

ENVIRONMENTAL PROTECTION (COST RECOVERY) REGULATIONS 2021 — FEES

Statement

HON TJORN SIBMA (North Metropolitan) [5.04 pm]: It is not ordinarily my custom to take the opportunity to make a member's statement, but I thought I would put something on the record in a timely way. This contribution might not be interesting to most members present—it is a bit of a niche interest for me, unfortunately—but it casts light on two areas of government under-performance. The first is the sheer lack of accountability. The second is getting through the backlog in the approvals system.

I want to reflect on a particular measure. When this chamber passed the Environmental Protection Amendment Bill 2020 some two years ago, it made a range of consequential regulatory changes. That was a very sensible and well-crafted bill. We debated that bill sensibly, adopted sensible amendments moved by the opposition—not all of them—and we ended up with a bill that was pretty good and struck the right balance between environmental stewardship and the facilitation of economic endeavour. One of the regulations that emerged from the passage of that bill was the introduction of the so-called cost recovery pricing model for assessments made under part IV of the Environmental Protection Act. I will quote from a government document produced by the Department of Water and Environmental Regulation. It is a discussion paper that was issued late last year. It encapsulates the purpose of charging cost recovery fees. I will quote from paragraph 1.3 of the document —

The primary objective of introducing the pricing model for Part IV of the EP Act is to improve the capacity and agility of the department to manage an increasing environmental assessment workload without compromising the environmental values of the state. All funds received are to be held by the department and must be applied towards assessment and overseeing the implementation of proposals assessed under Part IV (this includes compliance activities). To build baseline capacity for delivering EIA, funds generated will secure positions for assessment officers. In periods of high demand, funding can be used to engage additional staff. There is also the potential for the department to use qualified consultants to assist in delivering key elements of the environmental assessment.

There was an acceptance by industry that these regulations would come into effect. There was obviously a great degree of interest from a number of industry stakeholders to ensure that the pricing model that was attached to effectively operationalise these regulations was fair, reasonable and transparent. I think it is reasonable to say that the industry was prepared to wear it. However, industry was disgruntled about the way in which the pricing model has been developed and had asked at the point of putting in their submissions that the pricing model be reviewed by an independent arbiter some 12 or 18 months after its implementation. There was also concern that the government, or the department, more to the point, was in a rush to establish these regulations and to start charging these fees at the soonest possible moment, before a number of the companies were prepared for it and before they believed the department was able to make the regulations operational. Nevertheless, the regulations came into effect in January this year.

From time to time, I have asked regular questions about the number and volume of invoices, and the value obtained and the like. On 12 October, I asked for an update on the total value of fees invoiced by the department and the total value of receipts received by the department. That is a pretty basic question. I was surprised by the answer I got; in fact, I got more information than I anticipated. I was told that for the financial year until 30 September, the total value of fees invoiced and received was nil. The explanation was as follows —

There has been no invoicing under part IV cost recovery in recent months because in response to the unprecedented number of environmental assessments needed to facilitate the state's booming economic growth and the staffing challenges faced across the public and private sectors, the Department of Water and Environmental Regulation has prioritised delivery of environmental assessments over invoicing for cost recovery. No revenue will be forgone by the government as a result of these delays. As a result of a recent recruitment process, the department expects to resume its cost recovery invoicing soon.

So much was embedded in that answer that it begged follow-ups, just for clarification because I did not have a particular view on this. The key point must be understood that the department was in a rush to develop a pricing model for a regulation that most industry stakeholders thought they were not prepared to implement or accept; nevertheless, they proceeded with it, but after—I did not know at this time—three or four months of it being implemented, it was rescinded. It was put on temporary halt because of the unprecedented volume of assessments—the demand had gone up—which was the very thing that the cost-recovery method was supposed to deal with. Effectively, the tool that the government was in a rush to give itself to solve the problem was withdrawn because there was a problem with demand. It is a very quizzical and curious response.

That being said, I asked a range of follow-up questions and I think from that point on, the department clammed up. But as we well know, it is not the department that takes responsibility for answers, it is the minister. I have here about six or seven follow-up questions that came from the original, of which some have been answered and some have not. I will fast-forward a bit without going into minute detail over every question and answer; I will reflect

on the two in recent days. On 25 October, I asked who made the decision. I had been told previously that it was an operational decision. According to the uncorrected *Hansard*, my question was this —

- (1) When was this operational decision made in the Department of Water and Environmental Regulation and by whom?
- (2) When was the minister advised?

Opposition members know that they are about to be snowed over when the government runs all these serial questions together and gives them a blanket statement. The answer was —

- (1)–(2) The department is responsible for making operational decisions —

I add as commentary that no-one doubts that. The answer continues —

The department temporarily suspended invoicing in quarter 4 of the 2021–22 financial year. As per responses to earlier questions, normal invoicing processes will resume shortly ...

There is no question about that. All I asked is when the decision was made, by whom and was the minister advised. I do not know whether he was advised because he does not confirm that in the answers on which he signs off. I thought I would try again unsuccessfully. According to the uncorrected *Hansard*, today I asked —

I refer to the “operational decision” to temporarily halt issuing invoices to proponents in order to conduct part IV Environmental Protection Act environmental assessments.

- (1) On what specific date within “quarter 4 of the 2020–21 financial year” was the decision made?
- (2) Did the director general approve this decision; and, if not, which senior executive within the department is responsible?
- (3) Is there any internal correspondence to substantiate the above?

I did not even ask whether the minister had been informed because I have formed the impression that the minister takes no interest. This is the pivotal bit in implementing regulation, which came from government policy and legislation, and the minister does not appear to have any real interest in how it is going. But more to the point, I was referred to yesterday’s answer so it refused to say on what date the decision was made. I put this up not so much as idle speculation, but a reasonable guess. I know of proponents that have withdrawn applications from the process because they have had their breath taken away by the size of the proposed bill. Was it potentially the fact that the department determined that it did not want to encounter any more instances of this so it decided to temporarily halt the scheme? I do not know; that is a working hypothesis, but it is the best hypothesis I can possibly form. If this was actually the best decision to make, and it may well have been—I am open-minded—no-one seems willing to put their name to it. No-one seems willing to say, “Yes, that was me. I made that decision. I stand by it and I advised the minister on that particular date.” The government is refusing to answer basic questions—this is not even a politically loaded question. We actually want the government to succeed in the basic administration of government processes. We do not want it to fall over, because that hurts everybody. When basic questions are asked about how this is going and why decisions are made, there is absolutely no answer. This is completely unacceptable. From this chamber to the next, Minister Whitby needs to lift his game and hold his department to a higher standard.