposed act. The inclusion of the definition and the associated amendment at clause 7(2) will identify that lawful authority to impact biodiversity

from other approvals applies so long as the relevant biodiversity conservation conditions attached to those approvals are met.

**Hon LYNN MacLAREN:** Is this a new amendment or was it circulated previously?

**Hon Donna Faragher:** It has been on the notice paper since last week.

**Hon LYNN MacLAREN:** One of the concerns I have raised is integration with other acts. The government is introducing the definition of “biodiversity conservation conditions”. Can the minister explain how they will relate to planning laws or any other acts? Will they be unique to the proposed Biodiversity Conservation Act and no other act?

**Hon DONNA FARAGHER:** It is actually unique to the Biodiversity Conservation Bill 2015, but the conditions may refer to other parts in other acts, or licences or approvals that might come under other acts. The Animal Welfare Act might be an example of that.

**Hon ADELE FARINA:** Just to clarify, when we are talking about biodiversity conservation conditions, we are not talking about conditions that will be set by the Minister for Environment under this legislation; they may be conditions that are set by another minister, with no expertise in biodiversity at all, under a different piece of legislation. Is that correct?

**Hon DONNA FARAGHER:** It is with respect to the acts that are referred to primarily in clause 7. For example, the Conservation and Land Management Act might authorise putting a spotlight in front of native fauna, such as a kangaroo, for counting purposes or something like that. Under this legislation, that may be seen as inappropriate or not acceptable. Therefore, this condition has been included to recognise that it is being done for a particular purpose and with approval under another act, which in this example would be the CALM act. These conditions would then be made under the CALM act authorisations and they would provide protection to the person who has the spotlight in front of the kangaroo, which otherwise would not be permitted under this bill. I hope that makes sense.

**Hon ADELE FARINA:** For a bill that is supposed to be getting rid of unnecessary red tape and regulation, that would have to be the most ridiculous example I have heard for a very long time. It seems to be regulating something that no-one would consider needs regulation, because obviously if there were people out counting kangaroos for the purposes of doing a population count, I do not think anyone would raise any issue about shining a spotlight at a kangaroo to count it. To me, it is all a little ridiculous for a bill that is supposed to be getting rid of regulation and unnecessary red tape. We seem to be creating more than we need to with this legislation, and it is highlighted by the example that was provided.

What I am trying to get clear is: if planning or development approval was granted under the Planning and Development Act 2005—it could well apply to the example Hon Lynn MacLaren used during question time about the wetland in Bayswater—for a proposal for a unit development next to a wetland, and it was determined that the biodiversity of that wetland needed to be protected, is it possible that by giving approval under the planning act for the development of those units, the Minister for Planning could impose a biodiversity conservation condition that would satisfy the requirements under this bill? On what basis does the Minister for Planning have any expertise to impose a biodiversity conservation condition? If we are going down this path, there should be some requirement about who the Minister for Planning is required to consult in order to impose that sort of a condition, and that does not appear to be clear from the proposed amendments on the notice paper.

**Hon DONNA FARAGHER:** I just indicate that the Planning and Development Act is not referred to in clause 7. That is one part.

**Hon Adele Farina:** Does it say “any written law”?

**Hon DONNA FARAGHER:** Members referred to planning conditions in a general sense. The Western Australian Planning Commission will obviously seek advice from relevant agencies and put forward conditions in response to that. In an answer that I gave members today, the Minister for Environment indicated the Department of Environment Regulation put forward that a condition should be there with respect to acid sulphate soils, and that was included. I can confirm that as the Minister for Planning. So that is the WAPC.

In a general sense, if planning conditions deal with biodiversity or the taking of flora, for example, no matter how well the conditions are written, current planning legislation effectively does not allow someone to take that flora. The proponent, or whoever the member wants to refer to, would have to apply to the Department of Parks and Wildlife for a permit to take that flora. Effectively, two permits are required. I understand that this clause

puts two into one. Conceivably, a condition relating to the taking of flora could be put into the conditions of the planning approval but it would still have to meet the biodiversity conservation conditions set out in this bill.

**Hon ADELE FARINA:** I have a number of questions; I am not too sure where to start. As it currently sits in the bill, clause 7(1) lists a number of acts. The proposed amendment seeks to insert a new definition of “biodiversity conservation conditions”. I know we are not at it yet, but it relates to the next proposed government amendment that seeks to amend clause 7(2). The express words “or required under a written law or State agreement” seem to be far more extensive than the legislation listed in clause 7(1). The proposed amendment to clause 7(2) is at odds with clause 7(1). I am not clear what this proposed amendment will do. Is it to apply to only those pieces of legislation that are listed in clause 7(1) or is it, as stated in proposed section 7(2)—if we agree to the amendment—that it will apply to a written law or a state agreement, which is much broader?

**Hon DONNA FARAGHER:** The acts referred to in clause 7(1) and beyond are well-known requirements for licences, permits and approvals. I understand the other part is effectively a catch-all to take into account some other acts that may have relevance. The acts that are defined would be the most well-known and used for licences and other matters. I do not disagree, I have to say, on reading this, that in part the proposed amendment would perhaps read better if it referred to “activity” rather than “an act” because I think there are a couple of references to “act”. One issue raised by parliamentary counsel was that referring to “activity” might cause confusion with respect to clause 6, “Lawful activity”. It was suggested that it was a lower case “a” for “act”.

**Hon ADELE FARINA:** Minister, I am still not clear about what we are trying to achieve by this clause of the bill, and who will get to impose the biodiversity conditions, and under what circumstances. Could the minister perhaps explain that, because it is not clear to me?

**Hon DONNA FARAGHER:** Mr Deputy Chair, I ask that you leave the chair until the ringing of the bells, please. I would like to get some advice on this matter.

**The DEPUTY CHAIR:** Members, I will leave the chair until the ringing of the bells.

*Sitting suspended from 5.40 to 7.30 pm*

**Hon DONNA FARAGHER:** I thank the chamber and the Deputy Chair for leaving the chair prior to the dinner break. Some further discussions took place behind the Chair and I indicate that I will move that further consideration of clause 7 be deferred until after clause 320. This is so that we can continue to look at some issues with the amendment before us.

**Further consideration of the clause postponed, on motion by Hon Donna Faragher (Minister for Planning).**

**Clause 8 put and passed.**

**Clause 9: Determination as to fauna, flora or species —**

**Hon ADELE FARINA:** Could the minister indicate under what circumstances these provisions will be used? Clause 9(1) provides for the minister to make an order to —

... determine that an animal, other than an animal that belongs to a native species, is fauna for the purposes of this Act.

Clause 9(2) provides that —

The Minister may, by order, determine that an animal that belongs to a native species is not fauna for the purposes of this Act.

I would like some understanding of why these provisions are needed.

**Hon DONNA FARAGHER:** I will deal with each in part. Subclause (1), which states that the minister may, by order, “determine that an animal, other than an animal that belongs to a native species, is fauna for the purposes of this Act”, may be an example whereby we may want to manage an exotic species. Exotic finches would be an example in the case of aviary birds. That is how that subclause will apply. Subclause (2), which states that the minister may, by order, “determine that an animal that belongs to a native species is not fauna for the purposes of this Act”, would be an example whereby they are not protected under the act. The example given to me is that of a fly.

**Hon ADELE FARINA:** I am still not sure I am that clear when a minister would need to use that. However, that is fine; I understand the explanation given.

I have two questions to follow: Will there be public consultation prior to the minister making the order? Will the order be disallowable?

**Hon DONNA FARAGHER:** I can answer in two parts. No, there is no requirement for consultation, but it is subject to disallowance. I refer Hon Adele Farina to clauses 258 and 259. She will note that on page 20 of the bill, clause 9(7) refers to section 258.

**Clause put and passed.**

**Clause 10 put and passed.**

**Clause 11: Crown bound —**

**Hon LYNN MacLAREN:** Clause 11 is a very important clause. I think it is important to bring it to the chamber's attention and to also ask the minister a question. Clause 11 binds the Crown. This is an important change from the Wildlife Conservation Act. It is one of the important clauses in the bill and we support it. However, can the minister confirm that although this clause binds the Crown, the state or the Crown will not be held liable for any offences? Could she address that matter and explain why that will be the case?

**Hon DONNA FARAGHER:** I am happy to take more questions on this, if I have not answered the member fully enough, but I confirm that subclause (2) effectively indicates that the state cannot be prosecuted.

**Hon LYNN MacLAREN:** In what way does the bill bind the Crown?

**Hon DONNA FARAGHER:** I will answer in two parts. First, it has the responsibility to act within the provisions of this proposed act, and that is not the case under the current legislation, which has no requirement for fauna. I also point the member to clause 272 on the resolution of matters relating to powers and duties of public authorities, which has some relevance to clause 11 as well.

**Clause put and passed.**

**Clause 12: Application of Act in relation to aquatic matters —**

**Hon ADELE FARINA:** I would like some clarification on the purpose of subclause (2), which refers to the Conservation and Land Management Act. Subclause (1) makes no reference to the CALM Act, but subclause (2) states —

Nothing in subsection (1) affects the application of the CALM Act Part II Division 3.

Also, the title of the clause is "Application of Act in relation to aquatic matters", so I am not too sure what relationship subclause (2) has with subclause (1).

**Hon DONNA FARAGHER:** Subclause (2) relates to marine parks, which will have requirements from biodiversity and fishing perspectives.

**Clause put and passed.**

**New Part 1A —**

**Hon ADELE FARINA:** The amendment goes for a number of pages. Am I required to read the amendment into the *Hansard*? I am more than happy to. My amendment seeks to insert a new part 1A.

**The DEPUTY CHAIR (Hon Alanna Clohesy):** No, the member is not required to do that but, to be clear, we are dealing with new part 1A, "Biodiversity Planning and Monitoring".

**Hon ADELE FARINA:** I move —

Page 21, after line 17 — To insert —

**Part 1A — Biodiversity Planning and Monitoring**

**12A. Statewide biodiversity conservation strategy**

(1) The Minister must —

- (a) prepare and adopt a statewide biodiversity conservation strategy for Western Australia within two years of the date on which this Act takes effect; and
- (b) monitor the implementation and effectiveness of the strategy; and
- (c) review the strategy every five years; and
- (d) may, when necessary, amend the strategy.

(2) The Minister must by notice in the *Gazette* publish the biodiversity conservation strategy and each amendment of the strategy.

**12B. Contents of the statewide strategy**

The strategy in section 12A must —

- (a) provide for an integrated, co-ordinated and uniform approach to further and promote biodiversity conservation encompassing government agencies, regional and local communities, other stakeholders and citizens;
- (b) be consistent with —
  - (i) the Act's objects and how these are to be achieved; and
  - (ii) State environmental policies; and
  - (iii) biodiversity recovery and management plans; and
  - (iv) co-operative arrangements with the Australian Government, local government authorities and regional natural resource management groups; and
  - (v) relevant international agreements;
- (c) identify priority areas for conservation action and investment, including the following —
  - (i) establishing a marine and conservation reserve system;
  - (ii) landscape scale approaches across tenures;
  - (iii) restoration of habitats;
  - (iv) landscape connectivity;
  - (v) threats to biodiversity;
  - (vi) impacts of climate change;
  - (vii) research and monitoring requirements;
  - (viii) education and raising public awareness;
  - (ix) facilitating access to information.

**12C. Development of statewide strategy**

- (1) The CEO must prepare a draft nature conservation strategy for Western Australia.
- (2) In preparing the draft biodiversity conservation strategy, the CEO must consider the objects of the Act.
- (3) In preparing the draft biodiversity conservation strategy, the CEO must consult with the —
  - (a) Scientific Advisory Committee; and
  - (b) Biodiversity Commission; and
  - (c) Conservation and Parks Commission; and
  - (d) parties affected by the implementation of the strategy.
- (4) The CEO must publish a notice in the *Gazette* and on the department's website inviting comment on the draft strategy.
- (5) Submissions in respect of a statewide biodiversity conservation strategy may be made by any person within 60 days of the publication of the notice referred to in subsection (4).
- (6) In preparing the final draft strategy, the CEO must —
  - (a) consider all submissions received; and
  - (b) obtain and consider final advice from the —
    - (i) Scientific Advisory Committee; and
    - (ii) Biodiversity Commission; and
    - (iii) Conservation and Parks Commission; and
    - (iv) affected government agencies.

- (7) The CEO must submit the draft statewide biodiversity conservation strategy to the Minister for approval within 6 months of the closing of public consultation in subsection (5).
- (8) The draft strategy must be accompanied by a report setting out the issues raised in any submissions given during the public consultation period for the draft strategy.
- (9) The Minister must cause notice of publication in the *Gazette* and on the department's website —
  - (a) final biodiversity conservation strategy; and
  - (b) report on submissions in subsection (8).

**12D. Implementation of strategy**

The CEO must take reasonable steps to implement a statewide biodiversity conservation strategy that has been approved through provisions of this Act.

**12E. Review of statewide biodiversity conservation strategy**

- (1) The Biodiversity Commission when undertaking a review must —
  - (a) undertake public consultation for a period no less than 60 days and consider submissions; and
  - (b) obtain and consider advice from the Scientific Advisory Committee, Conservation and Parks Commission and the department administering the Act; and
  - (c) consult with affected government agencies and other stakeholders.
- (2) The Biodiversity Commission must provide the final review with recommendations and a report on submissions received to the Minister for approval.
- (3) The Minister must consider the report and may take any action considered appropriate.
- (4) The Minister must —
  - (a) cause an order and copy of the final report of the review in subsection (1), report on submissions received in subsection (2), and report received from the Biodiversity Commission to be laid before each House of Parliament; and
  - (b) make the final review and report on submissions publicly available within 30 days after tabling in Parliament.

**12F. Minor amendments to the statewide conservation strategy**

- (1) The Minister —
  - (a) may prepare a new biodiversity conservation strategy, incorporating the minor technical or clerical amendments into the existing strategy; and
  - (b) need not comply with the requirements in this Part.
- (2) If a new nature conservation strategy is prepared in subsection (1), the Minister must cause an order to be laid before each House of Parliament, and make publically available within 30 days of tabling in Parliament.

**12G. Bioregional planning**

- (1) The Minister may determine a region as a bioregion.
- (2) The Minister may prepare and publish a bioregional plan for the bioregion either —
  - (a) on the Minister's initiative; or
  - (b) at the request of a regional natural resource management group or local government municipality; or
  - (c) at the request of any person.
- (3) In preparing a bioregional plan, the Minister must carry out public consultation on a draft of the plan.

- (4) The Minister may, on behalf of the State, co-operate with another jurisdiction or, an agency of a jurisdiction or any other person in the preparation of a bioregional plan for a bioregion that is not wholly within the State.
- (5) Co-operation in implementation of a bioregional plan may include giving financial or other assistance.
- (6) A bioregional plan may include provisions about all or any of the following —
  - (a) the components of biodiversity, their distribution and conservation status;
  - (b) priorities, strategies and actions to achieve the objectives of the bioregional plan;
  - (c) mechanisms for community involvement in implementing the bioregional plan;
  - (d) measures for monitoring and reviewing the bioregional plan.
- (7) Subject to this Act, the Minister must have regard to a bioregional plan in making any decision under this Act to which the plan is relevant.
- (8) The Minister must review a bioregional plan at least every five years, and assess compliance with the plan and the extent to which its objectives are being met.
- (9) The Minister must publish a bioregional plan and any review in the *Gazette* and make publically available within 30 days of publication.

**12H. Biodiversity monitoring, evaluation and reporting on state and condition of biodiversity**

- (1) The Biodiversity Commission must undertake a review and prepare a report on the state and condition of WA's biodiversity every five years from the commencement of this Act.
- (2) In undertaking the review in subsection (1), the Biodiversity Commission must establish evaluation framework, mechanisms and a set of indicators to determine —
  - (a) trends in state and condition of biodiversity components, including the following —
    - (i) threatened species and ecological communities;
    - (ii) priority species and ecological communities;
    - (iii) specially protected species;
    - (iv) Ramsar wetlands;
    - (v) nationally listed wetlands;
    - (vi) native vegetation extent and condition;
    - (vii) sandalwood;
  - (b) trends in pressures for biodiversity components listed in paragraph (a);
  - (c) the effectiveness of management intervention for biodiversity components listed in paragraph (a).
- (3) The Biodiversity Commission must provide a review and report with recommendations to the Minister for approval.
- (4) The Minister must consider the report and may take any action considered appropriate.
- (5) The Minister must —
  - (a) cause an order and copy of the final report of the review in subsection (1) and report received from the Biodiversity Commission to be laid before each House of Parliament; and
  - (b) make the final review and report on submissions publically available within 30 days after tabling in Parliament.

This amendment seeks to address a number of the deficiencies with the bill that have been identified by a number of community and conservation groups and that are critical to this whole capacity to protect

biodiversity in this state. The first part of proposed new section 12A deals with a statewide biodiversity conservation strategy. We need a strategy in place so that the department and all the stakeholders involved in areas that might impact on biodiversity conservation know what the state strategy is, what it is working towards and what the plan is. Certainly, when the former Labor government was in place, together with developing a piece of legislation, we were also developing a biodiversity strategy. We consider that to be fundamentally important to the whole process. That is lacking in this bill, and a number of groups have raised that.

I also make the point that the international convention on biodiversity conservation makes reference to the use of strategies, and uses the instrument of strategies to develop its objectives within this sphere. It is a well-established process and it is lacking in this bill. The amendment proposes that the state will be required to prepare a biodiversity strategy, monitor the effectiveness of the strategy and review it every five years and amend it if necessary, and that it will be published in the *Government Gazette*. Proposed new section 12B details the contents of the statewide strategy to give some understanding of what needs to be covered in the strategy. Proposed section 12C deals with the development of the statewide strategy so that we have a process in place that everyone is clear on and all the relevant bodies that have the technical and scientific expertise to provide advice to that process are consulted. Proposed section 12D deals with the implementation of the strategy.

Proposed section 12E deals with the review of the statewide biodiversity conservation strategy, and proposed section 12F deals with minor amendments to the statewide conservation strategy as needed. Proposed section 12G brings in a new concept of bio-regional planning, which sits underneath the statewide conservation strategy. This will look at small regional areas. Again, that will be a very important instrument in making sure that everyone understands the objective and what we need to be working towards, which clearly are not spelt out in the legislation. Proposed section 12H deals with biodiversity monitoring, evaluation and reporting on the state and condition of biodiversity. This is absolutely critical. We cannot conserve biodiversity if we do not know its current state and condition. That needs to be constantly monitored. A fair bit of money is spent in various implementation processes and plans and we need to be able to assess whether they are effective or not. Monitoring is absolutely critical. I point out that the Aquatic Resources Management Bill, which the house will consider at some point in time, provides for monitoring of aquatic resources and aquatic resource management strategies. That is missing from this bill. As I said, the government has brought two bills before the house to modernise the legislation in this area, but one does these things and the other does not. It does not make sense to me. The amendment seeks to address what the opposition believes are major deficiencies in the bill before us.

**Hon DONNA FARAGHER:** The member has indicated it is a long amendment and I do not disagree. I will give a general statement and then add a couple of points. The government will oppose this amendment. The government believes that all the matters that have been raised through this amendment can already be resolved without a statutory requirement. This will only add a bureaucratic and time-consuming requirement and take the focus away from implementing biodiversity conservation. In 2010 the government agreed to Australia's national biodiversity conservation strategy. That was done without a statutory requirement. Biodiversity conservation has been demonstrated without the statutory requirements proposed in this amendment. Regional strategies such as the Kimberley science and conservation strategy and the Great Western Woodlands conservation strategy are examples of that.

I refer to proposed section 12C—I know that there are some more amendments further on and we will come to deal with those as well—and the proposal to establish a biodiversity commission. As I understand it, the opposition is seeking to establish a new biodiversity commission to advise on biodiversity conservation matters, as well as establish a formal statutory scientific advisory committee. Again, from what we can read in this amendment, the opposition is proposing two extra advisory committees and I think —

**Hon Adele Farina:** They are separate amendments.

**Hon DONNA FARAGHER:** Yes, but it is referred to in the body of the opposition's amendments. I am making a general comment. That is why I prefaced my comments and said that we will come to that more substantially later. That would add two extra advisory committees, and I think the commission would be more than an advisory committee. That adds secretariats and meeting costs and all those sorts of things. The government simply believes that strategies, whether an overall strategy or regionally based strategies, can be implemented without statutory requirements, if I can put it that way. We have already demonstrated that we can do that without having an amendment such as this.

**Hon LYNN MacLAREN:** I note that the amendment that the honourable member is proposing seems to be quite comprehensive in its scope and would certainly be supported by the Greens. But I also note that the minister has just said that it does not have to be in legislation and that it could be implemented by the department regardless of whether it is in this bill. That seems to indicate that there might be a willingness on

the part of the minister to establish a state biodiversity conservation strategy. That would certainly be welcome. It is a shame really that we do not want to be that explicit in this bill, but I see it is in quite a different style. It hearkens back to perhaps a previous way of going about biodiversity conservation legislation and to try to insert it into this bill is a noble attempt, but it appears to be unnecessary in the legislation, to me, from what I have heard. As long as the minister has an intention to have a biodiversity strategy and to pursue its implementation and monitoring, I would welcome that to be on the record.

**Hon DONNA FARAGHER:** Obviously, that is a matter for the Minister for Environment to determine. I was simply saying that there is capacity for strategies to be developed, undertaken and indeed funded without the requirements on how that is done being in legislation. As I said, I point to two examples that are well-known to me. The Kimberley science and conservation strategy has been put together without the requirements that are being proposed as part of this amendment. The Great Western Woodlands strategy is another example of that. Mechanisms and strategies are already in place and are being undertaken by the government. Indeed future governments will have the opportunity to do further strategies, whether they are regionally based, statewide or whatever it may be. My comment was general in nature because depending on a particular issue or an identified concern, there is an opportunity to develop those strategies without the statutory requirements that are proposed in this amendment.

*Division*

New part put and a division taken, the Deputy Chair (Hon Alanna Clohesy) casting her vote with the ayes, with the following result —

Ayes (10)

Hon Robin Chapple  
Hon Alanna Clohesy  
Hon Kate Doust

Hon Sue Ellery  
Hon Adele Farina  
Hon Lynn MacLaren

Hon Martin Pritchard  
Hon Amber-Jade Sanderson  
Hon Ken Travers

Hon Samantha Rowe (*Teller*)

Noes (19)

Hon Martin Aldridge  
Hon Ken Baston  
Hon Liz Behjat  
Hon Paul Brown  
Hon Jim Chown

Hon Peter Collier  
Hon Brian Ellis  
Hon Donna Faragher  
Hon Nick Goiran  
Hon Dave Grills

Hon Nigel Hallett  
Hon Alyssa Hayden  
Hon Col Holt  
Hon Peter Katsambanis  
Hon Rick Mazza

Hon Robyn McSweeney  
Hon Helen Morton  
Hon Simon O'Brien  
Hon Phil Edman (*Teller*)

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Pairs

Hon Darren West  
Hon Stephen Dawson  
Hon Sally Talbot

Hon Mark Lewis  
Hon Michael Mischin  
Hon Jacqui Boydell

**New part thus negated.**

**New part 1B —**

**Hon ADELE FARINA:** I move —

Page 21, after line 17 — To insert —

**Part 1B — Biodiversity Commission**

**12I. Establishment of the Biodiversity Commission**

- (1) There is to be a Biodiversity Commission, comprising 7 members.
- (2) The Minister is to determine by instrument in writing the membership and the terms and conditions of appointment of members of the Biodiversity Commission, and appoint a chair and deputy chair.
- (3) The members of the Biodiversity Commission are to have expertise in one or more of the following areas —
  - (a) biodiversity conservation;
  - (b) biological science;
  - (c) environmental sciences.
- (4) The Minister must ensure that —
  - (a) members possess scientific qualifications that the Minister thinks relevant to the performance of the the Biodiversity Commission's functions; and
  - (b) members are appointed to represent the Biodiversity Commission; and

- (c) at least 5 members are not to be public servants; and
  - (d) the Chair and deputy chair are not to be public servants.
- (5) The Biodiversity Commission may establish sub-committees or seek advice on relevant matters in order to perform its functions.

**12J. Functions of the Biodiversity Commission**

The functions of the Biodiversity Commission are to —

- (a) advise the Minister, at his or her request, on matters relating to the conservation and ecologically sustainable use of biodiversity; and
- (b) undertake periodic reviews of the statewide biodiversity conservation strategy to determine its effectiveness; and
- (c) undertake periodic reviews of the assessment and report on the overall state and condition of biodiversity; and
- (d) undertake periodic reviews of recovery, abatement and management plans; and
- (e) perform such other functions as are conferred on the Biodiversity Commission by this Act or the regulations.

**12K. Biodiversity Commission — Annual Report**

- (1) The scientific committee described in Part 1C must, each financial year, give the Minister a report (an *annual report*) about the activities of the committee during the year.
- (2) The scientific committee must make the annual report publicly accessible not later than 30 days after the day the scientific committee gives the report to the Minister.

Effectively, this amendment seeks to establish a biodiversity commission that would comprise seven members. It would have expertise in the areas of biodiversity, conservation, biological science and environmental science. It would provide that body of expertise that the minister would need in the management of the legislation. The functions of the biodiversity commission would include: advising the minister, at the minister's request, on matters relating to the conservation and ecologically sustainable use of biodiversity; undertaking periodic reviews of the statewide biodiversity conservation strategy to determine its effectiveness; undertaking periodic reviews of the assessment and report on the overall state and condition of biodiversity; undertaking periodic reviews of recovery, abatement and management plans; and performing such other functions as are conferred on the commission by the act or the regulations. The scientific committee would provide an annual report through the biodiversity commission.

This again goes to one of those issues that has been raised by community groups and stakeholders in this area. They feel that we need a body of scientific expertise to provide advice to the minister as it is needed and also to ensure that the implementation of the legislation is on track with that statewide strategy. Again, I am not going to labour the point because I know how the numbers lie. This is a very important body and it will give great weight to the legislation. If we are serious about wanting to conserve biodiversity in this state, we would establish a commission tasked with that function.

**Hon DONNA FARAGHER:** The government will not be supporting this amendment moved by the opposition. I made some reference to this in response to the previous amendment. The government believes that the establishment of this proposed commission would add significant cost to the administration of the act without necessarily any greater gains in biodiversity conservation outcomes. I remind the house that there is a Conservation and Parks Commission. Previously, two separate authorities provided advice to the minister on biodiversity—the Marine Parks and Reserves Authority and the Conservation Commission of Western Australia. The government moved to combine the two. We now have the Conservation and Parks Commission, which provides advice to the minister on matters surrounding biodiversity. For those reasons, the government will not be supporting this amendment.

**Hon ADELE FARINA:** Would the minister just put on the record how many members of the Conservation and Parks Commission have expertise in the area of biodiversity conservation?

**Hon DONNA FARAGHER:** I will have to get back to the member on the specifics of the current membership. I also add that the commission has the capacity to set up special committees on an as-required basis. If it required some further work or advice on a particular matter in a particular scientific field, there is capacity for it to bring in those experts to help it deliver the advice that it needs to the minister.

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

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**Hon LYNN MacLAREN:** Similar to new part 1A proposed by Hon Adele Farina, I commend the work that has gone into this amendment. It seeks to establish a biodiversity commission that would include that scientific expertise that is needed in order to advise the minister, which we just heard is not presently on the Conservation Commission but could be co-opted on. Currently, it does not exist. This proposed new part lays out the functions of the biodiversity commission and also refers to an annual report, which I think is very important.

I think we are in a crisis situation as far as our biodiversity goes. We pointed that out in the debate on the second reading. This current system is not working very well. When one points to the current system and says that we have already covered that, there is a bit of scepticism about that. I like the fact that the opposition is proposing to insert a part that specifically creates a biodiversity commission. I will support the amendment.

*Division*

New part put and a division taken, the Deputy Chair (Hon Amber-Jade Sanderson) casting her vote with the ayes, with the following result —

Ayes (10)

Hon Robin Chapple  
Hon Alanna Clohesy  
Hon Kate Doust

Hon Sue Ellery  
Hon Adele Farina  
Hon Lynn MacLaren

Hon Martin Pritchard  
Hon Amber-Jade Sanderson  
Hon Ken Travers

Hon Samantha Rowe (*Teller*)

Noes (19)

Hon Martin Aldridge  
Hon Ken Baston  
Hon Liz Behjat  
Hon Paul Brown  
Hon Jim Chown

Hon Peter Collier  
Hon Brian Ellis  
Hon Donna Faragher  
Hon Nick Goiran  
Hon Dave Grills

Hon Nigel Hallett  
Hon Alyssa Hayden  
Hon Col Holt  
Hon Peter Katsambanis  
Hon Mark Lewis

Hon Rick Mazza  
Hon Robyn McSweeney  
Hon Simon O'Brien  
Hon Phil Edman (*Teller*)

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Pairs

Hon Stephen Dawson  
Hon Darren West  
Hon Sally Talbot

Hon Jacqui Boydell  
Hon Michael Mischin  
Hon Helen Morton

**New part thus negatived.**

**New part 1C —**

**Hon ADELE FARINA:** I move —

Page 21, after line 17 — To insert —

**Part 1C — Scientific Advisory Committee**

**12L. Scientific Advisory Committee**

- (1) There is established a body to be called the Scientific Advisory Committee.
- (2) The functions of the Scientific Advisory Committee are to advise the Minister on the following —
  - (a) listing and de-listing of taxa of flora and fauna, ecological communities;
  - (b) listing and de-listing of key threatening processes;
  - (c) criteria and guidelines to be followed in the determination of threatened and priority taxa and ecological communities;
  - (d) criteria and guidelines to be followed in the determination of threatened and priority taxa and ecological communities critical habitat;
  - (e) other matters relating to the conservation of threatened biodiversity.
- (3) Other functions of the Scientific Advisory Committee are —
  - (a) preparation of conservation advice upon listing for each taxa, ecological community and key threatening processes outlining objectives and immediate actions to be undertaken; and
  - (b) undertake reviews of listings at least every five years.

**12M. Membership**

- (1) The Scientific Advisory Committee is to consist of 7 members to be appointed by the Minister of whom not more than 4 are to be State Service officers or State Service employees and of whom one is to be appointed as chairperson.
- (2) All members of the Scientific Advisory Committee are to have special knowledge and experience in the sciences of biodiversity or ecology.
- (3) The members of the Scientific Advisory Committee must collectively have expertise in the following categories and each member must have expertise in one or more of the following categories —
  - (a) vertebrate fauna;
  - (b) invertebrate fauna;
  - (c) vascular flora;
  - (d) non-vascular flora;
  - (e) taxonomy;
  - (f) marine ecology;
  - (g) freshwater ecology;
  - (h) terrestrial ecology;
  - (i) population ecology.
- (4) For the purposes of giving advice to the Minister and in performing its functions under this Act, the Scientific Advisory Committee may consult with members of the broader scientific community as it considers appropriate, and convene sub-committees of expertise.

Again, I am not going to read the whole amendment into *Hansard*, but it comprises two parts. The first part establishes a body to be called the scientific advisory committee, which is to comprise seven members and is to advise the minister on a range of things, such as the listing and de-listing of taxa of flora and fauna and ecological communities; the listing and de-listing of key threatening processes; criteria and guidelines to be followed in the determination of threatened and priority taxa and ecological communities; criteria and guidelines to be followed —

**The DEPUTY CHAIR:** Order, members! There are a lot of audible conversations happening in the chamber and it is very difficult for *Hansard* to pick up the member on her feet. If you need to have a conversation, can you take it outside, please.

**Hon ADELE FARINA:** The committee is also to advise on the criteria and guidelines to be followed in the determination of threatened and priority taxa and ecological communities' critical habitat; and other matters relating to the conservation of threatened biodiversity. Other functions of the scientific advisory committee are the preparation of conservation advice upon listing for each taxa, ecological community and key threatened processes, outlining objectives and immediate actions to be undertaken; and undertaking reviews of those listings at least every five years.

The second part deals with the membership. The committee is to comprise seven members, and they are all to have special knowledge of and experience in the sciences of biodiversity or ecology. Proposed section 12M(3) provides for a long list of different categories that the combined committee is to have experience in.

I know from the minister's earlier comments that she is not likely to support this proposed amendment and, quite frankly, I do not understand why not. Clearly, when we are dealing with biodiversity conservation it is a highly scientific area and we need to have expert scientific advice to guide us along the way. The Fish Resources Management Act provides that the minister may establish a Fishery Management Advisory Committee and any other committee the minister wishes. It has two provisions. Establishing a committee to advise a minister is not unusual. The Aquatic Resources Management Bill 2015 proposes to provide for the minister to establish advisory committees for the protection and management of fisheries. It states nothing about the conservation of fisheries or fish biodiversity. Therefore, it makes sense that if we have these other advisory committees advising on the take or use of the resource, we should also have an advisory committee with the relevant technical expertise to advise the minister on biodiversity conservation. I do not think it is onerous, I do not think it is something we should be scared of, and I do not think it is at all costly. More importantly, it would provide a level of public accountability for the funds that are being spent and for the implementation of the legislation, and it also would provide the minister with expert advice.

I know the minister is going to say that we already have a Threatened Species Scientific Committee, but I do not think that that operates at the same level as that which we are proposing for this scientific advisory committee. It is my understanding, from looking at the department's website, that the existing Threatened Species Scientific Committee meets once a year. I do not think that is anywhere near adequate and I ask the minister to confirm whether the website is accurate about that because, from my reading of the website, it states that the committee meets annually to consider any nominations for listings received since the previous meeting. Clearly, a committee that meets only once a year will not achieve the objectives we are proposing that the scientific advisory committee should focus on.

**Hon DONNA FARAGHER:** Again, the government will not support this amendment. The member is right; I am going to refer to the fact that there are two non-statutory expert scientific committees—the Threatened Species Scientific Committee and the Threatened Ecological Communities Scientific Committee. The member referred to the fact that they meet only once a year; I understand that they can meet as often as is needed and that they can meet more often, as the case may be. Those committees have been in place for some time and they will continue to advise the minister on future listing proposals. Although they are non-statutory, their advice is obviously critical to the minister of the day. They operate, however, at virtually no cost to the government, unlike the proposed committee that is being put forward in this amendment. I also indicate that clause 260 relates to guidelines about listing, and clause 260(2)(b) provides that guidelines issued under the proposed section may provide for and in relation to the process for dealing with those nominations. It is the government's intention that that clause will identify the role of the non-statutory scientific committee and the advice requirements the minister will consider when making listing decisions. Clause 39 provides that the minister will advise when he has disagreed with scientific advice, recognising that the bill requires feedback to nominators on their nomination. I suppose there is transparency in that regard, in that should the minister take alternative advice, the nominator will need to be advised of that decision. There is transparency in relation to that matter. Again, it means that the minister can take advice from the committees I have referred to but is not precluded from taking advice from other scientific experts, depending on the circumstances, so we are not limiting the minister of the day to seeking advice, in this instance, from only the scientific advisory committee that is proposed in this amendment. As I say, non-statutory committees are in operation and, as I understand it, an issue has never been raised about the current operation of the committees to which I have already referred. That also does not preclude the minister taking advice from other scientific experts outside the committees I have already referred to.

**Hon ADELE FARINA:** I would like to ask the minister a question about the Threatened Species Scientific Committee and the Threatened Ecological Communities Scientific Committee. In the last 12 months, how many times has each of those committees met and when was the last time they met? How many times in the last 12 months has each of those committees provided advice to the minister? How many times in the last 12 months has the minister actually requested advice from either of those committees? That sums it up. I am happy for the minister to take that on notice if she does not have that information now, and to provide it to me tomorrow.

**Hon DONNA FARAGHER:** I appreciate that there are a number of questions within that question, so I will have to take that on notice.

**Hon LYNN MacLAREN:** The Scientific Advisory Committee as laid out in this amendment does have quite a few duties that seem to be already carried out by the Threatened Species Scientific Committee. However, I am inclined to support the amendment. I did not raise this in the debate on the previous two amendments but I really do have to raise it here: what is the big deal about spending a bit of money on scientific advice to protect our environment? I just want that addressed, because that is one of the reasons being raised for not establishing these scientific committees. We are not saying that these people have to be on our payroll 100 per cent of the time; it is just an opportunity to garner some of the scientific expertise that is already out there and have the benefit of it in our protection of biodiversity. To me, it is like value adding; it is not actually a deficit. I would like to understand what the big deal is about establishing a scientific committee that is going to meet irregularly, have a very small impost and actually bring in a whole lot of knowledge that its members are paid for either in their academic pursuits or from their attachment to companies or whatever. They are already being paid, so why should the government not benefit from their great knowledge? I am going to support this amendment, but I want to ask the minister whether this government is prepared to pay anything at all to ensure that we have the best scientific advice in this groundbreaking update of our biodiversity conservation laws, which has not been done for 60 years. Surely we can afford to spend something!

**Hon DONNA FARAGHER:** I will respond by saying that, as I understand it—I will stand corrected—no question has ever been raised about the current operation of the committees that we already have in place. They have worked effectively. No-one has raised any concerns about their operation, who is on them or how they provide advice to the minister of the day. I suppose if it ain't broke, why fix it? The fact is we have two committees that operate effectively. No-one has put anything to the government, as I understand it—I say that because I am obviously not the Minister for Environment—and no issue has been raised. There is no suggestion

that these committees will be disbanded. They are clearly very important committees from which the minister will always seek advice. There is no suggestion that they are not operating effectively, so why do we need to make something statutory when no problem has been raised with the committees that have been in operation for a considerable time?

**Hon ADELE FARINA:** If we extend the minister's argument of it ain't broke, why fix it—we have committees operating and they are not enforced by any legislative basis—the same argument could be made that threatened species are currently being listed, so why do we need a legislative framework for the listing of threatened species and the rest that we will be discussing in part 2? That is the problem with that argument. The minister cannot on the one hand say that we need to bring in legislation to the Parliament to provide a legislative framework for the listing of threatened species, protected species, habitats, endangered species, critically endangered species and the list goes on, when that is happening already. If the minister is going to say that we do not need to have the advisory committee enshrined in the legislation because it is fine, it has been working and no-one has raised any issue with it so we do not need to fix it, then the same argument can be made for a substantial part of this bill. I do not think it is a good argument. The real question that should be asked is: if we have a committee set up already and it is working well, why is the government so scared about enshrining it in legislation? It is clearly not going to be an additional cost because it already exists—there is not going to be a requirement for any additional resource because it is already being provided to the committee. My only concern would be if the website is right and it meets only once a year. I would probably have a problem with that in terms of what we would want that committee to be doing, but other than that, if it is all working well and it is there, why is there such a strong objection from the government to enshrine that in legislation? It is not an additional cost to government. Other legislation that has been brought to this place by the government has had provisions that establish advisory committees and scientific bodies. It makes no sense to me why a completely different tack is being taken in this bill. I do not think the minister has adequately explained the different tack that is being taken and why the government is so shy in this particular area to give legislative backing to what already exists.

**Hon DONNA FARAGHER:** I think we are going to have to agree to disagree on this point. The government has actually been trying to reduce the number of statutory committees, not just with this portfolio but also across the board. I say again that the government does not believe that there is a requirement to place a statutory committee within the legislation when we already have non-statutory committees that do a good job. That is the sum total—we do not believe that it is necessary. We are not suggesting that they be disbanded in any way. We recognise their importance. I think there were some suggestions during the second reading debate that the minister was not going to take scientific advice and would just make decisions on a whim. Clearly, that is not the case. I identified other parts within the legislation that referred to the procedures and processes that will be undertaken when the minister has to deal with a nomination for listing. That obviously would include, in part, advice from scientific experts, and that would not just be with respect to the two committees to which I have referred—it would not preclude him or her taking advice from other scientific experts who might not sit on that committee. We have experts in the field at universities, the WA Museum and other areas, so it is not limiting the advice that the minister can seek from a scientific perspective. We just simply do not believe that it needs to be a statutory committee.

*Division*

New part put and a division taken, the Deputy Chair (Hon Amber-Jade Sanderson) casting her vote with the ayes, with the following result —

Ayes (10)

Hon Robin Chapple  
Hon Alanna Clohesy  
Hon Kate Doust

Hon Sue Ellery  
Hon Adele Farina  
Hon Lynn MacLaren

Hon Martin Pritchard  
Hon Amber-Jade Sanderson  
Hon Ken Travers

Hon Samantha Rowe (*Teller*)

Noes (19)

Hon Martin Aldridge  
Hon Ken Baston  
Hon Liz Behjat  
Hon Paul Brown  
Hon Jim Chown

Hon Peter Collier  
Hon Brian Ellis  
Hon Donna Faragher  
Hon Nick Goiran  
Hon Dave Grills

Hon Nigel Hallett  
Hon Alyssa Hayden  
Hon Col Holt  
Hon Peter Katsambanis  
Hon Mark Lewis

Hon Rick Mazza  
Hon Robyn McSweeney  
Hon Simon O'Brien  
Hon Phil Edman (*Teller*)

Pairs

Hon Darren West  
Hon Stephen Dawson  
Hon Sally Talbot

Hon Jacqui Boydell  
Hon Michael Mischin  
Hon Helen Morton

**New part thus negatived.**

**Clause 13 put and passed.**

**Clause 14: Criteria for categorisation as species of special conservation interest —**

**Hon ADELE FARINA:** Clause 14(c) provides that —

the listing in that category is otherwise in accordance with the ministerial guidelines.

What is proposed to be in the ministerial guidelines? Again, we are being asked to approve something blind. We have no idea what will be in the ministerial guidelines. I would appreciate some advice from the minister about what we can expect to see in the ministerial guidelines.

**Hon DONNA FARAGHER:** It will include the process and the detail of the criteria that will need to be determined. I refer the member to clause 260, which refers to the issuing of guidelines.

**Hon ADELE FARINA:** I assume it is the same for proposed sections 15, 16 and 17, which have similar provisions that are subject to ministerial guidelines. Will there be a public consultation process in the development of the ministerial guidelines so that the public get an opportunity to comment on them? Will they be disallowable instruments? Where will the public be able to find the ministerial guidelines?

**Hon DONNA FARAGHER:** I understand no, there is no provision for public comment but they will be public documents; they will not be disallowable. They will be public documents that will be placed on the department's website. I understand that members of the public will be able to make submissions where they believe the guidelines should or could be amended. There is capacity for that to happen but, no, they will not be disallowable.

**Hon ADELE FARINA:** Are the guidelines in relation to proposed sections 14 to 17 likely to contain any compliance requirements and penalties for noncompliance of those requirements?

**Hon DONNA FARAGHER:** No.

**Clause put and passed.**

**Clauses 15 to 17 put and passed.**

**Clause 18: Criteria for categorisation as species otherwise in need of special protection —**

**Hon ADELE FARINA:** Clause 18 provides that a native species is eligible for listing in the category of species otherwise in need of special protection at a particular time if, at that time, there is a need to provide special protection for that species. It seems to me that we have covered quite a comprehensive range of listings in the preceding clauses and this provides for a further special type of protection listing. I would like some indication from the minister what that might be. What has not already been covered by the preceding clauses that need this general catch-all?

**Hon DONNA FARAGHER:** I understand that, effectively, it is a catch-all in case in the future something does not fall within the previous clauses. I suppose it is futureproofing that.

**Hon Adele Farina:** I have no idea.

**Hon DONNA FARAGHER:** It is there as a catch-all, just in case.

**Clause put and passed.**

**Clause 19: Listing of threatened species —**

**Hon ADELE FARINA:** This clause deals with the listing of threatened species. I want to draw the chamber's attention to clause 19(3), which states "the Minister must have regard only to matters relating to the survival of the species." That is a nice, positive statement in this legislation about actual protection of the species and what the minister is required to have regard to. That is a positive. I have raised a whole lot of questions and I wanted to put on the record that I think that this provision is a positive.

To save the pain in the rest of the clauses in this particular subdivision of part 2 that also deal with "in accordance with the guidelines", I assume that all the minister's answers to my previous questions about ministerial guidelines will apply as well?

**Hon Donna Faragher:** Yes.

**Clause put and passed.**

**Clauses 20 to 33 put and passed.**

**Clause 34: Listing of key threatening processes —**

**Hon LYNN MacLAREN:** Clause 34 is about the listing of key threatening processes and, if I am not mistaken, this is the first time it has been included in wildlife conservation legislation. I note that for the first time the minister will be able to list key threatening processes that threaten or may threaten the survival, abundance or evolutionary development of a native species or ecological community. The consequence of listing is that the listed process must be identified in any relevant recovery plan and that regulations will be made. This is a significant improvement on the Wildlife Conservation Act and we support it wholeheartedly.

**Clause put and passed.**

**Clauses 35 and 36 put and passed.**

**Clause 37: Minister may obtain advice on listing decision —**

**Hon LYNN MacLAREN:** Many of my constituents have said that this clause is unacceptable. Clause 37 states that the minister may obtain advice on listing decisions. People are concerned about whether the minister has to obtain that advice, whether the minister has to accept that advice and whether that advice will come from expert advisors, in particular scientific advice. I want to put on the record before moving my amendment that the Leeuwin Group has publicly complained about the power given to the minister in this bill. Professor John Bailey has said —

“Also of great concern to the Leeuwin Group is the lack of a means to include the latest independent scientific thinking in decision-making about threatened species and communities, and threatening processes” ...

“To this end, it is essential that the Bill include an independent science-based advisory committee to advise the Minister on threatened species, communities and threatening processes.

We have just had plenty of debate about that and none of the amendments to require this bill to include a statutory advisory committee have been accepted.

[Interruption from the gallery.]

**The DEPUTY CHAIR (Hon Liz Behjat):** Could I ask members in the gallery to take their seats, please.

**Hon LYNN MacLAREN:** Under “listing processes” in division 4 I will try to amend the bill to make it clear that the minister must obtain scientific advice on listing decisions. I intend to oppose clause 37 and insert the following —

**37. Minister to obtain scientific advice on listing decision**

Before making a listing decision the Minister must obtain and have regard to advice from one or more persons considered by the Minister to have scientific expertise relevant to the matter to which the decision relates.

**Hon DONNA FARAGHER:** Before we come to the substantive amendment the honourable member would like to move, I foreshadow that the government will also oppose the clause. I also foreshadow that the government will support Hon Lynn MacLaren’s amendment. I will speak to that amendment when we get to it.

**Clause put and negatived.**

**New clause 37 —**

**Hon LYNN MacLAREN:** I move —

Page 32, line 17 — To insert —

**37. Minister to obtain scientific advice on listing decision**

Before making a listing decision the Minister must obtain and have regard to advice from one or more persons considered by the Minister to have scientific expertise relevant to the matter to which the decision relates.

I am tempted to say more, but I will just move the amendment in my name because I am delighted that the government has responded to the community in this way and is prepared to amend the bill.

**Hon DONNA FARAGHER:** As I indicated, the government will support this amendment. The government believes it will put in place a simple requirement that the minister obtain and have regard to advice from one or

more persons with relevant scientific expertise when making a decision to list either a threatened species or a threatened ecological community. I indicate that it is already in line with the Minister for Environment's stated intention in the other place, and I think publicly also, that he will obtain advice from the Threatened Species Scientific Committee, which I have explained in previous clauses. It must also be remembered that that will not preclude the minister and future ministers seeking scientific advice from others. It applies not only to established committees, but also additional advice can be sought from other experts who do not sit on those committees. As I say, it is in line with the minister's stated intention in any event, and that is why the government supports the amendment.

**Hon ADELE FARINA:** I would like to put on the record that the opposition supports the amendment. It is a small step today, and we will take every step forward we can. I would have liked a much stronger provision that required that advice to be made public so that in the circumstances when the minister did not agree with the scientific advice, we could understand that that was the case, and for the minister to be required to provide reasons for his decision. That would have been a far more transparent process. However, we appreciate that this is a small step forward, and we support it.

**New clause put and passed.**

**Clause 38 put and passed.**

**Clause 39: Notification of Minister's decision —**

**Hon ADELE FARINA:** This clause states, in part —

- (2) The Minister must give a person who makes a nomination written notice of the Minister's decision on the listing, amendment or repeal the subject of the nomination.
- (3) If the Minister's decision is that the listing, amendment or repeal is not to be made, the notice must include the reasons for the decision.

This provision has been used as an example of transparency and accountability. I suppose it is to a limited extent, but it is important that we understand that it applies only to nominations made by a member of the public and the minister is required to give only that person written notice of the minister's decision on the listing, and, if the minister does not agree with the listing, he is required to provide only that person with the reasons for the decision, as the express words of the bill state. If that is incorrect, I am sure the minister will correct me. It concerns me that there may be a process whereby the minister decides to nominate something for listing or the committee might decide to nominate something for listing, and that would not be covered under clause 39. It should not matter where the nomination comes from. The information should be made available through the *Government Gazette* or other avenue so that it is available to all members of the public and not simply the person who made the nomination. As far as transparency and accountability goes, this clause is very low on the scale.

**Hon DONNA FARAGHER:** I indicate that when it refers to nomination and who can make that nomination, it can also include the committee; it is not confined. There is no suggestion within these clauses that the notice or reasons are to be kept confidential. It does not indicate that it be placed on a website or anything of that nature, nor does it preclude anyone making it public in any event.

**Clause put and passed.**

**Clause 40: Minister may authorise taking or disturbance of threatened species —**

**Hon ADELE FARINA:** For members who might be interested, this is the God clause. Clause 40 reads —

The Minister may, by instrument, authorise a person (including a public authority) to take or disturb a threatened species.

An application for an authorisation must be in a form approved by the CEO.

The Minister may, by instrument, amend or revoke an authorisation given under this section.

Clause 42 then provides the process by which that occurs. I have a number of amendments standing in my name for this clause, and I suppose I need to move them individually, although it might save time to move them together.

**The DEPUTY CHAIR:** You can seek leave to move the three together.

**Hon ADELE FARINA —** by leave: I move —

Page 34, line 6 — To delete “instrument” and insert —  
order

Page 34, line 10 — To delete “instrument” and insert —  
order

Page 34, after line 11 — To insert —

- (4) Section 258 applies to an order made under subsection (1) and (3).

The reason for these amendments relates to clause 258, particularly the amendment to insert new subclause (4) —

Section 258 applies to an order made under subsection (1) and (3).

Fundamentally, in trying to make sure that clause 258 applies, we propose to change the word “instrument” to “order” so it is consistent with the wording in that provision. Clause 258 provides for orders made by the minister to be dealt with as subsidiary legislation for the purposes of the Interpretation Act 1984, so that the minister must cause a copy of each of the orders to be laid before Parliament as soon as practicable after the order is published in the *Government Gazette*. This amendment will allow for those orders to be disallowed by the Parliament so that this process provides greater transparency and accountability. The Parliament is the law-making body of this state. I have stood up many times and advocated that as much as possible it should be contained in the body of the act, but we are finding, particularly with this legislation, and with a lot of legislation that is coming up in recent times, that very substantial components of bills are in the regulations. We believe that these matters are sufficiently important that they should, at the very least, be in the regulations and not in some instrument that does not even get tabled in Parliament or considered by Parliament or has no capacity to be disallowed by Parliament. By changing the word “instrument” to “order”, we bring this clause in line with the wording in clause 258, which enables orders to have application under the Interpretation Act and to become disallowable instruments providing for the scrutiny of Parliament, which I am sure everyone in this place agrees is the preferable position.

**Hon DONNA FARAGHER:** The government will not support these amendments. I appreciate there is probably a more substantive matter at clause 42—we will come to that when we come to it—but in clause 40, the net effect of the amendments moved by the opposition would be that any decision by the minister to authorise a disturbance or taking of a threatened species will be subject to parliamentary notification and potential disallowance. It effectively becomes a catch-all, and I will give just a couple of examples. Every day there may be translocations, fauna surveys and a range of activities that will require the minister to authorise a person to take or disturb a threatened species. Clause 42 is at the extreme point, with potential extinction, and that is another matter. I am not sure whether the intent of the opposition’s amendments is that a translocation or some other conservation activity would trigger parliamentary notification and potential disallowance capacity. That would mean that a number of conservation activities would not be able to be undertaken because we would be coming back and forth to Parliament every five seconds.

**Hon ADELE FARINA:** To clarify matters on the record, a disallowable order would be made and have effect straightaway; it would not stop a lot of that activity, but it would be an opportunity for the order to be tabled in Parliament to raise public awareness of what is happening and provide an opportunity for public comment on the issue. I think the minister’s statement that it would stop a range of activities happening is not quite accurate, but certainly if the order was made and tabled in Parliament and the activity had not been undertaken, that might happen. However, I would expect that in most circumstances that would be fairly rare. It is not unusual for matters to come before Parliament in this way. Certainly, whenever we look to amend an A-class reserve or a national park, those amendments come before Parliament as disallowable instruments. I do not know whether it is as big a burden as the minister suggested.

**Hon LYNN MacLAREN:** I see that Hon Adele Farina is, basically, trying to amend these clauses in a similar way to my amendments on the supplementary notice paper. Making it a disallowable instrument would achieve much of what I intend to move at a later clause—clause 42. As I propose to achieve this in a different fashion, I will not support the amendments proposed at clause 40.

**Hon DONNA FARAGHER:** I indicate again that it would be unwieldy because these amendments would require a notification every time the department wanted to undertake a biological survey, a translocation, some scientific research that required taking a threatened species for measurements, or whatever it might be, and any time it wanted to undertake some conservation studies that might require taking or disturbing a threatened species. It is unwieldy and unnecessary.

**Amendments put and negated.**

**Clause put and passed.**

**Clause 41 put and passed.**

**Clause 42: Governor’s approval required in certain cases —**

**Hon ADELE FARINA:** Clause 42 requires the Governor’s approval in certain cases. It provides —

- (1) The Minister must obtain the approval of the Governor before giving an authorisation under section 40 if, in the opinion of the Minister, 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.
- (2) Subsection (1) does not apply if the purpose of the proposed taking or disturbance is to establish a breeding colony or a population in cultivation so that the threatened species can be reintroduced into the wild at a later time.
- (3) If the Governor gives an approval for the purposes of subsection (1) —
  - (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.

The fact that in the instance that a threatened species is likely to become extinct the minister is required to table that order in Parliament is, at least, a plus. However, we are concerned, as has been raised in the second reading debate and by a number of community groups, that simply taking the matter to cabinet, which is effectively what happens when we require the Governor’s approval, does not necessarily elevate the level of public scrutiny or transparency of the process at all, because all that happens behind closed doors. Those of us who are well practised in making freedom of information applications know that that is the excuse or the reason that is given for not providing any documentation: it was prepared for the purposes of cabinet consideration and therefore it is confidential. There is no transparency in that process up to that point.

The Governor then signs the authorisation and the minister is required to table that approval in both houses of Parliament. In many cases, it is quite possible that that authorisation has taken effect before it is tabled in Parliament and the action that was likely to cause the extinction of a threatened species has occurred. The capacity for Parliament to do anything when it is very much informed of it after the fact is close to zero in a number of circumstances. That is of great concern because this is a significant decision. This is a biodiversity conservation bill and the government has made a commitment to biodiversity conservation in presenting this bill to this place, yet it has a provision that enables the minister to make a decision that could lead to a threatened species becoming an extinct species. That is a major concern. That is all done without any public consultation or transparency. I think that most people in the community would see that as a problem and would believe that that is contrary to the intention of the provision.

I bring to members’ attention that the Minister for Environment has been reported in the papers as saying that the God clause will allow the minister to make decisions that will allow a species to become extinct. He said —

... yes that measure is in the bill ...

“But there’s a very high trigger point for that as well, that is not something that any future minister will do lightly.

In practice, that may be the case. I am sure that is the case; no minister will take that decision all that lightly, but the issue is that the legislation does not provide any guidance or criteria that need to be met before the minister is able to make that consideration. There is no public safeguard. When all that process happens behind closed doors in a shroud of secrecy and with a lack of transparency, we cannot be certain that the process is being followed properly. We all know what happens in government and, as the minister has stated numerous times, ministers are placed in a position in which they have to weigh competing decisions all the time. Sometimes there is enormous pressure on ministers to make a particular decision. The circumstances in which I could imagine a minister making a decision such as this would be when some major development, such as a mining proposal or a town planning development, is at stake and there is a view that the benefits of that proposal outweighed the extinction of a species. In my opinion, that is a debate that should be held in public. The government and the proponent should be putting those arguments in public and those people who have the opposite view should be able to air their views too. If we talk about being a democracy in which we welcome open debate and we talk about “government of the people, by the people, for the people”, we have to allow public debate. This provision does not do that. It allows this vitally important decision to be made behind closed doors and that is an issue of great concern.

The minister has said, as I have read out, that there is a very high trigger before he can implement the provisions of that clause. The bill does not provide any high trigger at all. The minister can just make a decision. I am not saying that he would do that lightly and without taking scientific advice or other expert advice. There is nothing in the bill that says that the minister can make a decision only in certain circumstances or when certain criteria have been met or once the minister has followed a certain process. I think they are significant deficiencies in this legislation.

Given the statement by the Minister for Environment that a very high trigger is required before he is able to make this decision, I cannot find the higher trigger. He went on to say that it is an incredibly high threshold. Would the minister please explain to me and identify the clauses in the bill that would set this incredibly high threshold that the Minister for Environment has stated exists and explain what criteria need to be met before the minister is able to satisfy that higher trigger to implement this provision?

**Hon DONNA FARAGHER:** By way of background, I indicate that approvals to take a species to the extent that extinction could result are not specifically provided for in the Wildlife Conservation Act. Also, theoretically, such approvals may currently be given under the Environmental Protection Act, with no requirement for parliamentary approval, if I can put it that way. It is a big step forward in adding protection compared with what is currently in place. At the moment, the minister does not need to advise anybody if he or she chooses not to. There is no requirement under the current act.

I have not read the comments that the member has referred to but I presume they are from the *Hansard* of the other place.

**Hon Adele Farina:** It was in a media article, which I am happy to table if you require it to be tabled.

**Hon DONNA FARAGHER:** No, that is okay. I am not discounting that those things were said by the minister. There is a higher trigger. It involves the Governor and the Parliament. By involving the Parliament, it therefore becomes public. That is a far cry from the current situation in which the minister could make a decision. I accept what the member has said and what I have said in this place before; that is, no minister will wake up one morning and say, “I am very happy for this particular species to become extinct.” I accept that the member is not suggesting that that would happen, albeit I think one of her colleagues suggested that during the second reading debate. There is a higher bar than what is the case in the current legislation, which does not even specify any of those requirements. I think that would have been in reference to what the minister was referring to in the media commentary that the member mentioned.

**Hon LYNN MacLAREN:** I note that I have an amendment to this clause that tries to achieve the same thing. It is not as explicit as Hon Adele Farina’s amendment. However, I think the amendment that I intend to move is superior because it also requires the two houses of Parliament to consider it. It is not just that we were advised but we consider it such a terrible thing that the minister might have to do. I will not be supporting Hon Adele Farina’s amendment, but I sincerely appreciate the issues that have been laid out so articulately by her. She has clearly listened to her constituents and she has put forward what we consider to be the argument, which is a fatal flaw in this bill. She has done that well. I believe that the amendment in my name is a superior amendment so I will not be supporting her amendment.

**Hon ADELE FARINA:** I have not moved my amendment, but I appreciate the member’s comment. I move —

Page 36, after line 17 — To insert —

- (2A) Before the Minister seeks approval from the Governor, the Minister must publish a notice in the *Gazette* and on the department’s website seeking comment on the proposed taking or disturbance and provide reasons for such action.
- (2B) Submissions in respect of the proposed taking or disturbance may be made by any person that is not less than 60 days after the day on which the notice referred to in (3) is published in the *Gazette*.
- (2C) When preparing a final proposal to the Governor, the Minister must —
  - (a) obtain and consider advice from the Scientific Advisory Committee and any other relevant advisory body deemed appropriate; and
  - (b) make public, advice in paragraph (a) available via the Department’s website.
- (2D) The Minister must not seek approval under subsection (1) unless the Minister has had regard to —
  - (a) any submissions made under subsection (2B); and
  - (b) Australia’s obligations under international agreements relevant to the threatened species or threatened ecological community to which the proposal relates; and
  - (c) the extent to which any environmental protection policy affects the conservation, protection and management of the threatened species or threatened ecological community to which the proposal relates; and

- (d) the extent to which any recovery plan or interim recovery plan affects the conservation, protection and management of the threatened species or threatened ecological community to which the proposal relates; and
  - (e) the need to avoid any adverse ecological or social impacts.
- (2E) Before making a final proposal to the Governor, the Minister must cause an order under section 40 to be tabled in both Houses of Parliament.

The reason for the amendment is to try to address some of those issues that have been raised by the community in opposition to this particular clause and to the bill as a whole. The community is concerned that the bill is fundamentally flawed. The amendment will require some debate and consideration before the order is made—before the minister seeks the approval of the Governor. It will require the minister to publish in the *Government Gazette* and on the department’s website that he is proposing this action and that it could lead to a threatened species becoming eligible for listing as an extinct species and invite public comment on that. The community would have 60 days within which to provide comment. The minister would need to have regard for those submissions that are received and would also need to obtain and consider advice from the scientific advisory committee, which I acknowledge the house has not supported but it also states “in any other relevant advisory body deemed appropriate”. There is a requirement to get expert advice on the issue before taking any action. There is also a requirement for the minister to consider a whole host of other things that a minister should consider in making such an important decision that is likely to cause the extinction of a species—that is, consider the submissions, consider the international obligations and consider environmental policies and also any recovery plans or interim recovery plans that are in place and the need to avoid adverse ecological or social impacts. Finally, before taking the proposal to the Governor, the minister must cause that proposal to be tabled in both houses of Parliament so that there is a capacity to have some debate in both houses of Parliament before that execution is signed, because that is effectively what it becomes at the end of the day. This allows for the debate to occur before the fact rather than after the fact when nothing can be changed—it is done; the act that is likely to cause that species to become extinct has already been passed and the species could already be extinct under the provisions of the bill as they currently stand.

I urge members to seriously consider this amendment because it addresses the concerns raised by the community. It ensures that there is transparency and public accountability and it provides for scrutiny of Parliament in the process. Really, at the end of the day, when we are making a decision of this nature, that is the least that should be expected.

**Hon DONNA FARAGHER:** We obviously have one amendment before us now, which is the opposition amendment, and Hon Lynn MacLaren has foreshadowed her own amendment. The government has considered both, and I can advise the chamber that it will oppose the opposition’s amendment moved by Hon Adele Farina and will support the Greens amendment.

**Hon ADELE FARINA:** Would the minister like to put on the record the reasons for opposing the opposition amendment and supporting the Greens amendment, and the points of difference between the two?

**Hon DONNA FARAGHER:** I suppose the point is that, from our perspective, the amendment put forward by the opposition is fairly bureaucratic, while the amendment put forward by the Greens extends the special approval requirements and essentially deals with the main issues that have been raised by the community on this matter. As I say, even without this amendment, the government believes it is far superior to the current situation under the act. However, the minister has heard the concerns raised by the community, and the amendment foreshadowed by Hon Lynn MacLaren deals with the substantive concerns that have been raised; I see Hon Lynn MacLaren nodding in agreement. For that reason, we will support the amendment.

**Hon ADELE FARINA:** I think I need to put the opposition’s position in relation to the proposed amendment that may be moved by Hon Lynn MacLaren. In essence, there are significant similarities —

**The DEPUTY CHAIR (Hon Liz Behjat):** We are dealing only with your proposed amendment at the moment.

**Hon ADELE FARINA:** I know, but it has been foreshadowed, and I think I need to put on the record my views about it, as everybody else has.

**The DEPUTY CHAIR:** I am going to put everything separately, so there will be an opportunity to put those views.

**Hon ADELE FARINA:** Sure, but I would like to do it in a foreshadowed way, like everybody else has. I do not think that is unreasonable.

There are a lot of similarities between the two proposed amendments. However, the amendment foreshadowed by Hon Lynn MacLaren does not allow for an upfront process of inviting public submissions and public comment, which is included in the opposition’s proposed amendment. I think it is superior on that ground, and

I therefore urge members to support the opposition's amendment because it provides an opportunity for disclosure much earlier in the process, for the community to make submissions, and for that debate to occur far earlier in the process.

**Amendment put and negatived.**

**Hon LYNN MacLAREN:** I think it is clear that everyone in this chamber wants to oppose this clause.

**Clause put and negatived.**

**New clause 42 —**

**Hon LYNN MacLAREN:** Having been unanimous in our opposition to that clause, the only option we have to go forward is through the amendment standing in my name at 23/NC42. I move —

Page 36, line 8 — To insert —

**42. Parliament's approval required for certain proposals**

- (1) In this section *proposal* means —
  - (a) a proposal to give an authorisation under section 40; or
  - (b) a proposal to amend an authorisation given under that section.
- (2) This section applies to a proposal if, in the opinion of the Minister, the authorisation or amendment the subject of the proposal could be expected to result in the threatened species to which the proposal relates becoming eligible for listing as an extinct species in the near future.
- (3) Despite subsection (2), this section does not apply to a proposal if the purpose of the taking or disturbance to which the proposal relates is to establish a breeding colony or a population in cultivation so that the threatened species can be reintroduced into the wild at a later time.
- (4) The Minister must not give the authorisation or make the amendment the subject of a proposal to which this section applies unless the proposal —
  - (a) has been laid before each House of Parliament; and
  - (b) has been approved by a resolution passed by both Houses of Parliament.

This proposed amendment is superior to the previous proposed amendment because it requires the approval of both houses of Parliament. It is not just the minister's decision being tabled; there is a debate, and a decision is made by every elected member in Western Australia in the Parliament assembled that we are going to permit an extinction. Really, this is the highest level of scrutiny and transparency that we can possibly have, and it is appropriate. I would argue that if this were a Greens bill, we would have an absolute prohibition on granting approval for actions that could be expected to cause the extinction or collapse of a threatened species. But this is not a Greens bill; this bill takes an approach that is different from the approach a Greens bill would take. It is permitting the minister to approve an action that is likely to cause an extinction, and we are saying, as a community, that it is not good enough for a minister to make that decision all on his or her own. We are saying that elected members should have a public debate, as we do in Parliament, and that that debate should be relevant to whether that ministerial decision is accepted and goes up to the Governor. We have put forward this new clause on considerable advice; as I mentioned in my contribution to the second reading debate, we have taken considerable advice on how to deal with the "God clause", and there are two proposed amendments on the supplementary notice paper for correcting the lack of transparency in the bill when it was tabled. I am really humbled that the government has chosen to accept this way forward, because we have paid attention to what has occurred in other places during this debate, and we have recognised that those ways were not successful ways and that we needed to find a new way forward. We have put a new way forward on the supplementary notice paper. It does not, as Hon Adele Farina said, include a public consultation period, but neither does it preclude that from occurring; it just does not specify it. Sure, that might have been a superior way to go about it, but we have put forward a proposed new clause that is workable, that addresses the issue of transparency and scrutiny and that provides a failsafe for extinctions. It is a new clause that will take this bill forward and will address a fatal flaw.

**Hon DONNA FARAGHER:** I indicate again, as I have previously indicated, that the government believes the current provision is a higher bar than is the case under the current act and that such approvals may, theoretically, be given under the Environmental Protection Act, with no requirement for parliamentary approval. Having said that, the minister has heard the concerns of the community, Hon Lynn MacLaren and others on this matter and

the government will support the amendment in the name of Hon Lyn MacLaren. I certainly hope that after this, should the amendment pass—I presume it now will—we will no longer refer to clause 42 as the “God clause”.

**New clause put and passed.**

**Clauses 43 and 44 put and passed.**

**Clause 45: Minister may authorise modification of occurrence of threatened ecological community —**

**Hon ADELE FARINA** — by leave: I move —

Page 38, line 3 — To delete “instrument” and insert —  
order

Page 38, line 8 — To delete “instrument” and insert —  
order

Page 38, after line 9 — To insert —

- (4) Section 258 applies to an order made under subsection (1) and (3).

This clause provides that the minister may authorise modification of the occurrence of threatened ecological communities. It contains three provisions, which read —

- (1) The Minister may, by instrument, authorise a person (including a public authority) to modify an occurrence of a threatened ecological community.
- (2) An application for authorisation must be in a form approved by the CEO.
- (3) The Minister may, by instrument, amend or revoke an authorisation given under this section.

My three interrelated amendments pertaining to this clause are very similar to the amendments moved to clause 40. The reasons I gave for the amendments to clause 40 apply also to this clause. The deletion of the word “instrument” and replacement with the word “order” enables compliance with the wording in clause 258(2), which provides “An order to which this section applies is subsidiary legislation for the purposes of the Interpretation Act 1984.”

That will require the minister to cause a copy of the orders to be laid before each house of Parliament as soon as practicable after the order is published in the *Government Gazette*. This would therefore allow those orders to be disallowed if the house should consider that appropriate. It would also allow for some transparency and some public accountability and parliamentary scrutiny. We acknowledge again that there are some shortfalls with that because there is often a time lag but it will at least enable these matters to be brought before the house for some parliamentary oversight, which we believe is important when we are making decisions of this nature.

**Hon DONNA FARAGHER:** My comments on these proposed amendments are similar to those made on clause 40. The net effect of this group of amendments moved by the opposition would be to make any decision by the minister to authorise, effectively, disturbance or the taking of a threatened ecological community to be subject to parliamentary notification and potential disallowance, and that would be as an order under the proposed amendment to clause 259. For the reasons I have outlined concerning clause 40, which we have dealt with, similar reasons apply for why the government will not support the amendments moved by Hon Adele Farina.

**Amendments put and negatived.**

**Clause put and passed.**

**Clause 46 put and passed.**

**Clause 47: Governor’s approval required in certain cases —**

**Hon ADELE FARINA:** This clause provides for the Governor’s approval to be required in certain cases. Clause 47(1) states —

The Minister must obtain the approval of the Governor before giving an authorisation under section 45 if, in the opinion of the Minister, the proposed modification could be expected to result in the threatened ecological community becoming eligible for listing as a collapsed ecological community in the near future.

It is effectively another “God clause”. Subclause (2) states —

If the Governor gives an approval for the purposes of 10 subsection (1) —

- (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.

Again, this process is very much at the wrong end in that making that decision public comes at the end, not at the beginning of the process when the minister is considering a proposal to make a decision that could result in a threatened ecological community becoming eligible for listing as a collapsed ecological community. It is the view of the opposition and many in the community that public debate on a matter as important as this needs to happen at the beginning of the process when the minister is considering a proposal, not after the minister has made a decision, because by that point it is too late. If that process as it is provided for in the bill is allowed to play out, that ecological community could have collapsed by the time the order and the approval is tabled before both houses of Parliament. Even though the tabling allows for some debate, it comes way too late. The preferred process is one in which there is community consultation at the very early stages. I move —

Page 40, after line 8 — To insert —

- (1A) Before the Minister seeks approval from the Governor, the Minister must publish a notice in the *Gazette* and on the department's website seeking submissions on the proposed modification and provide reasons for such action.
- (1B) Submissions in respect of the proposed modification may be made by any person that is not less than 60 days after the day on which the notice referred to in subsection (1A) is published in the *Gazette*.
- (1C) When preparing a final proposal to the Governor, the Minister must —
- (a) obtain and consider advice from the Scientific Advisory Committee and any other relevant advisory body deemed appropriate; and
  - (b) make public the advice referred to in paragraph (a) available via the Department's website.
- (1D) The Minister must not seek approval under subsection (1) unless the Minister has had regard to each of the following —
- (a) any submissions made under subsection (1B);
  - (b) any advice obtained under subsection (1C);
  - (c) Australia's obligations under international agreements relevant to the threatened species or threatened ecological community to which the proposal relates;
  - (d) the extent to which any environmental protection policy affects the conservation, protection and management of the threatened species or threatened ecological community to which the proposal relates;
  - (e) the extent to which any recovery plan or interim recovery plans affects the conservation, protection and management of the threatened species or threatened ecological community to which the proposal relates; and
  - (f) the need to avoid any adverse ecological and social impacts.
- (1E) Before making a final proposal to the Governor, the Minister must cause an order under section 45 to be tabled in both Houses of Parliament.

In summary, the amendment is a far superior provision. It ensures that the public is able to comment at the stage the minister simply considers a proposal that will have the potential to result in a threatened ecological community becoming eligible for listing as a collapsed ecological community. It provides 60 days for public comment. It also requires that the minister obtain scientific expert advice before making a decision on the proposal and that that advice be made public. When dealing with these sorts of decisions, transparency and accountability should be paramount. Such a provision will ensure that will happen. The amendment also outlines what the minister needs to have regard to when he makes a decision and that the proposed order be tabled before both houses of Parliament before making a binding proposal to the government. It will enable all public consultation, debate and accountability to happen at the front end and not after the fact when nothing can be done about it and a decision has been made and the impact has been had. It seems more sensible to have that occur at the beginning of the process. I commend the amendment to the chamber.

**Hon DONNA FARAGHER:** I indicate very briefly that the government will not support this amendment. I also indicate for the reference of the chamber that threatened ecological communities are not recognised at all under the Wildlife Conservation Act. The purpose of including such a clause in the bill is to ensure that the level of decision-making is elevated. I note the supplementary notice paper contains another amendment and the government is inclined to support that one, as it did with clause 42. I just indicate that to the house.

**Amendment put and negatived.**

**Progress reported and leave granted to sit again, on motion by Hon Donna Faragher (Minister for Planning).**