

FOREST PRODUCTS AMENDMENT BILL 2021

Committee

Resumed from 24 March. The Deputy Chair of Committees (Hon Dr Brian Walker) in the chair; Hon Alannah MacTiernan (Minister for Regional Development) in charge of the bill.

Progress was reported after clause 1 had been agreed to.

Clause 2: Commencement —

Hon Dr STEVE THOMAS: I am not intending to take a huge amount of time through the Committee of the Whole stages of the bill. Can I check, regarding the commencement and given the timing, do we have an expectation of when the act will come into operation and the impact of that on potential plantings in the current calendar year? Given that we will be going into summer, will we get any seedlings in the ground later this year or will we be waiting until next year to commence that?

Hon ALANNAH MacTIERNAN: The Forest Products Commission has a full tree-planting season underway at the moment using Water Corporation, Department of Water and Environmental Regulation and other government land. It has been able to structure its work in such a way that it can actively plant this year while it waits for this to come on board. In the last couple of months, obviously in anticipation of the bill being passed, it has been making expressions of interest on land and positioning itself in the market. Once the bill is proclaimed, it can move very rapidly towards the acquisition of properties. The planting on those properties will start next year.

Hon Dr STEVE THOMAS: Thank you, minister. Interestingly, I did a trip through the southern section of the Shire of West Arthur, through the area at the back of Mcalinden to the north—the minister might not know it, but some of the staff might—where it appears that pine is already going in. The blue gum removal process is happening, and pine is going in at that point. I presume that is the sort of process the minister is talking about. I think some of that is Water Corporation land, particularly up around Maringee Farms. The minister might want to get advice on that. I presume that is the initial stuff that is happening. I think the minister is telling us that we would expect to see a massive expansion of that next year.

Hon ALANNAH MacTIERNAN: Just on those two, the Mcalinden and Maringee parcels were acquired in 2020, and the member will recall that one of the intentions of this bill is to put beyond doubt that the Forest Products Commission has the legal authority to do that. Those properties have already been acquired by Forest Products Commission. There is also some Water Corporation land—as the member quite correctly identified—particularly near the Maringee property, and that also is being planted.

Hon Dr STEVE THOMAS: Thank you. That is my backyard, so I am around there quite a bit. My final question on this clause is: given we last debated this bill back in March and it is now three months down the track, is the minister in a position to give us a time frame and indication of the various rollouts? This is going to be a long-term project. I do not need to hear it will be 30 years before we start harvesting, but is the minister in the position to give us any information about planting—on the expected rollout, acreages and plants over the next 10 years, for example?

Hon ALANNAH MacTIERNAN: At this point, we need to be very clear that we have the power to do that, so there has been no more recent acquisition of land. That will happen. I think once we start seeing exactly what land we can acquire and at what price, we can start providing more detail on that.

The first harvest tends to be done at 12 years. It is a thinning process, and a product is harvested from it. It is used for poles, in particular. It takes 25 years, obviously, for structural timber.

Hon Dr STEVE THOMAS: We might get to a bit of that under clause 5 later down the track, so I am happy to make progress in the meantime.

Clause put and passed.

Clause 3 put and passed.

Clause 4: Section 3 amended —

Hon Dr STEVE THOMAS: Just for your ease, deputy chair, there are only eight clauses in the bill, and I do not want to spend a lot of time on any of them in particular. We will probably spend a bit more time on clauses 5, 6 and 7. If we go one at a time, we may not quite get finished by the lunch break, and I apologise to the staff for that.

Clause 4, which will amend section 3, puts in the definition of the storage of carbon. Let us start with a very simple thing. Is there an indication or modelling yet on the expected carbon sequestration volumes or weights that might be applied for in the future? Can the minister comment on the rules that will exist around that and how firm they are likely to be? Is there some sovereign risk in the rules changing over time, for example?

Hon ALANNAH MacTIERNAN: I am advised that they are anticipating to generate between 7.9 and 9.5 million tonnes of carbon from the expansion program. As the member would be aware, most will probably be done as Australian carbon credit units and they will obviously be subject to the Clean Energy Regulator's assessment. I note that although there has been some controversy around some of the methodologies underpinning ACCUs, none of the methodologies that are being questioned involve the active planting of trees. They have tended to be the regenerative ones, rather than those.

Hon Dr STEVE THOMAS: That was my understanding, as well, so I thank the minister for that clarification. Clause 4 also seeks to change the definition of "departmental land" from land "held by the CALM Act CEO" to land "vested in the Conservation and Land Management Executive Body". Can I check: I think that this determines who actually owns the carbon credits at the end. Is that what this clause does? Does this impact on which section of government effectively gets the carbon credits, or is this simply for the ownership of the trees and the land itself?

Hon ALANNAH MacTIERNAN: It is just reflecting the name changes that have occurred with the landowner. It is solely to reflect amendments that were made back in 2006 by the Machinery of Government (Miscellaneous Amendments) Act to the Conservation and Land Management Act 1984. The Machinery of Government (Miscellaneous Amendments) Act changed the name of the body, so this is a catch-up provision.

Clause put and passed.

Clause 5: Section 4 amended —

Hon Dr STEVE THOMAS: Can the minister refresh us? This is the clause that, in the definition of "forest products", will effectively add in freehold land acquired by the Forest Products Commission. Can the minister give us an update on why that change is required? Is it because the FPC has purchased land and we now need to retrospectively approve that, or is this entirely based on future stuff, and the retrospectivity effectively does not get dealt with until a later clause? As the minister answers, perhaps she can demonstrate why clause 5, an amendment effectively to include freehold land, is required in this legislation.

Hon ALANNAH MacTIERNAN: I thank the member. Again, it appears that this is part of the provisions that are designed to ensure and put beyond doubt that the Forest Products Commission can purchase land in order to plant trees. It is part of that. Also, the definition is designed in such a way that it will not allow for the acquisition of carbon rights on trees on private land.

Hon Dr STEVE THOMAS: I thank the minister. Just on that last part, is the minister saying that it confirms that there is no right for the FPC to hold carbon credits on privately held land that presumably it does not own? Can I just get that clarification?

Hon ALANNAH MacTIERNAN: In that definition, it does if there is a sharefarm arrangement, so these enhanced rights of carbon credits apply only to land that it acquires or sharefarmed land.

Hon Dr STEVE THOMAS: I thank the minister for that clarification, I think that makes sense. The Forest Products Commission could not ostensibly as part of government own carbon credits in a shared farm, presumably by contract, and it would have to negotiate out of contract who owns the carbon credits. Thank you. That will do for clause 5.

Clause put and passed.

Clause 6: Section 6 amended —

Hon Dr STEVE THOMAS: Clause 6 prohibits persons who might have some—I think it is defined as—material personal interest in commercial undertakings relating to carbon dealing from serving as commissioners within the commission. I guess I am interested in the identification of the need for this clause outside the normal components of the Public Service Act et cetera. Is there a specific reason this clause is included, and is there a potential risk of material personal interest? It seems to be specifically for carbon credits. I might start with that one, because there might be a follow-up question, I think, on how that might occur.

Hon ALANNAH MacTIERNAN: I am advised that there are already provisions in the existing act that relate to pecuniary interest. This clause seeks to expand those so it is clear that those provisions for pecuniary interest also involve accumulation. For example, we could not have someone who is a commissioner running a company—Select Carbon or something—that provides carbon accumulation services to the commission. It is not dissimilar from a prohibition that already exists with regard to the existing enterprise. This will make sure that the new portion of the enterprise is likewise protected.

Sitting suspended from 1.00 to 2.00 pm

Hon Dr STEVE THOMAS: On clause 6, we were dealing with the material interest component, and I want to finish off by asking about the hands-off material interests. I suspect that as we proceed over the next 10 years or so we will see a number of companies investing in carbon credits et cetera, and some of them already exist; it is a little

ad hoc and it is not necessarily where we want to see it. However, I am assuming that if a person's superannuation fund is potentially investing in carbon credits, that would not necessarily exclude them from serving in the role as commissioner as long as it was in, say, a superannuation fund. But if a person invested directly themselves and held a share portfolio and were a company in those circumstances, would they then be precluded from becoming a commissioner?

Hon ALANNAH MacTIERNAN: I thank the member for the question; it is an interesting one. I understand that quite a large body of case law is focused on what is a material personal interest. It may well be, in my understanding with ministerial superannuation interests, that those things that are part of a whole investment package tend not to fall within that. The guiding principle is: is the interest of such a nature that there would be an apprehension that it would bias the decision? I guess it would depend to some extent on the precise circumstances. However, looking at the practice, it has tended to be that a large, public superannuation fund over which one has no direction is not normally considered a material personal interest.

Hon Dr STEVE THOMAS: I am happy with that. I think it is a little bit “suck it and see” to find out what it will be precisely in the future, but I think that is comfortable, and as long as everybody is watching, I think that is fine. Therefore, I am convinced on that.

Clause put and passed.

Clause 7: Section 10 amended —

Hon Dr STEVE THOMAS: Clause 7 will put into the act the definition of “relevant right”. The explanatory memorandum states —

... the Commission has the function of applying for, holding, exploiting, or disposing of any rights, or other legal and commercial benefits arising from the storage of carbon ...

I am interested to know about a forest there is a change of carbon. Initially, the expectation is that a person will be storing a certain amount of carbon. If drought comes and the forest dies off, will this provision impact on the government's measurement of the carbon that it has? Is there an obligation, therefore, to maintain the carbon levels? I will give the minister this example: it is estimated that the carbon claim will be X, then a drought or a pine beetle infestation or whatever comes along. Will there be an obligation on the state or does the state simply say, “We were only going to claim the carbon X years down the track; therefore, we lose that carbon credit,” but there is no obligation to maintain a certain carbon harvest?

Hon ALANNAH MacTIERNAN: The general principle is if a person has been receiving carbon credits and there is a fire, drought or some other catastrophe, they are required to replant. Therefore, if a fire came through and wiped out 10 000 trees, under the arrangement the person would be required to replant 10 000 trees. Obviously, a hell of a lot of carbon has been lost in the fire, and trees in their early period sequester the most carbon. That is the basic way that that will be handled. All these mechanisms are regulated under the approved methodologies by the Clean Energy Regulator. The Clean Energy Regulator has to define the system, and under the rules that relate to silviculture, there is basically an obligation to replant.

Hon Dr STEVE THOMAS: That leads on to a couple of quick questions about that obligation. This is probably an issue of contract law—I am thinking of leasehold land—whereby the Forest Products Commission has formed a lease with a landholder. If there is a catastrophic drought, for example, there is an indication that the person would be obligated to replant, but is there capacity for the Forest Products Commission to walk away from the lease? Is there any way, as a part of the legislation or as a part of the government's intent, that the FPC can ultimately walk away? I suspect that there might be but that it would be an issue of contract law, whereby the landowner's compensatory mechanism would be an issue of contract law. I just want to check if that is the case.

Hon ALANNAH MacTIERNAN: There is a general requirement for the party, in this case the FPC, to replant trees that have attracted a carbon credit, but they are not necessarily required to plant them in the same place. If, for example, there is a sharefarming arrangement and the sharefarmer determines after the event that it is no longer materially advantageous to them, they can terminate the contract. But the obligation with respect to the carbon credits would still remain, presumably with the FPC.

Hon Dr STEVE THOMAS: That is interesting. It is almost, I guess, confirming that the issue of the requirement to replant might be as much an issue of contract law, depending on the contract between the lessee and the FPC.

Hon Alannah MacTiernan: There is an obligation on the holder of the right. It is not the intention that the sharefarmers—the obligation to the clean energy system will be with the FPC.

Hon Dr STEVE THOMAS: Are there examples where the FPC has effectively walked away from contracts because of—not catastrophic circumstances but other circumstances? Are there any cases the minister is aware of that she can tell the chamber about? I understand that it does happen.

Hon ALANNAH MacTIERNAN: Under the existing sharefarming agreements, in the event of a disturbing situation, where it is deemed that the arrangements of the contract are no longer commercially viable, the FPC has the right to terminate the contract. That is governed by the provisions of contract law, and that is the nature of the contracts. We would see here that there is a bit more protection for the landowners. If there is an obligation to replant, that would change the balance of whether it was commercially viable or not. If the FPC had an obligation from the Clean Energy Regulator to replant, that would change the balance of where that commerciality or non-commerciality fell.

Hon Dr STEVE THOMAS: I think we are nearly there. Is the minister aware of any examples when there has effectively been—I will not call it a break in the contract, because that would suggest something illegal—a termination under contract because those circumstances have existed?

Hon ALANNAH MacTIERNAN: There are some negotiations that are taking place in relation to those matters. We cannot talk at this point about those specific ones, but it has happened in the past.

Hon Dr STEVE THOMAS: Finally, on clause 7, when we look at the relevant right that is being inserted, which empowers the performing of a function—it is a little hard to know exactly where this might apply. In relation to the right to a carbon credit, for example, is it likely that the landowner, who would be the lessee and not the lessor, could potentially lease the land and the payment would be a component of the carbon credits instead of a dollar value from the FPC?

Hon ALANNAH MacTIERNAN: The rights can be split. For example, we might have a mining company that wants trees planted. They could do a deal with the FPC whereby trees are planted on their land, they keep the carbon credits for their offsets and the FPC gets the trees. The rights can be split up.

Hon Dr STEVE THOMAS: This might be more a statement than a question, but I think the ultimate value of this might be in rolling in environmental offsets as part of this process, if we were to do so. There would be an enormous opportunity then to pick up carbon credits, tree planting and environmental approvals of mining ventures that we might look at. Here is my gratuitous advice to the government. I have always said that there is a greater opportunity to do environmental offsets better, instead of going like for like—effectively five acres of tree lopping suddenly resulting in 10 acres of an isolated block somewhere that fills up with cotton bush and groundsel and everything else. There is an opportunity, as part of this piece of legislation, to roll in some interesting parts of the offsets program. Obviously, the minister does not need to respond, but I make the observation that I think there is an enormous opportunity to make the entire system significantly better.

Hon ALANNAH MacTIERNAN: I understand that. I would just make the point that if we are looking at something other than carbon credits, if we are looking at other environmental offsets for clearing, a pine plantation will not necessarily deliver it. The sort of carbon farming on farming properties that we are talking about—the strategic alleyway planting that we have been promoting, through which we are actually delivering biodiversity corridors—has the ability to offset some of the broader elements. But, in terms of a pine plantation, I think we have to be realistic and say that the only environmental offset that would be available is the carbon.

Clause put and passed.

Clause 8: Section 13A inserted —

Hon Dr STEVE THOMAS: I think we can probably bypass clauses 9 and 10 because they are more functional and administrative. They can be rolled together.

Clause 8, which is the last clause I have a significant interest in, effectively validates previous acquisition of lands by the Forest Products Commission in a position where it was not meant to be acquiring land. Clause 8 is a pretty simple clause. It will simply insert new section 13A, which states that any freehold land acquired by the commission before the amendment comes into operation is taken to be, and to always have been, as validly acquired. That suggests that it was not validly acquired at the time. I know this matter came up in the second reading debate. Can the minister indicate how the government became aware that that land purchasing was occurring and how much was purchased, the areas it was purchased in and the time frame in which it was purchased?

Hon ALANNAH MacTIERNAN: Since the inception of the FPC, and up until 2020, it had been acquiring land, and everyone knew it was acquiring land. It was acquiring land after having confirmation of State Solicitor's Office advice that the provisions of the legislation were such that it would cover that activity. In February 2020, the State Solicitor started to question the advice it had previously given. There can be no blame here on the FPC. Obviously, some different lawyers turned their mind to the issue. At that point the FPC stopped acquiring land. It has not clearly been established; this is all just legal advice. A body of legal advice existed for 20 years and then a body of legal advice has existed for the past 18 months or so. The logic was that at a time when we are introducing carbon rights, this is clearly an issue that we want to clarify. It was always the intention of the legislature that the FPC have that right. This proposed new section is to put beyond doubt the fact that it has that right in light of revised opinion of the State Solicitor's Office.

Hon Dr STEVE THOMAS: I think the minister said it, but I did not quite pick it up. When was the last purchase of land by the FPC? Was it a big area of land, or is the minister not sure?

Hon ALANNAH MacTIERNAN: The last sale was in 2019 and was around 1 200 hectares all up.

Hon Dr STEVE THOMAS: Is it possible to get a breakdown of the landholdings of the FPC as such? Is that document easily available to be tabled?

Hon ALANNAH MacTIERNAN: We do have a document here. I want to get clarification from the minister that he is okay with our producing this. I do not see that anything in that would be commercial-in-confidence. I will get clarification from the minister and if we can, we will provide the member with that document.

Hon Dr STEVE THOMAS: I thank the minister. I appreciate her support in that. I do not know whether the Minister for Forestry is one of the ministers who is away at the moment. He is probably in the middle of question time in the place that shall not be named. If his office could sort that out, that would be good. It would be nice if we could have it today, if possible, but I will leave it in the minister's capable hands to work that out. Even if it is tabled after we come back from the recess, it would be useful information. That would be a list of land that I assume is currently vested in the FPC rather than being in the conservation estate as such?

Hon ALANNAH MacTIERNAN: This is a list of properties for which the freehold title rests with the FPC.

Hon Dr STEVE THOMAS: I thank the minister; that is exactly what I was asking for.

Is the minister aware of other departments or statutory bodies that operate in a similar way? I am looking for examples of government trading enterprises or statutory bodies that purchase land. Obviously Water Corporation purchases land; it has the capacity to do so under its own act. Is this an issue that other departments are likely to strike with their ownership of land, or is this specifically a one-off to the FPC given its empowering act, the Forest Products Act?

Hon ALANNAH MacTIERNAN: We are not aware of any other enterprises. I must admit, when looking at the powers in the act, I find the advice rather puzzling because it refers to maintaining and establishing or maintaining plantations of forest products. Why that does not cover the purchase of land to do that seems a little puzzling. However, there has been no suggestion that this has affected any other agency.

Clause put and passed.

Clauses 9 and 10 put and passed.

Title put and passed.

Report

Bill reported, without amendment, and the report adopted.

Third Reading

HON ALANNAH MacTIERNAN (South West — Minister for Regional Development) [2.28 pm]: I move —
That the bill be now read a third time.

HON DR STEVE THOMAS (South West — Leader of the Opposition) [2.29 pm]: I will not be very long; I just want to make a few comments before we finish on the Forest Products Amendment Bill 2021. I thank the minister and the advisers for their assistance in getting through Committee of the Whole this afternoon. It is not a long bill, but it is very important, so I appreciate that. Obviously, the opposition supports the expansion of the softwood plantation sector. The pine sector is critical; it maintains a number of jobs in the south west and significant companies rely on it, such as Wespine Industries and Laminex. These are all very important things and it is important that the government reinvests in the softwood plantation. As the government has removed the Gngangara pine plantation, for a number of reasons including the watertable, there must be an expansion elsewhere. The Shires of Boyup Brook and West Arthur are a little concerned they might be overrun by it, but there is an opportunity to expand well into those areas. I am a firm believer in the free market and I think that landowners—read farmers—will enjoy taking up some of those opportunities to their benefit. That is a very good outcome.

I will finish with this: there is not a lot wrong with the bill before the house today and it has been well explained. It is not a panacea for the issues around the timber industry in Western Australia. We have heard members talk today about how much support they have for the destruction of the native hardwood timber industry. This is not an alternative; this is something that had to happen, but it happens completely separate from all the components of the destruction of the native hardwood timber industry. The opposition welcomes this bill and the government's intent in this area, but we remain firmly opposed to and abhorred by the government's destruction of a timber industry that could have been made sustainable in the long term but was sold out for political reasons.

HON ALANNAH MacTIERNAN (South West — Minister for Regional Development) [2.31 pm] — in reply: I thank members for supporting the Forest Products Amendment Bill 2021. I note that since we have come into

government, the Forest Products Commission has absolutely ramped up the planting of softwood timbers. As Hon Jackie Jarvis has pointed out in this place several times, for some inexplicable reason, that was wound back by the previous government. One of the difficulties we are talking about is the 25 years it takes to produce structural timber. Having an eight-year period when very little happened has created a gap in the market; nevertheless, we are determined to do what we can to patch it up and make sure that future governments will not find themselves in that position. It is also really important to acknowledge that the potential for carbon sequestration and obtaining carbon credits enhances the commercial attractiveness of this tree planting, and will assist not just the FPC, but also other parties that want to deal with the FPC.

The native timber industry is a very different thing. I put it to the member that this is a case of “They Were All Out of Step But Jim”; this policy is overwhelmingly supported by the community. As Hon Jackie Jarvis said this morning, when we look at the recent election results, we see that it seems that the majority of people support it. That is not to trivialise the degree of difficulty that this has created for people in the hardwood timber industry, and we will certainly be doing all we can to ensure a just transition for the parties that have been affected by the decision. Long may you, member, very clearly ignore what is really an underlying value set of not just the metropolitan community, but also the south west of Western Australia.

Question put and passed.

Bill read a third time and passed.