AGRICULTURAL PRACTICES (DISPUTES) REPEAL BILL 2011

Second Reading

Resumed from 20 October.

MR M.P. MURRAY (Collie–Preston) [12.21 pm]: I rise to speak against the bill before us today; namely, the Agricultural Practices (Disputes) Repeal Bill 2011. The reasons I rise today are many and varied. Certainly, it surprises me that you, Mr Speaker, will not be having a say on this because I am sure that in your area, as much as in mine and many other country areas, the Agricultural Practices (Disputes) Act could have been strongly utilised in many and varied cases. We even heard in the minister's second reading speech about odour, noise, dust, smoke, fumes, fugitive light and spray drift issues to name a few, and I can add a couple more to that list. For example, the genetically modified organism issue down south could have been dealt with under this act without having to go to the courts, which not only costs people huge amounts but also splits communities. I believe this act could have been utilised to make sure that we do not have that split in farming communities or between suburbia and farming communities. With urban growth comes the issue of the gas guns in the hills. For example, people move and build their house in Donnybrook, thinking it will be a utopia. But the birds come at four o'clock in the morning, their neighbour has gas guns to scare them off and there is a dispute between neighbours. How do I know that? It is a regular complaint that I hear from people in the Donnybrook growing region. The cockatoos are protected and no-one wants to shoot them—maybe some people do want to shoot them!—but they want them out of their orchards. At four o'clock in the morning it is quite disconcerting when a gas gun, which builds up pressure and is ignited by something similar to a spark plug, gives off a big bang. The birds rise and fly out. I see a few nods on the other side from members from suburban-type areas. The birds rise and return to the bush and, hopefully, they have not done too much damage to the orchards. But I understand that people have moved out there for the quiet country life and all of a sudden there is a hell of a bang and they wonder what is going on. They look out the window to see who has been shot, only to find it is a gas gun used to scare off birds. The arguments that I have heard on that issue alone are many. People move in. They might have a couple of horses. The horses get agitated because of the noise of the gas guns and the neighbours are asking, "What about my horses?" Generally it is left up to one to move on. That is, the person who has bought the five-acre block gets angry, says they are not putting up with it anymore and loses faith in their country utopia. The property is put back on the market and the person moves on. In the meantime, the damage done in the schools, between the families, and to neighbour relations has split the community. This act could have been utilised instead, but it was never funded. The minister, in his wisdom, has certainly not put in anything and, in fact, he has not created the structure for it to happen. It has been put aside, and in his words, "Just left there until it is repealed in the house."

Members should think back to the Marsh case and the GM contamination between Kojonup, to the south, and Collie. I have been down there. It was an absolute opportunity in the first instance to at least sit down with both those farmers. Without splitting a community, they could have sat together, gone through the procedure and worked through the problem instead of having to find thousands and thousands of dollars, or, in some cases, sponsors, to take the matter to court for it to determine who is right and who is wrong. That is something that I think is un-Australian. Here we have a process that could have been used, but that was not used because of the minister's lack of desire to have anything to do with confrontation. The minister has walked away and left these people to argue through the courts. Neighbours are not talking, with five farms differing from the rest.

Here was an opportunity that was missed by this government; a government that is more concerned about cost cutting and taking away the rights of people than it is about working towards a resolution without using the courts. One can only wonder whether there is some connection between the lawyers, the court system, the minister and others that keeps people in jobs. I just cannot see why the minister did not promote this, because when we debated the GM bill, it was obvious what was needed. Liberal members of Parliament, especially the member for South Perth, asked for dispute procedures to be included. If I recall rightly, the minister agreed, but never put anything in place. The minister indicated that something would be included so that people did not have to go to the courts, saying something along the lines of, "I don't think it will get into the court system." And the first issue went to the court system when we had an act that could have been used. Why did we not use it, minister? The act was not used because the minister, big-noting himself, was cutting out of the country all those things that mean something to people. The disputes resolution process may have been used had it been promoted, but I have not seen it promoted anywhere. In fact, many members were quite unaware of the disputes resolution act. Country people were most certainly unaware of it because it was only acted upon in the outer suburban areas. When we think about the dust created when someone ploughs up a paddock to put in a crop right next to an urban growth area, just before the rains come, dust blows into homes through open windows and all of a sudden we have an argument. They are the types of things that this disputes procedure was in put in place to deal with. In any workplace, we now have to have a disputes resolution procedure. We could have utilised this for

dust and spray drift from one neighbour's property to another and the like. Again, these are all very common issues.

In real terms, a lot of people will sort that out on a handshake or over a beer down the pub, but not all. That procedure should have been left in there, and funded, so that we could have support in country areas where there is urban growth and alternative land uses, and all the things that come out of those, to make sure we could do that. Recent issues have arisen in Narrogin—the member for Wagin is not here, but I am sure he would remember that very well—and Donnybrook in respect of lot feeding. In the Donnybrook case, the person involved put more than 500 cows in a lot feeding area on the side of a hill, which was prone to washing away and within 400 metres of five houses. We all know about the problems in country areas with the smells, noises and dust that come out of lot feeding, because there is erosion of the topsoil and no grass to keep the dust down. The smell is horrific; one shower of rain, and the smell is then in people's bedrooms and kitchens. Even though this is in a country environment, it is not just the normal pasture smell of running half a dozen cattle over 1 000 acres; up to 500 of these cows were crowded into an area of a couple of acres. Once the number gets over the 500 mark, there is some room to move, but not once it gets under that. We had to have the dispute; Narrogin's dispute went away because one of the companies went broke, so when the company folded, the problem went away, but the issue still remains because it just moved to the Donnybrook–Brookhampton area. The Environmental Protection Authority was called, and it said that this was not its problem. What about the muck running down into the river from the overflows? That was apparently not EPA's problem, it was Water Corporation's problem. Water Corporation said that it was not its problem, so around we went. Then we found out that, just maybe, it was a shire problem under the Health Act. This is another case where the shire council had to take responsibility and work it through; it had to come out and make a decision about where to go next, without any support from the state government.

Again, we had legislation that could have picked up that matter. I did not see the Minister for Agriculture and Food come anywhere near the place when we had this problem of neighbour versus neighbour, farmer versus farmer. As usual, when an issue is a bit touchy, the minister was silent; or else he goes off to Korea on one of his frequent flyer trips to collect the points. Off he goes and disappears. When it is really tough, he just disappears; no worries at all. He just disappears and will not deal with the issue.

It was no different when the truck carrying GM canola caught fire at Williams. What did the minister say? "Oh, I couldn't believe it; I just couldn't believe where it happened, and it shouldn't have happened." But it did happen, just as people told him it would happen, but there was no disputes procedure in place to deal with who was to clean up along the side of the road. Is it a state government responsibility? Is it a shire responsibility? My belief is that it is a state government responsibility, but no; it came back to the Department of Agriculture and Food and was paid for out of its budget. It was supposed to do that job, but was there any follow-up? "Oh yes, we're going to follow up for two weeks". Not two years—two weeks. Now we have the problem of GM canola sprouting in the area and other areas being contaminated because the seed has been carried on tyres and even on the wind. Again, it is a case of neighbour against neighbour. What happened in real terms with that spillage? A seed grader was sent in to clean it up, but when the driver found out it was GM canola, he said, "Mate, I'm not putting that through my machinery", and off he went back up the road. Whose responsibility is it? Surely that matter could have been put through this place so that we could determine how it would be monitored, and by whom and when, into the future. As it is, there is no monitoring in place for what could have been a very simple and straightforward issue, had it been taken through the disputes process. That is where our concerns are.

I will move on, because I am sure that the minister does not want to talk about GM canola; it is something that frightens him terribly, with the new changes to the electoral boundaries down south. If we look at the people who will enact their political will into the future, they will include doctors and chefs against GM. They will come out very strongly against GM and give the minister a fair sort of hurry-up with his new boundaries down there, which went 52 per cent Labor in the federal election, never mind the state election. That area is 52 per cent Labor, and that will be really concerning for this minister. That is why I do not see him wanting to do anything other than sit tight, when he could have come out in support of something that, in country areas, could have been managed, controlled and worked through.

It really beggars belief that the minister is now pushing for a red meat agricultural precinct in my area, which will create odours and dust right at the entrance of the Ferguson Valley, one of the prettiest places in Western Australia. If members have not been there, I suggest they go and have a look at that area; it is going to be ruined because people probably will not have much in the way of an appeal mechanism before them. This precinct will involve lot feeding; 100 000 cows a year are destined to go through this area at the entrance of what will in the future be the Swan Valley of the South West. It is certainly one of the prettiest places in the state. I do not know whether the minister has had a look at the Ferguson Valley; would he like to see lot feeding there, with 100 000 cows going through every year, as will happen under the proposal that has been put forward and supported by funding from the minister's government?

Mr D.T. Redman: By way of interjection, this bill makes reference to "normal farming practice" and having some protections around that. Would you say that lot feeding is not normal farming practice?

Mr M.P. MURRAY: No, I am saying that it is a farming practice that could have been dealt with in a better way. If there were two farmers or a small subdivision opposed to it, they could have sat down and worked out how many cows might be acceptable. I am not saying we should not do it at all; I am saying that we should be able to work through the problems there, as Australians generally do. The minister has taken away the mechanism for that to happen. There is even the issue of light in feed lots; they will put up lights, and the overflow will come into the bedroom of someone whose house is adjacent to the feed lot fence. Light is sometimes needed in feed lots to keep the cattle calm, and if someone wants to complain about it, they will now have to go to the State Administrative Tribunal or see a lawyer to make a common law claim. That is not right when we could have used this mechanism the whole way through. I think the minister has missed the point. He has missed a chance to fund and expand this service, so that it could pick up more such issues that will come about in the future.

At the moment there is a bit of a lull because the subdivisions and growth areas around some of these areas have stopped, as in the Roelands area. About 5 000 acres there was going to be split up into a series of villages on the hill overlooking Bunbury, but a lot of people had a problem with it because of its impact on farming. That is where the minister has missed the point; he thinks I am against farming. No, I am saying that these sorts of issues could have been sorted out—issues including lot sizes and roads—so that farmers could continue with their practices there, whether it is sheep, cows or whatever.

Another issue that has come up recently in the Kojonup area—again, a National Party area—is the proposal for a wind farm. People there are concerned that there is going to be a conflict of interest between wind farms and farming, so I told them to write to the Minister for Agriculture and Food. They went into great detail about why there should not be wind farms in certain areas; in other areas they were quite happy about it.

Mr D.T. Redman: Do you support the wind farms?

Mr M.P. MURRAY: In certain areas—we will discuss it with the community concerned.

Mr D.T. Redman: In certain areas?

Mr M.P. MURRAY: I certainly do. I do not have any problem with them being around Albany. I certainly would not like one outside my chook shed, if I had 5 000 chooks. The noise would upset them and put them off the lay. Imagine 5 000 chooks not laying eggs! It would be something that would really cause a problem within that industry, because there would be no eggs. Imagine that down in the city! People would not be able to have bacon and eggs for breakfast because the chooks were off the lay because someone had put a wind farm up there, when the issue could have been sorted out and the wind farms moved a bit further down the road.

They are the sorts of things that this legislation could have covered. I think it is very short-sighted of the minister to just take an axe to it. It has not cost him any money in the past, but it is certainly something that could have been worked on and could have been utilised in a way very similar to the State Administrative Tribunal in the city. When there are parking issues between neighbours in the city, they take it to State Administrative Tribunal because it is a cheap and easy way to get through a system and get a resolution. This is what this is about; this legislation is supposed to get resolution between people on day-to-day issues about farming areas and suburbia, or issues about farming and farmers themselves.

The landholders themselves could be someone with something as small as a quarter acre up against a person who has 1 000 acres, who has a completely different idea of what rural life is about. I am sure that the minister in his travels, when he gets out of Perth, sees that conflict between rural lifestyle and urban lifestyle in rural settings. We have those problems. How do we get through them?

We think about dams. As Western Australia is so flat, there are not a great number of areas to choose from, so I will use the Ferguson Valley as an example again. The first idea was to split some of those big farms. Long-term resident Mr John Gardiner—his family has a huge history there—split some blocks up. People then built their houses on those blocks. We started with one dam up the top. Then there were two dams, three dams. The fourth dam did not get any water in it, and there was a dispute. We have some mechanisms there, but generally it ends up in the courts.

Also in the Ferguson Valley, the Shire of Dardanup permitted a vineyard to have what it thought would be a small area for entertainment. The noise from that entertainment upset people in the valley, so we had a dispute. That is still going. It has been taken backwards and forwards; it has been to the Ombudsman, it has been everywhere around the place at a huge cost to both parties when they could have sat down in the disputes tribunal, worked through it and came out with a sensible resolution. We remember that in a resolution not everybody wins. Some people have to give a bit and some have to take a bit.

Another example is that local people did not like the traffic on Sunday afternoons when the people went to this vineyard to listen to a bit of jazz. Some people are so selfish, and they parked in driveways. Residents could not get their tractor in or out because of these people. There are so many areas for which we should have been looking at using the system. It is very disappointing to hear of issues such as those that Mr Bell in the Ferguson Valley had. He differed with the people who bought the vineyard and were looking at running a business. Mr Bell was looking at running a few cows, having a nice, relaxed lifestyle and looking out over the view. I am sure the member for Bunbury gets out sometimes on the front steps and waves to the people up in the Ferguson hills, because they can just about be seen on a clear day. They are the sorts of things that people do not want to lose, but in the same sense we have to have growth and people have to get used to some of the densities that we need around the place. It is very remiss of the minister to just say that we are going to take this tribunal out and just get rid of it. They are just a few of the things that have happened.

Marron farmers in some areas are another example. They get a spray drift and the marron walk out and die. Alternatively, it could be someone upstream who decides to drop a dam out because he has cleaned his dams out and the mud that comes down again cleans it out. It is farmer to farmer, and urban to social. It is the whole mix, and we need to have a mechanism for that into the future. It was there, under the minister's nose, but he did not use it. He was too tight to spend a few dollars. I believe a minimal amount of money would be needed, but it takes away the huge amount of money for people who have to go and chase lawyers. Sometimes they have to get QCs. They become so entrenched that they have to go and get the top lawyers in the state. Sometimes they have friends in that area who will assist, because they want to buy a block up the road, and they do not want the particular issue to be brought into the area that would change their lifestyle.

I wonder that the minister in all his travels—he has been to about 14 different countries—did not take the time to ask people in other countries how they got on with urban encroachment, because they seem to have done it quite well along the way. It is a wonder he did not sit down and ask, "How do you sort that out?" Certainly we do not need people having a pot shot at each other or a bit of shotgun spray coming across the dam because someone is poaching someone else's marron or something else like that, which sometimes happens in country areas.

We do not need that sort of problem before we start communities.

Mr D.T. Redman interjected.

Mr M.P. MURRAY: I know that these things happen because I hear about it. People bring them into my office. I hear about these issues. I thought I would have to bring them up.

In all seriousness, in the minister's second reading speech he mentioned what the tribunal was for. He mentioned the issues of odour, noise, dust, smoke, fumes, fugitive light or spray drift, as just a few.

Another issue—one of my learned friends will take this a bit further—is that the repeal of the act affects other areas. We have some very strong concerns about other acts. One matter the minister has been very lax on is biosecurity. We have seen the withdrawal of money from the biosecurity area, which then has to be propped up with royalties for regions money. It has been very much a talking point in country areas—taking with one hand and putting back with the other. If it is not doing that, it is certainly putting the onus back on to farmers in the biosecurity area. In recent times the minister has received a lot of criticism for the issue of lice on sheep. I am not sure how far this legislation goes across those issues of biosecurity, so we will be asking some further questions down the line on that, because it is an issue that the minister has dropped the ball on. There is also the famous Ord issue and the biosecurity problems with rice. Something went badly wrong up there, and it has put a bit of a dampener on that.

Mr D.T. Redman: By way of interjection, so that I can respond in my follow-up to the second reading, if you are going to go to consideration in detail, are you going to raise some questions about the other acts that are amended as a product of repealing this one? Is that what the member is saying?

Mr M.P. MURRAY: Yes; certainly I will do. I can clarify that so that the minister can get some assistants to help us through that, because we want to know what sort of crossovers there will be through the repeal of this act. What impact is it going to have on those other areas?

Mr D.T. Redman: Basically, wherever there is a reference in this current act to another act, we need to make amendments to that act, and that is what this gives effect to.

Mr M.P. MURRAY: I know; we understand that, but we want to know whether we need to follow the line then to see whether the impact is huge.

When we look at agricultural activity, including management of the harvesting of a plantation, what does that really mean in that area? We want to know what impact that has. That is just one example; I do not want to steal the thunder of others. Certainly as we go along, we come back to those issues that we have problems with. Even now, as we speak, there are noise and dust issues. Even in my area, although it might even come under mining to

some degree, in between the mine and the Collie township, there was a water spillage or leak from the mining industry that washed a huge amount of slurry into the rivers. Some private property owners in the middle were quite concerned about that and wanted to know where they could go as an agricultural pursuit, without having to get a lawyer, to put in a complaint and say, "My neighbour's not acting properly. My neighbour has missed the boat on this one and hasn't done the right thing. They've underestimated the rainfall and there's a problem. Where do we go to?" They may be told that they have to take the matter to the Environmental Protection Authority or deal with it through lawyers. However, as soon as someone mentions lawyers, they turn white because they are small farmers who do not earn a great deal from their farm—they are more like lifestylers—but they have been impacted on. The act could have been utilised in this circumstance. The act could have been very strongly utilised to sort out the problem with both parties and get it done at a very minimal cost. I think the State Administrative Tribunal charges about $60-odd. From all reports, most people with those small types of claims just want somewhere to go and some direction and in the end have someone say, "Enough is enough, let's sort out the problem and stop the personal attacks on each other."

That applies more so in country towns. I always have this old saying about how if a person walks down the street in a country town and looks at the footpath and does not look people in the eye, they say, "He's a bit shifty", whereas if a person walks down a footpath in the city and looks people in the eye, they say, "I wonder what he wants." There is quite a difference in the make-up of people in country towns and the issues that concern them. Many are stuck in their ways, I suppose, and do not want change at any cost. I believe that is not the way to be. If something is really affecting someone, we need somewhere that people can have their disputes resolved. We need that place for people to go to so that they can come back and say, "Well, we've sorted that one out, let's get on with our lives and get back to being neighbours." In country areas, sometimes there might be only half a dozen people in a hamlet or small village and they will all be arguing. I am sure that the minister has had to put up with that in a few of the smaller areas through his electorate, especially given the make-up of the different people there—organic farmers, the Greens, traditional farmers, you name it—who run into each other more often these days. Sometimes it causes financial issues for people when their neighbours put in a crop and say, "Look, mate, you're my neighbour. I'm putting this in and I'm just letting you know", and their neighbour says, "Well, I can't plant something else because my crop will be contaminated." If that happens one or two times, there can be problems when the neighbour says, "Well, it's my turn", and the person says, "No, I want to do it again and I want to replant it with something else", so the neighbour who has been missing out says, "Mate, it's my turn and I'm putting this in", and the contamination may go back the other way.

Therefore, with all that, I think the minister has made the wrong call with this bill. In fact, I call on the minister to withdraw this bill, go away, think about it and come back, maybe with a rewritten bill, to pick up some of the problems we have been talking about, whether it be water, landholders, wind farms, lot feeding—we can name so many issues. Sometimes a problem can be as simple as a fence that is not strong enough to keep the bull away from the heifers, which always causes a few problems if it is the wrong bull. Again, we know about those problems. Sometimes people believe the fences are strong enough but the cattle gets out and the neighbour runs into one of them —

Mr D.T. Redman: There's a bit of bull in here, too, I can tell you!

Mr M.P. MURRAY: Yes, there are many areas. We had problems with deer jumping fences in the hills and starting to breed. I believe there are still a few areas in which there are mobs of between 20 and 30 deer that have jumped over the fence. The neighbour said, "They're not mine; I don't have to look after them", and did not do anything about it and now we have a feral problem.

Minister, please take into consideration that this is not just about removing an act that is not being used. I think the act should be promoted and moved forward, rather than be taken out. Promoting the act would need funding and the minister's support, which is not there at the moment. If the minister thinks about his area, we have had problems in the Kojonup and Narrogin areas with lot feeding contamination, spray drift into dams and problems with other acts. With that, I cannot support the Agricultural Practices (Disputes) Repeal Bill 2011.

MR C.J. TALLENTIRE (Gosnells) [12.56 pm]: I rise to oppose the Agricultural Practices (Disputes) Repeal Bill 2011. Given there is no doubt that there is potential for conflict when it comes to the interface between agricultural activities and other rural pursuits, why would we contemplate removing a piece of legislation that is designed to help resolve conflicts? It seems to me that legislation of this kind is probably going to be more and more important, more necessary than ever, as we experience ongoing pressure from people who want to enjoy a rural lifestyle while perhaps engaging in some form of agricultural pursuit; they want to be part of an agricultural community. We have new ideas coming into agricultural areas; people want to pursue new types of farming and sometimes these practices are very much of a trial nature. In the history of Western Australian agriculture in recent years we have seen all sorts of ideas that people have wanted to experiment with, such as angora goats, alpaca farming, ostrich farming, paulownia plantations, and all sorts of different cropping ideas. These ideas

often come from people who have the best of intentions but who lack any real agricultural experience. In those cases we can really see serious conflict arise, particularly given that those sorts of newer agricultural pursuits tend to be chosen or pursued on smaller properties where inevitably there is potential for conflict, especially when we are talking about properties that are only five or 10 hectares or so. Therefore, I think there is a lot of danger in removing the Agricultural Practices (Disputes) Act and it would be a great shame for us to lose it. Perhaps the Department of Agriculture and Food has not been promoting this disputes resolution act and has not been using it to full effect; however, to me, that is not a reason to lose that legislation.

I turn to clause 4 of the bill, which provides for consequential amendments to the Environmental Protection Act 1986. I am very concerned by this; in fact, I have to describe what is proposed as something of an underhanded way of watering down the very essence of the Environmental Protection Act. I will go on to explain what I mean by that. The proposal in clause 4 is that section 74B(2)(c) and (d) of the Environmental Protection Act be replaced with some other wording. In the proposed wording I have seen a definite watering down of what is intended in the Environmental Protection Act when it comes to the use of codes of practice. When we look at section 74B(2)(c) of the Environmental Protection Act as it stands, we see that it is very clear that the intention is for the Agricultural Practices (Disputes) Act to be used in certain ways. I am sure that the minister will have his staff available to guide him through this point, but I am happy to go through it with him in further detail when we get to consideration in detail. Section 74B(2)(c) provides that a defence against an environmental harm charge can be used if the person charged is able to claim that something was —

> (c) done as an agricultural practice within the meaning of the Agricultural Practices (Disputes) Act 1995 in respect of which an order has been made under section 12 of that Act and —
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> (i) in accordance with the order as to the carrying out or management of that agricultural practice; or
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> (ii) in the carrying out or management of a normal farm practice, as specified in the order;
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> (d) done —
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> (i) as an agricultural practice within the meaning of the Agricultural Practices (Disputes) Act 1995; or

This is the really key bit —

> (ii) in the management or harvesting of a plantation, and in compliance with a code of practice relating to an act of that kind issued under section 122A …

I contrast that with what is proposed in clause 4, which is to broaden this exemption provision to include —

> (d) an agricultural activity (including the management or harvesting of a plantation) ...

I think this clause intends to open it up to include things such as codes of practice that relate to feedlotting or viticulture or all sorts of horticulture pursuits. It is clearly a watering down of the provisions in the Environmental Protection Act. That is being done through this backdoor approach of repealing the Agricultural Practices (Disputes) Act. I think that is disgraceful. Here we see the true intent of this Liberal–National government—that is, to find a backdoor way of diminishing environmental protection in this state.

When the Premier made his speech at the garden party that was held last week, from what I gather—I was not there—a big play was made about how the natural values of Western Australia are of the utmost importance to us all. The Premier went on to talk about how the protection of the noisy scrub-bird was an emblem of how successful we have been at conservation in Western Australia. Here we see that the government is prepared to trade away the protection of the environment for people who want to pursue certain agricultural activities if they can claim that those agricultural activities are being done in accord with a code of practice. That is not what the Environmental Protection Act currently provides. The act provides that it is for only the harvesting of a plantation. The minister wants to broaden this to include a range of other things. That is not being debated here at all, but that is the wording of this repeal bill. That is totally unacceptable.

I will explain my concerns about codes of practice. I am prepared to work with some codes of practice and I accept that some have been done very well. For example, I think that after a number of reiterations we have got right the "Code of Practice for Timber Plantations in Western Australia". It carries the necessary messages about how a plantation should not be to the detriment of the environment and should not be put in place when native vegetation clearing has been done. Indeed, the code of practice has wording to that effect —

> Clearing of **native vegetation** for plantation **establishment** is contrary to the policy of the Western Australian government. Clearing of native vegetation for the establishment of plantations generally requires a clearing permit under the *Environmental Protection Act 1986*.

The code of practice lets people know right up-front that they cannot clear and destroy native vegetation for the sake of putting in a plantation. That is a good thing, but that provision has not always been there. It took a lot of argument and effort from a lot of stakeholders to make sure that that code of practice contained that particular provision. I am concerned that through what is proposed in clause 4, we will see an opportunity for other codes of practice to be drawn up. It is true that codes of practice have to meet the requirements of section 122A of the Environmental Protection Act and certain standards require that different authorities, including the Environmental Protection Authority, be consulted. Authorities to be consulted include —

> (b) such State authorities as the CEO considers appropriate; and
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> (c) such industry groups as the CEO considers appropriate; and
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> (d) such environmental and other groups as the CEO considers appropriate.

It is good to see that. It gives me some hope that we can have some confidence in the codes of practice. However, then I see that the Minister for Agriculture and Food is boasting and putting out statements about cutting red tape for feedlots. A media release by the Department of Agriculture and Food states that the approval time for a feedlot has "reduced from 18 months to nine weeks". I put it to the Acting Speaker and the minister that there is no way we could have a code of practice that will meet the standards set out in section 122A of the Environmental Protection Act if he is talking about a nine-week approval time from the moment somebody submits their application for a beef cattle feedlot through to the consideration of it. There is no way we can have that, let alone the development of the actual code of practice. There is no way we should develop a code of practice that allows that sort of time frame. All sorts of things have to be considered.

I have some experience with encountering this code of practice process because it is my understanding that the current code of practice for beef cattle feedlots in Western Australia would not meet section 122A of the Environmental Protection Act. It would not meet the standards because it does not have those consultative processes in place. I recall that it was pretty well a waste of time when I made a submission back in 2001 on the beef cattle feedlot process. One of the issues that I raised in that submission concerned the definition of a beef cattle feedlot. I suggested that the cut-off point being proposed, which was that 500 head of cattle was the determining factor for whether something was feedlot, was insufficient. I said that really we should look at the actual stock density and the number of cattle per hectare. That would be a far more sensible way of determining whether something is a cattle feedlot. That point was ignored. Therefore, I do not have much faith in the code of practice for beef cattle feedlots.

I use this point to illustrate that the amendments put by the minister will dramatically water down the current provisions in the Environmental Protection Act. The minister is changing the legislation so that a code of practice can be suddenly put in place to enable people to avoid a charge of environmental harm in the future. To me that is quite unacceptable. I foreshadow that I will move an amendment to clause 4 of the bill so that we are very clear that it will be for only an agricultural activity. I will remove the words that the minister has in the bill —

> (d) an agricultural activity (including the management or harvesting of a plantation) ...

We will be more specific about it. Our amendment will read that it will have to be a code of practice in the management or harvesting of a plantation done in compliance with the code of practice relating to an activity. We will be very specific, but we are prepared to accept the code of practice relating to harvesting a plantation. Beyond that, no, we will not accept activities matching any description that can possibly be described as an "agricultural activity".

I realise that that is a fairly detailed look at my concern with this legislation, so I will return to the broader concern about removing the opportunity for people to engage in some form of disputes resolution. I would like to hear from the minister what other avenues he would recommend to someone who might suddenly find that next door to them a beef cattle feedlot is proposed. People might not even live anywhere near the beef cattle feedlot, but they might observe that there is a proposal to have a beef cattle feedlot within, say, 50 metres of the Avon River. There are certainly cases like that. The minister might be aware of the Wilding family, for example, near Northam, who have a cattle feedlot on the banks of the Avon River. I do not know how that can be acceptable. I think the nutrient load on the river must be absolutely enormous. That is not consistent with what I would call best practice agricultural management; yet we often hear when codes of practice are presented that they will be used to establish best practice in the industry. Unfortunately, that term is used far too loosely.

I checked that the explanatory memorandum was consistent with what I was interpreting, and I found that to be the case. The explanatory memorandum says that clause 4 will be —

> … replaced by a paragraph simply referring to an agricultural activity (including the management or harvesting of a plantation)".

Again it will broaden what can be included so long as it is done "in accordance with such a code of practice". The explanatory memorandum refers also to how an order can be made under the Agricultural Practices (Disputes) Act 1995. When those orders are made it is reasonable that there be an exemption from the charge of an environmental harm offence. That is the real intent of section 74 of the act, and that is reasonable. A rather badly worded section of the explanatory memorandum states —

> This will be replaced by provision referring to an act of a kind specified in an order made by for the chief executive officer of the department assisting in the administration of the *Biosecurity and Agriculture Management Act 2007*.

The structure of the sentence makes it a bit confusing, but I think the minister might be able to explain more clearly what is meant by that part of the explanatory memorandum. Minister, clearly there is potential for conflict in our rural areas and for different land use conflicts. Those conflicts that arise from time to time are an essential part of developing our state. But we need legislation that can handle those circumstances. We need legislation that people can be confident about using for dispute resolution. I think in this area, we do not have anything that is superfluous. I hear all too often of the cases that the member for Collie–Preston was talking about whereby, unfortunately, people are in conflict with neighbours simply because of land-use management decisions. We need arbiters who can deal with those problems. It is true that other mechanisms can be used when things are at a planning phase. The State Administrative Tribunal and local government can be helpful, but I think a specialist body in agricultural practice dispute resolution is ideally suited to many of the sorts of cases that we are all aware of, such as horticultural disputes involving people who use sprays, which result in spray drift and issues around nutrient discharge from viticulture activities. Although there is a viticulture code of practice, issues cannot be resolved if legislation is not available for use by people who are in conflict.

I am happy to confirm that I oppose this bill; I oppose the repeal of the Agricultural Practices (Disputes) Act 1995. Should the minister wish to pursue things, I will certainly move an amendment to clause 4 of the bill before the house.

MS L.L. BAKER (Maylands) [1.15 pm]: I have a very specific issue to raise in relation to this Agricultural Practices (Disputes) Repeal Bill, and I will not take very long or be too detailed about it. It concerns the issue my colleague referred to—how we manage agricultural disputes without this process. I point specifically to a case of intensive farming in England that is more or less infamous now. This particular case involved what was called the Lincolnshire super dairy cow facility, which I think first appeared on the horizon in 2009 or 2010. In fact, I have a report here that indicates that on 16 February 2011 the company that had this proposal in play in the north of England finally withdrew it. It is an eventuality that I can see coming to this country in the not-too-distant future whereby a very large farming facility is proposed.

To give some detail about the proposed dairy in Lincolnshire in the north of England, the proponent, Nocton Dairies, submitted plans to house 9 000 cattle in a super dairy on the land outside the village of Nocton near Lincolnshire in England. That kind of intensive farming is obviously driven out of a need for dairy farming in the United Kingdom, which is under pretty heavy pressure to be productive and economical into the future. It is an industry that is searching desperately for ways to survive. I can understand, economically, where this proposal came from. From my perspective from an animal welfare basis, which the minister will be well aware of, I would have grave concerns for this type of proposal. It was the basis for huge public outcry and, indeed, a ministerial outcry when the proposal was discussed in the UK Parliament. The proposal was to house indoors 9 000 cattle; they would not be out grazing. In fact, much to my surprise, when I was researching this I found that in a radio interview in 2010 a representative from Nocton Dairies, the proponent of this proposed industrial-scale dairy in Lincolnshire, made his position clear by saying that "cows do not belong in fields". I can well imagine that most people in the house would be fairly puzzled by anyone making that kind of statement. Of course a cow belongs in a field; it certainly does not belong in a shed with 8 999 other cows. This proposal was rigorously argued in the community. Many people from the farming industry who were concerned about the profitability of their practices came forward to argue for the proposal. Interestingly, many small farmers were very concerned about the proposal being granted because it would mean their death; they would not survive this kind of large-scale industrial development. They rejected the proposal. Steering through the proposal became a real nightmare for the UK government and eventually it was rejected on environmental grounds. This morning all my colleagues have referred to the environmental issues of this kind of farming practice. The Agricultural Practices (Disputes) Repeal Bill 2011 has some danger in it. I would really like the minister to give me an example of how he sees the various parties being able to put their cases forward without this kind of mechanism in place so we can move on to resolve the problems. If this kind of proposal landed on our laps, how would the department deal with it?

As I said, the issue I wanted to raise was fairly short and to the point. I am very keen to hear the minister's response.

MR D.T. REDMAN (Blackwood–Stirling — Minister for Agriculture and Food) [1.21 pm] — in reply: I thank members for their response to the Agricultural Practices (Disputes) Repeal Bill 2011. I am a little surprised at the interest in this bill. I will go over some of the history and attempt to respond to some of the comments that were made. Hopefully my advisers will be here by that time so we can move into consideration in detail. That would be timely.

I do not want to go over too much of what was said in my second reading speech. As has been said, this bill will repeal the Agricultural Practices (Disputes) Act 1995, which has been earmarked for repeal since it was recommended by a review of the act in 2002. Interestingly, a lot of the discussions and the resulting decisions made about the repeal of this bill happened during Labor's term in government. I will come to that in a little while. The act is being repealed because its continuance simply cannot be justified. From time to time a lot of people raise with me their concerns that acts that sit on the statutes are superfluous and do not need to be there. It is incumbent on any government to look at those acts and see if they serve a purpose. If they do not, we should get them off the statutes. From time to time we need to tidy them up. I guess I see this bill as one of those tidying-up exercises. I will defend the reasons we are going down this path. I believe that the act is not justified. It is only very rarely used, and certainly has not been used in recent times. I will refer to some of the decisions that the Labor Party made in government.

The act provides for a board to be appointed to determine disputes between neighbouring landholders over odour, noise, dust, smoke, fumes, fugitive light or spray drift. It is quite specific in what it refers to. It gives some scope to look at other things but it is quite specific. When the act was introduced, it was thought that there would be a significant number of disputes about agricultural practices as a result of the encroachment of urban land use in rural areas. The intent of the bill was more about resolving disputes about urban encroachment into rural areas than disputes between neighbouring farmers, which, as we know, have been occurring for many years and also have been resolved to people's satisfaction for many, many years. That was the intent of the bill. It is important to remember that we are talking about the urban encroachment on agricultural practices and quite specific circumstances in which disputes between neighbours could arise. The act was only ever used in very small and decreasing numbers. The provisions for mediation were used only rarely, with three being the maximum in any one year, and none at all being conducted in some years, including the last three financial years.

Mr M.P. Murray: Was there any process of referrals?

Mr D.T. REDMAN: I will come to some of those points. Interestingly, the board was never called upon to determine a dispute. When the act was put in place, there was obviously a very big discussion in this place with members talking about this issue of normal farming practice and the potential impact that it would have on other land uses and so on and the conflict that would therefore arise. I imagine that it would have been the subject of a lot of public discussion at the time. It certainly would have been at the fore of many people's minds, particularly the farming community and those who found themselves in dispute with normal agricultural practice at the time. I do not accept the argument that because no-one knows about or promotes the act, that it should remain.

No members have been appointed to the board for some years. Leading up to May 2008—when the Labor Party was in government—no members were appointed, so it chose not to put members on the board. As I understand it, the act prescribes the membership of the board. In order to deal with that, in May 2008, acting under section 55(2) of the Financial Management Act 2006, the Treasurer—the now Leader of the Opposition—appointed the Director General of the Department of Agriculture and Food as the accountable authority for the board until the act was repealed. A review during the term of the previous government said that the act should be repealed as it was not needed and does not get used. The Labor Party did not make any appointments to the board for a long period, which arguably was in breach of the act, and now it is telling me that we have not done what we need to do to support it. Then the Labor government decided to make the Director General of the Department of Agriculture and Food the responsible authority in order to meet the formal statutory requirements of the act. The behaviour of the Labor Party while in government is hardly reflective of the comments that its members have just made. I read some commentary in the upper house that reflected a similar view, asking why we are disbanding a board that is needed when, in fact, during the Labor Party's time in government, that board was disbanded. It is quite incredulous that members of the Labor Party take up that argument now given that they made no effort —

Mr M.P. Murray: As a minister the same thing will happen when you want to change something or not change something in the future. Life changes; you have to realise that.

Mr D.T. REDMAN: Absolutely. I will pick up some of the arguments that the member raised as well.

The years since the Agricultural Practices (Disputes) Act was introduced have really shown that there is no need for the act. In my opinion, potential conflicts resulting from competing land uses are best addressed through effective land use planning. One of the across-the-board views of members, quite rightly, was the potential for a

conflict to occur over time with the growing amount of urbanisation, the challenges of farmers meeting a financial outcome where it is in the black and not the red, and hence the pressure that is on them to be profitable and the potential conflict that has with those around them.

I will work through a couple of the issues that the member for Collie–Preston touched on. Disputes are many and varied, and I would argue that there are many mechanisms to respond to them. Since the introduction of this act, the Environmental Protection Authority, the Department of Environment and Conservation and local government authorities have significantly improved policy and legislative powers relating to odour, noise, dust, smoke, fumes, fugitive light and spray drift. There is certainly a more enhanced legislative base for resolving disputes now than there ever was when this legislation was put in place. I think that is one of the reasons that this act is not used as a dispute-resolution mechanism. I think the member for Collie–Preston used the example of feedlots in Narrogin and some of the challenges that presented. The EPA and the Department of Environment and Conservation were fully engaged in that dispute. I have a number of noise issues within my electorate, as I am sure the member for Collie–Preston has in his electorate. Again, local government authorities play a very, very strong role. They have the legislative capacity to defend those situations. The point here is not so much the intent of this act but whether the purpose of the act is covered by other areas. In my view, it is. If the act is not being used, which it is not, and if it was not supported by Labor during its term of government, which it was not because Labor simply did not replace the board and changed the responsible authority from the board to the Director General of the Department of Agriculture and Food, in my view, they are very strong arguments for repealing this act.

Mr M.P. Murray: What about trying to stop those court cases that split communities? We know what they are all talking about without going into the issue; you know what we are seeing is disastrous for the mining community.

Mr D.T. REDMAN: This legislation, as I understand, was really a mediation process. It was somewhat of a defence for normal agricultural practice and I actually put it to the member for Maylands that the argument that she ran about the issue back in England is probably supported by the repeal of this legislation, because this runs as a defence to say that normal farming practice is a reasonable activity to be carried out, if what was defined over there was normal farming practice—some might have some debate about that. I thought that the argument that the member ran actually supported a position to repeal this legislation.

Ms L.L. Baker: It may do; I just wanted to —

Mr D.T. REDMAN: Therefore, I am assuming that the member for Maylands will sit on our side of the house when we come to the vote!

Ms L.L. Baker: Minister, I just wanted to hear your explanation about how that would happen.

Mr D.T. REDMAN: I will just work through these points and then we might come back to some of that.

The other point made by the member for Collie–Preston related to the issue of genetically modified crops. This legislation was never designed to be a farmer-to-farmer dispute resolution process. It was really about urban encroachment, and that was the second reason it was put in place. Urban encroachment onto normal farming practice —

Mr M.P. Murray interjected.

Mr D.T. REDMAN: It could have been used, and I guess any number of people could have pursued that path, but it was never, ever designed to be that. It was not successful in dealing with issues of odour, noise, dust, smoke, fumes, fugitive light or spray drift. We could argue that it is not going to be successful in any other matters that come into play. I think one of the strong things about supporting the repeal of this legislation is the actual activity that has happened. What has happened in practice supports the decision that this government is taking, because the legislation simply has not been used. If it has not been used, why is it there? These issues are resolved through a range of other matters quite successfully—sometimes through the courts, and I do not think we can avoid that. This legislation will never, ever avoid the use of court action in serious disputes. I do not think that will be challenged.

Mr M.P. Murray interjected.

Mr D.T. REDMAN: Member for Collie–Preston, I come back to the point. The member said it has not been funded and that I was too tight to fund it—that was the comment that he made to the minister who was then in my role and responsible for this legislation. I put to the member again that it was the Labor government that reviewed the act and said it should be repealed. The Labor Party refused to fill the Agricultural Practices (Disputes) Board. The Labor Party was forced to make a decision to appoint the Director General of the Department of Agriculture and Food as the responsible authority, simply because it would have been in breach of the act not to have a board there. Clearly, those decisions support a repeal of the act. The member talked about

the case of Mr Marsh. Although I do not want to go into the range of facts around that case, because I think it is a very different debate from the one we are currently having, I challenge the member's points about the support that the Department of Agriculture and Food has given, and the position I have taken, on coexistence in Western Australia of a new technology that this government has clearly allowed to happen that supports our farmers being competitive. I make the point that in our term of —

Mr P. Papalia: There is no evidence for that; it is absolute tripe.

Mr D.T. REDMAN: Member for Warnbro, there were some very strong points made by the member for Collie–Preston about my support for the agricultural community of Western Australia, and I stand very strongly on my record and the record of the Liberal–National government in terms of what we have done in three years and the resources that we have deployed in order to ensure that agriculture will continue to be a significant contributor to the economy of Western Australia.

Mr M.P. Murray interjected.

Mr D.T. REDMAN: I am happy to take up another debate when we get off this subject, because I am sure the Acting Speaker will pull me up if I get off the agenda. I come back to that point —

Mr M.P. Murray: He is asking for your protection; give him a bit of protection.

The ACTING SPEAKER (Mr J.M. Francis): Do not ask me to oblige, member for Collie–Preston, because I will start now.

Mr D.T. REDMAN: I come back to the point that, in my view, for all of the issues that have been raised in terms of various conflicts, and they are many and varied, there are strategies that are robust enough in practice because they are currently used to resolve those conflicts. Therefore, to come back to the point, the fact that there has not been a board in place to enact this legislation for many, many years and that the board has never been called on to make a decision in its whole existence—that is in the last 16 years—and it has only ever been triggered for use on a maximum of three occasions in any one year, strongly supports the repeal of the act.

I will not challenge the points that the member for Gosnells makes about the potential for conflict, particularly on that urban–rural interface. There is a planning trend for a number of smaller properties—I think the member said five-hectare properties—on which people choose a lifestyle and on which they may want to have some agricultural practice. People move to those locations and sometimes, as the member for Collie–Preston also highlighted, in those circumstances they find that they are confronted with challenges that they may not have anticipated, which have actually been dealt with by the agricultural community for many years. I think the nature of growth means that we move out into those areas. I have a concern about some of that, which I would share with the member for Gosnells. If we focus on spreading out rather than increasing the level of urban density, at some point in time there begins to be pressure on those agricultural areas. That is certainly a long-term concern of mine. I know the Minister for Planning is presently undertaking a review of the agricultural components of the state planning policies and those are decisions we need to consider as governments. I say governments of both persuasions because I think the policy settings should be appropriate to preserve good farming land in Western Australia so it is not depleted over a period of time. Therefore, I take the point made by the member for Gosnells. Really, the member did not come back to strong points about this legislation. He said only that it is perhaps a mechanism for resolving some of those disputes. I would argue, as a member of government, that in this case there are other mechanisms that are in fact being used and they are being used effectively. The member mentioned the watering down of the Environmental Protection Act through the consequential amendments in this bill. There is absolutely no intent to water down the Environmental Protection Act. I will wait for my advisers to —

Mr C.J. Tallentire: It is clearly there; if you look at page 4 of your bill it says that you are going to broaden it out so that it includes harvesting of a plantation. At the moment it only refers to harvesting of a plantation.

Mr D.T. REDMAN: I will wait for my advisers. I can only refer to the explanatory memorandum of the bill, which states —

Mr C.J. Tallentire: It says the same thing.

Mr D.T. REDMAN: The intent of the bill is to make the consequential amendments in other acts that are triggered as a result of the Agricultural Practices (Disputes) Act being repealed.

Mr C.J. Tallentire: That is beyond being a consequential amendment. You are also watering down the EP act via the back door.

Mr D.T. REDMAN: I am now advised that the Department of Environment and Conservation does not agree with the points that the member makes that the bill is watering down the Environmental Protection Act. The department specifically approved the wording that went into the bill and quite rightly it would have been drafted

in consultation with the department. I will just read my notes for a second. Currently it depends on the view of the Agricultural Practices (Disputes) Board for something to be within the definition of agricultural practice under the legislation. That definition is very broad and would cover a cattle feedlot, for example. Therefore, under current legislation a cattle feedlot would be a normal farm practice if carried on under an approved code of practice. I will wait for some specific discussion that I am sure that the member will want to have with me. I am advised that the member's proposed amendment would dramatically change the effect of section 74 of the Environmental Protection Act, not the amendment in the bill. From what I am advised, the member seems to be misreading section 74B(2)(d) of the EP act. I am happy to raise the issue further, unless of course the member is happy to take the points I am making now as they are.

Mr C.J. Tallentire: My amendment returns your bill to what the current status of what the EP act is.

Mr D.T. REDMAN: I will pick that point up when we come to consideration in detail, because we are getting down to a level of detail that will test my skills. I will just try to paraphrase the points the member makes. The member makes the point that he believes that the consequential amendments in clause 4 of the bill are an under-the-carpet way of watering down the Environmental Protection Act and he therefore sees the government slipping something into the legislation that should not be there, which changes the original intent of that act in a way that he thinks is watering it down. I will make the case when the time comes that that is not the case. The member can only take my word on it at this point in time. The member did make some reference to feedlot approvals. I do not accept that feedlot approval times is something that should be discussed or debated here. There is a whole range of approvals processes. This bill refers to a dispute resolution process that was thought to have been needed because of the urban encroachment on agricultural land and to put some definition around that. I am making the case here that it is not needed.

Mr C.J. Tallentire: Minister, I might not have been clear enough there. I was referring to the approval of the code of practice for feedlots, because that is what will be critical to this amended act. If you can say this is an approved code of practice for feedlots, then anything that is decided under that code of practice would get the green light.

Mr D.T. REDMAN: Again, the process for defining a code of practice is a very separate process. In many cases, it is done at a national level. We certainly support taking a national approach to that. I am still not capturing the issue that the member has in linking the code of practice to what he sees as a watering down of this particular bill. However, I would rather pursue this through consideration in detail, because at that point I can get some more definition around it with my advisers.

The member for Maylands made some strong points about animal welfare. I think that is the tenor of her point in referencing a circumstance in the north of England in which there was a request to set up a 9 000 cattle-intensive farming facility. I guess I made the point before, and I will refer to it again, that this act defines "normal farming practice" as somewhat of a defence when that is under threat from urbanisation. In fact, it is interesting—the member might like to read this—that section 4 of the Agricultural Practices (Disputes) Act states in part —

> (2) The reasons for the enactment of these provisions are —
>
> (a) to ensure —
>
> (i) that agricultural production continues to be a major contributor to the economy of the State; and —

So that is supporting agriculture as a practice. It continues —

> (ii) that agriculture continues to contribute to the preservation of the landscape and environmental resources of the State, to the benefit both of those who reside in the State and those who visit the State; and
>
> (iii) that normal farm practices, understood and accepted by the rural community, but not always understood by or initially acceptable to persons unfamiliar with the rural lifestyle who encounter those practices by reason of an increasing urbanization of rural areas, are not, whether by reason of that lack of understanding or because of an unwillingness on the part of the farmer to modify any such practice in a practicable and acceptable manner, made the subject of premature litigation contrary to the public interest;

That is a fistful, member. But I make the point that I would have thought the member's commentary would have supported repealing this act.

I thank members for their contributions. My closing point comes back to the fact that this act is not something that members opposite supported when in government. So I find it interesting that they are now choosing to go

back on their support for the repeal of this act. This act is something that in practice they did not support when they were in government, because of the appointments to the board. It is something that in practice they did not support, because they chose to appoint the director general as the responsible authority under the act, given that that would have been in breach of the act itself, not having had the board in place. So I find it very surprising that members opposite have made that decision, given that this act has not been used. There is a whole range of other strategies in place to respond to those disputes that are out there—in my opinion, very effective strategies and ones that carry some legislative power and policy.

With that, I move that the bill be read a second time.

Question put and a division taken with the following result —

Ayes (26)

Mr P. Abetz	Mr V.A. Catania	Mr A.P. Jacob	Mr C.C. Porter
Mr F.A. Alban	Dr E. Constable	Dr G.G. Jacobs	Mr D.T. Redman
Mr C.J. Barnett	Mr J.H.D. Day	Mr A. Krsticevic	Mr T.K. Waldron
Mr I.C. Blayney	Mr J.M. Francis	Mr W.R. Marmion	Dr J.M. Woollard
Mr J.J.M. Bowler	Mr B.J. Grylls	Mr P.T. Miles	Mr A.J. Simpson *(Teller)*
Mr T.R. Buswell	Dr K.D. Hames	Ms A.R. Mitchell	
Mr G.M. Castrilli	Mrs L.M. Harvey	Dr M.D. Nahan	

Noes (21)

Ms L.L. Baker	Mr M. McGowan	Mr E.S. Ripper	Mr P.B. Watson
Mr R.H. Cook	Mrs C.A. Martin	Mrs M.H. Roberts	Mr B.S. Wyatt
Ms J.M. Freeman	Mr M.P. Murray	Mr T.G. Stephens	Mr D.A. Templeman *(Teller)*
Mr W.J. Johnston	Mr A.P. O'Gorman	Mr C.J. Tallentire	
Mr J.C. Kobelke	Mr P. Papalia	Mr P.C. Tinley	
Mr F.M. Logan	Ms M.M. Quirk	Mr A.J. Waddell	

Pairs

Mr J.E. McGrath	Mr J.R. Quigley
Mr I.M. Britza	Dr A.D. Buti
Mr M.W. Sutherland	Mr M.P. Whitely

Question thus passed.

Bill read a second time.

Leave denied to proceed forthwith to third reading.

Consideration in Detail

Clauses 1 to 3 put and passed.

Clause 4: *Environmental Protection Act 1986* amended —

Mr C.J. TALLENTIRE: I move —

Page 4, lines 17 to 18 — To delete the lines and substitute —

(d) in the management or harvesting of a plantation done

I will outline why this amendment is so essential. This is a change in a repeal bill that has a consequential impact on the Environmental Protection Act. I maintain that that change to the EP act is a watering down of the current standard of the Environmental Protection Act. That is being done by broadening the scope of the provision in section 74B(2)(d)(ii) of the Environmental Protection Act that presently states that a code of practice can relate only to an act "in the management or harvesting of a plantation". What is now proposed by the minister is a change in the language so that it will read —

an agricultural activity (including the management or harvesting of a plantation) …

That clearly opens the door for all kinds of other codes of practice to be developed and used. That is not the current wording in the EP act. I will come back to this if necessary, but I would like to hear the minister's initial response to that.

Mr D.T. REDMAN: I will attempt to work through this. In the first instance, a code of practice needs to be approved, and it has to be made under the Environmental Protection Act or another relevant act. So a code of practice has to be approved in the first instance; it is not just an industry code of practice. This is not something that is written up somewhere, ticked off and, therefore, applies to these circumstances. Does the member have a copy of the Environmental Protection Act in front of him?

Mr C.J. Tallentire: Yes, I do.

Mr D.T. REDMAN: Section 74B(2)(d), which the member is talking about, has subparagraphs (i) and (ii). The member will see that subparagraphs (i) and (ii) are indented, and that means that both of those subparagraphs apply to being "in compliance with a code of practice relating to an act of that kind issued under section 122A or made or approved under any other written law". So the section does not separate them so that one subparagraph will be in compliance with the code of practice and the other one will not. Does that give some clarity?

Mr C.J. TALLENTIRE: The point remains that we are substituting terminologies. We are putting into the act a phrase that would allow for a code of practice—yes, one that is approved through the Environmental Protection Act or any other piece of law. I outlined in my second reading contribution why I have concerns about the process being used for those codes of practice, and I pointed out that the minister's own department is talking about how it is going to speed up things and that it is cutting through red tape. So I am losing confidence in the process that surrounds the development of these codes of practice. At the moment we have an Environmental Protection Act that allows for a code of practice that relates to the code of practice for timber plantations in Western Australia that has been very carefully developed over many years. That code of practice is allowed to be used as a defence. If a person is operating under that code of practice, they can use it as a defence against a charge of environmental harm. I am prepared to accept that. That is the existing nature of the legislation. However, the minister wants to open up the legislation, and that is what he is doing in clause 4 of the bill. He is saying that it is an agricultural activity, including the management or harvesting of a plantation. He is opening it up so that other codes of practice can be put forward—ones that I maintain will not receive the same level of scrutiny as the code of practice for timber plantations in Western Australia, and will not receive the same level of community consultation, public scrutiny and input from different stakeholder groups. I am concerned that the minister is watering down his legislation by his insertion into the act of the word "including" because he is opening it up. Presently, the act restricts things to a code of practice relating to the management or harvesting of a plantation. It is very specific. It is there in the legislation, and the minister has pointed me to section 74B(2)(d)(ii) of the Environmental Protection Act. If one reads that, it is very clear. It states, "in the management or harvesting of a plantation". The word "including" is not there. That is what the minister is inserting, and that is why I maintain he is watering down this legislation.

Mr D.T. REDMAN: I will just paraphrase what the member is saying. He is saying that currently the act reads in this way: that both subparagraphs (i) and (ii) do not refer to compliance with a code of practice.

Mr C.J. Tallentire: No, that's not what I'm saying.

Mr D.T. REDMAN: I am advised that there is absolutely no intent, in the legal sense, to change the intent of the EP act. The way the amendment in the bill has been written simply makes the appropriate change to take the reference to the Agricultural Practices (Disputes) Act out of the provision, but it does not change in any way the intent of that section in the EP act. In the legal sense, there is no change in that position. Therefore, I am having a struggle understanding the member's intent to change something that does not make a change. As I understand, it would have been possible to write the provisions as subparagraphs and have them referenced as subparagraphs (i) and (ii). But the point is that this is written in such a way that it is not in any way changing the intent of the EP act, and the member has my word on that.

Mr C.J. TALLENTIRE: If that is the case, I think the minister will be prepared to accept my amendment, because my amendment maintains the language exactly as it stands in the act currently. The minister is saying that his intent is to not change or water down the EP act. Therefore, he will be happy with the amendment that I have moved, because, as things stand at the moment, the legislation that has been put before us has been drafted in such a way that it does water down the Environmental Protection Act as the minister is saying that he is going to allow for the inclusion of things beyond just harvesting of a plantation. He is going to allow for the inclusion of other codes of practice that could be drafted. Of course, yes, that would be done through section 122A, but the minister is broadening the scope of things, and that is not how things stand currently. Therefore, I think the only thing for the minister to do is accept the amendment that I have put forward because it maintains the status quo.

Mr D.T. REDMAN: The amendment that the member has put forward will delete the lines in paragraph (d) and substitute "in the management or harvesting of a plantation done". That is actually amending —

Mr C.J. Tallentire: No, read on.

Mr D.T. REDMAN: That is actually amending the whole provision, including subparagraph (i), so he is changing significantly the intent of what is written in the current act. I just cannot accept an amendment that changes the act in the substantial way that is described in the amendment. Let us look at paragraph (d). The member is basically moving, on page 4, to delete lines 17 to 18 and substitute —

(d) in the management or harvesting of a plantation done

So he is deleting all the lines.

Mr C.J. Tallentire: I am simply ensuring that, by making that amendment, we ensure that the act will read as it currently reads.

Mr D.T. REDMAN: I am advised that, in fact, the opposite is the case.

Mr C.J. Tallentire: No. The government has the word "including" in its bill; I am taking that out.

Mr D.T. REDMAN: Member, can I just clarify? The member wants to change this bill, but if he then takes it back to what it actually changes in the Environmental Protection Act, with the changes he is putting in, it changes the whole intent of that part of the bill.

Debate interrupted, pursuant to standing orders.

[Continued on page 8818.]