

ENVIRONMENTAL PROTECTION AMENDMENT BILL 2020

Committee

The Deputy Chair of Committees (Hon Matthew Swinbourn) in the chair; Hon Stephen Dawson (Minister for Environment) in charge of the bill.

Clause 1: Short title —

Hon TJORN SIBMA: With indulgence, I express a measure of relief that we have finally got to this point. It felt like the starter's gun was fired in June for what was then the 10 000-metre sprint, and it seems like it turned into a marathon at around the 2 500-metre mark. Hopefully, we get to finish the race, albeit not tonight. That is just to indicate a pressing need for me to familiarise myself again with the supplementary notice paper and the issues that were raised in the second reading debate. I compliment the minister on the comprehensive speech that he has just given in reply to those issues that were raised.

In the course of this discussion on clause 1, I want to pick up on a couple of issues before we progress through the rest of the bill. This is not to unduly hold things up, but I will identify some issues now so that we can either elicit a response or agree to extract further detail at a more appropriate time. I do, however, want to clarify and understand a little better the current status of the review of the environmental offsets framework that the minister has referred to previously. That was an important piece of work. I understand that no public result of that review has been forthcoming and I connote from the minister's remarks that he has been provided a copy of the review and certain recommendations to adopt. Would the minister be able to advise the chamber of the status of that review and his contemplation of it?

Hon STEPHEN DAWSON: We are working on the implementation plan at the moment. The intention is to consult first of all with the industry advisory group. Following that, I will be in a position to more broadly consult, but it is a body of work that is currently under consideration.

Hon TJORN SIBMA: Would the minister be in a position to table a copy of the document that he has already, or to release, say, a draft iteration of that review and its recommendations for broader public appreciation and understanding? It would be very helpful from my position.

Hon STEPHEN DAWSON: I would prefer not to at this stage. I am very happy to arrange a briefing on the issue for the member and, indeed, any other honourable member. He can be shown the documents. But the way we have proceeded on all our policies thus far has been to consult with the advisory groups and to do it internally before we go more broadly, and, quite frankly, scare the horses in some cases. I am happy to make that offer to the member and indeed others at this stage. I will make something more publicly available at a later stage, but not just yet until I have considered any advice that comes back from the advisory group on that issue.

Hon TJORN SIBMA: Thank you, minister, for that clarification. I will most certainly take up that offer of a briefing, and I am sure that Hon Robin Chapple is also agreeing. For the purpose of the discussion of this bill and understanding how this issue relates to the broader reform agenda that the government is prosecuting through this bill and the regulations that may follow, would it be fair for me to assume that on the basis of the answer that the minister just provided here, the government is not going to publish any implementation strategy or adopt any strategy, more to the point, of implementing recommendations within that review either before the end of this calendar year or before the election?

Hon STEPHEN DAWSON: No decision has been made on that issue at this stage. It is always my preference to clear the decks and to have as much of this information out before we get towards the silly season. I think some very good work has gone into this and other plans or frameworks the department is working on at the moment. I would like to get it out as soon as possible. We will see what feedback we get from the advisory group before we commit to putting it out more broadly.

Hon TJORN SIBMA: I am probably chancing it here, but the minister said—I do not impute any specific malevolent or worrisome aspect to it—that he did not want to “scare the horses”. Would there be anything within the body of this review or within the government's contemplation that might cause anxiety among operators in this space; and, if so, please disclose it?

Hon STEPHEN DAWSON: I do not think there is. That was a figure of speech. Certainly, in the environment portfolio there are a multitude of views and there are multiple sides of the table not just two sides of the table. We will endeavour to bring everybody along with us. I do not believe there is anything in it that will scare the horses, but I want to make sure that we have consulted properly with the advisory group that has been established to look into this matter for us.

Hon ROBIN CHAPPLE: I want to try to get something clear in my own mind specifically around the existing act. Nothing in the amendment bill affects the word “environment” as described in the Environmental Protection Act. I will go to sections in the act that refer to “environment”. The first states —

environment, subject to subsection (2), means living things, their physical, biological and social surroundings, and interactions between all of these;

Section 3(2) states —

For the purposes of the definition of *environment* in subsection (1), the social surroundings of man are his aesthetic, cultural, economic and social surroundings to the extent that those surroundings directly affect or are affected by his physical or biological surroundings.

I assume that the minister and his department are very closely following what is happening with the Joint Standing Committee on Northern Australia in relation to the destruction of Juukan Gorge. There is a flaw within the act at the moment. Prior to making a decision about heritage-related matters, the Environmental Protection Authority was supposed to be in receipt of information about the heritage values from the companies involved. That was so that the EPA, in making its decision, could take into account heritage values. The EPA, in assessing Brockman Syncline 4 on 24 March 2006, received correspondence from the proponent, Rio Tinto in this case, that there were 27 Aboriginal heritage sites but, unfortunately, was told that none were of any significance. On 18 December 2013, the sites were referred to the Department of Indigenous Affairs. The department determined that two of the referred sites due to be destroyed were significant and that the other 124 sites were not considered significant.

Having said that, the problem I have with the operation of the current act—this has been highlighted in the federal inquiry—is that although heritage has to be considered under section 3(2), which refers to the environment, the broader definition of “environment” should be taken into account. What I want to find out from the minister during discussion on clause 1 is this: will the current situation remain the same; that is, cultural value will not be assessed by the EPA when indeed it is prescribed in proposed section 3(2) that it should be? In the past, heritage values were considered by the EPA. This has dropped off and I am wondering whether we can get some determination about whether the direction being followed by the Joint Standing Committee on Northern Australia will be taken on board in the future, especially if we are to rely on a delegation from the federal government in terms of the Environment Protection and Biodiversity Conservation Act back to the state. That was a bit of a longwinded question; I hope the minister can provide me with an answer.

Hon STEPHEN DAWSON: That was quite a longwinded question, and it had multiple limbs. I am not in a position to comment on any decision that was made in 2006. That is certainly outside my area of responsibility.

Hon Robin Chapple: I am talking about the policy.

Hon STEPHEN DAWSON: Sure. I just make that point from the outset.

The EPA does take into account Aboriginal heritage matters. However, as I indicated in my response to the second reading, I also acknowledge that the Aboriginal Heritage Act as it currently exists is outdated and does not meet the needs of Aboriginal people or industry. It does not meet the needs of anyone, to be frank. It certainly does not do enough to protect our unique heritage in Western Australia. I say also that what happened at Juukan Gorge was terrible. I place that on the record.

The EPA does take into consideration Aboriginal heritage matters. However, I make the point that it can make decisions only on the information that is provided to it. It can interrogate that information. However, if the information that is given to it is missing detail or data, it is very hard for it to know what it does not know, essentially.

I do not know what the federal joint standing committee might come up with or where it might land. However, I will indicate, as I have previously on the draft bill, that, from my perspective, the Aboriginal Cultural Heritage Bill that was released in September by the Minister for Aboriginal Affairs is a better place to deal with Aboriginal heritage matters. In saying that, the EPA will continue to care for Aboriginal heritage issues, but that bill is a better place to deal with those matters. From time to time, the EPA gets involved in conversations between proponents and Aboriginal groups, and it has been known to bring to the table people with different views to try to sort out some of these issues as part of the decision-making. That happens now. I do not know what will be in the joint standing committee’s report. The bill before us will not change anything in that regard. There will be a lot of opportunity in the Aboriginal Cultural Heritage Bill, which will hopefully be before us in the not-too-distant future.

Hon ROBIN CHAPPLE: I thank the minister. To tease that out a bit further, should a decision about the reference to social surroundings in proposed section 3(2) be considered by the EPA before it makes any decision about the values? That is the problem. If the decision about the values is established after the EPA has made a decision about the definition of “environment”, how will we address that? That is the process at the moment. Section 18 decisions, or whatever might eventuate under the new act, will occur after the decision of the EPA. To go back to Juukan—I know it is a while ago—the values were established after the EPA had made its decision.

Extract from *Hansard*

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Hon Tjorn Sibma; Hon Stephen Dawson; Hon Robin Chapple

Progress reported and leave granted to sit again, pursuant to standing orders.