AQUATIC RESOURCES MANAGEMENT BILL 2015

Consideration in Detail

Clauses 1 and 2 put and passed.

Clause 3: Terms used —

Mr D.J. KELLY: I say from the outset that the opposition supports this bill. This bill has broad support in the industry among both commercial fishers and recreational fishers. Therefore, we do not intend to delay the passage of this bill any longer than is necessary. However, there are some questions that are worth exploring at this point.

I refer firstly to the issue of customary fishing. This bill recognises, for the first time, customary fishing. That is a good thing. My understanding is also that the legislation deals with how much of the resource should be allocated for customary fishing. The definition of "customary fishing" states —

> ***customary fishing*** means fishing by an Aboriginal person that —
>
> (a) is in accordance with the Aboriginal customary law and tradition of the area being fished; and
>
> (b) is for the purpose of satisfying personal, domestic, ceremonial, educational or other non-commercial communal needs;

In order for an Aboriginal person to benefit from the customary fishing entitlement, is it a requirement that there be a finding of native title, or is the entitlement to customary fishing available to any person who is of Aboriginal heritage?

Mr J.M. FRANCIS: I will make it short and clear. I am advised that native title in any format will not make any difference to whether an Aboriginal person has the right to engage in customary fishing. It is purely according to whether a person is of Aboriginal descent. That should alleviate any concern. In other words, there will be no change under this legislation to the right of an Aboriginal person in Western Australia to fish.

Mr D.J. KELLY: The minister has comforted me with the first part of his comment. The second part of the minister's comment was that there will be no change from the current situation. Therefore, my understanding is that, for the first time, customary fishing will be recognised, and that entitlement will be taken into account when determinations are made about the resources that can be taken as part of a managed fishery. The minister might want to clarify whether that is correct.

Mr J.M. FRANCIS: The definition of "customary fishing" is exactly the same as the current definition under the Fish Resources Management Act 1994. It is word for word. It states —

> ***customary fishing*** means fishing by an Aboriginal person that —
>
> (a) is in accordance with the Aboriginal customary law and tradition of the area being fished; and
>
> (b) is for the purpose of satisfying personal, domestic, ceremonial, educational or non-commercial communal needs;

Mr D.J. KELLY: I understand that the definition is the same. However, obviously the legislation that sits around that definition is different. Just to be 100 per cent clear, a person's entitlement to access customary fishing is derived from their Aboriginality, regardless of whether there is a finding of native title. Is that correct?

Mr J.M. FRANCIS: Absolutely correct.

Mr D.J. KELLY: I refer also to the definition of "recreational fishing", which states —

> ***recreational fishing*** means fishing other than commercial fishing;

Given recent events, I wonder whether, in the minister's view, the taking of sharks as part of what is called a shark cull, or shark mitigation, would fall within the definition of "recreational fishing". The taking of sharks as part of shark mitigation certainly is not commercial fishing. Knowing the scrutiny that this piece of legislation will get, someone might say that the taking of sharks as part of shark mitigation is not commercial fishing; therefore, it falls within the definition of recreational fishing. My concern is that a lot of unintended consequences might flow from that. Would the taking of sharks as part of shark mitigation fall within the definition of recreational fishing?

Mr J.M. FRANCIS: The short answer is no. It comes under clause 7 at page 13 of the bill, "Exemptions from Act", which states —

> (1) The Minister may, by notice in writing, exempt a specified person or specified class of persons from all or any of the provisions of this Act.
>
> (2) The Minister may only grant an exemption under subsection (1) for one or more of these purposes —
>
> (a) research;

(b) environmental protection;

(c) public safety; …

It will come under the category.

Mr D.J. KELLY: I would expect that the powers for shark mitigation would come from clause 7, "Exemptions from Act", but my question is not about that. If there is ever any litigation around this legislation, a court will look at the plain meaning of words in the legislation. It seems to me that, on the plain meaning of the definition the minister provided for recreational fishing—that is, "fishing other than commercial fishing"— taking sharks as part of shark mitigation would fall within that definition. The definition at page 6 states —

fishing or ***fishing activity*** means —

(a) taking an aquatic organism in any way; or

(b) searching for an aquatic organism, or any other activity that can reasonably be expected to result in taking the organism; or

(c) any activity in support of, or in preparation for, any activity described in this definition;

When a Fisheries boat is sent out to bait a drum line and drop it over the side in the hope of attracting a shark, to me it seems to be fishing under the definition provided in this legislation. Catching a shark for shark mitigation is fishing under this legislation, and it will be included in the definition of "recreational fishing" in this legislation. I am sure that is not the minister's intention. I have not followed through the logic of that as to what might follow, but, notwithstanding that the minister said that he will be given the authority to catch sharks under clause 7, I am raising with the minister that some clever person—probably not the minister—may challenge shark mitigation or something else on the basis that taking a shark comes under the definition of "recreational fishing", and who knows what the consequences of that would be. The answer the minister has given so far that shark mitigation will done by exemption under clause 7 does not seem to answer the simple question I asked: would the definition of "recreational fishing" include taking a shark with drum lines?

Mr J.M. FRANCIS: I understand the point the member is trying to make, but I refer to two particular parts of this legislation. Firstly, on page 2, clause 3, "Terms used", before the definition of "Aboriginal body corporate", states —

(1) In this Act, unless the contrary intention appears —

That statement covers all the definitions outlined in the clause. Secondly, I will again refer to clause 7, "Exemptions from the Act", which states —

(1) The Minister may, by notice in writing, exempt a specified person or specified class of persons —

These are the key words —

from all or any of the provisions of this Act.

I would argue that that would include the definitions, if required. There are two checks on the interpretation of the clause. I understand what the member said. If a person were to look at only the definition that refers to catching any aquatic life, the activity would have to fall into the commercial fishing category or the recreational fishing category, but there are two clauses that allow for other categories, such as exempted by the minister unless the contrary intention appears—those words and the exemption from all or any provisions of the act.

Mr D.J. KELLY: I understand what the minister said and he is right; the beginning of clause 3(1) states the proviso —

In this Act, unless the contrary intention appears —

The definitions follow that proviso. Rightly, one would not say that customary fishing falls within the definition of "recreational fishing" because it is not commercial fishing, because elsewhere in the legislation there are specific references to customary fishing. A person would not get up an argument that customary fishing is actually recreational fishing. But I cannot see the taking of sharks for the purpose of shark mitigation mentioned anywhere in the legislation—I am happy for the minister to point it out, and I have asked him to point it out. Unless the contrary intention appears, there is no contrary intention. The exemption clause that the minister referred to could be used to exempt a whole range of things, including research, environmental protection et cetera. The legislation does not specifically mention shark mitigation, other than at clause 7, which I do not accept gets us anywhere. Is a contrary intention outlined anywhere else in this legislation?

Mr J.M. FRANCIS: The bottom line is that if it were required, obviously, a court would decide such a matter. There are other reasons. Although the legislation may not specifically mention the word "shark", clause 7(2)(c) mentions "public safety". That may not be for a shark—who knows what other creatures lay on the bottom of the ocean, member for Bassendean—but if something is required for public safety, I would submit that a shark would

come under clause 7(2)(c), "public safety". There are other reasons, as were pointed out earlier, for which we might take a marine organism other than for either recreational or commercial fishing—obviously, for research, environmental protection, public safety, public health, education purposes or whatever it might be. There is a specific list in the legislation and I would suggest that sharks come under public safety.

Mr D.J. Kelly: I do not want to drag this out unnecessarily. I suppose I have raised the issue, and I am content to leave it at that.

Mr C.J. TALLENTIRE: The legislation has a definition for the Abrolhos Islands reserve. I would like an explanation as to why other reserves are not mentioned, but the Abrolhos Islands is highlighted in the terms used. Why is the Abrolhos Islands highlighted and other reserves are absent from the legislation?

Mr J.M. FRANCIS: That definition means that a land management order has been made out to the Minister for Fisheries specifically for that reserve. I understand that it is the only reserve anywhere in Western Australia that is entrusted to the Minister for Fisheries, and that is why it is specifically mentioned there.

Mr D.J. KELLY: Obviously, one of the potential benefits that we derive from our aquatic environment arises from tourism. Can the minister inform me whether ecotourism is defined in the legislation? It may be an error on my part, but a definition of ecotourism does not readily jump out at me.

Mr J.M. FRANCIS: The definition is on page 3 and reads —

> ***aquatic eco-tourism*** means tourism relating to aquatic organisms in their natural environment and includes the viewing and feeding of aquatic organisms but does not include the taking of aquatic organisms;

Mr D.J. KELLY: The definition of "waters" states —

> ***waters*** includes —
>
> (a) the bed or subsoil (if any) under any waters; and
>
> (b) the airspace above any waters.

I can understand why the definition of "waters" might include the bed or subsoil, but I am not sure why it would include the airspace above waters. In what way does this legislation impact upon the airspace above any waters, and to what height?

Mr J.M. FRANCIS: The reason the definition refers to the space above the waters is that it refers to the activities of boats. Obviously, submarines travel under the water and boats travel on the water, but there are also seaplanes and, if someone was really bored and studied the International Regulations for Preventing Collisions at Sea, they would know all about winged ground craft that fly in close proximity to the surface of the water using ground effect displacement. They would also be covered. A winged ground craft would be considered a vessel. A seaplane, while it was on the water, would also be considered a vessel and be required to conduct itself as such, but if it is in the air, it becomes an aeroplane. There are other categories of things that we do not really see in Western Australia, such as winged ground craft, but the definition would cover those.

Mr D.J. KELLY: Under this legislation, is that question important only for the purposes of compliance—if a vessel or a plane is engaged in contravention of the legislation? Is it only a compliance question?

Mr J.M. FRANCIS: I am advised it is mainly for compliance purposes. I am trying to imagine whether somebody would be so bold as to fish from a hot-air balloon. Certainly, it is for the issue of compliance, and that is why it is specifically mentioned in the definition.

I move —

> Page 2, line 17 — to delete "1987" and insert —
>
> 2015

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 4 and 5 put and passed.

Clause 6: Aboriginal persons not required to hold authorisation in certain circumstances —

Mr D.J. KELLY: Clause 6 reads —

> An Aboriginal person is not required to hold an authorisation to take aquatic organisms if the organisms are taken for the purposes of the person or the person's family and not for a commercial purpose.

I could not readily identify a definition of a person's family, and am curious to know how the government understands that term would be defined.

Mr J.M. FRANCIS: I am advised that there is no specific definition, so I suggest that commonsense might prevail here. Obviously, Indigenous Western Australians have fairly large families, and I suggest that anyone trying to interpret this clause would keep that in mind and allow commonsense to prevail. It could apply to aunts and uncles, and it could be a fairly broad definition, but I would suspect that if, for some reason, someone wished to challenge this, and it was interpreted by a court, it would have a fairly commonsense but broad acceptance of the definition of "family" as far as an Aboriginal person is concerned.

Mr D.J. KELLY: I am comforted by the comments of the minister, because I think it would be important that the definition of a person's family in the context of customary fishing be very broad. I am aware that in a lot of legislation there are very prescriptive definitions of families. For example, in industrial relations legislation, we commonly see benefits such as family leave and sick leave, and there is a definition of "family" in those arrangements that is really prescriptive. In this circumstance, I suppose it would be more appropriate to have a much broader definition of "family", but I am a bit concerned that the government has not actually attempted to make it explicit. If this ever came before a court, there could be an argument about whether someone who had shared their customary fishing catch with someone who was not a direct brother, sister, aunt or uncle would breach these provisions. I am comforted by the minister saying that it is the government's intention that this clause be interpreted fairly broadly, but he may want to give consideration, as this legislation goes through Parliament, to providing a broader definition so that people who want to cause trouble further down the track are not able to litigate around this point, if that is the government's intention.

Mr J.M. FRANCIS: I accept the point that the member for Bassendean is making. I am told that we have no precedent definition available at the moment for what is a family. As I have pointed out, an Aboriginal family is generally much bigger than a non-Aboriginal family, so it is intended that this be interpreted with a large degree of commonsense, and also a large degree of fairness and acceptance. I am very aware that if this clause is ever tested in a court, the court will look at the words that I use right now in order to interpret the government's intention when this legislation was considered in detail. The intention is that this clause be interpreted fairly broadly. Obviously some of the tests that might be applied by a court would also include, not so much the separation of the family members by genealogy, but whether they have been in contact—all the things we would expect a court could consider. In one extreme, someone who might be a seventh cousin who has not spoken to the defendant for 18 years, might not be considered part of the family for the purposes of this definition, but if a cousin in regular contact has been provided with fish on a semi-regular basis for some time, then commonsense would prevail. I will just point out that section 6 of the current act, the Fish Resources Management Act 1994, has an application for Aboriginal people. It states —

> An Aboriginal person is not required to hold a recreational fishing licence to the extent that the person takes fish from any waters in accordance with continuing Aboriginal tradition if the fish are taken for the purposes of the person or his or her family and not for a commercial purpose.

I guess what is in the 1994 act will apply to the current legislation, and that act was open to exactly the same interpretation, as I said, before a court. If a court was required to test this at a later date, I would expect it to be broad, but also to use a degree of commonsense.

Clause put and passed.

Clause 7: Exemptions from Act —

Mr D.J. KELLY: I seek the minister's clarification to put on the record some issues related to this clause. Is this the clause that once passed the government will use to continue taking sharks as part of its shark mitigation program? If the government decides to continue its serious threat policy or static drum lines, will the minister use this clause to give himself an exemption? If that is the case, what is the process that the minister would have to go through under this legislation to put that program or policy in place? Do the persons outlined in the bill have to do anything other than what is outlined in clause 7?

Mr J.M. FRANCIS: The short answer is yes, this is the clause. I understand that it is the prime clause that will give the minister the exemption required to do that. Can I just add by the by—it is not really that relevant—that there is no intention to undertake a shark cull at this time. We reserve the right under the public safety clause to take or capture a shark under the serious threat policy that we have, which would be covered under clause 7(2)(c), "public safety".

Mr D.J. KELLY: My question was: What would the process be for the minister to put the serious threat policy into action, for example? What would be the process that the minister would have to go through under this legislation?

Mr J.M. FRANCIS: I have to point out that, as the member knows, the last two times that policy was used—it is exactly the same as in the current legislation—I was on leave, so I did not personally give a written authorisation. My understanding is that it is a process of the Department of Fisheries advising the minister—or the acting minister as it would have been last month—that a serious threat existed and that authorisation would be given to the relevant fisheries officers. It would be as simple as following this clause.

Mr D.J. KELLY: Let us just limit the debate to the serious threat policy, not the static drum lines. With the serious threat policy, am I right in thinking that every time there is an incident that the minister believes enacts that policy, an exemption is applied for, or is there a standing exemption? That is what I am trying to get my head around. Whether it is on a standing or a case-by-case basis, if the minister gets some advice either over the telephone or in writing that an incident has taken place, is it the case that all he has to do is make some sort of note somewhere? Is there a form the minister has to fill out? Given that clause 7(3) states that an application for exemption can be made by the minister, does the minister just have to talk to himself? What is the actual process or paper trail that this legislation requires?

Mr J.M. FRANCIS: The answer to that is that there is a standing authorisation, but obviously it could be withdrawn at any time as well. That is to the CEO, who can obviously exempt individual fisheries officers, contractors or whatever might be as required. There is a standing exemption, but the advice would come from the department via the CEO to the minister as to whether it is a serious threat. Obviously, I would expect the minister's office to be advised if the serious threat policy was being enacted. The answer is that there is a standing exemption, but it could obviously be withdrawn on a case-by-case basis, just as applies broadly at the moment anyway.

Mr D.J. KELLY: If there is a standing exemption that allows sharks to be taken as part of the serious threat policy, who applied for that exemption that there be a standing exemption? I understand that even if there is a standing exemption, the minister's office may be consulted under the policy, but who has actually applied for the exemption that the minister referred to as a standing exemption?

Mr J.M. FRANCIS: My understanding is that the minister has just signed and no-one particularly applies for it. That would be more a case of situation management. Unrelated to this, just as an example, another bill before the house to do with emergency services deals with the fact that the police commissioner needs to physically sign a piece of paper to declare an emergency situation, and it will allow him to do that verbally. This legislation states that the minister may give notice in writing. That means pen to paper as far as my understanding is concerned, which is one of the reasons that in certain circumstances there would be a standing exemption. If there was not, what would happen if the minister was in phone range, but a long way out? That is one of the reasons that there is a standing exemption for the purpose of being able to expedite these things. If the serious threat policy is used to try to catch a shark that is a serious threat to public safety, timeliness would also count and it is one of the key reasons that there is a standing exemption at the moment, rather than that having to be done on a case-by-case basis such as has to be done currently with the police commissioner for emergency declarations.

Mr D.J. KELLY: I suppose the reason that I am a bit confused is that I understand that subclause (1) states that the minister may by notice in writing exempt a specific person, so the minister in this case has put in writing an exemption—maybe the minister can clarify whether for a person or a specific class of persons in a minute—then in subclause (3) it states that an application for an exemption may be made by the minister. Presumably that means that other people can apply for an exemption, and I just wonder whether that is the intention. For example, could a commercial fisher apply for an exemption to take an aquatic organism that they would not otherwise be entitled to take? Is that how it is supposed to work?

Mr J.M. FRANCIS: The key word in clause 7(3) is an application for an exemption that "may" be made to the minister. In the case of the serious threat policy, there was no application, I understand. I will find that out and see if that is correct and if I need to correct that for the member later, I will. My understanding is that someone does not need to make an application; they may make an application, but just because they do, it does not mean it will be granted. Commercial purposes are included in the list of reasons under subclause (2) that the minister may grant an exemption, but I would foresee perhaps universities, for scientific research purposes, making an application to the minister for an exemption under subclause (3). Of course, research is also listed under clause 7(2)(a). There may be education purposes, which is also listed, which would apply to people who, for whatever reason, may want to make an application to the minister for an exemption if they were going to use whatever it is they catch from the ocean for education purposes. For all those reasons, the key word in subclause (3) is "may", but it is not required; the minister may just provide a standing exemption, as has been the case under the serious threat policy anyway.

Mr D.J. KELLY: Once an exemption has been granted, is there anything in this legislation that would allow someone to challenge that exemption? For example, if the minister granted an exemption and said that the exemption had been granted for environmental protection and someone took the view that that exemption really could not be justified on the grounds that the minister had cited, are there any provisions under this legislation to

allow them to challenge the validity of that exemption? The minister might be able to tell me whether there are general common-law provisions that enable an exemption to be challenged, but are there any mechanisms under this legislation to allow a person to challenge an exemption that the minister has granted through any of the provisions under clause 7(2)(a)-(g)?

Mr J.M. FRANCIS: My advice is that a decision made under the seven exemption categories in the legislation may be challenged in the courts using common-law provisions. I would expect that perhaps one of the reasons it might be challenged would be if it were an abuse of executive power. I will have to take the question on notice, but I will endeavour to provide the member with any relevant case histories in which such a challenge might have been mounted under similar circumstances, but the short answer is that common-law provisions will apply.

Mr D.J. KELLY: From the minister's answer, I take it that there is no provision under this legislation for a person to challenge an exemption once the minister has granted it. Once the minister has granted an exemption, people would have to go to the courts and pursue administrative law or common-law avenues to challenge the exemption; there is nothing under this legislation to provide for such a challenge. That is one of the apparent problems with this provision—that the minister can grant an exemption under clause 7(2)(a)-(g) without any other justification than that the minister believes it should happen. There is no transparency or accountability, and there is nothing to require the minister to ensure that the decision he or she makes is backed up by any evidence. The minister can say, "Oh well, sometimes an exemption has to be granted when it is required in circumstances of urgency." I can understand that explanation as it applies to purposes such as public safety or public health, but if an exemption is going to be granted for research or educational purposes, knowing how slow universities move, I find it hard to believe that allowing some process through which people can comment on whether the exemption is justified, or ask that the minister provide some reasons why the exemption is being granted, could be effective. This clause gives the minister wide powers to override everything else in the legislation without any requirement to provide reasons or to back up his or her decision with evidence. None of that is required, and that contributed to the frustration of people who opposed the government's decision to start taking sharks as part of shark mitigation. The government was not required to provide evidence, reasons or justifications before implementing that policy. The minister might say, "Well, if there's a serious threat, the government's got to be able to act quickly and decisively to save human lives." I suppose my comeback to that would be, "That might be the case in that one instance, but you've already told us that there's a standing exemption you've given yourself." If there is a standing exemption that is to continue in force for weeks, months or years, it seems to me patently unreasonable for the minister to have that exemption in place indefinitely without any transparency whatsoever. Maybe there would be some justification, even if the minister is wrong, if he or she thinks it is necessary to act to save lives under immediate threat; but to allow that exemption to go on indefinitely seems to be patently unreasonable and a flaw in the legislation. I would be interested to hear the minister's views on that.

Mr J.M. FRANCIS: I point out that the provisions and exemptions outlined in this clause are the same as they have been since 1994. It is not always possible to foresee the unforeseeable. There may well be a requirement other than public safety to expedite an exemption under this clause. I do not want to play hypotheticals, but as an example to paint a picture for the member for Bassendean, if there were another Cockburn fish kill, there would be a requirement for timeliness and for research to be undertaken. It will not be recreational fishing; it will not be commercial fishing. It will be scientific. It may be required to rapidly have an exemption to catch a number of different fish to see whether something was happening fairly quickly. If the member remembers the recent Cockburn Sound fish kill—that was obviously before my time as minister—there was an awful lot of speculation in the media as to what the cause might be. The grain terminal copped it for a couple of days, and I think even nuclear submarines might have copped it at one stage, but it turned out to be something different altogether. I refer the member to page 9 of the Aquatic Resources Management Bill 2015 and the "registrable interest" definition, which outlines it "means any of the following". I will read the definition first. If the member goes through that list, it states —

> (d) an exemption;

I then refer the member to page 108, part 10, "Division 1—General", and the very first sentence, which states —

> **150. Register of registrable interests**
>
> (1) The CEO must keep a register of registrable interests in such manner and form as the CEO determines.

It goes through what those particular details are in each respect. My expectation would be that it would also be published in the annual report of the department anyway. I am happy to place that on *Hansard* at this point as well. That would be any exemptions given under that clause we are referring to.

Mr D.J. KELLY: Thanks, minister. I do not dispute the need for an exemptions clause if there was another Cockburn Sound fish kill, and for some reason the minister wanted to take some action that he is not able to do because of some provision elsewhere in the act. My concern is that the exemption, in effect, can last forever and

not be challenged unless a person would find some other provision of administrative law that would claim—I do not know as I am not an expert in administrative law—that the minister was possibly acting without bona fides or pursuing an undeclared commercial interest or something, so that it was an abuse. Given what happened for example at Cockburn Sound, it may be that the minister allows someone to take fast or immediate action to deal with a situation, but if that exemption will then last for weeks, months or years, it would be appropriate for some requirement for the minister to be transparent or for people to challenge the validity of that exemption. The minister has referred me to "Part 10—Register." That would require the CEO to keep a register of registrable interests and that appears to include exemptions. The exemptions might be then publicly viewed, but, as indicated in my reading of clause 7, the exemption might be as simple as exempting all employees of the Department of Fisheries to kill sharks as part of the serious threat policy with the approval of the CEO—full stop. That could be the extent of the exemption. That provides no-one with any details. Presumably the exemption would have to say which provision under clause 7(2)(a) through to (g) the minister relied upon. If the minister takes the view that killing sharks is required on a Sunday afternoon because Sunday afternoons are the most popular time at beaches, the minister could do that and no-one, however crazy that idea might seem, would be able to challenge it. I am still not satisfied that this legislation provides a degree of transparency that would give me comfort. Is there anything else in the legislation the minister can point to to show that he will be transparent in regard to these matters? I will not be critical of the minister's predecessors, but there is a great deal of public interest around these things. The fact that there is virtually no transparency is one of the issues that is constantly raised with me—namely, that in this area of public policy the minister gives himself all the authority and none of the accountability.

Mr J.M. FRANCIS: I previously mentioned that we are providing the minister with exactly the same authority as existed under the Fisheries Management Act 1994. It is the exact same authority and powers to specify what exemptions apply—to whom and what conditions—as has been in place for 22 years in Western Australia. It is the same conditions, same power, same authority and the same accountability that existed when various governments were in power over the last 22 years—from 1994 to now.

I point out again, though, that I was not trying to be cute. It is very hard to foresee the foreseeable. To go back to the other point, I was just sitting here thinking of other reasons for a need to expedite an exemption. I am sure the member for Gosnells would appreciate a situation, God forbid, say, if the crown-of-thorns starfish started marching over the reef in Western Australia. If someone realised that timeliness is very important, and if it was possible to give an exemption for environmental protection reasons, we would allow someone to rapidly go and collect whatever it might be that is about to cause significant contamination. Obviously, the crown-of-thorns starfish is a marine biological animal, so such exemption would be required, or any other invasive non-natural species could be seen under that measure. If the urgency existed for those reasons, the member could see why a minister would properly give a fairly immediate and broad exemption for environmental protection reasons. As far as the accountability is concerned, as I said, my expectation is that all exemptions would be in the department's annual report anyway. I think everyone here understands very clearly that if the serious threat policy is enacted for the sake of a shark, there are no secrets in this business, member for Bassendean. A Department of Fisheries boat or any other boat does not sail to lay drum lines without every single person knowing about it. It is pretty well proclaimed. I am not sure whether I can give the member any more comfort other than that, but I do not think anyone is in the business of keeping secrets for the purpose of the exemptions. I am pretty sure that every single one of them would be FOI-able if someone did not publish them anyway. I am absolutely confident they would be covered under that mechanism. I think all the other points listed from (a) to (g) would cover all of the legitimate reasons. The conditions are prescribed by the minister. I understand that the general exemption period applies at the moment on a yearly basis—but it could be for a week, an hour or a day, and it could also be recalled and cancelled at any time. It is entirely in the hands of the minister of the day.

Mr D.J. KELLY: I have got a couple of other issues I want to raise with the minister about the exemptions clause. Some public discussion recently occurred about reopening what has been termed as the shark fishery that was closed in 2007–08 by the previous Labor government. The view expressed by some people is that action should be taken to reopen that fishery as part of the shark mitigation policy. I do not believe that that course of action would be in any way justifiable. My question to the minister is: if a decision were made to reopen that what is termed a shark fishery —

Mr V.A. Catania interjected.

Mr D.J. KELLY: I will let the recreational fishers in the member's area know about that.

It seems to me that that could be done in two ways: the government could either go through the normal process of considering a new fishery outlined in this legislation or give itself an exemption under this provision of the bill and bypass all the normal processes that it would go through to reopen a fishery. The minister can correct me if I am wrong, but my understanding is that it has been reported that the Premier has asked—I suppose he is the boss and he can ask any government department to do whatever he likes—the Department of Fisheries to see whether there is any link between the closure of that fishery and his belief that there has been an increase in the number of

great white sharks. My understanding is that the government is actively considering whether to reopen that fishery. I am looking for advice from the minister. If the government were to make a decision to reopen that fishery, would it go through the normal process under the legislation or would it be its intention to give itself an exemption using this provision of the bill or the similar provision in the existing legislation to implement that reopening?

Mr J.M. FRANCIS: I understand that while I was on leave there were two tragic shark attacks and the Premier asked the Department of Fisheries to investigate whether there was a connection between the closure of a former shark fishery and the increased number of white sharks off the coast of Western Australia, particularly Perth. There is no active consideration to reopen that fishery; my understanding is that it is purely a request for a scientific evaluation. I point out that I am determined to ensure that all the decisions made by the government, whether they be about commercial fisheries or whatever it may be, are made on a scientific basis with the best advice available at the time from universities, academics, scientific researchers and the department. As I said, I do not like going into hypotheticals, but if it were to happen, my understanding is that it would require an amendment to the management plan that is relevant under both the 1994 act and this legislation. It would therefore be done for a commercial purpose. Let me reassure the member by repeating that, at the moment, no consideration is being given to reopening that shark fishery. What has been asked for is a review, if you will, of or an update or further information on the scientific evaluation of whether an increase in white shark numbers has been the result of the closure of the fishery. That is as far as it has gone right now.

Mr D.J. KELLY: I am not going to play words with the minister. The Premier has asked for a review of whether there is a linkage between the closure of that fishery and his "belief" that there has been an increase in the number of great white sharks. I think that the public commonly believes that the government is actively looking at reopening that fishery. The minister says that he is just responding to the Premier's request and is not actively considering reopening that fishery. I think he is just being pedantic, but I am not going to take that any further. The government has the cooperation of the opposition in passing this legislation. If this legislation goes through the house in a short time and the minister makes the decision that he wants to reopen that fishery, is it his intention to do that via the normal processes under the legislation? Would he rule out reopening that fishery by virtue of an exemption, because he could give an exemption under clause 7(2)(c), which refers to commercial purposes? I am asking the minister whether he will rule out using this exemptions clause to reopen that fishery for the purpose of shark mitigation.

Mr J.M. FRANCIS: The member for Bassendean is asking me to try to predict the future, which is always difficult, but the short answer is that I could not foresee it and therefore I would rule it out. We are getting a bit off topic, but my understanding is—as I have said, I could not speak for a number of weeks, but I could watch TV and read the newspaper—that the major interest groups that put forward the argument that the closure of the white shark fishery has led to a greater number of white sharks and, therefore, attacks consisted of shark fishermen and commercial fishers who would benefit commercially from the decision to reopen the fishery. I would envisage that if it were ever to happen, it would be done through a change to the management plan. As I said, I do not want to play too much into prophesising about the future on these things, but I make it clear that it was the right thing for the Premier to do when he asked the Department of Fisheries for an update on or a relook at whether there was an impact from the closure of the previous shark fishery, which came under the west coast demersal gillnet management plan. I think it is prudent of any government to ask a department to check on the evidence and whether there are reasons that something has happened. We do that from time to time, as the member would know. The government asks all government agencies to explore the reasons why things happen. I think the Premier did the right thing when he asked that someone review the science.

Mr D.J. KELLY: I thank the minister. I am pleased that he has ruled out reopening that fishery using this exemptions clause. I think that is a very sensible thing for him to do. The minister has acknowledged that a review, or whatever he wants to call it, is being done by the Department of Fisheries based on that request from the Premier. Can he indicate whether any time line has been put on that review and when the public could expect to hear the outcome of the review that has been requested by the Premier?

Mr J.M. FRANCIS: I cannot give the member an answer to that but, separate to this process, I will find that out for him and bring him up to speed.

Mr V.A. Catania interjected.

Mr J.M. FRANCIS: Can I just give a commitment to the member for Bassendean? I will undertake to get my office to bring him up to speed on where we think that is going and what kinds of time lines we can try to predict to the best of our ability so that we can keep him in the loop. As I said, it is not exactly a state secret. I certainly undertake to bring him up to speed, outside of this particular process, on the progress of that research and the time lines.

The ACTING SPEAKER (Ms L.L. Baker): Members, this issue is not directly relevant to the clause that we are discussing. I think the minister has answered. I will let the member for North West Central ask one more question, but then we need to move back to the bill.

Mr V.A. CATANIA: Thank you, Madam Acting Speaker. Further to the clause, I note that the member for Bassendean was talking about how he was glad that the minister is not going to make a decision without having all the facts about the clause whereby, as the minister, he has the discretion to go ahead and start the shark fishery again. He has that discretionary power. It is a problem in my electorate, where there has been talk about the increase in shark numbers over the years since the shark fishery was closed. In my electorate, there have been calls by local governments, recreational fishers and commercial fishers—people fishing in the north west—to bring back the shark fishery to try to make sure that they can catch their quota without pulling up fish that are half eaten. There have also been major complaints by recreational fishermen in my patch, where it is very difficult to catch fish because of the large number of sharks. In the last few months, have there been any proposals to bring back the shark fishery off Exmouth and Carnarvon?

Mr J.M. FRANCIS: I will undertake to pass on the member for North West Central's concerns to the Department of Fisheries. I feel as though I am doing a grievance! I will also ensure that the member is brought up to speed on where the current shark fishery is still active and where the boundaries are to the part that is closed at the moment. I will also ask the department to consider the impact of the alleged white shark numbers all the way up the coast and I will keep the member —

Mr V.A. Catania: I am not talking about white sharks; I am talking about other sharks.

Mr J.M. FRANCIS: Anyway, I am happy to provide the member with all the information. I am keen to progress with this clause, but let me go back to the member for Bassendean's point so that I am crystal clear. There is no intention whatsoever to reopen a commercial fishery using the exemptions under clause 7.

Mr D.J. KELLY: I have one last question on this clause and then I will allow the minister to move on. Is the existing exemption that enables the serious threat policy to be implemented based on the department's belief that there has been a significant, rapid or inordinate increase in the number of great white sharks off our coast, or not?

The ACTING SPEAKER: Minister, just before you answer, are you happy with that question?

Mr J.M. FRANCIS: Yes, I am happy with that question. The bottom line, member for Bassendean, is that it does not matter whether there is one shark or a hundred sharks; the serious threat policy is determined by the actions of an individual animal. Obviously, if an animal attacks someone and, unfortunately, takes a human life, or if it is menacing kids at the beach—whatever triggers the serious threat policy—it is not based on the alleged or reported, or whatever words we want to use, increase in the number of white sharks. Clearly, something is happening, which is why, as I said, it is correct and right that the Premier asked for further information about this. However, the policy is not based on an assumption that there is some kind of increase in numbers or activity; it is based on the observation of an individual shark.

Mr C.J. TALLENTIRE: I think we would do well to dwell on this clause about exemptions because there is an ambiguity around so many aspects of it. Because there is a lack of guidelines, perhaps some guidelines need to be enshrined in the legislation to outline when an exemption can be used. Clause 7 lists the purposes for an exemption and that is useful, but I think some guidelines would be handy. My question is about one purpose which I think is missing and which I would have expected to see. It surrounds an emerging issue for fisheries—the issue of animal welfare. In my contribution to the second reading debate, the minister might recall that I spoke about concerns that people have with seabirds being caught on longlines. I also mentioned the problem we had in the past with sea lions getting into crayfishing pots and the need to require the installation of sea lion–excluder devices. I use those as examples because there may be provision, if there is an exemption power, for the minister to say that a certain style of longline is not allowed to be used if it is at the point in the water column where seabirds are able to swoop down and get caught. I suppose the minister needs to have these exemption powers. I accept that, but I would like some more clarification about when and where they can be used. I think we need some sort of guidance. Could the minister specifically address the issue of why animal welfare is not listed amongst the seven purposes in the bill for which the minister may grant an exemption?

Mr J.M. FRANCIS: If I can help out the member for Gosnells here, I will ask him to jump forward to page 25 of the bill. It is not the clause that we are looking at right now, but I refer to page 25 so that I can assure him that the issue is considered in the bill. Could I foreshadow that the member might want to revisit this issue when we get to page 25? At the top of the page, it states that an aquatic resource user plan —

> … may include any provision that, in the Minister's opinion, is necessary for —
>
> (a) the protection or management of the resource; or

But, in particular, for the member's concerns —

> (b) the protection of the aquatic environment, other aquatic resources, aquatic mammals, aquatic reptiles, aquatic birds and amphibians from activities related to the resource.

That is exactly what we do currently with the whale entanglement mitigation program—I probably have my words wrong there, but I am sure that the member is aware of it—so that the welfare of animals living in the ocean can be

taken into account. Short of that, I do not want to take up too much time; I might end up naming all the fish in my fish tank again.

Mr C.J. TALLENTIRE: I thank the minister. I see his point. On page 25, there may be provision to deal with some of those aspects such as whale entanglements and seabirds being caught on longlines. I think, though, that another emerging area that people have a concern about is the manner in which some fish and other sea animals are dispatched—killed. Again, we need some power here for a minister to take action on what might be deemed cruel practices when animals are left for extended periods to suffer out of water or in the hot sun, flapping around.

Mr J.M. FRANCIS: Codes of practice regulate the taking of animals and the expected behaviour when it comes to killing an animal. Sorry; I am not by any means trying to infer that the member has not looked at this bill, but can I take the member to clause 263, "Regulations", on page 190. The member might want to come back to this clause also. It states —

> (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed…

In particular, subclause (2) states that the regulations may make provision in relation to any of the following matters, which include, in paragraph (d), "the welfare, safety and health of aquatic organisms". The issue is in a later clause, member for Gosnells.

Clause put and passed.

Clause 8: Crown bound —

Mr D.J. KELLY: Clause 8 states —

> (1) This Act binds the State and, so far as the legislative power of the State permits, the Crown in all its other capacities.
>
> (2) Nothing in this Act makes the State, or the Crown in any of its other capacities, liable to be prosecuted for an offence.

That strikes me as peculiar. It is a pretty broad statement. There may be a good reason for this clause, and there may be more legislation that reads this way than legislation that does not. The Crown is bound by the requirements of this act. However, if the Crown breaches the legislation in any way, the Crown cannot be prosecuted for committing an offence. It is pretty odd. There should be one rule for all. There may be an explanation for this that I do not understand. We sometimes find that there is a peculiar constitutional reason for these things. I am very interested to hear an explanation from the minister as to why the Crown in all its capacities is bound by the legislation, yet the Crown cannot be prosecuted for an offence under the legislation.

Mr J.M. FRANCIS: I am advised, and in fact I have the relevant section of the Fish Resources Management Act 1994 in front of me, that this has been taken word for word from section 8 of that act. I am also advised that it is common in a lot of legislation to give those particular exemptions. I am not a lawyer, but I would suggest that the government taking itself to court is not something that is likely to happen.

Mr D.J. KELLY: The minister has said a couple of times tonight, when I have asked questions, that the provision is exactly the same as the provision in the current legislation, and that justifies it. The government has spent almost a decade formulating this legislation. The legislation has been changed in a lot of areas. If the old legislation was tickety-boo and was best practice, the government would not have needed to bring in this new bill. Therefore, the minister's argument that it is in the old legislation, and we are just repeating it, does not wash with me. That is my first point. The second point is that there are a lot of areas in which the government can be prosecuted for breaching the laws of the land. In my previous days as a union official, if a government hospital, for example, breached an industrial award or agreement that covered that hospital, we could go to the Magistrates Court and prosecute that hospital in the same way that we could prosecute a private employer. There would be no point having an award that covered public hospitals if a public hospital could not be prosecuted for breaching that award. Therefore, I am inquiring whether there is a more sophisticated reason why the government is not in this new bill making the Crown liable for prosecution.

The other issue is if we cannot prosecute the Crown for breaching a fisheries management act, why bother going through the process of giving the Crown an exemption to catch great white sharks, for example? Is there some other reason? Is it cost? We have just passed the new Public Health Bill. One of the frustrations with the Public Health Bill is that it sets new and modern standards for public health, yet the Crown cannot be prosecuted for breaches of that act. I understand that one of the reasons is that the problems in the public health system are so vast that if the Crown were to become liable for breaches of public health on its own land, it would probably be bankrupted instantaneously. I assume that is not the reason why the Crown is not able to be prosecuted for breaches under this legislation. I hope there is a more sophisticated reason why the Crown is not able to be prosecuted under this new, best practice, whiz-bang legislation that has taken so long to get into the house.

Mr J.M. FRANCIS: I am advised that this is a best practice standard clause that is used by Parliamentary Counsel. I ask the member to refer also to part 16, "Miscellaneous", at page 185 of the bill. I do not want to get into the habit when I am on my feet every five minutes of quoting buckets of pages into *Hansard*. Clause 253(1), "Protection from liability", states —

> An action in tort does not lie against a person for anything that the person has done, in good faith, in the performance or purported performance of a function under this Act.

That would obviously apply to a person who works for the Department of Fisheries. If the person is acting in good faith, they are okay. We do not need to start on a list of possible examples. However, a fisheries officer, or anyone in the department, may be liable to be prosecuted if it can be shown that they are not acting in good faith. Therefore, part 16 provides further clarification of this particular issue.

Mr D.J. KELLY: Clause 253(1) makes it clear that there is no action in tort against a person for anything that is done in good faith. I understand why that protection would be in the bill. Presumably, that is intended to apply only to people who are public servants, and not to commercial fishers. Maybe the minister can enlighten me. I am sure the intention of this provision is not to prevent a person from suing a commercial fisher who has caused damage to that person. There would be a lot of broken-hearted lawyers if this provision exempted anyone in the commercial fisheries area from ever being sued provided they were acting in good faith. I can understand why the Crown would want to protect employees of the Crown from being sued for just doing their job, provided they were performing their job in good faith. However, I do not think that gets around the fact that clause 8 exempts the Crown from prosecution under any circumstances whatsoever. If a fisheries officer were to breach a management plan for a fishery or do something that was in breach of a person's fishing licence, there would be no penalty. The minister might exempt fisheries officers from killing great white sharks, and a fisheries officer might take out a bull shark or a tiger shark.

Mr J.M. Francis: It is about whether it is done in good faith.

Mr D.J. KELLY: I am not talking about acting in good faith.

Sitting suspended from 6.00 to 7.00 pm

Mr D.J. KELLY: Just before the break we were exploring why, under clause 8(2), this bill appears to exempt the state, or the Crown in any of its other capacities, from liability for prosecution for an offence. I am wondering whether during the break the minister got any additional advice that might explain why that provision is in the bill.

Mr J.M. FRANCIS: All I can tell the member for Bassendean is that I am advised that it is a common clause in many pieces of legislation. As to its intended consequences, I will undertake to seek further information from parliamentary counsel and to provide that to the member some time tomorrow to bring him up to speed as to the detail of this. All I am advised at the moment is that it is a common clause.

Clause put and passed.

Clause 9: Objects of Act —

Mr C.J. TALLENTIRE: We had two briefings on this bill. They were both very good briefings, and I thank the minister's staff for their careful guidance. An issue that I raised in each of those briefings was around the objects of the bill. I especially looked at paragraph (b) of the objects and noted that there is a strong emphasis on managing the state's aquatic resources and having regard to their economic, social and other benefits. I want to know from the minister why we have this vague term "other benefits". We are quite clear that we want to manage the aquatic resources for their economic and social benefits, but we just have a general "other", which I imagine would include things like conservation values, non-extractive uses that are part of the aquatic resources as well and are there perhaps for tourism reasons, or just because people want to know that things like big blue groper are still in the ocean. Those other benefits are not, to my mind, properly captured when we use that very vague term "other benefits". Has the minister given any thought to something that is much more explicit and talks about non-extractive uses and conservation uses?

Mr J.M. FRANCIS: Firstly, I share the member for Gosnells' enthusiasm for the importance of the environment. Maintaining a sustainable fishery is a key part of this legislation, so we will manage the fisheries in a way, as outlined in part (a) of the objects of the bill, that will provide a benefit for present and future generations. That is exceptionally important. No doubt that is why it is the first paragraph of this clause. As for paragraph (b), I point out that this is a basic description of the objects of the legislation. It mentions economic benefits, which is great—obviously there is a significant economic benefit to the state and the thousands of people involved in the fisheries industry. We all know about the social benefits. "Other" is a generic term. It would mean educational benefits, scientific benefits, public safety benefits—a host of different reasons. It is a generalised term because it is an introduction to the objects of the bill.

Mr D.J. KELLY: I just want to echo the comments made by the member for Gosnells. I think I said in my contribution to the second reading debate that there might have been a time when we could have said that the conservationists were in one corner and the commercial fishers were in the other, but now a lot of commercial fishers are right at the forefront of arguing the conservation case because they know that if we do not manage our aquatic environment in a sustainable way, the whole thing will break down. It is not an argument about greenies versus commercial fishers; it is just that the modern-day appreciation of how we manage our resources is about ensuring the environmental sustainability of what we do, and that is not a fringe or an inconsequential issue. I am disappointed in the way in which the objects of this bill have been put forward. I am disappointed that environmental benefits in particular and scientific as well are not given specific recognition; they are included only by reference to a term of "other benefits". The minister may argue that "other benefits" is broad enough. The legislation mentions economic and social benefits obviously because the government wants the people who use this legislation to understand that they are front and centre. I would have thought, given the modern understanding of the way in which we want to manage our marine environment, that the government would have given environmental benefits equal recognition in the objects of the legislation. The objects of an act guide everything that we do. People who are going to implement this legislation are going to have regard to the objects whenever they do anything. That is made clear by clause 11. I just want to reiterate the comments of the member for Gosnells and ask why the government did not give that greater emphasis in the objects when in this modern world even the most strident recreational fisher and commercial fishers understand that preserving our environment is paramount.

Mr J.M. FRANCIS: I would encourage everyone interested in this bill to read it in its entirety and to have a view of the bill in its complete form, rather than just reading individual clauses. I ask members to reflect on the very next clause, clause 10. Effectively, clause 9 is the helicopter view—the very brief, abbreviated version of the objects of the legislation. Clause 10 is headed "Means of achieving objects of Act". I know we are dealing with clause 9 at the moment and not clause 10, but clause 10 talks about conserving and protecting aquatic resources; managing aquatic resources on the basis of relevant scientific data, which I have spoken about numerous times; the sustainable development of fishing; and encouraging members of the public to actively participate in decisions about management and conservation. If one reads the bill in its entirety and does not single out one particular clause, then I am comfortable that all of the issues just raised by the member for Gosnells and the member for Bassendean are well and truly addressed in the very next clause.

Mr D.J. KELLY: I simply do not agree with what the minister just said. The whole purpose of the objects of the act is to provide the key direction for the legislation. When a person looks at legislation, they do not read it and give every clause the same weight. When a person is interpreting legislation, they go to the objects first, because the objects colour the way that everything else is interpreted. I do not think the minister can get by saying that these sorts of issues are given emphasis in the next clause. I read clause 10, "Means of achieving objects of Act", as the bill having two objects and six means by which those objects can be achieved. We do not need to do all of them; we could achieve the objects by doing one of them. Clause 10 provides a suite of mechanisms by which the head powers of the act, which are the objects, can be achieved. In 2010, the then Minister for Fisheries put out the publication "A Sea Change for Aquatic Sustainability". A primary theme of that document was along the lines that we need to enhance the way that we look after our marine environment. The marine environment with which we live is under enormous pressure for a range of reasons. This legislation was supposed to beef up the way that we care for our marine environment, but I just do not think it does that in the objects, because the environmental benefits that accrue from the marine environment are left under the catch-all "other benefits". I think the minister needs to give us greater explanation as to why he has not gone down that path. When Hon Norman Moore put out that publication, he put great emphasis on protecting the marine environment not just for fishing, but for other purposes and for future generations. With these objects, I think the minister has missed an opportunity to bring that about.

Mr J.M. FRANCIS: I will make it crystal clear that I do not accept that the legislation is not clear; I think it is black and white. Clause 9 states —

> The objects of this Act are —
>
> (a) to ensure the ecological sustainability of the State's aquatic resources and aquatic ecosystems for the benefit of present and future generations;

I do not know how much clearer the member wants that stated, but I am very comfortable with the way that the objects of the act have been spelt out. Unfortunately, if the member for Bassendean is not comfortable with that, we will have to disagree on that. I think it is pretty straightforward that environmental protection, sustainability and management of the natural resource are at the very top of the objects of the act.

Mr D.J. KELLY: Clearly, there are two objects of the act, and on a plain reading of the way that the objects have been drafted one does appear to have precedence over the other. What is the government's understanding of how this legislation will operate? Does the object at paragraph (a) take precedence over the object at paragraph (b)? If not, if the object at paragraph (a) is in conflict with the object at paragraph (b), how does one determine what

course of action to take? What is the intention? Which object takes priority could have been made clear, but that has not been done. For the purposes of clarity, which of those objects takes precedence—paragraph (a) or paragraph (b)?

Mr J.M. FRANCIS: They are equally important and they are read together. I might go back to a point the member made, on which I agree with him. I think the industry and all the interest groups have evolved over time. As far as the front line of commercial fishing is concerned, they are very aware of the environmental impact of their operations, and, as I said, do not want to fish themselves out of a job. If they were to pillage an entire fishery, they would be doing themselves out of future income. Everyone in the debate—I think the member said the commercials and the greenies, or whichever words he used—has come a long way, and there seems to be a lot more balance now. The key to everyone's involvement is scientific, base sustainability. The objects in the bill are equally important and read together.

Mr D.J. KELLY: A decision was made in the drafting of this legislation to remove the precautionary principle, which in the current legislation appears at section 4A, and reads —

> **Precautionary principle, effect of**
>
> In the performance or exercise of a function or power under this Act, lack of full scientific certainty must not be used as a reason for postponing cost-effective measures to ensure the sustainability of fish stocks or the aquatic environment.

I understand that that section was inserted into the legislation in 2011. That principle was put into the legislation by the government to beef up environmental protection under the existing legislation. The person on the street's understanding of the precautionary principle is that just because there is not full scientific truth one way or the other of something the government wants to do to preserve the environment, it is not to be used as an excuse not to take action. That section was inserted in the existing legislation only five years ago by the minister of the time, yet it has been taken out of this legislation. We are only up to clause 9, and the minister has said a couple of times that provisions of this bill are justified because they were in the last bill. Here is an example of a provision that was in the last bill, that the minister specifically made the decision to take out. The precautionary principle is supported in many circles when decisions are made about conserving our environment. Why was a decision made to take out the provision that was put in the existing legislation not that long ago, with some fanfare at the time?

Mr J.M. FRANCIS: I would submit, member for Bassendean, that the provision has not been taken out, as such, but rewritten. If the member reads the whole of clauses 10 and 13, he will see that the provision has been rewritten in a better way.

Whether it be climate change or fisheries management, I have always viewed the precautionary principle as mother nature deserves the benefit of the doubt. That is one way of looking at it. With respect to the precautionary principle, ecologically sustainable development gained—I have some notes here—international recognition back in 1992. The principles were open-ended and gave no clear guidance on how they were to be applied. There were five principles, including intergenerational equity; conservation of biological diversity; the precautionary principle, which the member referred to; and the internalisation of environmental cost. This is the important bit: in the 1990s, Australia adopted the National Strategy for Ecologically Sustainable Development. The key point of the strategy was that the principles should be treated as a package with no one principle more important than the other and each principle to be applied with consideration of the other principles. I submit that the key elements of ecologically sustainable development are embedded in the objects of the bill in clauses 9 and 10 and even clause 13, which provides for the monitoring of aquatic resources that the minister must ensure takes place.

Mr D.J. KELLY: I do not fully appreciate how the minister thinks that clause 10 and clause 13 replace the precautionary principle. Clause 13, for example, states —

> The Minister must ensure that —
>
> (a) the condition of aquatic resources and the aquatic environment is kept constantly under consideration; and
>
> (b) an assessment of the risk to the ecological sustainability of an aquatic resource is undertaken if the Minister is of the opinion that there is reason to do so.

I do not see how that replaces the precautionary principle at all. I really do not see how clause 10, "Means of achieving objects of Act", replaces that provision either. The minister put it as we always give nature the benefit of the doubt. That is an overarching principle that under the existing legislation influences the way the whole bill would be implemented. That has been specifically taken out. Which specific part of clause 10—do not just say it is clause 10—does the minister think replaces the precautionary principle?

Mr J.M. FRANCIS: I really do not want to have to start reading out whole clauses into *Hansard*, but clause 9 is obviously very clear that the objects of the act are to ensure ecological sustainability of the state's aquatic resources. Clause 10 provides for the means of achieving this. Clause 10(a) ticks the box. Clause 10 also states —

> (b) managing aquatic resources and aquatic ecosystems on the basis of relevant scientific data and principles; and
>
> (c) encouraging the sustainable development …
>
> (d) encouraging members of the public to actively participate in decisions …

I am struggling to read one paragraph that does not address that issue, member for Bassendean. I would submit that every single paragraph, (a) through to (f), covers the issue of the precautionary principle in ecologically sustainable development.

Clause put and passed.

Clause 10: Means of achieving objects of Act —

Mr D.J. KELLY: I take the minister to clause 10, which states —

> The objects of this Act are to be achieved in particular by —
>
> (a) conserving and protecting aquatic resources and aquatic ecosystems and where necessary, restoring aquatic ecosystems;

We support that paragraph, but I draw the minister's attention to the part of that paragraph that states, "where necessary, restoring aquatic ecosystems". I am wondering whether the minister could give me a practical example of where and how the government would do that under this legislation.

Mr J.M. FRANCIS: I can think of a number of different examples. If Asian green mussel had to be removed from the hull of a ship, it would tick that box. As would restoring, if possible, seagrasses and the release of snapper fingerlings back into Cockburn Sound.

Mr D.J. Kelly: That was Recfishwest, wasn't it?

Mr J.M. FRANCIS: Yes, but it was all done through the Department of Fisheries; at the end of the day, it has to be approved. Off the top of my head, there are a number of different ones; for example, on the biosecurity management side, we remove something that we know is a detrimental or invasive species, or we restore a natural species to the environment to help bring the ecosystem back into balance. I am also told another example is the oyster beds in Albany harbour. Without spending too much time on my feet, I am sure that we can find lots of examples of measures that are currently undertaken.

Mr D.J. KELLY: Thanks for that. I think the minister is right. I can completely understand how doing work to eradicate marine pests would fit into that paragraph. Limiting bag limits on a particular species may be a way of restoring natural numbers in the wild. Is there an example of when under this legislation the Department of Fisheries would do work beyond removing pests and restoring fish numbers? This legislation is more about managing the whole marine environment. The minister mentioned, for example, seagrass. Could the minister see Fisheries actively doing work under this legislation to restore the marine environment through mechanisms other than removing pests and trying to regulate fish numbers, such as regenerating seagrass or something of that nature?

Mr J.M. Francis: While the member is on his feet, perhaps he is looking at things such as the creation of artificial reefs as well.

Mr D.J. KELLY: I am just wondering. That might be a good example. I am just asking.

Mr J.M. FRANCIS: I mentioned oyster beds in Albany harbour. Could I foresee it happening? Obviously, it happens now; as I mentioned by interjection, the new artificial reef that was recently put in place off Mandurah. There is also a number of them further south at the moment. We have two issues here. We have the removal of a foreign or invasive species and restoring the natural balance of aquatic life. However, I suggest we cannot look at them without looking at the opportunities, as I said, through artificial reefs or whatever it might be, of creating new environments that otherwise were essentially almost uninhabitable for most of those particular species. I guess they are the key ones. Will it continue under the new legislation? Absolutely. I think it is one of the core roles that the Department of Fisheries undertakes through Recfishwest, which it funds, or on its own as a government department. We have an obligation as a government agency to ensure that we maintain the natural balance in the ecosystem of the ocean as much as possible while we are able to feed protein to people. It is a fairly commonsense approach and it will not change under the new legislation.

Mr D.J. KELLY: Can I ask the minister about clause 10(c)? One of the ways of achieving the objects of the act will be under paragraph (c), which states —

> encouraging the sustainable development of fishing, aquaculture and other activities reliant on aquatic resources;

Why has the word "encouraging" been used, because it is a fairly soft word? I would have thought that the word that could have gone in there would have been "ensuring", because a key function of the department is, through a raft of other things in the legislation, to ensure that activities such as fishing, aquaculture and other activities are done in a sustainable way. I do not understand why under this clause the word "encouraging" is used rather than a stronger word like "ensuring", which reinforces the obligation on the department and others to ensure that those activities are done in a sustainable way.

Mr J.M. FRANCIS: I am not disagreeing with the member for Bassendean, but I think that we are reading the sentence differently. If we were to turn around and use the words "encouraging" the development of fishing and not include the word "sustainable", or if we were to put "encouraging aquaculture" and not include the word "sustainable" in this clause, we would in fact be doing the clause a disservice. It is a fact that we cannot as a government force anyone to invest in aquaculture. Let us get that right. We can encourage them to invest in aquaculture. The reason it is there is that we want to encourage the development of aquaculture but we also want it to be sustainable with, obviously, a negligible or zero footprint on the environment where possible or in a manner whereby once the aquaculture project is finished it can be reverted back to its natural state. We read all of those things into the sentence. Do we want to encourage aquaculture? Yes, we do. Do we want it to be sustainable? Absolutely we do. That is exactly why it says encouraging sustainable versions of those particular projects. When we look at the need to encourage aquaculture, obviously we have done a lot with the approval processes at the moment—trying to have the government deal with other government agencies in getting environmental approvals in place for aquaculture zones.

I do not want to dwell on this here, and I am sure that the member for Bassendean does not either, but there has been a long disappointing, but in the future encouraging, scene for aquaculture in Western Australia. When we realise, to keep it short, that we have a limited amount of sustainable fishing that we can undertake in any fishery, if we want to not diminish fish stocks to the point at which we obliterate an entire species—we want it to be there, as outlined in the objects of the act, for future generations—and we realise that that natural catch has a limit, and when we look at the population of the world and the country, and the demand through China for a quality protein in particular, for example Western Australian fish, then the only way to fill that gap is through aquaculture. I think the future of aquaculture in Western Australia, although it has been through some difficult times in the last few decades, is still in its infancy. The future is exceptionally bright and there are opportunities, although they are not endless. We have a long way to go while still maintaining aquaculture in an environmentally sustainable way. I cannot ensure that any person will invest in aquaculture, but I can certainly encourage it. If the member reads the sentence that way, it makes perfect sense.

Mr D.J. KELLY: Can I also ask about clause 10(d), which states —

> encouraging members of the public to actively participate in decisions about the management and conservation of aquatic resources and aquatic ecosystems;

I think that is a very laudable—I think that is the right word—provision to put in there. The more the community can feel as though it has input and ownership of the way that we manage and protect our aquatic environment, the better. I am just interested. It is great to have an object or a means of achieving an object at the front of the bill. I am wondering whether the minister can tell me how that is reflected in the processes in the rest of the bill. It is obvious that the formulation of aquatic resource management strategies and aquatic resource use plans are the guts of the new provisions in the bill. How do those processes live up to paragraph 10(d)?

Mr J.M. FRANCIS: I will start by saying that, obviously, it is not education alone and education that can be undertaken at any level, whether it be at primary school, through to tertiary education, through to training for the industry, it is important that people are aware of the opportunities. That will also trigger conversation if we look at what it asks for—that is, encouraging members of the public to actively participate in decisions. I refer the member to the bottom of page 19 of the bill, relating to drafting the ARMS, where it states, in particular, "give public notice of the proposal for an ARMS". I am not going to read all that, but it has to be published in the *Government Gazette*. It comes down to education and consultation. On page 23, clause 24 states —

> (2) The Minister is not to make an ARUP for a resource unless —
>
> (a) the consultation required in relation to the making of the ARUP set out in the ARMS for the resource has been carried out;

There is an absolute requirement for the public to be involved to a large degree in the information that goes into the decision-making process.

Mr D.J. KELLY: Could the minister give me more detail, or maybe we can talk about it when we get to clause 16? My reading of clause 16 is that the ARMS just has to say that the consultation needs to be carried out in order to put together an ARUP. Where is the public consultation required when the ARMS is put together?

Mr J.M. FRANCIS: The short version is on the bottom of page 19, at clause 17, "Draft ARMS", which states —

> … give public notice of the proposal —

It continues over the page —

> (2) The public notice of the proposal for an ARMS must —
>
> (a) contain information … and
>
> (b) specify where copies of the draft strategy may be obtained without charge —

I know the Acting Speaker will like that.

The ACTING SPEAKER (Ms J.M. Freeman): I have it now.

Mr J.M. FRANCIS: It continues —

> (c) invite interested persons to make submissions to the CEO …

It is clearly spelt out in clause 17.

Clause put and passed.

Clause 11: Regard to be had to objects of Act —

Mr D.J. KELLY: The minister might again tell me that this is parliamentary counsel's best practice drafting, but the clause reads —

> A person or body performing or exercising a function or power under this Act must have regard to the objects set out in section 9 and the means of achieving them set out in section 10.

Obviously "having regard to" something is not the same as saying that someone must act in accordance with the objects or consistent with the objects. The plain English meaning of having regard to the objects or the means is not the same as saying a person has to act consistent with the objects. My understanding is that "regard" simply means that a person has to look at them and consider them, but they do not always have to act consistent with them. I am curious, given that the "Objects" play such an important part in determining how this bill will become a living document, why clause 11 is drafted in the way it is.

Mr J.M. FRANCIS: Member for Bassendean, I submit that when the clause is read in its entirety, if a person had an authority that did not have regard to the objects of the act or the means of achieving the act, once again it would be something that could be determined by a court. In looking at some of the subclauses in clause 10, such as "encouraging", I would also submit, having regard to the member's point of view, that "encouraging members of the public to actively participate", while it is spelt out further as to how we will notify them, I cannot physically force a member of the public to take an interest in it. We can encourage them but we cannot necessarily force them to do it. I understand the point the member is trying to make, but in its entirety I would suggest that clause 11, which indicates "a person or body"—whether it is the CEO of Fisheries, the Minister for Fisheries or anyone else covered by this bill making a decision—if they did not have regard to this, and it could be clearly proven that they did not show any regard for it whatsoever, that is something that could be questioned by a court.

Mr D.J. KELLY: I agree with exactly what the minister said. If the minister, the CEO or a fisheries officer or whoever was shown not to have regard to the objects of the bill, they would be in breach of this provision—not that they can be prosecuted for that, as we discussed earlier. Why has the minister decided to use a term such as "have regard to" rather than a stronger term such as "consistent with" or "in accordance with", which is a much tighter obligation on people performing a function or power under this bill? There must have been a reason for doing it. It could have been drafted in a way that put a heavier requirement on people to act consistently with the objects, but it has not. I am wondering why the minister made what appears to be a deliberate decision when clause 11 was drafted.

Mr J.M. FRANCIS: I am advised that all of those items listed in clause 10, "Means of achieving objects of Act", even in clause 9(a) and (b), are all relevant and they all have to be taken into regard but they are not the be-all and end-all, and they are not determinant factors. As I said, if someone did not take them into regard and it could be shown, it could be determined by a court that did not take place. That is specifically why I would suggest that clause 11 is even in there. It would be even worse if clause 11 was not in there at all, from my reading. It would just say, "The objects of the act are", without saying that anyone had to take them into regard. The short version is that the word "regard" is a balanced view between "think about" and "force". "Take into regard" still has some requirement—in fact a significant requirement—for people acting under those particular clauses.

Mr D.J. KELLY: I do not really think the minister understands. This clause does not put a requirement on members of the general public; this is people who are employees of the crown—public employees who have a duty to act in a way which, under this clause, is only with "regard to" the objects of the act rather than "consistent with" or "in accordance with" the objects of the act. Yes, it would be worse if this was not in here at all. I think the minister characterised it as people have to think about the objects of the act rather than they must comply with the act—that is the point I am making.

Mr J.M. FRANCIS: I submit to the member for Bassendean that "regard" is a balanced word. I would point out that the second line says they "must have regard"; it is not "may have regard", "might have regard", "could have regard" or "perhaps might think about" —

Mr D.J. Kelly: "Must think about" is very powerful.

Mr J.M. FRANCIS: It says "must have regard". It makes it pretty clear that they have to take all of the objects of the act, and the means of achieving them, into consideration.

Clause put and passed.

Clause 12: Terms used —

Mr D.J. KELLY: During our earlier discussion about the definition of "recreational fishing" in clause 3, I said that in my view it might encompass activities carried out during the shark mitigation program. I want to draw the minister's attention to the term "recreational fishing" in clause 12. Clause 12 makes it clear that recreational fishing does not include customary fishing. Clause 3 makes it clear that recreational fishing is fishing other than commercial fishing, but clause 12 makes it clear that recreational fishing does not include customary fishing. If "recreational fishing" is not customary fishing and it is not commercial fishing; if it is fishing, it is recreational fishing and that includes trying to catch a shark as part of shark mitigation. I raise again with the minister that the way this has been drafted leaves it open that anything that is fishing but is not customary and is not commercial must be recreational.

Mr J.M. FRANCIS: I refer the member to clause 3 on page 2 of the bill. As I mentioned before, under "Terms used", the key words are, "In this Act, unless the contrary intention appears". Clause 12, which we are debating now, is "Terms used" in this part, part 3. These are definitions specifically for this particular part. We could keep going around here all night as we progress through this Aquatic Resources Management Bill. I guess the point the member for Bassendean is making is that it is either recreational or professional fishing, and there is no other type according to the particular one that he referred to at the start. I suggest that all the way through the bill there are other versions of fishing; they do not necessarily have to fall into one of the two camps. That is what clause 3 specifies at the start. Obviously, clause 12 contains specific definitions for this part of the legislation.

Clause put and passed.

Clause 13: Monitoring aquatic resources —

Mr C.J. TALLENTIRE: Clause 13 is the commencement of a series of very interesting clauses that relate to monitoring the fisheries and the development of the aquatic resource management strategy, aquatic resource use plans and what have you. I notice that this clause refers to monitoring the aquatic resource and just how that is done. It is very vague; it seems to suggest that the minister can do that in whatever fashion he desires. In the past—I think there will be an opportunity to discuss this further in debate on a subsequent clause—there were bodies known as management advisory councils. I think the commonwealth fisheries still use them. They are bodies constituted with commercial fishers, recreational fishers, community members who have a particular interest and people from the scientific community. It strikes me that if we are concerned about monitoring a fishery and we want to get as many perspectives as possible—not just the allowable take, but a very broad perspective—we would want to know the ecological impacts from a fishery. We do not want to know only that there will always be X number of fish to take for a fishery; we want as broad a perspective as possible, and that is how the MACs, as they were known, served a really valuable role. I begin with the issue of what role the MACs could play and put it to the minister that he needs to tell us how he sees the monitoring of the resource being done.

Mr J.M. FRANCIS: I guess the best way to answer this is that I do not know what science will hold into the future. I can look back and, I guess, point out one example in which the scientists from the Department of Fisheries looked at a particular fishery, which was obviously the rock lobster fishery. When they did the puerulus count in, I think, 2009, they realised that the fishery was on the verge of crisis. I think Hon Norman Moore was the minister at the time, and he put in some fairly strict conditions and changed the implementation of the quota system for the fishers. He used scientific advice from a number of bodies, particularly from the Department of Fisheries. The reason it is so broad, I am advised, is that to a large degree it has to be futureproofed. If I start to specify now that we will use certain methods to measure the sustainability of a fishery and next year someone invents a new way

of doing it, that will not help the cause. It is worded broadly because, as sure as I am standing here, something will evolve in the next few years that will change the way we measure the sustainability for a particular fishery.

Mr C.J. TALLENTIRE: I am afraid I was not quite clear enough. I accept that there will be all kinds of ways of monitoring, but it is about the body that does the monitoring. I think the minister answered my question to some extent by saying that the department will do the monitoring. My suggestion is that we need something broader than that. There is fantastic expertise in the Department of Fisheries; it has the very best of aquatic resources science, but sometimes we need other perspectives. That is when I put forward that the management advisory councils were very useful to that end. Perhaps a feeling in the agency is that they were a bit of a nuisance; they required secretariats and all the effort of convening meetings and what have you. It might be the view of some that that is time and energy better expended on actual scientific research rather than on convening meetings. I know that always creates tension, and when government resources are scarce, it is a reasonable argument. But, overall, I think the minister will find that a perspective that comes uniquely from a government agency can be enhanced only by having contact with a much broader array of people who do not necessarily have great technical expertise even—no doubt some would have great technical expertise—but a real interest in the particular fishery.

Mr J.M. FRANCIS: I will make the member's life a little easier and refer him to clause 224, "Establishment and functions of advisory committees", on page 162. The provision for the establishment and functions of an advisory committee is laid out pretty clearly there, as is the minister's ability, by instrument in writing, to establish advisory committees. I will not read it into *Hansard* but I will give the member a second to skip over it.

Mr C.J. TALLENTIRE: I do not want to stray into the area of clause 224, but I note that that is not an obligation. I have a further point on management advisory committees. I believe it is an ambition—the minister can perhaps confirm this—of the agency to have all the Western Australian fisheries receive the blue tick from the Marine Stewardship Council. I understand that MSC certification requires good involvement from not just the people in the agency with expertise, but also people from further afield, as well as community involvement. I suppose there could be a parallel function: if there is a management advisory council, at the same time it will create the necessary infrastructure to fulfil the obligations that the MSC certification requires.

Mr J.M. FRANCIS: Absolutely. The member just reminded me that six weeks ago I undertook to give the member for Bassendean a heads-up—but I am not sure that I did—on the timing of the announcement for the Mandurah crab MSC certification.

Mr D.J. Kelly: You haven't told me, no.

Mr J.M. FRANCIS: If the member is free on Friday and wants to come to Mandurah, I will give him the details tomorrow.

I am sorry; the member for Gosnells just refreshed my memory on the MSC certification. The Marine Stewardship Council certification is exceptionally important for environmental sustainability reasons. It is exceptionally important from a product marketing point of view. Consumers are becoming more and more aware of where the seafood they eat comes from—I think the member for Gosnells might have raised this in his contribution to the second reading speech; one of the members did—and wanting a high quality sustainable product. To a large degree, they pay an extra premium for that. Actually, it might have been the member for Mandurah who asked me about it. Sorry; I am looking at him—this Friday; you have your invite, member for Mandurah.

Mr D.J. Kelly: That doesn't mean you can't invite me as well.

Mr J.M. FRANCIS: You are more than welcome to come too.

I think people are becoming more aware of this. We will work towards ensuring the opportunity to obtain certification is undertaken whenever it might confront us. I am not saying it will always be possible, but certainly proactively supporting particular fisheries is exceptionally worthwhile. I understand the member's point, and the bill states that the minister "may" establish these committees. Certainly, if there is a requirement to progress, or even assist in progressing, Marine Stewardship Council certification, the government will be on board.

Mr D.A. TEMPLEMAN: The minister mentioned Marine Stewardship Council certification and the Peel fishery. Particularly for blue manna crab and sea mullet species, what will this certification allow us to do locally with the brand? Obviously, the MSC gives us the certification. For example, New Zealand is well known for its green badging of a whole range of products from land-based products to others. What will certification allow a local community to do in badging its produce? Do they have to conform to a branding required by the Department of Fisheries or can a community such as the Peel, once it has certification, come up with its own branding that refers to the certification but has a unique logo and catchy jingle? It could be on the radio, "Come to Peel. Come to Peel." It could be something like that.

Mr J.M. Francis: Catch crabs in Perth!

Mr D.A. TEMPLEMAN: Get your dose here! Apart from that, the question is important if Peel gets this certification, which the minister knows I am strongly supportive of. I appreciate and acknowledge the work of Recfishwest and the Mandurah Professional Fishermen's Association, and in particular Damien Bell, who I mention again, who drove this very well. What does it mean for our community to grab the opportunity and use that certification as an appropriate tourism and local economy marketing tool? Can we do it?

Mr J.M. FRANCIS: The short answer is yes. Obviously the typesetting of the MSC's logo that is specified would remain, but the Mandurah fishery can absolutely come up with its own branding and logo. I strongly encourage it to do so. I had a conversation today with a fairly large player in the commercial fishing industry. One of the things that came up is that marketing is not just state or national based; it is regional and locality based. I started the conversation on this issue, but I do not want to go down this path in this clause. We have the country of origin issue, which is at a point at which most seafood producers have realised the significant marketing advantage to brand the location of the catch. Other than the MSC symbol, which has to remain the same, can the Peel crab fishery come up with its own marketing brand, logo or three-word slogan—jobs and growth or whatever it might be? The answer is yes, and I would strongly encourage it to do so, as I am sure would the member for Mandurah.

Mr D.A. TEMPLEMAN: Once the certification is in place, what are the requirements of the department on that fishery to maintain its certification? In other words, is there an ongoing monitoring process? Does the department reassess the certification by an audit every two years, five years or whatever to ensure that the standard—because this is about a standard—is maintained and, indeed, that the fishery complies with any elements that may impact upon the quality of the product, which is what we are promoting? I am interested to know, once certification is in place, what requirements are placed upon the fishery by the Department of Fisheries and/or other interests to ensure the maintenance of the certification and whether there is any auditing or monitoring process or requirement to maintain that certification.

Mr J.M. FRANCIS: The answer is yes; there are requirements and there is a continual review process and also a thorough periodical review or recertification every five years as well. I do not want to dwell on the detail, because we are getting way off topic here, which is partly my fault. I am happy to give the member a lot more information on what will be the requirements, particularly for that fishery in the member's electorate, in the coming days if that will assist him.

Mr D.A. TEMPLEMAN: I have one more question, and I know I am pushing things, but I refer to recognition of the certification. Ultimately, is it a recognised national certification or is there international acknowledgement of the certification? I am interested in who, ultimately, recognises the certification once it is in place? I do not know whether the Minister for Fisheries will have enough time, because the state election will be upon us in March, but I know that former fisheries ministers loved going to the international fishing world expositions—the equivalent of a world trade gathering of fisheries people. Is this certification something that the Peel region in the future would be able to take to a gathering of that nature and it stacks up as a verified, acknowledged branding that is recognised internationally?

Mr J.M. FRANCIS: It is an international standard. It is the rolled-gold, Gucci, top of the wazza standard for environmental sustainability and quality of product, and all of those kinds of things. For the industry in the member's electorate, it will be a significant marketing advantage, aside from the moral advantage of having a sustainable fishery. The answer is yes, without going into the detail, and I am happy to get the member some information on this. Other countries do it successfully. The big fishery companies are well placed to do it very successfully. I was unaware there was a world gathering of leaders in the fishing industry—I will probably miss that opportunity.

Mr D.A. Templeman: I remember one minister going to one in Norway.

Mr J.M. FRANCIS: The member just does not want me to come back! I give the member this idea in closing: how about we find out when the next one will be held and who we have to lobby in order to get the one after next held in the Peel? That would be a great idea! It should be held in the member's electorate of Peel to celebrate the MSC certification of that fishery.

Mr D.J. KELLY: The minister referred to country of origin labelling. I understand that a range of products will have new requirements coming in from 1 July, I think. But they do not require country of origin labelling for seafood sold in restaurants or takeaway establishments, where the food is to be eaten and consumed immediately. Does the government support the introduction of country of origin labelling for seafood sold in restaurants or in takeaway establishments where the food is cooked and going to be eaten immediately?

Mr J.M. FRANCIS: We are getting way off topic, and I intend to move on. Quite simply, this is obviously a federal government issue. It was implemented by the federal government. The feedback I have from industry at the moment is that it would be impractical to do it in takeaway and restaurant environments, but certainly in retail, with produce to Coles and Woolies and all the other places such as fish markets, we are seeing it come in. Ultimately, it is a matter for the federal government.

Mr D.J. KELLY: I think in the earlier discussion the minister confirmed—it was no surprise—that clause 13 requires the minister to ensure that the condition of aquatic resources and the aquatic environment is kept constantly under consideration. That work will largely fall on the fisheries department. The minister will not be running around counting the number of anything, really, when it comes to fisheries; the minister will not be counting boats, fish or anything. It will fall to the department. It is great to have this legislation, but if the government is not going to adequately fund the department to do this work, it will not be worth the paper it is written on. If we look at the current budget, the total cost of services in 2014–15 for Fisheries was something like $98 million; in 2019–20, it will go down to $83 million. Because of the way the minister and his colleagues—I am glad the Premier has graced us with his presence—have stuffed the budget, departments like Fisheries will be asked to do more and more with less. How can the minister be confident that when this very good bit of legislation that provides a clear onus on the minister to monitor our aquatic environment is passed, he will have a department able to do that? The minister is sitting there with a bit of a smile on his face. It is a serious question.

Mr J.M. Francis: Absolutely.

Mr D.J. KELLY: We are supporting this legislation and we think that clause 13 is good. But over the last couple of years the government has been basically taking the guts out of the fisheries department, and under the budget just passed, the government will make further cuts across the forward estimates. How can the minister assure us that the fisheries department will have the resources to ensure that it is able to do the job that will ultimately fall on its head when clause 13 becomes law?

Mr J.M. FRANCIS: To make it simple, the way this works, member for Bassendean, is, firstly, I cannot predict the technologies that may evolve in the future that will make the monitoring of a particular fishery more expensive, cheaper, evolve, faster, more efficient—whatever it might be. The way it works is that the director general of the Department of Fisheries will advise the minister on how much it will cost to monitor a particular aquatic resource to the standards expected. It is not optional for the minister in this legislation. This legislation makes it crystal clear in the opening line—"The Minister must ensure". On advice from the director general of the Department of Fisheries, I will have an estimate of how much it will cost to ensure the monitoring of aquatic resources. Whoever the minister might be—for the foreseeable future, me—this legislation will require them to undertake the monitoring of the aquatic resources and environment and keep it under consideration. Something might happen in 10 years' time, and suddenly we will be able to use satellites to track something. Who knows what might evolve? But on a yearly basis we will seek advice, as required, from the director general of the department, estimate the cost and ensure that it is in the budget appropriately. As I said, it is not an optional requirement that the minister might like to do it; it states, "The Minister must ensure".

Mr D.J. KELLY: Minister, I am a little surprised by the comment, "Well, who knows what new technology will be out there in future that will make all this work much easier." I am not talking about 10 or 20 years' time; I am talking about the four-year horizon in the budget. Presumably the minister attended cabinet when these things were discussed—he did not absent himself. I am talking about the four years of the budget that was just passed. Since 2014, expenditure has dropped from $98 million to $93 million—a significant cut. In excess of 15 per cent has been cut out of the Fisheries budget. I am not asking the minister what will happen over the horizon, when maybe new technology will resolve things. Is the minister seriously saying that he is relying on technical innovation to ensure that the fisheries department can do the job it is required to across the forward estimates? Is that what the minister is seriously telling us?

Mr J.M. FRANCIS: I am saying that the director general of the Department of Fisheries is satisfied that the allocated funds in the budget through the forward estimates are sufficient to ensure that this requirement is undertaken.

Mr D.J. KELLY: I have one more question around whether Fisheries will have the capacity to do the work required under this legislation, particularly clause 13. One of the bits of technical innovation introduced by the department in recent years is Fish Eye Online Services. I understand that under Fish Eye it was envisaged that all fisheries would electronically record things such as catch numbers so that the department could much more easily monitor fisheries. I understand that Fish Eye has not delivered everything it promised. Am I correct in thinking that the western rock lobster fishery, along with, I think, abalone are the only two that have come online for Fish Eye? Have any other fisheries come online for Fish Eye? Of the abalone and western rock lobster fisheries, how many fishers in those fisheries are using Fish Eye and allowing the department to collect all that information electronically?

Mr J.M. FRANCIS: The member is correct in that, to a degree, the take-up has not been ideal.

Mr D.J. Kelly: Sorry, minister—has not been?

Mr J.M. FRANCIS: Has not been ideal. It has been slow to be taken up. I understand that, effectively, it takes away the requirement for individual boat crews and licensed fishermen to fill in the old paper logs and allows them to move onto a computerised database that is uploaded on a regular basis to the department. The take-up has been slow, but those who have done it have been satisfied that it has been a time saver for them. I encourage more to take up Fish Eye. I understand that the department is now looking to roll it out into further areas of the fishery. The marine aquarium fishery is due to transition to Fish Eye in mid-2016. As I said, the department is also looking at transitioning it to other fisheries, and that is underway at the moment. The marine aquarium fishery will include live aquarium fish that is collected, and also live rock lobster. They are next in line about now—mid-2016. There has not been a great take-up of it, but the feedback from those who have is that it has been more than worth their while.

Mr D.J. KELLY: I have had quite negative feedback from a number of those fishers who are currently using it. My understanding is that some fishers who took it up have now gone back to the old paper system. Firstly, does the minister know of anyone within the rock lobster and abalone fisheries who had taken up Fish Eye but who has now gone back to the old system? Secondly, if there has been any negative feedback, what has been the nature of that feedback?

Mr J.M. FRANCIS: I am not aware. I am not saying that the department has not had any. If I go back to the member's last question, I would have to get him the information on the exact numbers and the percentage of licence take-ups and whether anyone has gone back to the old system. I would have to find out that information for the member; I do not have it here. The member for Bassendean might be talking to different people. I will find out for the member.

The ACTING SPEAKER (Mr P. Abetz): The question is that clause 13 stand as printed. Member for Bassendean, I would remind you that we are dealing with clause 13 and not a wide-ranging discussion about all the details of Fish Eye or other things. You need to stick to the clause.

Mr D.J. KELLY: I take your point, Mr Acting Speaker; I will limit it to one more question. Actually, because you interrupted me, you broke my train of thought and I cannot remember what it is. You should do that more often, Mr Acting Speaker. I cannot remember; it will come to me. I will come back to it.

Clause put and passed.

Clause 14 put and passed.

Clause 15: Requirement for ARMS —

Mr C.J. Barnett: I am a whiz on Fisheries!

Mr D.J. KELLY: I am sorry that the Premier missed the earlier discussion about shark mitigation; I understand that is something the Premier claims to be a whiz on!

Clause 15, "Requirement for ARMS", reads —

> As soon as is practicable after an aquatic resource is declared to be a managed aquatic resource an aquatic resource management strategy (ARMS) must be approved under section 20 in respect of the aquatic resource.

The clause reads "as soon as is practicable". I understand that fisheries are different, so the time it will take to develop an aquatic resource management strategy is likely to be different depending on the size of the fishery and the like. I suppose I am looking for some guidance on this. Fisheries are going to have to go through a process of transitioning from the current legislation to the new legislation.

I cannot believe that the Premier said what he did while he was in the minister's chair!

Mr J.M. Francis: Are you really up to clause 57? Fair dinkum!

A government member: He just abolished the department!

Mr D.J. KELLY: That is right. There will be no more trips to Norway for the fisheries minister.

What I was saying while the minister was away from his seat was that this clause requires that an aquatic resource management strategy be put in place as soon as is practicable. I understand that it is going to be different for each fishery. A number of existing fisheries are going to have to transition to this. I presume that some planning or strategising has been done around how long it will take an established fishery like the western rock lobster fishery to put in place an aquatic resource management strategy. Is it going to be a three-month process or is it likely to be a 12-month process? What planning or assessment has been done of the work that will be involved in this?

Mr J.M. FRANCIS: I will make a couple of points about this. Obviously each one will take some time; a guesstimate is six to 12 months. Pearling will have to come first because this act will effectively repeal the legislation that impacts on pearling. After that, I understand that the rock lobster fishery will be the next cab off the rank. I also point out that there is no reason that a number of different fisheries cannot transition at the same time; the department can work on plans for a number of different fisheries at the same time. As a rule of thumb, it will take six to 12 months for each one.

Mr D.J. KELLY: I thank the minister for that. I have heard it said before that pearling will be the first because this legislation effectively abolishes the separate legislation that currently covers the pearling industry. The minister can correct me if I am wrong, but when this legislation becomes law, current arrangements for fisheries will continue. Is there something about pearling that would require it to percolate to the top of the list for an aquatic resource management strategy? I assume, and the minister can tell me if I am wrong, that all current arrangements for the pearling industry would continue, albeit that its legislation has been effectively repealed.

Mr J.M. FRANCIS: I am confident that the ARMS and the aquatic resource use plan for pearling will have to be in place. They will adopt all the current procedures, but they will also have to be in place at the time of gazettal of this legislation because this repeals the Pearling Act. That is a given. As I said, it will be the rock lobster fishery after that. The ARMS and ARUP for the other fisheries will be developed and implemented as soon as possible after considering all the requirements for those other fisheries, but for all those fisheries the current arrangements will stay in place until such time as they move on to the new ARMS.

Mr D.J. KELLY: Just to clarify that, am I right in thinking that we will pass the legislation but, before it is proclaimed, the department will prepare an ARMS and an ARUP for pearling so that at the time this legislation comes into effect, the ARUP and the ARMS for pearling will come into effect on the same day effectively?

Mr J.M. Francis: Yes.

Mr D.J. KELLY: Okay. I suppose the question that arises is: given that this legislation requires public consultation and public comment before ARMS can be put in place, how will the department meet the requirements for public consultation and those periods required under this legislation to allow the legislation to come into force with the ARMS and the ARUP for pearling in place at the same time?

Mr J.M. FRANCIS: I get the member's point. The Interpretation Act allows the process for that particular consultation for pearling to start before this act is proclaimed. My understanding is that the Department of Fisheries has already commenced work on pearling, so there will be a smooth transition come the date of assent, which will be the start date. Under section 25 of the Interpretation Act, some powers of an act may be exercised before it commences. We are using that provision to start pearling.

Clause put and passed.

Clause 16: Content of ARMS —

Mr C.J. TALLENTIRE: Clause 16(1)(c) refers to —

> the minimum quantity of the aquatic resource that is considered necessary to be maintained for the resource to be ecologically sustainable;

I would like to explore that with the minister. I have already mentioned things such as blue groper populations. I note that there was a time when we could swim around Rottnest Island and see large blue groper. Now we will not see them; we will only see the smaller blue groper. We talked about the change in sex that a groper goes through, so the gropers we see would be female. We have overfished. But I wonder whether that would be argued as an example of an ecologically sustainable catch because the species has not gone; it is not extinct. Locally, it is structurally altered, but it is still present. I am concerned to know how this clause will work. It goes to our understanding of population numbers. My fear is that the minimum quantity for the actual continuation of the species might be quite different from the minimum quantity that we would require for, say, a majestic tourism experience. I would like the minister's comments on that.

Mr J.M. FRANCIS: If I can rephrase the member for Gosnells' question: how do we determine what is ecologically sustainable? That is done on the basis of the information and advice provided by the scientists of the Department of Fisheries and whomever the department consults, such as an advisory committee. I have no answer other than that. I am not going to pretend to be an expert on the gender-changing nature of the blue groper at Rottnest Island. I will always revert to the advice of the scientists and the experts, who are far more proficient in the issue of fish stocks than I will ever be.

Mr C.J. TALLENTIRE: Let us look at another example. Swimming amidst a school of spangled emperor in Coral Bay is an amazing tourism experience. I am sure that we could deplete the number of spangled emperor quite dramatically and we would still have that species in good number. There would be no problems. But we would have lost the tourism experience. We would not be able to get the boats going out there with tourists. They often do it as a precursor to a swim with the whale sharks. It is very clever because the whale shark boat operators need to test

whether people have the swimming skills to be out in the deeper water with the whale sharks. They give people the opportunity to swim with the spangled emperor and it is just as unforgettable as swimming with the whale sharks. It is a really impressive tourism experience and one that I think we could market to the world much better. We talk about tourism as an industry that will help fill the gap that we have after the resources boom, and I think there is a lot of truth in that. However, we have to present those experiences really strongly and be able to guarantee people that they would have the experience of swimming with a massive school of spangled emperor.

This clause providing for the content of an aquatic resource management strategy is about ensuring that the resource is managed in an ecologically sustainable way. The ecologically sustainable way would just mean that the population is adequate to replace for a commercial or recreational take. It will not be an ecologically sustainable tourism quantity. That is our problem. We need to ensure that the ARMS considers not only the take or the catch, I think is the correct term, but also the availability and the quantity of the species to provide people with other kinds of experiences.

Mr J.M. FRANCIS: I understand the point that the member for Gosnells is trying to make. Let me try to explain it in a different way for the member. The ARMS for a managed aquatic resource must set out the following things. The clause goes through the various things, but the one I want to the concentrate on is paragraph (c), which states —

> the minimum quantity of the aquatic resource that is considered necessary to be maintained for the resource to be ecologically sustainable;

I can assure the member that does not mean we fish to that level. That means that as part of the many things that we have to do under the ARMS—another one here is important—we have to set the absolute minimum. As I said, under no interpretation do I want the member to believe that is the minimum we fish to. The minimum population for ecological sustainability is based on our best scientific data. I refer the member across to the top of the next page of the bill. Clause 16(1)(f) states —

> the quantity of the aquatic resource that is to be available in a fishing period for customary fishing and public benefit uses;

We have not only the scientific floor but also community involvement and consultation for setting how much we can possibly take from that aquatic resource. I want the member to be assured that what is mentioned in clause 16(1)(c) is not in any way the actual catch limit. We do not fish down to that. It is just a management requirement, as it should be, that we know the absolute minimum based on science.

Lastly, I refer the member to clause 16(1)(g), which states —

> the method to be used in calculating the total allowable catch … for the aquatic resource;

That will also be done, obviously, with community consultation, but, once again, by no means is it to be fished down to the absolute minimum required for sustainability.

Mr D.J. KELLY: In clause 16(1)(b) is a requirement that the aquatic resource management strategy sets out —

> the main objective to be achieved by managing the aquatic resource;

I am wondering what that means in practice. Presumably, when we are managing an aquatic resource, there is a number of objectives that all have to be met together. We have talked about them. We have to ensure the ecological sustainability of the environment. We have to protect it against pests. We have the issues that the member for Gosnells just raised. We have to be mindful of other uses of the environment. Maybe the minister could give us an example. If we were going to deal with the western rock lobster fishery, what is the main objective envisaged to be? I am confused about why there will be one single objective.

Mr J.M. FRANCIS: I would envisage that, without thinking of other reasons, the main objective of every single one would be the sustainability of the fishery. I am struggling to think of anything other than that. That would be the main objective of each one of them as far as I understand it.

Mr D.J. KELLY: If the main objective for each fishery is to ensure its environmental sustainability, why not just say that in the legislation. Why not just state that the main objective of each aquatic resource management strategy will be "blah, blah". The way the legislation has been drafted leads us to believe that for each aquatic resource management strategy there will be different main objectives depending upon whatever. If it is as simple as the main objective for each of the ARMS will be to ensure the ecological sustainability of the resource, why not just say that in the legislation rather than have all this consultation and public comment and individual consideration for each fishery?

Mr J.M. FRANCIS: I am advised that there may be other fisheries whereby in certain situations the main objective may be commercial or recreational—recreational being the marron fishery and commercial being the Exmouth prawn fishery, which is perhaps something different from that. I envisage that most of them will be for ecological sustainability of the fishery, but it may not always be the case.

Mr C.J. TALLENTIRE: I am wondering what will happen when the issue is not around the numbers but is about the health of the population. I am aware of an example in the Peel–Harvey area where there was a problem with

crabs moulting. It was seen that the population was not well and it had something to do with the moulting of crabs. There was an indicator that something was not quite right. Numbers can be irrelevant. Numbers are a very simplistic way of looking at the health of a population. We need to ensure that these ARMS are looking more broadly than that. I do not see that. There does seem to be a focus on numbers and total allowable catch. That is what it seems to be all about. Is there some way we can take into account other factors?

Mr J.M. FRANCIS: I refer the member to clause 14, at page 18, before I give an example. It states—

> (3) The Minister must make a declaration under subsection (1) if a risk assessment in respect of an aquatic resource concludes that there is evidence that —
>
> (a) overexploitation …

Without reading all that into *Hansard*, there is an issue with the management of the fishery. A live example right now is the herring stocks. There has effectively been a massive reduction in the total allowable catch of herring until we find out what is going on with the herring stock. The garfish stock in Cockburn Sound is another fishery that was impacted. The provision is there. It is not just a case of handing out a licence to give people carte blanche to take their quota. Something could happen to the fishery. We saw the impact of the marine heatwave a couple of years ago that travelled south down near the Abrolhos. If the minister sees evidence of something going drastically wrong with the fishery and the long-term sustainability of the fishery is at risk, he can take action straightaway. Is that what the member is getting at?

Mr D.J. KELLY: I was going to raise the issue of the herring fish stock. This clause basically states part of the content of the ARMS, which states at paragraphs (h) and (i) —

> (h) the proportion of the TAC that is to be available for recreational fishing for the resource;
>
> (i) the proportion of the TAC that is to be available for commercial purposes,

If I get this right, under the current legislation, the herring fishery was split 50–50, so 50 per cent was allocated to commercial and 50 per cent for recreational. When the situation arose with the herring stocks, a decision was made to, I think, half the herring stock. That was done. It could have been done by halving the catch of recreational and commercial and still maintaining 50–50; instead the government made a decision to close the commercial fishery and maintain the recreational fishery. We no longer have a 50–50 balance. We have effectively closed the commercial arrangement and kept the recreational fishery with some altered bag limits, but it is no longer a 50–50 arrangement. If that decision is rolled forward into this new legislation and if the herring aquatic resource management strategy had identified a 50–50 split, recreational versus commercial, and the same thing happened with concerns about the herring stock, how would the government implement that alteration to a 50–50 arrangement? Does the minister understand what I am saying? Some people have said to me that we could simply do it in a relatively quick fashion and have the same outcome; other people have said that under this legislation we would have to go back and amend the aquatic resource management strategy. We would effectively have to go back to the beginning of the process that we went through when we put in place a new ARMS. Which argument is correct? If the current herring situation had been dealt with under this legislation and there was a 50–50 split, would we effectively have been able to reduce the commercial catch and maintain the recreational catch in a timely fashion or would we have had to go back to square one?

Mr J.M. FRANCIS: By way of information, I understand the herring recreational catch went from a bag limit of 30 to 12, so there was a significant reduction in recreational fishing limits as well. I will direct the member to page 91, clause 125, "Minister may prohibit activities", which states —

> (2) The Minister may, by order published in the *Gazette*, prohibit persons or any specified class of persons from undertaking a specified activity …

Effectively, under the legislation the minister will have the ability to act immediately. I think that is a good position to be in. If we suddenly become aware of a catastrophic reduction in the number of fish in a particular fishery, or a species, we need to reserve the right to act very quickly if we are trying to save a fishery. I do not know what might happen. I am trying to give examples in recent history to put it into perspective. The aquatic resource management strategy can be reviewed at a later date, if required, but the minister will have the authority to act immediately.

Mr D.J. KELLY: Thanks, minister, for identifying that clause 125 would be the mechanism used if the current herring situation occurred under the new legislation. I am satisfied that on the face of it the minister could deal with that issue using that clause. One of the benefits that the commercial fishing sector sees from this new legislation is that they believe the aquatic resource management strategy and the aquatic resource use plan, by going through that process, will have greater certainty or security on their access to the resource.

Mr J.M. Francis: Correct.

Mr D.J. KELLY: After listening to what the minister just said, I wonder whether that undermines that belief to a certain extent. It has been suggested that once a person gets a proportion of the total allowable catch determined in ARMS, they have greater protection from that being taken away from them arbitrarily. I wonder whether what the minister just said undermines that belief from the commercial fishing sector, at least to a degree.

Mr J.M. FRANCIS: I understand the point the member is trying to make. Yes, there is greater certainty for the licence holders and that will give them—I am not sure that this is the right term—"bankability" on their businesses so that they can arrange finances to invest in all of the things that businesses should be able to do rather than the yearly process of reapplying every single time. This is not in the bill with the intention to undermine what we are trying to provide to commercial fisheries; this is in the bill to ensure that they are in fact commercially viable. If anything, I would suggest to those people looking for some kind of certainty for their business that this is a positive rather than a negative. I use, by way of example, herring. If the government did not do something about the drastic and very abrupt apparent reduction in the herring stock, as much as I said that everyone is starting to realise environmental sustainability is very important for everyone's business as well as the environment and all the other things that go along with it, I would suspect that people would have continued to fish too much of the herring stock. That would have had a much more long-term detrimental impact on the sustainability of that fishery and would have therefore had a greater impact on the financial viability of fishermen. The abalone stocks in south Kalbarri were greatly impacted by the marine heatwave. Had we not taken action on that, the long-term detriment to the sustainability of their businesses would have been front and centre. Does it detract from it? I do not think it does. If anything, there is a pressure release valve here for the government to act rapidly—obviously based on scientific advice—if there is a noticeable and rapid decline in a stock, and there is also the fact that once a fishery reopens, those licensees will be given priority to restart their take. I read into that that it is obviously to their commercial viability.

Mr D.J. KELLY: I have one final question on this clause. Clause 16(f) sets out that each of the aquatic resource management strategies has to identify the quantity of the aquatic resource that is to be available in a fishing period for customary fishing. Has the government consulted with Aboriginal groups about how this will work? I cannot see any specific requirement set out in one of the ARMS for consultation with Indigenous groups. I have two questions in one for the sake of brevity: has the government consulted with Aboriginal organisations at all; has the government made any assessment of what the quantity required for customary fishing might be; and has the government made any assessment about what the quantity required for customary fishing might be for a fishery like western rock lobster? Has there been consultation, and what is the minister's assessment about what it might be for a fishery like the western rock lobster?

Mr J.M. FRANCIS: The first question was: has there been any consultation about these ARMS? No, not yet, but there will be. Was the second question whether an estimated customary allocation is already in place?

Mr D.J. Kelly: For western rock lobster.

Mr J.M. FRANCIS: Correct.

Mr D.J. Kelly: What is that?

Mr J.M. FRANCIS: I would have to find out for the member. I will get the information rather than guess.

The ACTING SPEAKER (Mr P. Abetz): You said before it was your final question, member for Bassendean, but I will allow another question!

Mr D.J. KELLY: Every answer requires another question. If there is already an assessment for customary fishing for western rock lobster, it would be great if the minister could provide that to me.

Mr J.M. Francis: And what it is based on.

Mr D.J. KELLY: And what it is based on. It disappoints me that there was no consultation, as far as I am aware, with Indigenous groups about this legislation. There has been extensive consultation with the commercial fishing sector and the recreational fishing sector, as there should be for significant legislation such as this. I want it on the record that I am disappointed there does not appear to have been any consultation with Indigenous groups about this legislation when this legislation will regulate customary fishing in Western Australia. It seems to me a failing in the twenty-first century that the government would consult with commercial and recreational fishers but not with Indigenous groups when they will be affected by this legislation.

Mr J.M. FRANCIS: The bottom line, member for Bassendean, is that we are not taking away any rights that they have at the moment, and we are giving them priority use of the resource.

The ACTING SPEAKER (**Mr P. Abetz**): Minister, for the benefit of Hansard, could you face this way a little more because it is very difficult for me to hear what you are saying and it is difficult for them to hear.

Mr J.M. FRANCIS: Thank you, Mr Acting Speaker. Sorry, Hansard.

Dr A.D. Buti: I can hear you now you've got your voice back.

Mr J.M. FRANCIS: It is getting better by the day, member for Armadale.

The bottom line is, member for Bassendean, that we are not taking away any rights that they have at the moment under the current act. They will remain the same and they will be given priority use of the resource on top of that.

Clause put and passed.

Clause 17 put and passed.

Clause 18: CEO to consult on proposal for ARMS —

Mr C.J. TALLENTIRE: This clause refers to the obligations on the CEO to consult on a proposal for an aquatic resource management strategy. This is very important, and I am curious to hear from the minister from whom he imagines the CEO would receive submissions on an ARMS. Quite likely, the CEO would receive submissions from the Western Australian Fishing Industry Council, the commercial fishing body and probably from Recfishwest. Perhaps he would receive submissions from academics from the various universities. I wonder whether the minister thinks that other bodies should be approached for their views and their knowledge during the consultation phase on an ARMS.

Mr J.M. FRANCIS: I thought the member for Gosnells was reading from the list I had in my mind then. I add to WAFIC, Recfishwest and, I think he said, academics, likely people interested who are on, if I can use my imagination, the Conservation Council of Western Australia, the relevant regional development commissions, the relevant local governments and the local fishing clubs that might cover those areas. I guess commonsense will prevail, but I suggest that the CEO would consider a number of people likely to be affected who should be included in that. I would prefer to see an exhaustive list rather that a restricted list, if that answers the member's question.

Mr C.J. TALLENTIRE: It is interesting that that is the list in the minister's mind. It is a question of picking the odd one out—perhaps there are two odd ones out—because it strikes me that WAFIC has considerable revenues and capacity to put together submissions. Likewise, Recfishwest is the beneficiary of a scheme, and in the course of deliberating on this legislation I hope we will come to just how Recfishwest receives an allocation of funds that would help it produce a quality submission that would be well worth reading and add to the overall management of fisheries. Further down the list, the minister mentioned the Conservation Council, my former employer. Of course, at the moment, that body does not receive any money at all from government, but the minister has an expectation that it would provide some degree of comment and expertise. He hopes that a body that receives no funding or has no paid expertise in the fisheries area would provide a submission for free just because it could somehow scrabble together something. Surely, it will not be a submission of the same standing and quality as those done by bodies that have various mechanisms for getting funding from the agency and the whole fishing sector. I think there is an unfairness there and that it will skew the nature of the submissions. He also mentioned fishing clubs. I am not sure that they would necessarily get direct funding, but we could assume that they would come under the Recfishwest umbrella, so they would be assisted in the production of their submissions and their contribution to the consultation process. They would receive that assistance from Recfishwest. The minister mentioned local governments as well. They have capacity and their ratepayer base. The odd one out clearly is the conservation sector. There is no funding there. We know that in the past when Hon Kim Chance was the minister, a position known as the sustainable fisheries liaison officer was attached to the Conservation Council. I think Minister Chance saw that it was a very important role that could pull together the various views in the conservation sector and put them forward during consultation on something such as an ARMS, or whatever its predecessor was, so that there was good, meaningful consultation.

I agree with the minister; all those bodies should be consulted, but there should be a level playing field, so I am asking whether the minister will ensure reinstatement of funding to the conservation sector so that it can make meaningful contributions during these very important opportunities to provide advice on things such as an ARMS.

Mr J.M. FRANCIS: The very short and very honest answer, member for Gosnells, is no. I hate going off topic because I get dirty looks; however, a few months ago the Shire of Serpentine–Jarrahdale put a personally addressed letter in my letterbox about a development application to install an NBN tower in the park behind my backyard, visible from my house, asking whether I wanted to put in a submission. They wanted to consult with me. Did they offer to assist me with putting something professional together? No. Such is life. I will not commit to funding the Conservation Council for that position.

Mr D.J. KELLY: I think the member for Gosnells raised a very important point. The minister has spent the last three hours in this place telling us how important the ecological sustainability of the marine environment is to him. He said most of the right words, but every now and again he lets his guard down. When he makes comments like that, comparing the role of the Conservation Council with him and his phone tower, I suspect that almost all the commercial fishers I have met in the last four years are more concerned about the environment than he is. That is why this government has very little credibility about having the balance right. I say to the minister that he lets his

inner redneck show every now and again, and when he gave that answer, it was one of those times. If he, and his fellow ministers, had a shred of balance in the way they look at things, he would not reject the member for Gosnells' argument in such an offhand way. This legislation has a lot of good stuff in it and that is why we support it. However, it is also why we do not think the government is up to ensuring this legislation is properly implemented.

Clause put and passed.

Clause 19 put and passed.

Clause 20: Approval of ARMS —

Mr D.J. KELLY: This clause deals with the approval process for an ARMS. Clause 20(3) reads —

> If the Minister refuses to approve a draft strategy submitted by the CEO … the Minister may request the CEO to revise the draft strategy taking into account any matters referred to in the request.

The CEO has two months, I think, to submit the revised strategy. From my reading of subclause (3), if the CEO prepares a draft strategy and the minister does not like it for whatever reason, the minister may request the CEO to redraft it, taking into account the matter the minister is not happy with. But that is not the same thing as saying that the minister can require certain changes to be made.

The member for Swan Hills keeps chattering away in my ear!

I wonder what happens if the minister and the CEO cannot agree on the terms of an aquatic resource management strategy? Potentially, under this legislation, if there is no agreement, the strategy never reaches fruition. Is there some point at which the minister can say that he is not happy with what the CEO has done and the minister will make changes and then approve those changes? What will happen?

Mr J.M. FRANCIS: I cannot imagine that happening, member for Bassendean, but the clause is there so that the process can be restarted. If the minister refuses to approve a draft strategy for a managed aquatic resource, he may request the CEO to revise the draft strategy, taking into account any matters referred to in the request, and the CEO must within two months of a request, or a longer period as the minister allows, submit a copy of the draft strategy, as revised, taking into account those matters referred to by the minister and a report on the revisions that have been made. I guess if they cannot come to an agreement—I say this in the real world—I could imagine the outcry from the commercial fishermen who would impacted, waiting for a minister and a CEO to sort it out. I would not want to be in that position. I suggest that this subclause is just another level of protection to ensure that things are done correctly and that all the matters required are taken into consideration when developing the ARMS. That is all I can offer the member on that.

Mr D.J. KELLY: I can understand when work is done preparing a draft strategy that there would be pressure from a range of directions to get an outcome.

Mr J.M. Francis: You'd want to have a good reason for not agreeing, wouldn't you?

Mr D.J. KELLY: The minister would, but given that every fishery will continue under their old arrangements when this comes in, the world will continue. Is it the case that under the legislation there is no dispute resolution period? An agreement has to be reached between the CEO and the minister or else there could be a stalemate.

Mr J.M. FRANCIS: Let me be frank: I question the ability for the government to operate if a CEO and a minister could not resolve this issue. In other portfolios it is not unheard of, but at the end of the day this is an extra safety clause just in case it cannot be resolved, but I cannot envisage it being required. I would like to think that while I am the minister, and with the current CEO, that if we had a difference we would be able to successfully resolve it and ensure that the transition took place.

Clause put and passed.

Clauses 21 to 24 put and passed.

Clause 25: Content of ARUPs —

Mr D.J. KELLY: Subclause (2) states —

> An ARUP may include any provision that, in the Minister's opinion, is necessary for —
>
> (a) the protection or management of the resource; or
>
> (b) the protection of the aquatic environment, …

I query the way that is drafted. An ARUP "may include any provision that, in the Minister's opinion is necessary". Why is that "may"? If the minister believes that a provision is required for the purpose of paragraphs (a) and (b), should the legislation not allow the minister to insert those provisions in the ARUP and not specify "may include"?

Mr J.M. FRANCIS: It is a fairly simple answer. Subclause (1) specifies what must be part of the content of the ARUP, which is a fairly prescriptive list. Subclause (2) refers to the things that may be included if the minister is of the view that they should be considered. I am trying to think of an example. Let us look at a mussel fishery that might be inside the sound at Albany, where obviously there is no risk of whale entanglement; but perhaps in a rock lobster fishery in other parts of the coast there might be a risk of whale entanglement. It could be that kind of thing, and if the minister forms the view that other things need to be considered, subclause (2)(a) provides a fairly broad definition in "the protection or management of the resource", and that protection continues in paragraph (b), so we can pretty much include anything that might come to the minister's attention. It is an extra safety clause, if you will, in case there are unforeseen issues not listed in subclause (1), which specifies the things that must be included.

Mr D.J. KELLY: I want to get this right. If that is drafted that way simply to ensure the possibility of a minister being able to include those sorts of provisions in an ARUP, as opposed to those items listed in subclause (1) that must be in an ARUP, at what point in the process does a minister insert those provisions that he or she considers to be necessary?

Mr J.M. FRANCIS: The way it will work is that the Department of Fisheries will prepare the draft ARUP and send it to the minister's office. The department may have suggestions for the minister to consider, as highlighted in subclause (2). As minister, I might form my own view on what needs to be considered and that were not suggested by the department—who knows? And then I will send it back to the department for finalisation. Effectively, the point it is drafted by the Department of Fisheries and sent to the minister would be the point at which those things would be included.

Mr D.J. KELLY: I know the minister is probably being a bit flippant and using a bit of shorthand when he says the department will prepare it, send it to the minister, he or she will tick it off and off we go. Where in that process would, say, the Western Australian Tourism Commission or tourism interests have an opportunity to input into the ARUP?

Mr J.M. FRANCIS: The short answer is back at the strategy, during the public consultation period.

Mr D.J. KELLY: The aquatic resource management strategies are different from the ARUPs.

Mr J.M. Francis: Correct.

Mr D.J. KELLY: The legislation requires that the ARMS have a certain amount of consultation, but I think that there should be some sort of consultation when the ARUPs are put together as well. Is the minister saying that people get consulted only in the preparation of the ARMS but not the ARUPs; and, if so, is that not a deficiency?

Mr J.M. FRANCIS: I think the member is heading this way, so I might pre-empt him. I take the member back to the bottom of page 23, where clause 24(3) states —

> An ARUP is subsidiary legislation for the purposes of the *Interpretation Act 1984*, and section 42 of that Act applies to and in relation to a plan as if the plan were a regulation.

The short version of that is that it is allowable. It would have to go through the processes that all disallowable regulations go through. The actual ARMS will set out the process for consultation for the ARUP if it is required as part of the ARMS. The ARUP will be subject to consultation if required by the ARMS so, obviously, the ARMS comes first, and the final thing will be disallowable. Does that answer the member's question?

Mr D.J. KELLY: No. I am not interested in whether it is a disallowable instrument because I do not think that provides anyone with anything. Is the minister telling me that consultation provisions will be put in place in the ARMS prior to the making of the ARUP? Is that clause 16(1)(l)?

Mr J.M. Francis: Correct.

Mr D.J. KELLY: When an ARMS is put together, the ARMS will include the consultation provisions required to put together the ARUP; is that right?

Mr J.M. Francis: Correct. It is on page 19. Clause 16(1)(l) states —

> the consultation to be carried out in relation to the making, amendment or revocation of an aquatic resource use plan (ARUP) to implement the ARMS.

Mr D.J. KELLY: Okay.

Mr J.M. FRANCIS: I will add to that clause 24(2)(a) on page 23, which states —

> The Minister is not to make an ARUP for a resource unless —
>
> (a) the consultation required in relation to the making of the ARUP set out in the ARMS for the resource has been carried out; …

Clause put and passed.

Clause 26: Method for allocating shares under ARUP —

Mr D.J. KELLY: Clause 26(2) states that the methods for allocating shares under an ARUP may include but are not limited to the methods outlined in paragraphs (a), (b), (c) and (d). Paragraph (d) identifies that the minister could allocate resource shares in an ARUP for sale by public tender or auction. Obviously, as an issue of interest, people with an allocation under existing fisheries want to know what will happen when this new legislation comes in vis-à-vis their existing entitlements. I hazard a guess that the last thing people in existing fisheries would want is for the minister to determine the resource shares for a particular fishery under an ARUP by way of sale by public tender or auction. It may be the most profitable way for the minister to allocate the resource shares. It is in the legislation, so what will happen to people in existing fisheries when they transfer to this new regime insofar as resource share or allocation goes?

Mr J.M. FRANCIS: I thank the member for Bassendean because it is good to put this on the record at this stage. The current limits will be assessed on a like-for-like basis. Clause 26(2)(d)—"sale by public tender or auction"—will only apply to new resources. The current holders will get assessed like-for-like; this is only for new resources.

Mr D.J. KELLY: To be absolutely clear, when the minister says it will be assessed like-for-like, is the minister referring to subclause (2)(a), (b), (c) or something else?

Mr J.M. Francis: Paragraph (a).

Mr D.J. KELLY: Thanks, minister.

Mr C.J. TALLENTIRE: I am very interested in how the resource share will be determined. The minister is saying that newcomers only will go through a competitive tender process. There will be a phase-in of the new system, and I am concerned how equitable that will be. Is the minister assuming that people who currently hold an allocation resource share will be trading and selling theirs on some sort of market or will they be able to do private sales to people? Which provisions will prevent them from doing private exchanges, rather than going through what I think the minister was talking about as the competitive tender process for newcomers?

Mr J.M. FRANCIS: The best way to explain it is to give the example put to me. Let us say that a new resource such as a squid fishery is identified. The minister would be the holder of the shares in a new resource and would put it out to an open process that will allow people to tender for a share of that resource. It would be done publicly and, obviously, transparently.

Mr C.J. TALLENTIRE: That is good; that works for a new fishery. But I am keen to know how we will manage the situation of existing resource allocation shareholders. I keep using the western rock lobster fishery example, and the minister might be able to tell me how many people already have shares. But newcomers will want to come in: will they buy through private exchange or will they buy through some sort of open, transparent market mechanism? Will there be a western rock lobster share allocation market?

Mr J.M. FRANCIS: I refer the member for Gosnells to page 30, clause 36, "Transfer of resource shares", which effectively addresses these issues. I do not know whether the member wants to come back to that when we get to clause 36.

Mr C.J. Tallentire: Okay, we will come back to that.

Clause put and passed.

Clause 27: Form of surety —

Mr C.J. TALLENTIRE: This clause concerns the issue of sureties and the payment of a monetary bond to the CEO. I presume that it is the shareholder who will have to pay. I guess that is held as a surety against over-take—is that the term for excessive take—or other misdemeanours. Perhaps the minister could clarify that and then I will ask a further question.

Mr J.M. FRANCIS: It is a form of surety held by the CEO that can be deducted from for any violation of the agreement within the ARUP. It can also be applied after the initial ARUP and licence are issued. I do not want to single out any fishery here as I might get myself in trouble, but there might be a particular fishery that could be operating well for some time and then six months down the track the operator has a breach and, for whatever reason, the CEO may determine that they present some risk of continued violation. I think the member used the word "over-take" in terms of exceeding their quota. The CEO can require a monetary bond to be paid in case of future violations. Effectively, it is a stick approach to stop an operator from exceeding their quota or their take—it could be for a number of different violations to the agreement.

Mr C.J. TALLENTIRE: My question now is about the person or the business entity that puts up the surety. I will give a real-life example. What happens, for instance, if somebody owns a fair bit of resource allocation and has a number of boats and one of their skippers is offending or violating? Is it the skipper who has to pay or is fined or is it the business that is going to lose some of its surety? What are the implications for the skipper who keeps re-offending?

Mr J.M. FRANCIS: It applies to the skipper—the individual person who commits the violation.

Mr C.J. Tallentire: But has that skipper paid the surety?

Mr J.M. FRANCIS: If it was their violation, they would be required to pay the surety in the first place. I am being referred to page 32, clause 39. I will touch on it briefly but we can come back to it. It is headed "Provision of surety for authorisation". It would apply if the person is charged with or convicted of an offence against this act, or for a number of other issues. I refer the member to clause 39.

Mr C.J. TALLENTIRE: I am happy to take this up further under clause 39, but I am confused. I would not have thought that the skipper would hold the resource allocation; I would have thought that it would be the company. It might be Tallentire Western Rock Lobster Fishing Company.

Mr J.M. Francis: Are you declaring an interest in this?

Mr C.J. TALLENTIRE: Wishful thinking. If I had a company that held the resource allocation and I had four boats, the individual skippers of those four boats would not hold the resource allocation.

Mr J.M. FRANCIS: This bill moves the black mark onto the offender. I will use the analogy of a trucking company. Joe Francis Trucking might own five trucks. One driver who works for me takes one of the trucks out for a spin and exceeds the speed limit, so he cops the blame. The same principle will apply here; if the skipper of the boat commits the violation, he will be the one responsible.

Clause put and passed.

Clause 28: Effect of ARUP on management plans and regulations —

Mr D.J. KELLY: I ask the minister to explain how this will work. It goes to questions raised about clause 273, "Management plans", as well. When this legislation comes in, the management plans under the old legislation will continue in force. My assumption is that once new ARMS and ARUPs are in place, they will supersede the management plans under the old legislation. The way I read clause 28 is that it envisages that the new ARUPs and ARMS might coexist with a management plan. Subclause (2) states —

> If a management plan is inconsistent with an ARUP then, to the extent of the inconsistency, the ARUP prevails.

That clearly envisages that there could be an ARUP, an ARMS and a management plan all in place. I thought the whole purpose of this bill was to move fisheries onto ARMS and ARUPs and to eventually do away with management plans. Why would an old management plan continue in place when there is an ARUP and ARMS in place for that fishery?

Mr J.M. FRANCIS: The idea is to progress from management plans to ARMS and ARUPs under the new legislation. I am advised that there may be some situations in which there will be some overlap. The example I am provided with is in case there is a fishery that is predominantly for a particular type of catch but it is also subject to by-catch, which is covered by a management plan. If there is an overlap to some degree for some time, it may be possible that that happens. It is not the aim, but we have to prepare for those kinds of situations.

Clause put and passed.

Clause 29 put and passed.

Clause 30: Regulations for ARUPs —

Mr C.J. TALLENTIRE: I am intrigued that regulations can be made to cover aquatic resource use plans, because page 23 of the bill states that an ARUP is subsidiary legislation. I think that means that it is basically equivalent. Both the ARUP and the regulation that has been made covering an ARUP could be disallowable. I am not sure whether we normally have the potential for two pieces of regulation to be manipulated to cancel one another out. It would be incredibly confusing if we had disallowance motions moved on both the ARUP and the actual regulation that was covering the ARUP.

Mr J.M. FRANCIS: I will give the member an example. There might be an issue with the vessel monitoring system, GPS tracking of boats, that goes across various fisheries, so a standardised regulation might be required to apply to multiple fisheries. That might be a situation in which we would consider using a regulation under clause 30, to ensure that vessels use their location system.

Clause put and passed.

Clauses 31 to 34 put and passed.

Clause 35: Nature of resource shares —

Mr C.J. TALLENTIRE: We know that there are many advocates in this chamber for a strict definition of property rights. I read clause 35 and saw that a resource share is not a property right. I am summarising a bit, but it states —

> … the definition of ***personal property***, a resource share is declared not to be personal property for the purposes of that Act.

That is the Personal Property Securities Act 2009. Am I right, first of all, in understanding that in fisheries resource allocations, if we own a share in a fishery, we do not possess a property right?

Mr J.M. FRANCIS: Member for Gosnells, I am advised that there is a degree of property rights, which are spelt out in clause 35(2). Obviously, the resource share is transferable; a holder of a resource share has the right to transfer it. As I said, it is capable of devolution by will or by operation of law. There are to a degree some property rights. It is worth noting that the Personal Property Securities Act 2009 is a commonwealth act and it puts limits on the definition of personal property for the purpose of the act. I guess the short answer is that there is a degree of property rights, but it is limited.

Mr C.J. TALLENTIRE: I think this is an important point. We need to get it clear on the record and perhaps the minister should check with his advisers. It strikes me that the bounty of the oceans belongs to us all. It should not belong to an individual person. Somebody might have invested in a boat and fishing equipment to take, and we would recognise that they have made a personal commitment and an investment so that they can go out and fish for whatever aquatic resource it is. But they do not own those fish, so they do not have a property right. I think that needs to be made clear for the record. I ask the minister to check with his advisers to ensure that we have that understanding, because I think it would be very bad if in time people look back at *Hansard* and think that they have a share in an aquatic resource and suddenly have a property right.

Mr J.M. FRANCIS: The member is right. It has to be crystal clear that it is a common property resource. It does not belong to any individual. The right here is the right to catch it. It does not belong to an individual until such time as it is caught. I will add further clarification: it is not the right to catch it, but the right to the benefit of the animal once it has been caught.

Clause put and passed.

Clauses 36 to 46 put and passed.

Clause 47: Minister may arrange allocation of excess recreational TAC —

Mr D.J. KELLY: I am conscious of the time. I think we indicated that we would wrap this up by 10 o'clock. The minister wants us to go ahead, so I think everyone else can go home, but the minister can chat to himself! Clause 47 is quite an important clause, because it basically allows the recreational fishing catch to be temporarily reallocated to the commercial sector and for the proceeds of that temporary reallocation to be used by the recreational sector to further recreational fishing. Although we support this provision, I want to hear from the minister. Potentially, we will have more robust measurements of the recreational fishing sector under this legislation than we do under the existing legislation, because we have to make sure that any excess recreational allocation is truly excess.

Mr J.M. Francis: That is not caught?

Mr D.J. KELLY: That has not been caught. I want to hear what will be the process for the department to accurately assess the recreational catch in order for any excess to be properly traded? I would appreciate the minister explaining how the department will deal with that.

Mr J.M. FRANCIS: There are two issues here. The Department of Fisheries tries to maintain an understanding of what the catch is for each particular commercial and recreational fishery at any given time. If we take the rock lobster fishery as an example, from time to time fisheries inspectors will be on wharves trying to estimate the best they can. If I am not satisfied with the advice provided or if it is only a notional excess that is not caught, I would not foresee a reason to go down that path. However, if Recfishwest suggested that there was a substantial under-take of a particular fishery, the opportunity might be for that under-take of the quota, that amount of catch, to be sold back on only a temporary basis to the commercial sector. If that is taken up, Recfishwest might want to use the funds from that for the development of, say, a new artificial reef or safety program, whatever it might be. I can foresee that happening only if there was a significant differential between the total allowable catch and the estimated catch. If it is only negligible then, to be completely frank, the assessment by the Department of Fisheries of what a recreational take will be is exactly that, an assessment, and it will do its best to estimate it, but like political polling there will be a margin of error that will have to be considered. There cannot be a fisheries inspector on every single recreational fishing boat that comes alongside a wharf. We understand that is just the way it is. They can do only their best to estimate the current take.

Mr D.J. KELLY: There is potential within the western rock lobster fishery—I think it is a five per cent recreational catch at the moment—for an application to be made to sell off just one per cent. One per cent would deliver a substantial amount of money. That would be appealing for new facilities. The minister can probably tell me off the top of his head, or one of the minister's advisers could probably tell me, what one per cent of the western rock lobster fishery would be worth. The temptation would be to say, "Well, it is only one per cent. It is going to deliver a significant amount of additional cash that can be used for X, Y or Z. What can the harm be?" The minister

has not convinced me in his first answer that there will be a robust system to ensure that there will be no grey areas around the edges, such as what harm there can be in selling one per cent.

Mr J.M. FRANCIS: The minister may make administrative guidelines. That is how this would work. I assure the member that it is not about me as minister, but whoever may be the minister. My expectation is that the minister would err on the side of caution and that just because there is a difference in the TAC and the amount that was calculated to have been taken by the recreational sector it does not necessarily mean that it would be put out on the market. Perhaps the rock lobster fishery was a bad example of a fishery; it is just what sprung to mind. Also, there has to be willingness on the part of the commercial sector, if something was put on the table, to take it up. There are no guarantees. It is just an option that if there is a noticeable difference between the TAC and what is actually harvested and there is an option to further utilise that resource—as I said, erring on the side of caution—the minister will be able to do that. I would expect administrative guidelines to be published regardless. I refer the member to clause 254 at page 184, which outlines the responsibility and the guidelines that need to be followed for a minister to issue, amend and revoke guidelines.

Mr D.J. KELLY: Is there any requirement for public consultation before a transfer is made under proposed section 47?

Mr J.M. FRANCIS: It may be considered to put in a consultation clause as part of the administrative guidelines. However, the minister has to be asked by the recreational fishing body, essentially Recfishwest, to make the quantity of catch specified in the notice available for commercial purposes. It is only for that period anyway; it is only a temporary reallocation of the resource.

Clause put and passed.

Clauses 48 to 57 put and passed.

Clause 58: Renewal of managed fishery licence —

Mr J.M. FRANCIS: I move —

Page 47, line 3 — To delete the line and substitute —

(a) on or before a day that is prescribed by the regulations for the purposes of this paragraph; and

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 59 to 61 put and passed.

Clause 62: Grant or renewal of managed fishery licence in certain marine reserves —

Mr J.M. FRANCIS: I move —

Page 49, lines 26 and 27 — To delete the lines and substitute —

(b) an area, or part of an area, of a marine park from which commercial fishing is excluded under the CALM Act section 13B(6A)(a); or

(c) an area, or part of an area, of a marine park if the managed fishery licence would authorise commercial fishing that is of a type or class —

(i) specified in a declaration under the CALM Act section 13B(3B)(c); and

(ii) excluded under the CALM Act section 13B(6)(b) from that area or part.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 63 to 110 put and passed.

Clause 111: Regulations about pollution in aquatic environment —

Mr C.J. TALLENTIRE: This clause is a commendable feature of the legislation that gives it the power to bring about regulations to control pollution that could end up in the aquatic environment. I said "end up in the aquatic environment" because that is what I want clarity on, minister. Clause 111 refers to regulations that can be brought into effect to control —

(c) activities that might pollute any waters.

I am thinking of an example in the East Kimberley, where the Ord River flows through to the Cambridge Gulf. I think there is a valuable pearl fishery in the Cambridge Gulf area and I wonder whether there is a way in which the minister can use the powers in this legislation to control chemicals that might come down the Ord River and damage the pearl

fishery. I recall talking to the chief executive officer of the Pearl Producers Association about this matter some years ago. I think there was a concern that chemicals from horticultural activity in the Ord were coming down the river through the various plains. I guess that there has been a lot of development since I had that conversation, so it is likely that various horticultural and farm chemicals that wash into the Ord River end up in the Cambridge Gulf and then the oysters, which are filter feeders and very sensitive to any toxic chemicals. I wonder whether thanks to this legislation the minister will have the power to control activities that might take place on agricultural land so that there is no wash off and pollution of the Ord River and then the Cambridge Gulf.

Mr J.M. FRANCIS: This is probably a stronger version of what existed under the previous act, the Fish Resources Management Act 1994, section 255, just for the member's reference. Section 255(1) reads —

> The Minister may, by notice in writing served on any person, prohibit the person from engaging in any activity if in the Minister's opinion the activity is polluting, or is likely to pollute, the aquatic environment.

Instead of having the minister have the authority to give notice in writing, served on a person, this clause effectively allows the minister to make a provision on the matters outlined, which would then be disallowable, which provides a further degree of transparency and also a safety check in case of unforeseen consequences either way.

Mr C.J. TALLENTIRE: To make it really clear, under this legislation would the minister have the power to regulate activity that could be hundreds of kilometres away, such as the spraying of a chemical that was having a negative impact? It might be the use of Roundup, when some of the residue gets into the Ord River and down into the Cambridge Gulf, where it impacts on the pearl fishery. Does the minister now have the power to regulate and prevent the use of that chemical that is washing into the river?

Mr J.M. FRANCIS: The answer is yes, but with a provision that there is no alternative act that allows a different course of action. For example, the Biosecurity and Agriculture Management Act may apply in the circumstance that the member highlighted, such as the use of pesticides. I am very aware that many filter feeders and invertebrates are highly sensitive to nitrates, phosphates and other chemicals. That act would allow action in that circumstance, but the answer to the member's question is yes, if there is not an alternative or more appropriate provision for undertaking such actions.

Clause put and passed.

Clauses 112 to 131 put and passed.

Clause 132: Licensing of activities in certain marine reserves —

Mr J.M. FRANCIS: I move —

> Page 95, line 25 — To delete "fishing." and substitute —
>
> fishing; or

Amendment put and passed.

Mr J.M. FRANCIS: I move —

> Page 95, after line 25 — To insert —
>
> (c) a type or class of commercial or recreational fishing

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 133 to 144 put and passed.

Clause 145: Reviewable decisions —

Mr J.M. FRANCIS: I move —

> Page 105, Table item 5 in the 3rd column — To insert after "who":
>
> holds an aquaculture licence and

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 146 to 272 put and passed.

Clause 273: Management plans —

Mr D.J. KELLY: Clause 272(2) and (3) allow for management plans under the repealed act to continue in effect. I understand why that is—for continuity and certainty. I do not understand why subclause (3) effectively states that a management plan that was an interim management plan or a management plan for a limited life under the old legislation is now amended so that by virtue of this transitional provision, it becomes a managed fishery and any reference to it being managed for a specified time is deleted. Effectively, an interim management plan or a temporary management plan simply becomes a management plan on a permanent basis. I do not understand why that is the case.

Mr J.M. FRANCIS: There is a pretty simple explanation for that. Once this is assented to, there are no provisions to make a new management plan. If, say, it is two years before an ARUP is finalised, and that interim plan has expired and there is no provision to make another management plan, there would not be continuity. This allows for an interim management plan to continue until it is no longer required in this transition.

Mr D.J. KELLY: I am concerned that if there was a reason for the management plan being only interim or for only a specified time, that reason could be overridden by this transitional provision, which will convert it by a stroke of a pen to a permanent plan. Is there not some reason that the original rationale for the fishery being only interim or for a specified period might get lost?

Mr J.M. FRANCIS: As I said, I think there are only four or five. I will get the member a definitive list of them for tomorrow; I think there is sea cucumber or octopus or something like that. They were all on interim plans with the intention to move to permanent management plans anyway. I think the easiest way is if I get the member the information so he knows which ones were on interim plans that would have been impacted by this, which ones would transition, obviously, where they are and the date that the interim would have expired so that they are going to be covered, if that is all right. We will get that for the member tomorrow.

Clause put and passed.

Clauses 274 to 362 put and passed.

Title put and passed.