BIODIVERSITY CONSERVATION (EXEMPTIONS) AMENDMENT ORDER 2021 — DISALLOWANCE

Motion

Pursuant to standing order 67(3), the following motion by Hon Dr Brad Pettitt was moved pro forma on 10 November 2021 —

> That the Biodiversity Conservation (Exemptions) Amendment Order 2021 published in the *Government Gazette* on 15 October 2021 and tabled in the Legislative Council on 26 October 2021 under the Biodiversity Conservation Act 2016, be and is hereby disallowed.

HON DR BRAD PETTITT (South Metropolitan) [8.30 pm]: Thank you, Deputy President. Did I get that right? No?

Hon Sue Ellery: Acting.

Hon Dr BRAD PETTITT: One day someone will explain this to me and I will remember it!

Hon Sue Ellery interjected.

Hon Dr BRAD PETTITT: That is a good idea. Thank you.

Today, we are scrutinising the Biodiversity Conservation (Exemptions) Amendment Order 2021. I put it to members that in its current form, this amendment order should be disallowed. It is worth stepping back and starting with the purposes of the Biodiversity Conservation Act 2016, which describes itself as —

> **An Act to provide for —**
>
> - **the conservation and protection of biodiversity and biodiversity components in Western Australia; and**
> - **the ecologically sustainable use of biodiversity components in Western Australia** …

This state clearly has an obligation as expressed in the Biodiversity Conservation Act to protect biodiversity that we know is threatened. What concerns me and key people and groups in the conservation sector is that introducing the amendment order that is before us is likely to facilitate inappropriate fire regimes and result in the loss of biodiversity. This is significant because Western Australia is home to unique biodiversity. Western Australia's south west ecoregion is only one of the world's 36 internationally recognised biodiversity hotspots and one of only two in Australia that is recognised globally. About half of WA's south west 8 000 plant species are found nowhere else, as are many endemic species of wildlife, including the numbat, the western swamp tortoise and the honey possum. Being a biodiversity hotspot recognises not only the richness, uniqueness and diversity of a place, but also that that place is under threat. The Biodiversity Conservation (Exemptions) Amendment Order 2021 before us today is sadly adding to that threat. The amended exemption order has the effect of removing all liability for offences of taking or disturbing threatened species or threatened ecological communities for private landholders and occupiers, local governments and the Department of Fire and Emergency Services in undertaking activities relating to bushfire mitigation and bushfire suppression.

I understand that The Wilderness Society, the WA Forest Alliance, the Conservation Council of Western Australia and The Beeliar Group—Professors for Environmental Responsibility have all expressed serious concerns to the government about the implications of these amendments for conservation and the survival of specially protected fauna, threatened flora and fauna and threatened ecological communities.

One of the reasons for this disallowance can be found in an answer that the government gave to a question I asked last year. I asked the government why it had implemented the amendment order and I was told —

> It was identified that the legislation placed an added administrative burden on landowners and occupiers seeking to undertake bushfire mitigation activities to reduce fuel loads, including planned burning.

It seems odd to me that this government would use the excuse of a mere administrative burden for introducing an exemption that directly contradicts the core purpose of the act, which is to provide for the conservation and protection of biodiversity. I am not denying that Australia has experienced one of the most challenging bushfire periods in recent memory; in fact, this year in Western Australia has been especially tough. I often stand in this chamber and talk about the need for greater climate action, acknowledging that catastrophic bushfire conditions are aggravated by climate change, which threatens both human safety and biodiversity conservation. This decision should not be about safety over biodiversity conservation; we can do both. Fire management must maintain and protect biodiversity as well as people and property and be implemented by all sectors of government and community throughout the state. I need to ask: why the sudden need to enact these exemptions now? The act has not prevented bushfire mitigation activity and bushfire suppression activity from occurring until now, but it has ensured that private property owners,

local governments and DFES employees have been careful to protect and not disturb threatened species and threatened ecological communities in the process, lest they be liable for offences.

The government has assured me and the various stakeholders who have expressed concern that the Department of Biodiversity, Conservation and Attractions will continue to work with local governments, DFES and private property owners to provide advice on best practice and practical measures to minimise the impacts on threatened species and ecological communities. What does that look like? The DBCA webpage has fire information notes and a series of guidelines for landowners, but when I drilled down, I found a page that has links to seven single-page documents—two for flora and five for fauna—each with a few dot points about what people should consider when undertaking fire mitigation activities. I am concerned that without a proper authorisation process and any risk of penalties for modification, what reason is there for landowners to seek this information, as limited as it is, or take it into consideration and go beyond?

In trying to understand the volume of authorisations that were granted in the last three years as part of the BCA 2016, at the end of last year I asked the government the following questions on notice: How many authorisations were granted under the Biodiversity Conservation Act 2016 to take or disturb threatened species in the course of, or as a result of, prescribed burning or wildfire suppression in the last three years? How many authorisations were granted to modify threatened ecological communities in the course of, or as a result of, prescribed burning or wildfire suppression in the last three years? The answers were quite illuminating because in the last three years there have been 178 authorisations to take or disturb threatened species. However, of those, 134 were for DBCA, which, of course, is not exempt. Only 44 other authorisations were granted. This biodiversity conservation exemption will, over a three-year period, apply to 44 authorisations, which is about 15 a year. We are going through this process to relieve the administrative burden for, on average, 15 landowners per year, but it could have serious consequences for biodiversity. I do not think that that is a particular administrative burden.

A letter sent to the Minister for Environment on 28 October 2021 by The Beeliar Group—Professors for Environmental Responsibility stated, according to my notes —

> We wish to know why you did not develop a program or provide additional advisory services aimed at specifically supporting those landholders to manage those values while also achieving appropriate fire regimes.

That is a really good question. That is what should have happened rather than taking away the need at all. It should have been about working with the 15 landowners a year, which is not a lot, to make sure that we do this well and do it better. I am happy to table the letter. The minister did not give that question an adequate answer; in fact, it was avoided altogether. It certainly would have been better to support the landowners to protect biodiversity rather than just remove any obligation to protect it at all. Why is it not possible for the Department of Biodiversity, Conservation and Attractions to support and work with local governments, the Department of Fire and Emergency Services and private property owners to navigate the authorisation process, and, if need be, simplify it? I think just getting rid of it would get rid of an important safeguard for biodiversity conservation. I also asked who was consulted and provided advice on the exemption order. I will quote again from the Minister for Environment, who said that the government —

> sought advice from the Department of Biodiversity, Conservation and Attractions prior to the publishing of the Biodiversity Conservation (Exemptions) Amendment Order 2021. DBCA consulted with the Department of Fire and Emergency Services and the Department of Water and Environmental Regulation on the preparation of the amendment order.

We were also told of —

> … concerns raised by stakeholders ... that the legislation placed an added administrative burden on landowners and occupiers seeking to undertake bushfire mitigation activities.

This greatly concerns me. It appears that the decision was a reaction from government to feedback from the very group of stakeholders who are now exempt in the amendment order. Yet, based on the response from the government, I assume it did not consult with the Threatened Species Scientific Committee or Threatened Ecological Communities Scientific Committee when that is the very role of these committees. Just to be clear, the role of these committees is to provide advice to the minister on the listing of threatened species, extinct species, threatened ecological communities, collapsed ecological communities and key threatening processes under the Biodiversity Conservation Act 2016; and to review and make recommendations annually to the minister on threatened species—plants and animals—and threatened ecological communities. It amazes me that, when considering this exemption order, the minister did not consider seeking advice from or consult with either of these committees. There was no consultation with independent ecologists outside of the government and no consultation with non-government conservation and environmental organisations prior to making this decision. These organisations were briefed following concerns being expressed in the conservation sector after the introduction of the amendment order, but not consulted before the decision was made.

This decision was also made prior to the conclusion of consultation on the *Native vegetation policy for Western Australia*. The government has said the timing of the gazettal is not related to the public consultation phase of the state native vegetation policy. I ask the government why consultation feedback and this draft policy is not considered relevant to the amendment order, because it seems pretty clear to me that it is? Neither did the state government consult with the Australian government's Department of Agriculture, Water and the Environment despite its responsibility under the Environment Protection and Biodiversity Conservation Act 1999—EPBC act—to protect and manage nationally and internationally important flora, fauna, ecological communities and heritage places. Again, obviously the south west of Western Australia is one of those areas.

The Department of Agriculture, Water and the Environment has also just closed submissions as part of its consultation process to consider "'Fire regimes that cause biodiversity decline' as a key threatening process under the EPBC Act"—very relevant. I understand that the Western Australian government made a submission as part of this consultation process, but again has decided to introduce and implement an amendment exemption order that may likely facilitate inappropriate fire regimes and result in loss of biodiversity. Again, it feels like this decision from the government prioritises cutting so-called green tape and reducing an administrative burden, instead of fulfilling its obligation to protect threatened species and ecological communities and conserve biodiversity in Western Australia. I was also told, in response to questions I asked of the Minister for Environment, that prior to considering the amendment order, DBCA assessed the number and spread of threatened flora populations and threatened ecological communities across different tenure types and where that could intersect with activities that may be exempt under the order. In two tables provided by DBCA, the number of threatened ecological community occurrences per tenure type and the number of threatened flora populations per tenure type were listed. They show 57 per cent of the number of threatened ecological occurrences recorded were on tenure types covered in the exemption amendment order—LGA, private and pastoral—while 46 per cent of the number of threatened flora populations were recorded on LGA, private and pastoral land.

The DBCA admits that although —

> … most threatened flora species (73%) and communities (74%) have populations or occurrences that are located on conservation lands managed by DBCA ... Fauna is often poorly surveyed on private property and other non-DBCA-managed lands.

This means 27 per cent of threatened flora species and 26 per cent of threatened communities do not have populations or known occurrences that are located on DBCA-managed lands. Yet, the safeguards provided by authorisations and penalties in the Biodiversity Conservation Act to protect and conserve these threatened species and threatened ecological communities located on LGA, private and pastoral lands no longer exist because these landowners and land managers are now exempt. The WA government has been consistent in its messaging that this new exemption amendment order and its consequences is considered low risk. I have been told that DBCA considered that by exempting activities such as to permit burning that occurs during the cooler parts of the year when fire behaviour is milder and burn outcomes are likely to be patchy, that it was unlikely to pose a significant risk to threatened species and communities and that DBCA considers that low intensity planned burning at intervals of six years or greater is unlikely to have impacts on threatened species or ecological populations. However, despite requests from myself and environment and conservation groups to see the risk assessment undertaken, we have just been assured that the above, along with promised DBCA liaison with landowners and land managers, means any risk to threatened species or threatened ecological communities is "unlikely". Could the minister please table the risk assessment that was completed? It is entirely reasonable that the public and the scientific community have access to the risk assessment that led to this exemption amendment order. What criteria and long-term monitoring system is DBCA using to ensure that no negative consequences occur to threatened species and threatened ecological communities as a result of the changes under the exemptions?

This connects to the way that burning happens in this state. The exemption amendment order allows a landowner or land manager to undertake planned bushfire mitigation and suppression burning every six years without needing to obtain authorisation. In 2018, Bradshaw et al. wrote, in the *International Journal of Wildland Fire* —

> … numerous studies show that the impact of burning on a 6-year cycle would be catastrophic for many species of plants and animals that are unique to the south-west biodiversity hot-spot and will have a deleterious cascade effect on the entire ecosystem, increasing the 'extinction debt'.

Without an authorisation process, what is there to stop landowners and land managers from burning every six years with potentially some serious consequences for biodiversity? In the past, south west Australian forests had been burnt at intervals that were more like 80 to 100 years, and longer in the case of karri. As Bradshaw et al. point out —

> … it seems intuitively obvious that burning at a 6-year interval would engender substantial changes in the ecosystem.

The EPBC's draft listing assessment, "'Fire regimes that cause biodiversity decline' as a key threatening process" confirms —

> If populations are to persist through a sequence of fires, there must be sufficient time between successive events to enable population recovery through reproduction or immigration of new individuals, as well as recovery of habitat suitability for species that depend on resources that become scarce after fire. Subsequent fires may disrupt these recovery processes causing population declines or extinctions if fire intervals are short relative to the timing of life history processes. In some species, these recovery processes occur rapidly, while others have inherently slow rates of growth, maturation, reproduction or movement, or are contingent on slow recovery of suitable habitats.

The exemption order essentially gives landowners permission to burn every six years without regard for the types of biodiversity that might be present or the burning interval that might be best suited to the landscape. This is at the heart of why we need a proper process. We are asking these landowners to be experts on the types of biodiversity that exists on their property.

In conclusion, increased scientific oversight and a higher degree of sophistication in burn planning can develop improved outcomes for wildlife and biodiversity and hazard reduction. The Greens support hazard reduction burns to reduce the impact of bushfires guided by the best scientific ecological and emergency services expertise. We have that expertise in our state and I think it should be available to landowners to do that. However, I am voicing my concern and the concern of others about the implications of the Biodiversity Conservation (Exemptions) Amendment Order 2021. I am worried that this exemption will reduce the degree of oversight and protection, and the amendment order will likely alter fire regimes on a designated area, affecting the patterning, frequency and intensity of bushfires on private and local government authority–controlled lands, and thus lead to species lost and ecological community collapse, and could cause weed infestation and the introduction of feral species.

I am not convinced that this government appropriately considered the risk to threatened species and threatened ecological communities; it instead chose to prioritise cost-cutting and so-called red-tape reduction to reduce administrative burden, ultimately to the detriment of the biodiversity of this state. It is for this reason I ask the house to support the disallowance before it.

HON SUE ELLERY (South Metropolitan — Leader of the House) [8.51 pm]: I thank the member for raising the issues that he raised and for his commitment to the fabulous diversity in our Western Australian environment, but the government will not support the disallowance motion.

The government gave careful consideration to this matter before the decision was made to gazette the Biodiversity Conservation (Exemptions) Amendment Order 2021. I note in his contribution the honourable member I think put it this way when he said that it is not about biodiversity or safety; we can do both. The government could not agree more with the honourable member. Of course, we can do both and it is about the balance. We say that the amendment order is necessary to address an unintended consequence that had an impact on that balance.

The amendment order provides an exemption for owners and occupiers of land from the requirement to gain an authorisation under the Biodiversity Conservation Act 2016 for the taking and disturbing of threatened species and modifying a threatened ecological community when undertaking bushfire mitigation or a bushfire suppression activity. The act introduced new protections for biodiversity across the state from 1 January 2019 and replaced the really outdated Wildlife Conservation Act 1950. This resulted in authorisation being required to undertake certain bushfire mitigation activities that would involve the take or disturbance of threatened species or modification of a threatened ecological community. However, it became evident when the legislation came into effect in 2019 that there may be unintended implications for well-developed and established bushfire mitigation activities.

In addition, a number of stakeholders raised concerns that the requirement for an authorisation under the Biodiversity Conservation Act would hinder bushfire mitigation activities and place an unnecessary administrative burden on landowners and occupiers seeking to undertake planned burning to reduce fuel loads. The amendment order reduces that administrative burden on landowners and occupiers, local government, and the Department of Fire and Emergency Services employees who undertake the bushfire mitigation activities specified in the order; and it clarifies how the defences in the Biodiversity Conservation Act apply when a person undertakes a bushfire mitigation or bushfire suppression activity.

The amendment order will enable landowners and occupiers to undertake planned burning over the same area at intervals greater than six years without an authorisation under the Biodiversity Conservation Act. If landowners and occupiers want to undertake planned burning more frequently over the same area, they must apply for an authorisation from DBCA. This approach will help to ensure that the threatened species and communities are not unnecessarily or inappropriately impacted by a more frequent fire regime. Low-intensity planned burning at intervals of six years or greater provides the environment time to regenerate before further burning occurs and, in contrast, bushfires burning through long unburnt fuels can have devastating impacts on ecosystem health and resilience for decades.

The amendment order does not exempt the Department of Biodiversity, Conservation and Attractions from the requirement for authorisation under the act for planned burn activities on DBCA-managed lands. When threatened species and ecological communities are identified within planned burn areas, DBCA will continue to meet the requirements of the act through the strategic and operational planning processes that support the development of the annual burn program and associated fire mitigation activities. DBCA will continue to use best practice in its fire management activities and work within the requirements of the act given the responsibility it has to manage for both community protection from bushfire and conservation of threatened species and threatened ecological communities. To help ensure that biodiversity values are maintained, a series of fire management guidelines for key threatened species and ecological communities has been developed to assist landholders to manage fuel loads while recognising the requirements of threatened species and ecological communities when undertaking planned burning on their properties.

DBCA will continue to work with local governments, the Department of Fire and Emergency Services and private property owners to provide advice on best practice and practical measures to minimise impacts on threatened species and ecological communities. When managed properly, planned burning can maintain ecosystem health by assisting the regeneration of plants, providing food and habitat for animals, and reduce the risk of catastrophic bushfires impacting on communities and the environment. This is a sensible and balanced approach that will reduce that administrative burden and ensure a consistent approach for landowners and occupiers when undertaking bushfire mitigation activities while still making provisions for the state's important biodiversity values.

The recent experiences across Australia of summer bushfires in long unburnt fuels have reinforced the importance of low-intensity planned burning to reduce the risk of catastrophic bushfires impacting on communities and the environment. This government supports planned burning as the primary means of reducing combustible fuel and, therefore, the risk of bushfire to our community and the environment.

I reiterate that the government stands by its decision to introduce the amendment order as it supports a balanced approach that considers the potential impacts of reducing fuel loads through bushfire mitigation activities against protection of the community and the environment from low impacts of the bushfires. The government will not be supporting the disallowance.

HON TJORN SIBMA (North Metropolitan) [8.57 pm]: I was sitting there on false pretences so I have come to the despatch box to make my contribution.

I think this has been an informative debate on the disallowance motion, and I want to sincerely pay my compliments to Hon Dr Brad Pettitt for his passion and advocacy for his cause. I think he has moved this disallowance motion with the best of motives. That notwithstanding, I am in wholehearted lockstep with the government on this matter and we will be opposing the motion that this new regulation be disallowed. The issues have been extensively and well canvassed, so my contribution will be a brief one; hopefully, it gets to the nub of the issue and articulates properly the principle why the opposition opposes the disallowance. There are a couple of elements here.

First of all, we live, despite our modern comforts and sometimes our insulation from threat, in a hostile place. Western Australia is a hostile environment irrespective of the georegion that we might reside in, whether it is the Kimberley, the Pilbara, the midwest, the Gascoyne, south west, great southern or the Perth metropolitan area. We are sometimes awed and overawed by our exposure to natural threat and calamity. We need to make judgements based on science and based on the consideration of public health and other factors when we draft regulations. No regulations are of themselves perfect and they are always subject to a process of continuous improvement.

Though it is not often the case with my contributions in this chamber, I do want to pay compliments when they are due. I think that the amendment to the exemption order that is being considered here is a very pragmatic and prudent step, and I compliment the government for changing the regulations to allow for a far more pragmatic, realistic approach to pragmatic fire mitigation and bushfire suppression. As much as we need to recognise and protect and add to the welfare and the future flourishing of threatened species and threatened ecological communities, we are also obligated to do all that we can to ensure the protection of life, property and livelihood. Fundamentally, I think this is what this updated exemption order, which has been amended and gazetted, attempts to do.

The honourable member mentioned a series of well-respected groups and articulated their concerns about the implications of the regulation proceeding again untrammelled. Their contribution to the debate is to be respected and is to be argued on the facts. From my perspective, they make some interesting points, but I am unconvinced that this particular regulation will increase the risk threshold to such a magnitude for already threatened species and ecological communities that the regulation should be automatically disallowed. I do not believe that that is the case. Equally, we can cite in defence those organisations and esteemed members of our community, be they in local government or the Department of Fire and Emergency Services or be they private property owners, who also have a right for their perspectives to be heard and, when possible, articulated and operationalised, and I think that that is what has happened here.

To rearticulate and amplify the point, we will be opposing the disallowance motion, although it does raise an important point that was not made tangentially or in essence. I will share with the honourable member a concern about a lack of accountability or understanding and awareness of the state of threatened species, be they flora or fauna, and threatened ecological communities throughout the state of Western Australia. There used to be a mechanism—it was probably not perfect and there were probably reasons for and against it—whereby the Environmental Protection Agency used to publish a state of the environment report, maybe a decade or so ago. I decry the lack of having an objective—as much as we can; insofar as possible—rendering of the state of the natural environment of Western Australia. I think that would be a really helpful scientific baseline —

Hon Dr Steve Thomas: About 15 years ago.

Hon TJORN SIBMA: It was about 15 years ago. I think that would help to guide debates such as these.

In the course of estimates hearings last year when we had members in from the Department of Biodiversity, Conservation and Attractions, both Hon Dr Brad Pettitt and I asked a series of questions about, I thought, fundamental service lines within the department as they related to the management of these communities and the resourcing of the conservation estate. I found that to be a slightly frustrating process because there is no clear line of sight of how effectively a principal environmental delivery agency such as DBCA is performing its task. I think the honourable member has highlighted this interesting internal tension within the DBCA of, effectively, operating prescribed burns on the one hand, which have an obviously dangerous component, and managing the condition of our state's biodiversity on the other. Sometimes these tensions are resolved in ways that are not particularly elegant, but they are resolved.

There was a point during the hearings when I think the department took on notice the sheer number of management plans that are written up to guide the conservation efforts as they relate to an ever-expanding group of threatened flora and fauna and ecological communities. If there is one benefit that we can perhaps take away from this evening, which might not satisfy the member's intent in moving the disallowance motion but perhaps improve the quality of debate, it would be to start applying more scrutiny to how these endangered flora and fauna and their communities are actually being managed. What is happening to the—I will use a colloquialism—buckets of money that are poured into DBCA to manage the conservation estate and what kind of ecological return are we getting from that investment? I am not in a position to make an educated assessment one way or the other because there is an absence of clear-headed factual information. I think it is to the state's detriment that we do not have this information.

To round this out, from my perspective and from the opposition's perspective, and there may be colleagues of mine who wish to speak on this as well, I think the government has got the balance right with the amendment that it has made to this exemptions order. We need to tool up our communities to undertake proper bushfire suppression and fire mitigation activities without unnecessary administrative encumbrances. I support the regulation that the government has moved. Once again, I articulate our opposition to the disallowance.

HON DR BRIAN WALKER (East Metropolitan) [9.06 pm]: I have to say from the very start that the notes I had written had to be rewritten because so many valid points have been made. I thank all members for that. I would also like to appreciate what was said earlier. One of the areas that we need to be careful about is what we are actually dealing with. What are the facts? What is the science behind this?

I also take on board the fact that everybody here has a passionate interest in the flora and fauna of our state and, indeed, how well we are looking after it. It has to be said—I think we all agree—that we have not done a great job in comparison with all other parts of the world. We are sensitised, I am sure, but the problems that we are facing worldwide with the loss of species, flora and fauna should trouble us all.

I thank Hon Dr Brad Pettitt for bringing this disallowance motion forward. I appreciate that it will not be carried, but I wanted to have my voice out here supporting this disallowance motion for the simple reason that I am not absolutely certain that the balance, as the honourable member said, has been found. It would be wise to take time to look at this again, because it could be possible that we are undermining this act by its very good design, and I appreciate that, to impose requirements upon business, agriculture and development by ensuring that we do not destroy the environment but we bring species to the brink of extinction when we should not be doing this.

I recall reading just recently how rich our flora and fauna are. Dr Paul Vogel, then chairman of the Environmental Protection Authority of Western Australia, noted —

> "WA has about half of the total flora for Australia, 141 of Australia's 207 mammal species call WA home and there are more plant species in the Fitzgerald River National Park than in the entire United Kingdom."

This amazed me. That quote is from 2013, and things certainly have changed since then. From my point of view in the electorate of East Metropolitan in the Perth hills, all the natural beauty is also at risk from bushfires but are also home to flora and fauna, which deserve protection. I have a level of concern that this exemptions amendment

order could tip the balance even further with bushfire mitigation. We have all seen the recent catastrophe with fires ripping through. Yes, we can be happy that lives have not been lost, even if property was destroyed, but my heart breaks when I consider the damage done to the fauna, not just the sheep and cattle, but also the natural fauna. They have suffered tremendously. Anything we can do to reduce this risk would be a good idea.

One thing that I would look at, of course, is the benefit to be gained from the 40 000 to 60 000 years of experience of our Indigenous population. Have we adopted the practices that have kept this state and nation of ours in a relatively stable form? Have we consulted widely with those who have borne, over generations, the experience of ensuring that their food resource needs, both flora and fauna, were met and that a balance was kept? I think there is an untapped resource there. I am happy to be educated otherwise—that this resource has been tapped—but, if not, I encourage that we look even further into that.

Clause 7 of the Biodiversity Conservation (Exemptions) Order 2018, and particularly subclause (2), provides exemptions that clearly indicate that bushfire mitigation trumps environmental protection. I can appreciate that, but my heart tells me that we ought to have a closer look at this. Is the balance quite correct? We may be giving free slather to people to modify a threatened ecological community or take or disturb fauna or threatened fauna in an area. This could in fact be seen as a get-out-of-jail-free card. I would much rather the present laws be applied and that we look at individual needs on a case-by-case basis. The checks and balances need to be retained.

It could be argued that it may be just too hard. I appreciate that there may be issues with the administrative burden of this, but I am not certain that that is an argument I would care to take too far. Is our state worth looking after properly and putting energy, costs and expenses into? I think it is; we have a beautiful state. I am not certain that exemptions are the way forward. I understand that good intent is being shown on all sides and that effort is being made, but I simply caution that it would be wise to have a closer look at this.

Disallowing this order would give us more time to look at this in more detail. It would not be a forever, "No, we are not going to do this." I agree that changes could well be made, but have we made them in the right manner? I suggest that we should not use the act that was designed to protect our native flora and fauna to do the opposite of what we hope to do, simply because it might be too much work. I apologise for trivialising this. I wish to take up only a short time of the house, so I will summarise. I would like to see effort put into establishing that we are using the knowledge of our Indigenous brethren, and that we are able to take that knowledge and put it into practice in our lives so that we can more naturally manage our native animals and plants, help recover endangered species from extinction and do our best to reclaim our state as a place that could be a jewel in this world.

HON MARTIN ALDRIDGE (Agricultural) [9.12 pm]: I rise to make a brief contribution to this motion moved by Hon Dr Brad Pettitt, and recognise the contribution of Hon Tjorn Sibma as the lead spokesperson for the opposition on this issue. I want to put some comments on the record, particularly in my capacity as the shadow Minister for Emergency Services, as I think this motion intersects the environment and emergency services portfolios. I am sure that if the Minister for Emergency Services were not away from the chamber on urgent parliamentary business, he would probably also have an interest in the motion before the house.

Hon Sue Ellery: He would have done it; I am just doing it.

Hon MARTIN ALDRIDGE: Right; there we go. He would have had an interest in this motion in both a representative capacity and as Minister for Emergency Services.

I heard some contributions tonight, particularly from Hon Dr Brad Pettitt and Hon Dr Brian Walker, about the need for these regulations to be disallowed in the interests of protecting biodiversity. The other aspect of that is understanding the benefit of bushfire mitigation and suppression activities in the interests of protecting biodiversity. That is certainly a point that I want to talk about. It is wrong to assume that bushfire mitigation, in whatever form it might take, is only about the protection of life and property, because it is not; it is also about the protection of the environment and, particularly, threatened species within the environment. I will speak a little more about that in a moment.

Speakers before me dissected the regulation quite well, so I am not going to repeat what has been said, but I did want to point out that the regulation, as crafted by the government and which the opposition supports, does not provide the unfettered or unrestricted ability for somebody to engage in these activities in the interests of bushfire mitigation. I draw members' attention particularly to clause 7(3) through to (5), which will clearly place some restrictions in terms of not only the six-year rule, which has been mentioned, but also the types of activities that are prescribed. Subclauses (4) and (5) cover some other anticipated scenarios in which people might try to use this for a different outcome.

I heard during the debate that there is a risk of over-burning—that, effectively, the environment will be burnt every six years and that that will be a potential risk to the environment. I think the opposite is true. We are so far from the point of reducing the risk in our environment every six years that I am struggling to see that that will be a real threat any time soon. There are a number of reasons for that. In years gone by, the approach taken in using fire as a primary mitigation method was on the basis that the greater the number of hectares burnt a year, the more successful it was. The thinking

around that approach has changed significantly in the last decade. A much more scientific approach is now being taken to reducing risk. It is not just driven by the number of hectares; it is about the quality of the hectares that are burnt. A greater emphasis is placed on risk around critical infrastructure and communities as well as the environmental risk, as opposed to simply being driven by how many hectares have been burnt this year as a key performance indicator, as perhaps occurred in years gone by. Having said that, taking a more strategic approach to risk mitigation means that burning or mitigating risks in these environments becomes significantly more challenging, because it is a higher risk environment as opposed to burning some crown land in the middle of the goldfields and adding that to the annual tally.

The other impact is the seasonal conditions. Western Australia once had a very clearly defined northern fire season and a very clearly defined southern fire season. In my view, those lines have become much more blurred over the last decade, so the windows of opportunity to undertake risk mitigation, particularly involving fire, are much smaller than they used to be. One of the learnings from the 2011 Margaret River bushfire is that our agencies now take a much more thorough approach to planning and undertaking risk mitigation exercises than they once did. In my view, and I think the view of others, all these things are compounding in smaller windows of opportunity in which to conduct these types of activities.

It is important to note that under the Wildlife Conservation Act 1950, which was replaced by the Biodiversity Conservation Act 2016, I am advised that authorisation was required only in relation to the taking of threatened flora, so there has been a change in the transition from the previous act to the current act. It is not entirely true to say that by disallowing this regulation we would simply be enforcing the status quo, because that is not the case, as we are now dealing with the Biodiversity Conservation Act 2016 rather than the Wildlife Conservation Act 1950, which it replaced.

Hon Tjorn Sibma made some comments around this threshold question, and I think his concluding comments were that, on balance, the government had landed on the right settings of this regulation in terms of balancing the risks to the environment, to the citizens of Western Australia, to property owners and to others. I fully support that view. It might not have always been the case, as I said, many years before when different approaches might have been taken in risk mitigation, particularly by fire. I do not think that that is the case anymore.

I also wanted to talk about the impact that regulations like these are having on other aspects. For example, not related to this regulation, I can give another example that I think the government should give some consideration to—that is, the impact of environmental regulations on land clearing involving road projects, particularly road projects that improve road safety. I think some similar parallels can be drawn in respect of some administrative difficulties faced by road managers, whether they be state or local governments, with respect to improving our road network, particularly improving road safety outcomes on our road network. I think some similar parallels can be drawn with regulations like this—obviously, this regulation relates to mitigating the risk of fire rather than road safety.

I conclude on this. Some interesting observations were made by the Royal Commission into Natural Disaster Arrangements, which was a royal commission that handed down its findings in 2020. It reported on the 2019–20 bushfire season, which, as members will recall, largely impacted the eastern states. In fact, we had a fairly mild bushfire season in 2019–20.

I quote page 335 of this report —

> The Royal Commission into National Natural Disaster Arrangements was established on 20 February 2020 in response to the extreme bushfire season of 2019–20 … and identified significant damage caused by uncontrolled bushfire.
>
> The 2019–2020 bushfires have been described as an ‘ecological disaster’.
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> …
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> Over 330 threatened species and 37 threatened ecological communities protected under the EPBC Act were in the path of the bushfires.
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> …
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> … no bushfire on record has burnt more forest and woodlands habitat within a season.
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> …
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> Over 24 million hectares were burnt. The number of animals killed ‘greatly exceeded’ 1 billion, and wildlife and ecology experts have predicted serious long-term adverse effects on biodiversity.

I am glad that this debate has taken the course that it has and, as Hon Tjorn Sibma said, government regulations have struck the right balance. I think governments in recent years have significantly improved their practices with respect to fire mitigation in the planning and understanding of fire mitigation. I will not be able to support the disallowance motion before the house.

HON DR STEVE THOMAS (South West — Leader of the Opposition) [9.24 pm]: I will try to make a fairly short contribution and not go over the ground very well covered by Hon Tjorn Sibma and Hon Martin Aldridge. Obviously, as has been said, the opposition cannot support the disallowance before the house.

I just want to add a couple of pieces to the contributions made thus far. I have been around long enough to remember the targets of 200 000 hectares a year of burning. It is easy to jump out there and try to hit a target, and when you do so, because it is the most cost-effective and cheapest way to do it, you end up doing large swathes and you do them not infrequently compared with what is a much more targeted and what we used to refer to as "mosaic" burnings. Focus is placed on protection of assets, both biological–ecological and, on the other side, social. That is obviously a much more expensive process to do, and all governments have struggled to some degree to protect environmental assets and social and human assets at the same time.

Interestingly, there have been so many reviews on major bushfires in Australia that I think we averaged one every second year over the past six decades. They always come back with the same recommendation: control in advance is a much more important process than trying to catch up afterwards. That applies whether we are dealing with the ecological or social aspect. I know that there is a group of people, particularly down south in my direction, that have been opposed to controlled burns for a long period that do not believe they offer protection. As Hon Martin Aldridge just pointed out, controlled burns done well absolutely protect environmental and species assets as well as human assets. We could argue that we should perhaps put more money into that process to do a greater number of smaller areas. That obviously requires more manpower—person-power; whatever the right word is today—and more cost. More human resources are required to do that. It is a complicated argument. But to not do it would be a disaster for the state of Western Australia.

The regulations that were promulgated by the government allow a degree of protection—not total protection, but a degree of protection—for people trying to do the right thing and mitigate the risk of fire in their immediate environment. I introduced a private member's bill in the last Parliament and debated this in the Environmental Protection Act amendments a couple of years ago. I think the capacity for people to protect themselves should be automatic. Therefore, in my example, within 20 metres or 25 metres of someone's residence, no-one should be able to prevent them from protecting your house and your family. I actually think that is more important. Because of that, I do not think people are out there deliberately or wilfully destroying ecosystems and destroying protected species, for example. That is not the outcome.

Now, occasionally, even in the larger controlled burns that the government engages with, some native animals are hit. If they are not managed, obviously an impact will be felt. All the old foresters will tell us that wildfire that gets out and escapes, particularly where there has been no control, is far more damaging to the native environment than multiple controlled burns. I agree with Hon Martin Aldridge. The theory is that they are control burning areas every seven years, but very few areas get anywhere near it. History reveals that the only areas that get anywhere near every seven years are big open patches where it is possible to effectively burn through aerial dropping and get a big area to get the numbers up. Those are the areas that probably get burnt more frequently. Where we use the true and genuine mosaic protection burns, there are places out there that have not been burned for 40 years. An enormous number of places have risk that is absolutely diabolical.

Regrowth is interesting. If members want to have a look at this in action, I suggest they have a look at some of those areas where the wildfires went through, particularly in that Waroona–Yarloop area. The regrowth of the forest there has completely changed the ecosystem. That wildfire got into an area that had not been burnt for a very long period, and it killed all the big trees down to the ground and they then suffered. It looks like a bamboo jungle. It is so unnatural compared to the forest that was there 100 years ago, and it is the traditional forests of the south west. Bigger jarrah trees were interspersed by, in my area, the occasional marri or red gum, and horses could be galloped through there because trees were a significant distance apart. That was a natural-looking forest. Look at the regrowth with the Yarloop fires: it looks like a bamboo jungle that would be a struggle to get through. What does it mean? It means an enormous fuel load is sitting there right now of unusable saplings that will sit there until the next wildfire goes through, because it will not necessarily be managed.

It is absolutely the case that the proper use of controlled burns is critical to prevent that sort of damage. The regulations that are presented offer a degree of protection for those people who are trying to do the right thing. Well done to the government for actually putting those in place. I think Hon Tjorn Sibma said that these regulations offer the average citizen a degree of protection, and most of them are trying to do the right thing. There are not too many people out there deliberately trying to burn endangered species, and those who are are probably arsonists rather than landowners. It is the case that most of these people want to do the right thing. Most of these landowners want to encourage endangered species in their area, but they want a fuel load that can be managed, and the best way to do that is by what we call cool burns. We are getting into the argument of whether spring burns are better than autumn burns. I think we would love to do a lot more autumn burning, but the seasons have shifted a bit and there is fire risk out there. Spring burns potentially have a slightly bigger impact, but, as Hon Martin Aldridge said, we are going to have

to use basically all the time frame that is available to us to provide even an inadequate level of protection. The truth is that we probably have an inadequate level of protection for most of the state. The last time I drove through some of Perth's eastern suburbs hills—I am a former shadow Minister for Emergency Services and shadow Minister for Environment—I saw patches that I would be too frightened to send a fire crew into if I were the emergency services minister. The fuel load is enormous and it is just dangerous; there are no escape points. It is not just the Perth hills; Margaret River will burn again at some point. When that area that is not so much in the Dunsborough–Yallingup patch, but in the low hills that exist on the southern side of the highway, which the Acting President (Hon Jackie Jarvis) will know all about, burns, those people will be toast as much as those in the Perth hills will be.

We probably have an inadequate management system. To do it properly, it would probably bankrupt the state. It is not a criticism of this government or previous governments; it is very hard to get that level of protection in place. But it has to be done. Surely there can be some protection for those people who are trying to do that through both preventive burns and, under some circumstances, back-burning while a fire is happening. The work that is being done, mostly by volunteers, is to protect the community, and a lot of it is also to protect the environment. I have heard comments made previously that if we wait long enough, all our native forests will turn into rainforests and they will not burn. That has been around for a long time; I have heard those arguments floating around in the deep south of the state, if you will. Of course, that completely ignores what used to happen with Aboriginal fire management. Those forests always burnt because they are temperate, not tropical. Either we want to protect both the community and the environment or, ultimately, if we provide no security, we must be prepared to sacrifice both to some degree. I certainly do not want to do that on practical or ideological terms.

I think it is critical that this motion, unfortunately, not succeed. The work of protecting all those things, including native species, is far too important for that. I will not be supporting the disallowance motion either. This is an important set of regulations that deserve to be supported.

HON DR BRAD PETTITT (South Metropolitan) [9.33 pm] — in reply: I apologise for not jumping up, Acting President; I was not quite sure of the process. I will be very quick in response and thank everyone for their contributions. Although I appreciate that the disallowance motion will not be supported, I think it was useful for Parliament to have this discussion.

A few issues have been raised. One of the themes that came through from multiple speakers was that, in reality, we do not get to burn anywhere close to every six years, so we should not be too worried about that. The point that I and many of the experts who have raised serious concerns about the exemptions make is that that is exactly what the order proposes. Members are absolutely right; many places are being burnt maybe every 20 years, but I do not know.

A member interjected.

Hon Dr BRAD PETTITT: Or 60 years, as was noted in the interjection.

The point is that this order allows for six years. That is the threshold; six years is the threshold at which people do not need to go through any process to make sure that this is being done in the best, most professional way. I think that is the point; if the threshold were higher, I suspect that some of those concerns would be very different. If we are going to have that kind of threshold, it is quite wise that we use the expertise that exists within the Department of Biodiversity, Conservation and Attractions to advise on the best way to burn in particular locations. The fear that I and the experts in our community have in this space is that all that expertise and those checks and balances are being taken out of the process, and, instead, we will have people whose job is not to be experts determining the best way to do fire management in a particular area. That is why we have a state department that has experts who can assist in that. But I think we are losing that for a very large chunk of our land.

I agree with parts of what was said. I stated in my initial remarks that we all agree with prescribed burning. That is not the debate. Everyone acknowledges that controlled or prescribed burns are a rational part of how to deal with fire in this state. The argument for putting forward this disallowance motion was about how that is done and the kind of expert input, regulation, and checks and balances that are in place. Again, I agree with the comments made about balance. I fear, though, that this balance will not be right in some cases and, as a result, there will be unnecessary impacts on biodiversity, threatened species and communities because that expertise is not there.

My final comment is that I think there are smart ways forward on this. We are seeing around Australia and in this state increased use of some emerging expertise. I note the comments by Hon Dr Brian Walker about using First Nations people and some of the expertise on burning at lower temperatures in key areas. I think there is great expertise there; it fits with some of the cool burns that Hon Dr Steve Thomas was talking about. There are smart ways of doing fire management that we will need to get good at to reduce fire risk while also protecting very vulnerable communities, which will be increasingly vulnerable to fire through climate change. We will need more burning, and we will need to get better and smarter at it and have greater expertise in it, and not just let it be a bit of a free-for-all because government has vacated this space. That is my fear and that is why I put forward this disallowance motion.

Although I appreciate that it is not going to get up—I will not put members through the pain of a division—I am proud to have raised it on behalf of the community that is very much an expert in this space. I want to thank those people for bringing it to my attention and for the opportunity that we have had to discuss it in this place.

Question put and negatived.