



PARLIAMENT OF WESTERN AUSTRALIA

**JOINT STANDING COMMITTEE
ON
DELEGATED LEGISLATION**

THIRTY-FIFTH REPORT:

Forest Management Amendment Regulations (No.2) 1998

Presented by the Hon Robert Laurence Wiese MLA (Chairman)

Report 35

Joint Standing Committee on Delegated Legislation

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Terms of Reference

It is the function of the Committee to consider and report on any regulation that:

- (a) appears not to be within power or not to be in accord with the objects of the Act pursuant to which it purports to be made;*
- (b) unduly trespasses on established rights, freedoms or liberties;*
- (c) contains matter which ought properly to be dealt with by an Act of Parliament; or*
- (d) unduly makes rights dependent upon administrative, and not judicial, decisions.*

If the Committee is of the opinion that any other matter relating to any regulation should be brought to the notice of the House, it may report that opinion and matter to the House.

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Report of the Joint Standing Committee on Delegated Legislation

in relation to

Forest Management Amendment Regulations (No.2) 1998

1 Introduction

- 1.1 In the exercise of its scrutiny function, the Committee reviewed the *Forest Management Amendment Regulations (No.2) 1998* ('Amendment Regulations') made under the *Conservation and Land Management Act 1984* ('CALM Act'). A copy of the Regulations are attached and marked 'Annexure A'. Under the Committee's Joint Rules, if the Committee is of the opinion that a matter relating to any regulation or local law should be brought to the notice of the House, it may report that opinion and matter to the House. It is also the function of the Committee to consider and report on any regulation or local law that appears not to be within power.
- 1.2 The broad purpose of the Amendment Regulations are to amend Part 18 of the *Forest Management Regulations 1993* to insert a regulation (regulation 137A) which makes it an offence to erect or place a structure on or in land in a State forest or timber reserve without the authority in writing of the Executive Director or a forest officer. A penalty of \$2000 is prescribed for this offence. The definition of structure is defined broadly in regulation 137A(1) and will be discussed in greater detail below.
- 1.3 The reasons given by CALM¹ for the Amendment Regulations include the risks to trees of the forest when structures are attached to trees, the compaction of the soil associated with the structures putting pressure on the roots, camps increasing the fire risks over summer, autumn and spring, the general inadequacy of hygiene and waste disposal systems at bush camps posing a danger to occupants and the forest ecosystem, the inherent danger in climbing unauthorised structures and the risk of lives from falling tree limbs in canopied areas (in particular, reference is made to CALM's duty of care to minimise such risks) and finally, where structures have been established as part of a protest activity they can form a barrier to persons going about their lawful business and can inhibit legitimate access to the forest.

¹ Department of Conservation and Land Management, *Consultation with Interest Groups*, 14 July 1998 ('Consultation Paper').

- 1.4 The Shires of Dardanup and Manjimup and the Police Department support the introduction of regulation 137A².
- 1.5 To assist in its investigation of the Regulations, the Committee invited three officers from CALM - Mr Don Keene, Director of Forests; Mr David Hampton, Senior Policy Officer, Parks, Recreation, Planning and Tourism Division and Mr Hamish Crawford, Scientific Advisor, Forests - to appear before it on 15 October 1998. The Committee also placed an advertisement in the *West Australian* on Saturday 26 September 1998 inviting written submissions regarding the Regulations. The Committee received 92 written submissions. A list of those who made submissions has been attached and marked 'Annexure B'. Because of obvious time constraints, the Committee was not able to take verbal evidence from all those people who may have wished to come before the Committee.
- 1.6 The Regulations were published in the *Government Gazette* on 18 August 1998 and tabled in the Parliament on 8 September 1998. The Committee notes that the disallowance motion is listed on the Motion Paper under Orders of the Day. Under standing order 153(c)³, Tuesday 27 October 1998 is the last day for debate of the disallowance motion. If not debated then, the question shall be put and determined without further adjournment on the next sitting day, Wednesday 28 October 1998.

2 The Committee's Concerns

- 2.1 The Committee's primary concerns centre on two main issues:
- (1) the unduly broad scope of regulation 137A; and
 - (2) the necessity for regulation 137A in light of existing legislation which appears to meet its stated objectives.

This report will deal with each of these issues in turn.

² CALM's Consultation Paper.

³ *The Standing Orders of the Legislative Council*

2.2 The definition of ‘structure’ under regulation 137A includes:

- ‘(a) a building;
- (b) a post, pile, stake, pipe, chain, wire or other thing that is fixed to the land or to anything fixed to the land;
- (c) materials, objects and fixtures in the area of the structure; and
- (d) a pontoon or other floating structure.’

2.3 Applying this definition, the Amendment Regulations prevent the erection of a tent without a permit within a State forest when for example, walking the Bibbulmun Track which traverses large parts of State forests.

2.4 This was cited as a primary cause for concern in many of the written submissions received by the Committee in opposition to the Amendment Regulations. For example, the Western Australian Forest Alliance stated:

‘The new regulation has much wider implications than intended. It applies in State forest, which CALM says is “multiple use forest”. Users of State forest like bushwalkers, recreational fishers and Aboriginal people may unknowingly break the law because legitimate activities such as putting up a tent or a cooking tripod could contravene the regulation. Making legitimate activities illegal brings the whole legal system into disrepute. It also proves the regulation is ill-conceived and has a purpose different from what it is purported to be.’⁴

2.5 In evidence before the Committee on 15 October 1998, Mr Keene asserted that the Amendment Regulations were not intended to apply to recreational users:

‘I notice the memorandum refers to camps; the regulations are not designed to prevent people camping overnight or for short spaces of time if they are recreating in the forest or are in recognised camping areas. The camps we refer to in the Giblett area were there for several months. There were semi-permanent structures being erected, broken-down cars and all those other things that people tend to do after being there for a while.’⁵

⁴ Western Australian Forest Alliance written submission dated 5 October 1998, page 2.

⁵ Uncorrected Transcript of Evidence, page 2.

‘We are not targeting people who wish to have short term overnight camps in the bush. For example, we encourage people to camp on an overnight basis in the huts which are located on the Bibbulmun track.’⁶

- 2.6 Mr Keene was asked by the Chairman of the Committee why the definition of structure was drawn so broadly and responded:

‘There are a number of things that people put in the forest to obstruct people going about their lawful duties. The photographs will show some of those things. We are particularly concerned with people putting bridge spikes into logs which, unless a metal detector is used, are not picked up in mills sometimes until the logs go through the saw. Obviously, it damages the saw but, even more importantly, it can create a hazard to sawmill operators.’⁷

- 2.7 In response to the concerns raised by members of the Committee as to the broad definition of ‘structure’, Mr Hampton stated:

‘I do not believe that the department would ever seek to impose this penalty or have this penalty taken to court for the offence of a tent peg being driven into the ground. I would not regard a tent peg as being fixed to the land. By its nature, it is designed to go in and come out again. At the most extreme, a draconian department could use this power, but it would be extremely unlikely to do so.’⁸

I do not believe the department would ever take action under these recently introduced regulations for tent pegs being driven into the ground. They are to apply to a more permanent fixture to the land or a tree.’⁹

- 2.8 In the Committee’s view, the Amendment Regulations have been drafted in a manner that is unnecessarily broad resulting in potentially severe restrictions on recreational users of the State forests who are not involved in the conduct referred to by Mr Keene in his evidence to the Committee (see paragraph 2.5 above). Based on the evidence of the CALM officers it appears that the Department’s intention is to selectively enforce regulation 137A. The preferable course would have been for the Department to draft a regulation specifically directed at the conduct which the Department wishes to deal with rather than drafting a wide reaching regulation which will be selectively applied.

⁶ Uncorrected Transcript of Evidence, page 11.

⁷ Uncorrected Transcript of Evidence, page 3.

⁸ Transcript of Evidence, page 10.

⁹ Transcript of Evidence, page 11.

2.9 CALM asserts that the Amendment Regulations ‘are intended to fill an enforcement gap which exists for the forest estate’¹⁰. This sentiment was reflected in some of the submissions in support of the Amendment Regulations including Bunnings Forest Products’ submission which stated:

‘Bunnings Forest products believes that the proposed changes are highly desirable to ensure the continuation of sustainable forest management in the South West in a way that protects the safety of all involved and reduces the threat of employment dislocation from unlawful disruption of harvesting activities.

It appears that remedies to such unlawful disruption require strengthening.’¹¹

Most of the written submissions in support of the Amendment Regulations focused on their ability to discourage protest camps which were viewed as a threat to the safety and ability to operate and work of forestry workers, contractors, saw mill companies and communities generally.

2.10 In his evidence to the Committee, Mr Keene suggested that the Amendment Regulations had been drafted to deal, ‘with health and safety issues, duty of care, common law requirements and the need to ensure that people are able to carry out their legal obligations in a safe and efficient manner.’¹²

2.11 After reviewing the relevant legislation, the Committee is not satisfied that the Amendment Regulations are the best way to meet the objectives spelled out by CALM in its Consultation Paper (see paragraph 1.3 above) and in the evidence of its Mr Keene before the Committee on 15 October 1998 (see paragraph 2.10 above).

2.12 After declaring that there was an enforcement gap that needed to be filled by the Amendment Regulations, Dr Syd Shea in the Consultation Paper states that ‘[p]enalties for unauthorised structures already apply for national parks and nature reserves by way of the *National Parks Authority Regulations 1977* and the *Wildlife Conservation Regulations 1970* respectively’¹³. Mr Keene in his evidence to the Committee pointed out that there is no similar regulation in the *Forest Management Regulations*¹⁴.

¹⁰ CALM’s Consultation Paper.

¹¹ Bunnings Forest Products’ written submission dated 13 October 1998, page 1.

¹² Uncorrected Transcript of Evidence, page 1.

¹³ CALM’s Consultation Paper.

¹⁴ Uncorrected Transcript of Evidence, page 1.

2.13 Regulation 52 of the *National Parks Authority Regulations 1977* provides:

‘A person shall not without permission erect on a reserve any building or structure whatsoever, or any fence, pole, mast or notice.

Penalty:\$1 000.’

The word ‘reserve’ is defined to include any land that is declared to be a National Park. This penalty clause describes a wide range of erections that are prohibited including a ‘structure’ which has not been specifically defined elsewhere in the *National Parks Authority Regulations*. The definition of ‘structure’ in regulation 137A of the *Forest Management Regulations* (see paragraph 2.2 above) includes a number of objects which go beyond the type of erections prohibited in regulation 52 of the *National Parks Authority Regulations*. For example, a stake, pipe, chain and wire are all considered to be prohibited structures. In effect, the Amendment Regulations afford more stringent restrictions in State forests and timber reserves than the *National Parks Authority Regulations* afford in National Parks.

2.14 For present purposes, regulation 44 of the *Wildlife Conservation Regulations 1970* provides:

‘(2) A person shall not --

(a) camp on any nature reserve or wildlife sanctuary; or

(b) build, erect or transport any tent, shed, outhouse, cottage, building, or any structure whatsoever in any nature reserve or wildlife sanctuary,

except by permission in writing of the Executive Director and in a part set aside for such purpose pursuant to the Conservation and Land Management Act 1984 and regulations.

Penalty:\$400.

(3) A person shall not deposit, leave or abandon any vehicle, vessel or conveyance of any kind or any part thereof in any nature reserve or wildlife sanctuary.

Penalty:\$400.

(4) If the owner or the person responsible for depositing, leaving, building, transporting or abandoning any offal, refuse, rubbish, litter, tent, shed, cottage, building, structure, vehicle, vessel or conveyance or any part or parts thereof can be determined, the Executive Director may, orally or by written notice served on the owner or other person, direct the owner or other person or both to remove the offending thing or things from the nature reserve or wildlife sanctuary by any specified means within any

reasonable specified period and refusal or failure to comply with such written directions shall be an offence.

Penalty:\$400.'

Although like the *National Parks Authority Regulations*, the word 'structure' is not separately defined in the *Wildlife Conservation Regulations*, this regulation is more expansive in its listing the objects which are prohibited. However, it should be noted that the *Wildlife Conservation Regulations* were created to protect nature reserves and wildlife sanctuaries, generally regarded as being of greater environmental significance, and therefore requiring greater legislative protection, than State forests and timber reserves.

2.15 In further support of its claim that the Amendment Regulations fills an enforcement gap, CALM referred to section 108A of the CALM Act pointing out that this section permits the Department to remove and dispose of unauthorised buildings on land to which the Act applies (including the forest estate) but that there are no penalties available. This section provides:

'(1)If any building, hut, tramline, fence, dam, weir, or standing crop is found within land to which this Part applies, and --

(a) the owner thereof does not on demand produce any lease, licence, permit, or authority therefor; or

(b) after reasonable inquiries the owner is not known or cannot be found,

then on the hearing of the complaint of an authorized officer any court of petty sessions may fix a time within which the building, hut, tramline, fence, dam, weir, or crop shall be removed.

(2) If such removal is not effected within the time so fixed, the building, hut, tramline, fence, dam, weir, or crop becomes the property of the Crown and may be disposed of as the Executive Director may direct.

(3) In any case where after reasonable inquiries an owner is not known or has not been found, it is sufficient service of the notice of removal if a copy is posted on some conspicuous part of the land on which the building, hut, tramline, fence, dam, weir, or crop is found.'

The term 'authorized officer' is defined in section 102 (1) of the CALM Act to mean 'a wildlife officer, forest officer, ranger, conservation and land management officer and a person appointed to an honorary office under section 46'. Under section 102 (1), 'land to which this Part applies' means 'land to which this Act applies', which, according to section 5, is a reference to land, or land and waters, comprising, among other things, State forests and timber reserves.

2.16 The Committee notes that section 108A gives CALM the power to remove certain objects from 'land to which this Act applies', that is, State forests and timber reserves. However, the type of objects that can be removed are limited to any 'building, hut, tramline, fence, dam, weir, or crop'. Therefore, the Amendment Regulations are not merely a matter of providing penalties for unauthorised buildings under the Act, as the type of objects that can be removed by CALM under the Act are more limited than the objects listed under the broad definition of 'structure' in the regulation 137A.

2.17 CALM's Consultation Paper stated that '[w]here structures have been established as part of a protest activity they can form a barrier to persons going about their lawful business and can inhibit legitimate access to the forest'. A number of written submissions received by the Committee referred to section 82B of the *Police Act 1892* as providing sufficient power for the Police to ensure that people can go about their lawful business in State forests and timber reserves. This section provides:

'(1) A person shall not, without lawful authority, remain on any premises after being warned to leave those premises -

- (a) in the case of premises occupied by the Crown or a public authority, by a person in charge of the premises or by a member of the Police Force;
- (b) in the case of premises other than premises occupied by the Crown or a public authority, by the owner or a person in charge or occupation of the said premises or by a member of the Police Force.

Penalty: \$500 or 6 months' imprisonment.

(2) A person who for the purposes of and in accordance with subsection (1) warns some other person to leave premises may, at the same time as he gives the warning, indicate to such person that part of the premises which the person concerned is required to leave and in any such circumstances the part of the premises so indicated shall constitute the premises for the purposes of that subsection.

(3) A person shall not, without lawful authority, prevent, obstruct, or hinder any lawful activity which is being, or is about to be, carried on upon any premises.
Penalty: \$500 or 6 months' imprisonment.

(4) In this section --

"premises" includes any land, building, structure, or any part thereof;

"public authority" means an authority or body (not being an incorporated company or association) constituted by or under a law of the State or the Commonwealth.'

After section 82B of the *Police Act* was read out to him, Mr Keene said ‘I was not aware of that section of the Police Act’¹⁵. Mr Hampton said ‘[w]ith regard to the Police Act powers, the department would seek to resolve some issues itself, not necessarily to bring in the police, although in many cases that has been required’¹⁶. Under section 82B (1), the police and CALM officers are empowered to ask protesters to leave State forests and timber reserves. Further, the terms of subsection (3) would specifically prohibit protesters from preventing those engaged in lawful forest activities from carrying out their business. A penalty of \$500 or 6 months’ imprisonment is, in the view of the Committee, a significant deterrent to such activities. On this basis, the Committee does not believe that the Amendment Regulations offer CALM any useful additional enforcement powers to prevent persons from interfering with lawful forest activities.

2.18 Although Mr Keene told the Committee that to his knowledge, CALM has not carried out and are not carrying out any detailed scientific studies on the effects of the protesters’ bush camps on the forest¹⁷, the Committee notes CALM’s assertion in its Consultation Paper that bush camps can:

- (a) cause damage to growing trees;
- (b) lead to compaction of the soil putting the roots of the trees and possibly the tree itself at risk;
- (c) increase the risk of fires; and
- (d) pose a danger to camp occupants and the forest ecosystem as a result of inadequate hygiene and waste disposal systems.

However, in the Committee’s view, State forests and timber reserves are already substantially protected from these circumstances under existing sections in the CALM Act and *Forest Management Regulations*.

2.19 In regard to establishing bush camps, the Committee believes there are a number of provisions in existing legislation which enable CALM to control their creation. For example, section 106(c) of the CALM Act provides:

‘A person shall not, except under a permit, licence, or lease under this Act, or a grant, lease, licence, or other authority from the Crown -

- (c) **occupy**, clear, or break up for cultivation, or any other purpose, land to which this Part applies.’ (emphasis added)

¹⁵ Uncorrected Transcript of Evidence, page 5.

¹⁶ Transcript of Evidence, page 6.

¹⁷ Uncorrected Transcript of Evidence, page 7.

Section 103(4) makes it clear that this section applies to ‘land to which this Part applies’ including State forests and timber reserves (see sections 102(1)(a) and 5(a) and (b) of the CALM Act). A person who breaches section 106(3) is potentially liable to a penalty of \$4 000 and imprisonment for 6 months. In the Committee’s view, this section provides a significant deterrent to the establishment of unauthorised bush camps, particularly those that occupy one location for months at a time.

- 2.20 Mr Hampton gave evidence to the Committee as to why he believes section 106(c) of the CALM Act is deficient:

‘There are powers in the CALM Act with respect to the unlawful occupation of land. The wording of section 106 is slightly obscure. It states that a person shall not, except upon a permit, licence or lease, pasture any cattle on land to which this Part applies - that is obviously not applicable. Hunt, shoot or destroy or set snares. That is not necessarily applicable. Under subsection (c) someone cannot occupy, clear or break up for cultivation or any other purpose land to which that Part applies. The department could use subsection (c). There is some uncertainty. It reflects an historical bias in the legislation with regard to unlawful cultivation of the forest estate. It was a better move to clarify an offence to unlawfully cause a structure to be placed in the forest by way of the regulations.’¹⁸

The Committee believes that if there is some uncertainty surrounding the effect of section 106(c) of the CALM Act, it would have been preferable to clarify the effect of the section rather than creating a new regulation.

- 2.21 The Committee also refers to CALM’s power under section 62 (1)(d) of the CALM Act to classify the whole or part of land vested in it to be a temporary control area. Under section 62(2) an area can be classified as a temporary control area ‘for the purposes of public safety or the protection of flora or fauna, or both flora and fauna’. This classification shall not last longer than 90 days but can be made more than once for the same purpose and for the same area. This section provides CALM with the opportunity to prevent camps which pose a threat to public safety or to flora and fauna by declaring a temporary control area.
- 2.22 Finally, under regulation 128D of the *Forest Management Regulations*, the Executive Director of the Department may erect notices marking certain areas where persons may camp. Subregulation (3) provides:

‘A person shall not without the authority of the Executive Director camp in a State forest or a timber reserve except in a camping area marked as a camping area.’

¹⁸ Transcript of Evidence, page 6.

The penalty prescribed for breaching this regulation is \$200. The terms of regulation 128D effectively prohibit camping anywhere in State forests or timber reserves other than designated camping areas. One of the written submissions to the Committee noted that this year CALM officers have been issuing \$50 infringement notices to protesters for camping in breach of regulation 128D¹⁹. Any unauthorised bush camps that are not set up in designated camping areas should be caught by this regulation. On this basis, the Committee is not satisfied that regulation 137A offers CALM a new enforcement option. If CALM's objective is to provide a larger penalty (ie \$2000 instead of \$200) then it can amend the regulations to provide for larger penalties.

2.23 In regard to this camping regulation, Mr Hampton noted:

‘Powers in the forest management regulations deal with unauthorised camping. The penalties are quite low. In most cases we do not want to take legal action because it is an expensive option. However, we seek to point out to people that what they are doing is illegal.’²⁰

One of the written submissions to the Committee alleged that some protesters had received many of these camping infringement notices under regulation 128D, and that one woman has received 12²¹. The reality is that if the protesters refuse to pay them and CALM wants to enforce the notices, it will have no choice but to enforce them in Court. The Committee does not see how this situation is altered by regulation 137A. If a protester refuses to pay a fine imposed under the new regulation, CALM will have to resort to legal action to have the penalty enforced.

2.24 In the Committee's view, regulation 137A does not advance CALM's powers to prevent unauthorised bush camps in a way that is significantly different to sections 106(3) and 62(1)(d) of the CALM Act, and regulation 128D of the *Forest Management Regulations*.

2.25 In regard to protecting trees from the damage described in paragraphs 2.18 (a) and (b) above, the Committee refers to section 103(1) of the CALM Act which provides:

‘A person shall not, without lawful authority, **fell, cut, injure, destroy**, obtain, or remove any forest produce in, on, or from any land to which this section applies.’ (emphasis added)

¹⁹ Friends of Giblett written submission dated 11 October 1998, page 2.

²⁰ Transcript of Evidence, page 11.

²¹ Friends of Giblett written submission dated 11 October 1998, page 2.

The term 'forest produce' is defined broadly in section 3 of the CALM Act to include:

'trees, parts of trees, timber, sawdust, chips, firewood, charcoal, gum, kino, resin, sap, honey, seed, bees-wax, rocks, stone and soil but, subject to the foregoing, does not in Division 1 of Part VIII include minerals within the meaning of the Mining Act 1978'.

Section 103(4) makes it clear that this section applies to 'land to which this Part applies' including State forests and timber reserves (see sections 102(1)(a) and 5(a) and (b) of the CALM Act). A person who breaches section 103(1) is potentially liable for a penalty of \$10 000 and imprisonment for one year. It is the Committee's view that this section already provides CALM with substantial powers to protect trees from damage by persons establishing unauthorised bush camps.

- 2.26 In regard to the potential fire risk posed by unauthorised bush camps, reference should be made to sections 104 and 105 of the CALM Act which prohibit the lighting of fires in the following terms:

'104. (1) A person shall not without lawful authority --

- (a) light or kindle, or assist another person in lighting or kindling, any fire within the boundaries or within 20 metres of any boundary of land to which this Part applies; or
- (b) leave, without taking due precaution against its spreading or causing injury, a fire lighted or kindled as mentioned in paragraph (a),

if in either case any forest produce is burnt or injured, or is in danger of being burnt or injured.

Penalty: \$10 000 and imprisonment for one year.

(2) A reward not exceeding \$250 may be paid by the Executive Director to any person, not being a person employed in the Department, who shall give such information as may lead to a conviction under this section.

105. (1) A person shall not set fire in the open air to any tree, wood, bush or grass on any land that is contiguous to a State forest or timber reserve, without giving notice of his intention to a forest officer, so as to allow a forest officer to be present at the firing.

Penalty: \$4 000 and imprisonment for 6 months.

(2) Subsection (1) does not apply to a fire for the purpose of camping or cooking that is allowed by section 25 (1) (a) of the *Bush Fires Act 1954*.'

Section 25 (1) (a) of the *Bush Fires Act 1954* permits fires in the following limited circumstances:

‘(1) Subject to subsection (1aa) and sections 25A and 25B, during the restricted burning times or during the prohibited burning times a person shall not light or use a fire in the open air for a purpose not specifically mentioned or provided for in this Act, save and except in accordance with and subject to the following provisions --

(a) a fire for the purpose of camping or cooking shall not be lit within 3 metres of a log or stump and unless and until a space of ground around the site of the fire having a radius of at least 3 metres from the site as the centre, is cleared of all bush and other inflammable material, and when for any day the fire danger forecast by the Bureau of Meteorology in Perth in respect of the locality wherein it is desired to light or use a fire for such purpose is "extreme" or "very high", such fire shall not be lit on that day unless and until the approval in writing of the local government for that locality has been obtained so to do’.

The Committee also referred to regulation 90 in the *Forest Management Regulations* which gives CALM officers the power direct persons to put out fires in the following terms:

‘(1) A forest officer or a conservation and land management officer may direct any person to extinguish a campfire, barbecue or portable stove in a State forest or timber reserve if the forest officer or conservation and land management officer considers that the campfire, barbecue or stove constitutes a fire risk to any part of that land.

(2) A person shall comply with a direction given to that person under subregulation (1).

Penalty: \$2 000.’

The Committee also heard evidence from Mr Hampton in regard to the Department’s powers to control fires:

‘Mr HAMPTON: There are quite substantial powers, including imprisonment, in the CALM Act to deal with unauthorised fires. The department is trying to prevent problems from occurring. Although we have power to prosecute if a fire occurs, as has been stated there are behaviours associated with permanent or semi-permanent camps which put the forest and forest users at risk, and fires are one of those risks. We are not opposed to camping in the state forest at authorised camping spots. We will normally put in a concrete fire ring to minimise the danger of fire escaping. We are also not opposed to backpack

camping in the forest, by its nature almost overnight, not of a semi-permanent or permanent nature, where the risks of fire escaping are multiplied, particularly in extreme conditions.

The CHAIRMAN: But would you not already have under the Conservation and Land Management Act and under the Bush Fires Act powers to prevent somebody from lighting a fire in the bush, or anywhere for that matter?

Mr HAMPTON: We have powers to take action against a person who has lit a fire. We also have power for an officer to require a fire to be put out. I believe it is well known to the committee that CALM staff cannot be everywhere on our substantial estate. Although our enforcement officers and other officers will seek to ask people to put fires out when danger is present in camping or picnic spots, we are dealing with groups who are there constantly. Unless we seek to place an officer near the camp or structure, it is difficult for us each day to ask them to put out a fire.’²²

It is the Committee’s opinion that the CALM Act and the *Forest Management Regulations* provide State forests and timber reserves with substantial protection from the fire risks posed by bush camps. The Amendment Regulations do not expand CALM’s powers in this regard and if any additional protection is deemed necessary, it is preferable that regulations tailored specifically for this purpose be created.

- 2.27 The other primary purpose behind the Amendment Regulations is the minimisation of CALM’s potential liability. In its Consultation Paper, CALM stated:

‘Unauthorised structures represent an inherent danger to the people who choose to climb on them and in extreme cases to live in or on them, eg. falling tree limbs in canopied areas. The Department of CALM has a duty of care to minimise such risks. The Department’s exposure to such a liability also needs to be minimised.’

It is the Committee’s view that CALM’s ‘duty of care’ is wrongly stated from High Court authority which clearly provides that individuals entering areas of natural beauty in unadulterated conditions assume liability for what are commonly recognised dangers (such as the risk of falling branches). Only sites of hidden danger (such as unstable cliff faces, areas subject to subsidence and the like) pose special requirements of ‘duty of care’²³. It is the Committee’s view that it is not appropriate to seek a blanket prohibition on activity on the basis that liability might arise to CALM.

²² Transcript of Evidence, page 4.

²³ see *Romeo v Conservation Commission of the Northern Territory* (1998) 151 ALR 263

2.28 For the reasons outlined above, the Committee is of the view that the Amendment Regulations are:

- (1) unduly broad in their scope particularly as a result of the wide definition of ‘structure’; and
- (2) largely unnecessary in light of existing legislation which appears to meet its stated objectives.

2.29 On this basis, the Committee recognises a case for disallowance of the *Forest Management Amendment Regulations (No. 2) 1998* in their current form. However, the Committee does recognise that CALM may have some problems with the practicalities of enforcing the existing provisions of the CALM Act and the *Forest Management Regulations* regarding illegal camping, damage to flora and the risk of fires. The Committee recommends that the *Forest Management Regulations* be redrafted to specifically deal with CALM’s concerns.

.....
Hon R L Wiese MLA
Chairman
October 21, 1998

18 August 1998]

GOVERNMENT GAZETTE, WA

4447

HNNEXURE A

CONSERVATION & LAND MANAGEMENT

CM301*

Conservation and Land Management Act 1984

**Forest Management Amendment
Regulations (No. 2) 1998**

Made by the Governor in Executive Council.

1. Citation

These regulations may be cited as the *Forest Management Amendment Regulations (No. 2) 1998*.

2. Regulation 137A inserted

After regulation 137 of the *Forest Management Regulations 1993** the following regulation is inserted —

“

137A. Unauthorized structures in a State forest or timber reserve

(1) In this regulation “**structure**” includes —

- (a) a building;
- (b) a post, pile, stake, pipe, chain, wire or other thing that is fixed to the land or to anything fixed to the land;
- (c) materials, objects and fixtures in the area of the structure; and
- (d) a pontoon or other floating structure.

(2) Any person who erects or places a structure on or in land in a State forest or timber reserve without the authority in writing of the Executive Director or a forest officer commits an offence.

Penalty: \$2 000.

”

[* *Published in Gazette 9 February 1993, pp. 1119-201. For amendments to 29 May 1998 see 1997 Index to Legislation of Western Australia, Table 4, p. 41, and Gazette 21 April 1998.*]

By Command of the Governor,

M. C. WAUCHOPE, Clerk of the Executive Council.

Annexure B

List of Submissions

No	Date Rec'd	Name	Address
1.	12.10.98	Brian Young	PO Box 430 Manjimup WA 6258
2.	12.10.98	Peter Robertson	WA Forest Alliance 79 Stirling Street PERTH WA 6000
3.	12.10.98	Dr Jean-Paul Orsini	15 Hooley Street Swanbourne WA 6010
4.	12.10.98	Chris Lee	285 Carters Road Margaret River WA 6285
5.	12.10.98	Dr David Katz Kirsten Hocking	5 Janet Street West Perth WA 6005
6.	12.10.98	Leith Maddock	63 Irwin St East Fremantle WA 6158
7.	12.10.98	James Gill	Denmark Environment Centre Inc PO Box 142 Denmark WA 6333
8.	13.10.98	Geoff Fernie	PO Box 93 Walpole WA 6398
9.	13.10.98	Keith Kessell Corporate Affairs Manager	Bunnings Forest Products PO Box 370 Welshpool DC WA 6986
10.	13.10.98	Philip Achurch Executive Director	WA Small Business & Enterprise Assoc Inc PO Box 2 West Perth WA 6872
11.	13.10.98	John Vukovich	21 Whitley Place Bunbury WA 6230
12.	13.10.98	L. Kippert	C/- Post Office Northcliffe WA 6262
13.	13.10.98	PK Sargison Chairperson	Northcliffe For Future Generations C/- Post Office Northcliffe WA 6262
14.	13.10.98	Miriam Rowland	8 Seymour Ave Floreat WA 6014

15.	13.10.98	Gina Litton	18 Airlie Street Claremont WA 6010
16.	13.10.98	Claire Dawson	3 Ozone Parade Cotteloe WA 6011
17.	13.10.98	Wanda Morrison	30 Ord Street Nedlands WA 6009
18.	13.10.98	Gina Litton	18 Airlie Street Claremont WA 6010
19.	13.10.98	Lisa Robertson	84 Zamia Street Northcliffe WA 6262
20.	13.10.98	Bernie Knipping	83 Zamia Street Northcliffe WA 6262
21.	13.10.98	Asa Lamb	Box 160 C/- Post Office Northcliffe WA 6262
22.	13.10.98	Mason Abbott	C/- Post Office Northcliffe WA 6262
23.	13.10.98	K.E. Haslam	PO Box 162 Northcliffe WA 6262
24.	13.10.98	Katarina Papas	7 Silver Street Fremantle WA 6160
25.	13.10.98	Dane Samuel	66 Doonan Road Nedlands WA 6009
26.	13.10.98	Emma-Lee Luther	17 Rose Street South Fremantle WA 6162
27.	13.10.98	Adam Kovacevic	44 Moorlen Drive Yangebup WA 6164
28.	13.10.98	Phoebe Coyne	11 Loch Street Claremont WA 6010
29.	13.10.98	Giles Pickard	Claremont, Perth
30.	13.10.98	Brendan Worth	25 Clifton Street Scarborough WA 6019
31.	13.10.98	J.H. Lamb	Riverway Road Northcliffe WA 6262
32.	13.10.98	M.J. Davis	3 Little Howard Street Fremantle WA 6160

33.	13.10.98	M Sheeham	Lot 38 North Street Northcliffe WA 6262
34.	13.10.98	Phil Graham	Lot 11143 Holiwell Northcliffe WA 6262
35.	13.10.98	Les & Kay Mirco	9018 Richardson Road Northcliffe WA 6262
36.	13.10.98	Garry McGeachin	Lot 8593 Wheatley Coast Road Northcliffe WA 6262
37.	13.10.98	Kevin Brand	Lukes Road Augusta WA
38.	13.10.98	Phillip Hewitt	C/- Post Office Northcliffe WA 6262
39.	13.10.98	Tracey Needs	PO Box 126 Northcliffe WA 6262
40.	13.10.98	Anne Pettit	104 Canterbury Tce East Victoria Park WA 6101
41.	14.10.98	John Sherwood	South West Environment Centre Lotteries House 101 Victoria Street Bunbury WA 6230
42.	14.10.98	Terence Harney	10 Westlake Road Morley WA 6062
43.	13.10.98	Tim Daly / Nick Oaks	The Australian Workers' Union PO Box 8122 Perth Business Centre Perth WA 68849
44.	14.10.98	Bev De Rusett	De Rusett Road Northcliffe WA 6262
45.	13.10.98	Rod Whittle	Leeuwin Conservation Group PO Box 259 Margaret River WA 6285
46.	13.10.98	Philip Achurch	The WA Small Business and Enterprise Association Inc. PO Box 2 West Perth WA 6872
47.	13.10.98	Brian Young	PO Box 430 Manjimup WA 6258

48.	13.10.98	Peter Murphy	Preston Environment Group RMB 652 Donnybrook WA 6239
49.	13.10.98	Mathew Smith	8 Picton Crescent Bunbury WA 6230
50.	13.10.98	Carlene de Munck	U6/1 Princep Street Bunbury WA 6231
51.	13.10.98	Bob Pearce	FIFWA 55 Salvado Road Subiaco WA 6008
52.	13.10.98	Sallie Coulson	Rmb 652 Lowden WA 6240
53.	13.10.98	J.L Frith	Bridgetown Greenbushes Friends of the Forest PO Box 461 Bridgetown WA 6255
54.	13.10.98	Steven Smith	Twin Cully Farm Northcliffe WA 6262
55.	13.10.98	Joanne Janido	PO Box 160 Northcliffe WA 6262
56.	13.10.98	Graham Bishop	64 Minnipup Road Bunbury WA 6230
57.	13.10.98	David Morgan	Lane Forest Northcliffe WA 6262
58.	13.10.98	Damon Ormsby	L75 Wheatley Coast Road Northcliffe WA 6262
59.	13.10.98	Margo Beilby	50 Valley View Road Roleystone WA 6111
60.	13.10.98	L. Olney	39 Duke Street East Fremantle WA 6058
61.	13.10.98	Trudy Paap	61 Armstrong Road Wilson WA 6107
62.	13.10.98	J. Davis	3 Little Howard Street Fremantle WA 6060
63.	13.10.98	Rhys Jones	PO Box 556 Margaret River WA 6285
64.	13.10.98	Michael Beilby	50 Valley View Road Roleystone WA 6111

65.	13.10.98	Melainie McKay	C/- Warren Way Caravan Park Manjimup WA6258
66.	13.10.98	Jeffrey Stone	C/- Warren Way Caravan Park Manjimup WA 6258
67.	13.10.98	Douglas Charles Alderson	C/- Warren Way Caravan Park Manjimup WA 6258
68.	13.10.98	Angela Hayward	290 Railway Parade Leederville WA 6007
69.	13.10.98	Tim Daly / Nick Oaks	The Australian Workers' Union PO Box 8122 Perth Business Centre Perth WA 68849
70.	13.10.98	Dr Martin Rayner	House 2020 Arboretum Ave Manjimup WA 6258
71.	13.10.98	Lisa Sevelj	21 Gunbower Road Mt Pleasant WA 6153
72.	13.10.98	Ghislaine Sweet	7 Rose street South Fremantle WA6162
73.	13.10.98	Khaled Garman	38 Griver Street Cottesloe WA 6011
74.	13.10.98	Simon Walsh	Pioneer Road Northcliffe WA 6262
75.	13.10.98	Luke Keppel	17 Rose Street South Fremantle WA 6162
76.	13.10.98	Noriko Fuse	258 Carter Road Margaret River WA 6285
77.	13.10.98	B Caporn	17 Roase Street South Fremantle WA 6162
78.	13.10.98	Jason Renshaw	Unit 52 Student Village Murdoch University
79.	13.10.98	Jules Coyne	11 Loch Street Claremont WA 6010
80.	13.10.98	J.H. Lamb	Riverway Road Northcliffe WA 6262
81.	13.10.98	M.J. Davis	3 Little Howard Street Fremantle WA 6160

82.	13.10.98	Ben Coyne	11 Loch Street Claremont WA 6010
83.	13.10.98	Carmel Coyne	11 Loch Street Claremont WA 6010
84.	13.10.98	Jeff Nixon	Lane Poole Road Northcliffe WA 6262
85.	13.10.98	Justin Veiljing	88 Thomas Street Nedlands WA 6010
86.	13.10.98	Kale Martin	60 Palmerston Street Mosman Park WA 6011
87.	13.10.98	Trevor Shipping	84 Zamia Street Northcliffe WA 6262
88.	13.10.98	Trish Townsend	Forest Protection Society PO Box 4002 Wembley WA 6014
89.	13.10.98	Beth Schultz	79 Stirling Street Perth WA 6000
90.	13.10.98	Donna Selby	South Coast Environment Group PO Box 24 Walpole WA 6333
91.	13.10.98	Rufus Cole	
92.	16.10.98	Alan Callahan	Safety, Search & Rescue Training Australia PO Box 49 Bullcreek WA 6149