ENVIRONMENTAL PROTECTION AMENDMENT BILL 2002

Second Reading

Resumed from 27 June.

MR B.K. MASTERS (Vasse) [11.38 am]: In the lead-up to the last election, I was amazed at the Labor Party's effectiveness in opposition, which kept the previous Government honest on a number of issues, including mortgage brokers, belltowers and the like. However, in government, either through incompetence or a lack of courtesy, it cannot get its act together. I was under the impression that the debate on the Environmental Protection Amendment Bill 2002 would not occur until after the next two-week recess because we would be debating the Railway (Jandakot to Perth) Bill 2002. Nonetheless, the powers that be have decided that the Environmental Protection Amendment Bill is to be debated, so I will make a presentation on behalf of the Liberal Opposition.

This is an important piece of legislation. I am pleased to say that, for the most part, the Liberal Party will support the Bill. It is designed to correct a number of deficiencies that appear to have arisen over the past 10 or so years. It is also designed to effectively bring into force controls on the clearing of native vegetation within Western Australia.

The Bill contains nine subheadings and, in the time allotted to me, I propose to go through those subheadings, say where I think the Government has done a good job in putting the right words into the Bill, and highlight the Opposition's concerns and where some amendments may be desirable. I point out to the minister, who I am pleased is listening, that we have suggested a number of amendments, with one more yet to come - I am waiting on Hon Peter Foss to provide me with some detail about that amendment.

The first section relates to the assessment and implementation of proposals. In the past, there have been some difficulties in the way in which the Environmental Protection Authority has been unable to look at what are called in this Bill strategic proposals; for example, the highest level planning strategy of a region or a large area, as opposed to a planning decision or recommendation that might relate to a specific parcel of land. The Bill refers to the creation of a strategic proposal. Once the EPA has assessed that strategic proposal - and generally all those projects that hang off it and are subservient to it and will in theory continue once the broad planning exercise has been conducted and approved - there will be no need for those subsidiary projects to go back to the EPA for assessment, because that work will largely have been done at the strategic proposal assessment level. That is a worthwhile initiative and obviously receives no objection from this side of the House.

Another amendment to the Environmental Protection Act under this section of assessment and implementation of proposals will, for the first time, require that there be no on-the-ground action by a proponent until the assessment has been fully completed. I understand that in the past there was some legal uncertainty about whether that could be applied. The Bill seeks to remove that uncertainty and make absolutely sure, if the assessment has not been completed, that there is to be no action on the ground that could harm vegetation or do anything that might prejudice the environment.

The next section of this Bill allows the Environmental Protection Authority to refuse to accept a referral of a proposal for assessment. I am pleased to see that that refusal to accept a referral is appealable. Therefore, if a developer or someone else refers a project or a proposal to the EPA and the EPA chooses not to assess it, its decision may be appealed, providing a second opportunity for the merits of the proposal to be considered. That is a worthwhile provision.

The next section of the Bill refers to environmental regulation, and is designed to fix many of the holes that became apparent in the Environmental Protection Act over the past 12 to 15 years. For example, there is a stronger definition of "pollution" and the introduction of the definition of "environmental harm". It is important to note that environmental harm per se is not an offence, but there are also definitions for "material environmental harm" and "serious environmental harm", and both are offences under the Act. A lot of community concern has been expressed about the need for the Act to be stronger, and I recognise that. The Liberal Opposition will support the bulk of the provisions within this Bill, but I have a concern which I will express in the following way: if bureaucrats - public servants - are given too great a set of powers without the public having suitable protection against the abuse of those powers - protection by way of either appeal rights, access to the courts or to the minister, or some other appropriate procedure - we run the risk that protecting the environment in Western Australia will become so time consuming, expensive and complicated that many very worthwhile development proposals may be lost in the confusion, complexity and cost of obtaining environmental approval.

I do not know whether my concern will be shared by the Government, but during my 52 years on this planet I have actually been an employee of the precursor of the Department of Environmental Protection - the

Department of Conservation and Environment; in the early 1980s I spent about 15 months working as an evaluation officer and a policy person within that department. I left that job and went to a mining company, where I then had to interact on a regular basis with the DEP and the EPA. It was there that I found it was possible for a DEP employee - or an employee in the public service or the general employment industry, private as well as public - with ill-intent to do serious harm to a project, harm that was not justified and was costly and time consuming to rectify. I point out to the minister and the Government that the definition of "environmental harm" is all-encompassing; it is very strong. We do not seek to amend the definition, because we think it is appropriate, but it is important for the minister to appreciate that once this new definition becomes law, she will need to make sure that she maintains a watching brief over the way in which this new legislation is implemented by her public servants.

One of the Opposition's concerns about environmental harm is that, although defences to the claim that environmental harm is an offence against the Bill or the Act are prescribed in the Bill, there are concerns that people in the wider community will take court action in order to say to the judiciary that environmental harm of a material or serious nature has occurred or is about to occur and they therefore seek an injunction of a few days or a few weeks so that they can refer the matter back to the EPA or the DEP. Our concern is that this avenue may be used frequently by people who may be opposed to development - not necessarily just the green movement; they could be neighbours or people who own land neighbouring development sites and so on. We may end up having not just an assessment of the project by the EPA, with the assistance of the DEP, but the community coming back time and again - at significant material cost to the proponent as a result of significant time delays - seeking injunctions and other court actions before the matter is resolved. In those situations the proponent may well lose heart, move away and abandon the project.

I am awaiting an amendment from Hon Peter Foss. Rather than giving defences to various actions that might otherwise constitute environmental harm, which is covered in proposed section 74A of this Bill, the amendment would suggest that this legislation grant exceptions, so that environmental harm, under exceptional circumstances, could be considered to be a genuine exception that could not be taken to court because no defence was required. If a defence were required, the veracity of that defence could obviously be argued in a court of law. However, if an exception were given, based on what I have been told, that exception would provide a stronger support to the proponent, and would make it more difficult for someone to take a vexatious action to court or to use the law for purposes other than for which it was intended in order to delay and frustrate a project. As soon as I have the appropriate wording for that amendment, I will bring it forward.

The Opposition has a concern with what have been called codes of practice that can be produced by the chief executive officer. I refer members to proposed section 122A, headed "Codes of practice", on page 66 of the Bill. Codes of practice are eminently desirable, and I have no problem with that concept. The difficulty is that the Bill does not place any requirements on the CEO to make sure that a code of practice is produced only after significant community or other appropriate consultation with affected parties. Proposed section 122A(2) states -

> The CEO must not issue a code of practice unless the code of practice was developed by the CEO in consultation with -

It lists four groups that need to be consulted. My concern is that the CEO has a wide range of options in whom to consult from those groups, individuals or organisations. However, at the same time, this provision also gives the CEO the power to reduce the level of consultation to the merest suggestion of consultation. It could mean that a small advertisement could be placed in a newspaper calling for input. If no-one saw that advertisement, hey presto, three months later a code of practice could be created without any meaningful consultation with affected interest groups. The Opposition is concerned about that aspect of the Bill, and I have an amendment that I will later discuss.

This part of the Bill also includes a significant increase in the fines associated with pollution and other matters that impact on the environment. The Liberal Opposition supports those fines. It is interesting that when I stood in this place two or three months ago to suggest that there was a great need to increase the level of fines provided under the Gene Technology Bill 2001, in some cases from $6 600 to $66 000 and in others from $13 200 to $132 000, I was told that it could not be done because the fines needed to be consistent with federal legislation. Fines detailed in the Environmental Protection Amendment Bill range from up to $500 000, five years imprisonment, or both, to up to $1 million in circumstances that involve corporations. The level of those fines is appropriate; I do not have a problem with them. However, it is sad that an earlier Bill contained a ridiculously low level of fines, even though this Government clearly is putting its money where its mouth is and is trying to beef up legislation. The Government is saying that if someone does the wrong thing, he will be hit with everything that the Government has, including large fines and, potentially, jail terms.

Part 4 of the Bill is headed "Licensing and works approvals". I do not have any comments to make on this part, except that the CEO will be able to revoke or suspend works approvals or licences. I am pleased to note that

those actions are open to appeal under section 102 of the Environmental Protection Act, which will be amended by this Bill. Again, it is important that appeal rights exist against many of the decisions that the CEO can make. The same comments apply to the ability of the CEO to cause a closure notice to be given to a premises. Closure notices are also subject to appeal, which is a fair and appropriate action.

Part 5 of the Bill, headed "Financial assurances", gives the CEO the ability to require a proponent, who may be an individual, corporation, company or anyone, to provide a financial assurance as a condition of an environmental approval. Again, the Opposition does not have any concerns with that proposal in principle. It is important that the CEO - meaning the department - has access to that provision in order to undertake its full and proper role to protect our environment. However, I note that proposed section 86F, headed "Lapsing of financial assurance", suggests - I would be grateful for a response at a later stage - that a financial assurance cannot be withdrawn, cancelled, suspended or in any way modified except by lapsing. I am concerned about that point because CEOs, government departments and their employees are often busy people. The intent of proposed section 86F is that when the CEO is satisfied that the reason for applying for or requesting that a financial assurance be given no longer exists, the CEO can rule that the financial assurance has lapsed. By itself, that provision does not go far enough. The Opposition will propose an amendment to this proposed section to insert a new subsection along the lines that any responsible person - meaning a person who has granted a financial assurance to the CEO - could request the CEO to assess whether that financial assurance is still required. The worst-case scenario is that the Department of Environmental Protection could have the legal documentation associated with the financial assurance under its control and could choose not to make sure that the financial assurance had lapsed at the appropriate time. In that situation, the proponent would still be legally obliged to meet the requirements of that assurance. The amendment would allow the person responsible for the financial assurance to go to the CEO, wave a flag, and ask for an urgent assessment of whether the financial assurance was still required, and, if it was not, that it be deemed to have lapsed.

I have no real comment to offer on part 6 of the Bill, the fifth heading, entitled "Environmental Protection Policies". Part 7 is headed "Appeals". I understand that this section is designed to give more formal legal status to the position of the appeals convenor. That is desirable, if that is the way in which appeals will be conducted. I have been told by industry people that the appeal process under the Environmental Protection Act works very well. They appreciate that the high-level public servants who act as appeals convenors are experienced, rational, level-headed and sensible people, and they have been able to develop a rapport with the appeals convenor which has invariably led to a mutually acceptable outcome. However, the Minister for Planning and Infrastructure believes that this system, under her portfolio, is totally unacceptable. She does not want to be involved with the appeal process in any way, and hence legislation is currently before the upper House to cancel ministerial appeals under the Minister for Planning and Infrastructure's portfolio. The legislation now before this House, which the Opposition supports, is directly contrary to what the Minister for Planning and Infrastructure wants in her own portfolio. The Opposition is happy to support this section, but I draw attention to the inconsistency between the position on appeals of the Minister for the Environment and Heritage and that of the Minister for Planning and Infrastructure.

Part 8, which is the seventh part of the Bill, is headed "Bilateral Agreements". Some sections of industry have communicated to me the desirability of bilateral agreements with the federal Government to allow mutually agreed processes to occur under the Commonwealth Government's Environment Protection and Biodiversity Conservation Act 1999. The Opposition is happy to support this part.

Part 9, headed "Clearing permits", is the area in which I will be offering opposition views that are in fairly strong disagreement with those of the Government. This part effectively seeks to bring in a ban on the clearing of native vegetation in Western Australia. The minister may say that this is not the case - that clearing may still be allowed for housing, agriculture and roads - and that is quite correct. However, very high hurdles appear to have been placed in the path of farmers wishing to clear native vegetation to enhance their economic viability. I fear that this part will be used to bring in a de facto clearing ban in Western Australia. In certain parts of the State, that would not be a bad thing; indeed, it would be desirable. Sections of the Western Australian landmass - for example, most areas of the wheatbelt and large areas of the Swan coastal plain - have been cleared well beyond what anyone would consider to be a fair and reasonable degree. Based upon the figures I have been given, the Swan coastal plain is perhaps 80 per cent cleared of native vegetation. In the Vasse electorate, more that 96 per cent of native vegetation has been cleared, with the result that less than two or three per cent of the Abba Plains ironstone formation vegetation remains. Clearly, the Government has realised that it needs to take urgent action to protect that vegetation association, and I commend it for this. On satellite photographs of parts of the wheatbelt, it is almost impossible to see areas of native vegetation on a scale of tens of kilometres. In a satellite image covering an area 60 kilometres square, it is sometimes not possible to see any areas of native vegetation much bigger than the head of a match or a drawing pin. In those areas, this de facto clearing ban is highly desirable, but some areas of this State, particularly in the Midlands area around Eneabba, Badgingarra and Jurien Bay, and on the south coast east of Albany, a very high proportion of native vegetation has been retained.

Permission for a farmer, or any other landowner, to clear more of such land should not be unfairly withheld. I will talk about the issue of compensation shortly. The process for obtaining permits for clearing may be simpler and clearer than the previously existing process under the Soil and Land Conservation Act 1945. This legislation fills in a few holes. For example, as was explained by Hon Kim Chance in the other place, if the Soil and Land Conservation Commissioner does not reply to an application for permission to clear within 90 days, there is apparently no law to stop a person going out and clearing the land. Anomalies similar to that need to be corrected, and the Opposition will support most of those aspects of this legislation.

However, some concerns exist. For example, proposed section 51B(1) reads -

> (1) The Minister may, by notice, declare -
>
> (a) an area of the State specified in the notice; or
>
> (b) an area of the State of a class specified in the notice,
>
> to be an environmentally sensitive area for the purposes of this Division.

In assessing the validity or desirability of clearing native vegetation, that declaration, in turn, will mean certain things to certain people. I am concerned that the declaration by the minister does not require any consultation with the only independent adviser to the Government on environmental matters - the Environmental Protection Authority - or with the broader community. The Opposition will move an amendment to, at the very least, require the minister to seek the prior written advice of the Environmental Protection Authority before the minister is able to use the provisions of proposed section 51B. Other concerns the Opposition has about this part of the Bill relate to the amount of information that might be required by the chief executive officer of the Department of Environmental Protection before a decision can be made on a clearing application.

Proposed section 51E gives the chief executive officer significant powers to require the proponent to provide maps, management plans and other documents and information, but does not make provision for an applicant to appeal against a requirement to provide certain information. That is unfortunate. This was discussed during the briefing, for which I thank the minister's advisers. The briefing was planned to last for one hour and went for three, so it was very useful. The advisers told me that if the CEO acted unreasonably, the applicant could go to the courts to seek redress. The difficulty is that the applicant might be a farming family - mum, dad and a couple of kids - that lives in a relatively new farming area in which there has not been extensive clearing of native vegetation, and the viability of the farm might be reasonably low. That farming family might not have much ready cash to call upon to take its concerns to the courts. It is inappropriate for the courts to be the only recourse for such people. I will move two amendments to ensure that the CEO must require that only reasonable information be provided.

There is also great uncertainty surrounding the day-to-day application of the various provisions of this part of the Bill. For example, proposed section 51I, headed "Some kinds of conditions", will allow the conditions on clearing permits to be wideranging enough to cover any eventuality. I am concerned that it might be some time until the regulations, codes of conduct and other documentation are prepared by the department and made available to this House so that it can know what restrictions might be placed on the apparently unfettered power of the department, the Government and the CEO to apply conditions. This legislation could seriously impact upon the economic viability of between 100 and 200 farming families in Western Australia, and I think we need greater certainty about the sorts of things the minister and the Government have in mind.

I have a similar concern about proposed schedule 5 on page 145 of the Bill, which prescribes the principles for clearing native vegetation. Presumably these principles must be considered by the CEO and his staff when considering the merits or otherwise of a proposal or request to clear native vegetation. The principles contain very subjective words such as "high", "significant", "extensively" and "appreciable" in phrases such as "a high level of diversity of plant", "significant habitat for fauna", "it is significant as a remnant of native vegetation", "extensively cleared" and "appreciable land degradation". No-one knows what is "appreciable" degradation or a "significant" remnant of native vegetation, or what is meant by "extensively" cleared. Is a farming area from which 50 per cent of the native vegetation has been removed considered extensively cleared? Is it an area from which 90 per cent has been removed? Many people would say that an area that has had 90 per cent of its native vegetation removed is extensively cleared. Where do we draw the line between 50 per cent, which is not extensively cleared, and 90 per cent, which is extensively cleared? Is it 51 or 89 per cent? There is great uncertainty about that. I understand that nothing has yet been made public - certainly, nothing has been provided to me - so that we can understand how the bureaucrats in the Department of Environmental Protection will address these uncertainties when they assess clearing applications by landowners.

We are also concerned about the provision in proposed section 51I that will allow the CEO to apply a condition on a clearing permit requiring the applicant to make a monetary contribution to a fund for the purpose of establishing or maintaining vegetation. The word that came into my mind when I first read that proposed

subsection was "blackmail". In theory, this provision could create an opportunity for the Government, through the CEO or another bureaucrat, to tell a landowner who has applied for a clearing permit that although his case is marginal, he will be allowed to clear his land if he contributes $50 000 to a fund that will be used to establish or protect vegetation elsewhere. That could open up a Pandora's box in which undue, unfair and undesirable pressure is placed on applicants who request a clearing permit. Therefore, one of the amendments I will move during the consideration in detail stage will require that any monetary contribution must be mutually agreed between the applicant and the CEO. The amendment may not greatly strengthen the fairness provisions that apply to an applicant; however, it will share the decision-making power more equally between the two parties. I hope that to a large degree it removes any question about whether the applicant could be put in a position in which he or she could be effectively blackmailed by a government agency to put money into a fund.

Certain decisions of the CEO are subject to appeal, and I commend the Government and the minister for including those provisions. However, we will seek some minor amendments. Although they may appear to be insignificant to you, Mr Acting Speaker (Mr P.W. Andrews), or me, they are important to someone living on the land. The Opposition is concerned about the length of time applicants will have to provide responses to the Government. In three places in the Bill, landowners or applicants for clearing permits are given only 21 days in which to apply or make comment. We want to increase this to 28 days. Under some circumstances, it takes three to four days for mail to go from Perth to my home in Peppermint Grove Beach in the Shire of Capel. The extension of time from 21 to 28 days might sound excessive. Some people might think that the current amount of time the department has to send mail or some other form of communication to a farmer is reasonable. However, the reality is that the tyranny of distance can delay the speed with which information is passed to a person living in, for example, a more remote part of the Western Australian wheatbelt. I do not think it is unreasonable to request that the 21-day period be extended to 28 days.

Mr J.L. Bradshaw: Another problem is that a person may have gone on holidays. If he is away for a month, it will be too late by the time he gets back to do anything about it.

Mr B.K. MASTERS: That is a fair comment. I hope in those circumstances sufficient leeway is given by public service bureaucrats to negotiate an outcome with a landowner. If a landowner said he would be away from his property for 28 days, I am sure an accommodation would be made. I am concerned that bureaucrats in Perth might assume that 21 days is tons of times for a piece of paper to go from Perth by Australia Post, courier or some other way to a remote wheatbelt farm; that is certainly not true.

Proposed section 51N in clause 110 of the Bill relates to the transfer of clearing permits. I did not get a good explanation at the briefing three weeks ago of why the transfer of a clearing permit should not be automatic. Proposed section 51N suggests there are few impediments to the transfer of a clearing permit when someone, for example, sells a property and the new owner wishes to continue with the clearing or to put the clearing permit into effect; that should be an automatic right, subject to certain conditions. In the Bill it is a right only when a certain process has been completed. If a property in the Perth metropolitan area that is proposed for urban or other development is sold with a clearing right attached to it, any uncertainty about the validity of that clearing right or the transferability of the clearing permit may have significant financial implications for the seller, because it may well devalue the sale price of the farm, bush block or area of land. I do not know what the solution is, other than a complete rewrite of the proposed section. I will give that matter some more thought and I may move a late amendment. However, at this time it is unfair that the transfer of the clearing permit is not automatic.

I need to spend a few minutes talking about the Opposition's greatest cause for concern with the clause relating to clearing permits. Our concern is that the Government has made no allowance for compensation. Compensation is a word that has been used many times in the past, and it means different things to different people. The bottom line is that, until recently, a landowner who purchased land on which there was vegetation did not require approval to clear that land. In the past 10 to 20 years community attitudes have changed for the better. I recognise the great awareness-raising effort by the conservation movement to change community attitudes over the past two to three decades. Nonetheless, I am talking about a private landowner who has used his or her own money - often money that is owned by the bank, but that is another story - to purchase a block of land with the intention of using the land for a productive purpose that will keep the bank manager happy and the family fed, and allow the children to be sent to school and the family to live a peaceful and enjoyable life. However, this legislation will, effectively, create a clearing ban and this Government has said there will be no compensation. I think I even heard the minister ask why compensation should be paid to someone for not doing environmental harm. That is a proposition put forward by the environmental movement. It has said that compensation should not be paid because that money could be better used in other areas to protect or enhance the environment. I am afraid I have a serious difference of opinion with anyone who holds that view.

I make two points: first, under some circumstances environmental harm is a legally approved activity. Secondly, if the clearing of vegetation in the past was legally approved by other Acts of Parliament before laws were

enacted applying community requirements for the protection of land, or if clearing was otherwise legally available to a landowner, then it is entirely fair and reasonable for compensation to be paid for the removal of that legal approval. In other words, 25 years ago one million acres a year could be developed for farmland and it was acceptable legally, morally, environmentally and in every other respect to clear that land. However, there has been a change in community thinking, and that change is reflected in legislation. Therefore, when legislation prevents the clearing of native vegetation, the community must put its hand in its collective pocket and provide compensation for the cancellation of that legal right to undertake a certain activity.

I note that this is a hot and important issue. My position, and the position of the Liberal Opposition, is that without having provided a huge amount of detail, we are nonetheless committed to the principle of paying compensation to people who are affected by decisions of government that protect community values. There is also a great deal of misunderstanding of the exact situation that Western Australia faces currently. For example, I received a briefing paper - the source of which I am unsure but it might have been provided to me when I attended a briefing at the Pastoralists and Graziers Association some three to four weeks ago - headed "FAQ for Clearing Provisions of the Environmental Protection Amendment Bill 2002". "FAQ", of course, means frequently asked questions. The second sentence in the first paragraph of that briefing paper reads -

> Loss of native vegetation and unsustainable agricultural practices have led to an extreme decline in biodiversity . . .

That is absolutely and totally false. There has been no extreme decline in biodiversity in the wheatbelt of Western Australia as a result of the loss of native vegetation or unsustainable agricultural practices. The number of plant species known to be extinct in Western Australia today is either 19 or 20 of some 12 000 indigenous plants that grow in Western Australia, not including exotics that have been brought in as weeds. That is not an extreme decline in biodiversity. The situation of fauna is far more bleak. Australia holds the gong - if that is the right word - for having suffered the most mammal extinctions of any country on earth. There is a large degree of truth in that. Did the clearing of native vegetation and unsustainable agricultural practices cause the extinction of those animals, either locally or in total? The answer is no; the introduction of the European red fox followed at about the same time by the introduction of the European rabbit caused incredible harm to and mass extinctions of the small to medium body-weight sized mammals in Australia.

Mr M.W. Trenorden: What about cats?

Mr B.K. MASTERS: That is a fair comment and I am glad the Leader of the National Party raised that matter. I amend my last statement to say that the feral cat, the European red fox and the European rabbit between them have caused the overwhelming bulk of extinctions.

I do not wish my words to be taken out of context. No doubt the clearing of native vegetation has caused significant environmental harm and placed many species of plants and animals at extreme risk of extinction. In other words, the threat exists and is very real. As a community, we must respond in urgent but fair and reasonable ways. However, to say that the loss of native vegetation and unsustainable agricultural practices have led to an extreme decline in biodiversity is simply not true. I raise that simply to show that there is quite a deal of muddled thinking about conservation issues in Western Australia. As I said, there is much that we must do. However, the bottom line is that we will not be able to do the right things environmentally unless we understand the right things to do. Knowing the right things to do must be predetermined on the basis of knowledge of what has happened in the past.

I am not trying to be pedantic. I am trying to highlight the fact that things are tough and bleak environmentally in places such as the wheatbelt; but let us not be alarmist and let us not impact upon between 100 and 200 landowners who have a legitimate right to clear native vegetation in the western part of the south west land division and also in the southern coastal areas. Let us not disadvantage them unfairly because we are hung up on the idea of no compensation for not doing environmental harm. The reality - this is a second, more subtle, but nonetheless just as important, point - is that, as a community, we will never be able to adequately protect our environment unless the owners of those areas of land are actively and willingly supporting us in our conservation activities.

I guess there is some environmental justification for a blanket ban. I do not argue strongly against it. However, a blanket ban without compensation for community environmental protection benefits is unfair. That will be an area on which there will be a very clear division between the Government and the Opposition when we go to the next election. It will be at the Government's electoral peril if it does not address that issue in some way. At the moment, as I understand it, it has not addressed it at all.

What else is there to say about the clearing ban? I understand from people in the land development industry that there are third party appeal rights. I have not picked it up in the legislation, so I will need to read it again. However, if there are third party appeal rights against clearing permit applications, I can foresee vexatious and

other unfair and unreasonable action being taken by people to prevent or delay them for a long time or to cause increased costs when particular applications for clearing permits are being sought.

I also note in one of the briefing documents that the term "sustainability" is referred to. It states -

> Government policy of sustainable development will be well supported under the new system.

I find that to be a rather amazing statement, considering that no-one knows what is the Government's policy of sustainable development at the moment. Again I commend the Government for going down a difficult path of understanding sustainable development and also trying to work out how to achieve it, because at the moment no country, no organisation and no-one on this planet can clearly explain sustainable development. It would have been better to have talked about triple bottom line - the need to appropriately balance the three areas of social, environmental and economic needs and imperatives affecting the people of Western Australia.

I note also in the "FAQ" information that was provided to me that there is a commitment to a no-net-loss policy to maintain and increase the quality and quantity of native vegetation in Western Australia. That is a desirable concept, but it is flawed for two reasons. One is that in countries in which it has applied in the past - for example, the United States of America at the federal level has had a policy of no net loss of wetlands for over 10 years - it has failed. The experience in America is that very high conservation-value wetlands were taken, and new, less valuable wetlands were created to achieve that no-net-loss policy. The other reason that a no-net-loss policy is bound to fail is that, contrary to what the mining industry might say - I come from the mining industry, so it might not like my saying this - it is impossible to restore original ecosystems - absolutely impossible. People can do a very good job of creating something that is similar to a pre-existing environmental condition, but it cannot be restored. It cannot be recreated in its entirety. On that basis, to say no net loss, which implies that some native vegetation will be lost from one area but other native vegetation will be regenerated in another area, almost universally means that we will end up with poorer-quality vegetation in the areas that have been protected, at the expense of the high-quality vegetation that has been sacrificed.

I have only a couple of minutes to go. I will conclude by saying that the Opposition is concerned about the object and principles of the Act under part 10 of the Bill, which is headed "Miscellaneous". I think I know what I mean by the precautionary principle, the minister may think that she knows what she means by it, and I might think that I know what she thinks she knows about it - I could go on ad nauseam - but the reality is that the precautionary principle is a feel-good principle that can be badly misused. It can be misused by people who choose to go out of their way to try to frustrate legal and due process by saying that the precautionary principle requires that we do not make a decision in the absence of scientific information. I refer to a Resource Assessment Commission paper in 1993 by Michael D. Young entitled "For Our Children's Children: Some Practical Implications of Inter-Generational Equity and the Precautionary Principle". It is a very good document. It makes the point that even with all these principles to be taken on board, it is still important to make decisions. Therefore, the objects and principles in part 10 of the Bill should not be applied in such a way as to stop things happening per se. One needs to strike a balance and to make an objective, as well as subjective, assessment.

The Opposition will seek to amend the introductory wording of proposed section 4A by changing the word "regard" to "consideration". There is some concern that if the minister, the chief executive officer or the department must have regard to something, they cannot disregard it. However, if they consider something, they do not then have to adopt it.

MRS C.L. EDWARDES (Kingsley) [12.38 pm]: I am pleased to speak on this legislation for several reasons. I had the privilege of being the Minister for the Environment for some four years. During that time, I was ostensibly involved in the drafting of the legislation before us today. It was one of three further Bills that were introduced to this place in 1997. That legislation was to deal with the higher level of assessment that we have today. The second amending Bill dealt with waste management, and the third dealt with contaminated sites. I note that the minister in her second reading speech indicated that those two pieces of legislation will be introduced shortly. I empathise with the minister about the definition of "shortly" because when I introduced the amendments in 1997 - which were quite profound in extending the Environmental Protection Act - I indicated that I would introduce further Bills the following year. The minister has been much smarter than I was at that time by not putting a time frame on the changes.

These three pieces of legislation have required a great deal of consultation, which was necessary for many reasons. Environmental legislation has many impacts on people's lives, property rights and livelihoods. It does not matter whether people are employers or employees. With legislation that impacts on members of the community we must ensure that the level of consultation is extensive. I agree with the minister's statement in her second reading speech that the level of consultation on this legislation was extensive. In general terms, the Bill has much to commend it. The Opposition supports much of the Bill. However, this Bill differs in significant areas from the draft legislation I dealt with as the former Minister for the Environment. The member

for Vasse has highlighted those areas of major concern. One area is the new definitions that are proposed. The first is "the precautionary principle". The precautionary principle has different meanings for different people. If a person were to research what has been written about the precautionary principle, he would find distinct and diverse meanings. My definition of the precautionary principle is that not all decisions should be made today; some should be left for the future. In a general sense, the definition could mean that nothing should be done and that the environment has predominance over everything else. In making decisions, one of the guiding principles I held to my heart was one established by a world environment organisation. I will paraphrase it by saying that we cannot have a strong economy without having a strong environment. Equally, we cannot have a strong environment without having a strong economy; they go hand in hand. The principles of the triple bottom line have since come into vogue as an explanation for this basic principle. The triple bottom line is social, economic and environmental factors. The difficulty with the triple bottom line is that of specificity. It is hard to interpret the interconnection between social, economic and environmental factors. How do they relate to each other? It is connected with the principle of sustainability. The Government proposes to establish a sustainability commission. The concerns raised are about the lack of definition. Incorporating a definition of something such as the precautionary principle will result in differing views and ideas about how it should be interpreted. Another principle is that of "intergenerational equity". I fail to know where to start in trying to understand what we are talking about when the definition of such a term is -

> The present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations.

A much more familiar principle is that of "the conservation of biological diversity and ecological integrity". When the Regional Forest Agreement was being developed and issues arose about the protection of conservation areas such as marsh, heath and rocks, the then Government was attacked for not protecting sufficient biological diversity. The current minister is now under attack from the Conservation Council of Western Australia for similar reasons. However, that is exactly what the previous Government was protecting. Areas such as marsh, heath and rocks were included in conservation areas. I was able to show magnificent photographs of old-growth forest - including rocks, marsh and heath - to the community; and in her defence of proposed conservation areas, the current minister will also use similar material to show that biological diversity is absolutely essential. We cannot just have a monoculture; biological diversity is exactly that. However, some people in the conservation movement do not agree with our interpretation of that definition. I was interested to read that the Minister for the Environment and Heritage is being criticised for the same thing that I was criticised for while trying to protect biological diversity. How will this be incorporated into a definition within the Environmental Protection Act to ensure that it does not allow environmental protection to go off the rails because of differing interpretations of what it means?

Other interesting principles - which we will go into during consideration in detail - are those "relating to improved valuation, pricing and incentive mechanisms". I do not have a problem with the "polluter pays" principle; it is very clear and easy to define. It is one that most people understand. The previous Government established that principle with its 1997 amendments. Offence provisions allowed for a polluter to reimburse the Department of Environmental Protection for money the department spent during its investigation. Part of the principle relating to improved valuation, pricing and incentive mechanisms states -

> Environmental factors should be included in the valuation of assets and services.

I know that this is "a big concept" that is considered and debated worldwide. People are trying to determine the cost of the environment that should be incorporated into everyday operations and practices. I do not quite understand how this will be a principle to be taken into account in this State. Will it be that any organisation that applies for a licence or an application for environmental assessment will have to produce books of accounts that incorporate environmental costs? In Canada and the United States several companies have started to incorporate those factors into their accounts. It cannot be made an absolute must. If it is, it will discriminate against small and medium-size businesses. It might be acceptable for major projects because they have the opportunity, funding and resources to carry out appropriate environmental work. Major projects are able to incorporate those costs into the accounts. However, even some major projects may baulk at this principle. How on earth will we get small and medium-sized firms to comply? It is wrong to require them to invest more money just so they can continue to carry out their day-to-day operations. We want them to take the environmental considerations into account as they go about their day-to-day operations. However, such considerations will add another cost component that businesses do not need. The level of paperwork confronting small and medium-sized businesses prevents them from getting on with their work and from employing. I would like to go through this principle in some detail.

Debate interrupted, pursuant to standing orders.

[Continued on page 529.]