ENVIRONMENTAL PROTECTION AMENDMENT BILL 2020
ENVIRONMENTAL PROTECTION AMENDMENT BILL (NO. 2) 2020

Cognate Debate

Leave granted for the Environmental Protection Amendment Bill 2020 and the Environmental Protection Amendment Bill (No. 2) 2020 to be considered cognately.

Second Reading — Cognate Debate

Resumed from 9 June.

HON TJORN SIBMA (North Metropolitan) [2.31 pm]: It can feel like a long run-up sometimes, Madam President.

The PRESIDENT: Hopefully, not for too much longer!

Hon TJORN SIBMA: Indeed! I have foreshadowed some of my introductory remarks.

I outline to the house that from today and onwards, I am the opposition spokesperson on environmental matters. As such, I will be the lead speaker in the course of the debate on the cognate bills with which we are dealing. I indicate very clearly at the outset for everybody's benefit our support of the bills. Obviously, we have an expanding supplementary notice paper, and I imagine that through the course of the next few days, the supplementary notice paper will proliferate to include a number of other issues; that is fair, reasonable and appropriate. I identify up-front that I am not using this opportunity to speak at great length. The issues of significance are best dealt with by way of detailed examination through Committee of the Whole, so I will save my questions to some degree, but I will give the minister and the government fair indication of my areas of interest. I am sure that they will traverse ground similar to that of other members who will be making a contribution to this debate.

I identify some appreciation for my friend and colleague Hon Dr Steve Thomas, who has a formidable knowledge in this and other portfolio areas. I have benefited greatly from sharing an office with Steve over the last few years, and whatever I have picked up in the course of that, I have learnt through osmosis. I feel comfortable that any omissions made in my contribution to this debate will be identified very swiftly by Hon Dr Steve Thomas, who will fill the gaps. This is the Liberal Party's Selleys no-gaps approach in dealing with these bills.

Hon Dr Steve Thomas: Two days off the debate by changing portfolios!

Hon TJORN SIBMA: Indeed!

By way of genuine compliment, I thank the minister for making contact with me and offering a briefing. I appreciated not only that offer, but also the substance of the brief that was provided through both his office and departmental staff. That is in keeping with the minister's reputation as a professional. I acknowledge my appreciation for that.

I also make an observation, which might be misconstrued as a trivial or petty observation but it is not intended that way. I thank the government for not naming this a COVID-19 response bill. I make that point because amendment bills that deal with regulatory agencies that deal with approvals and the like have not been treated in a similar fashion throughout the course of the last few months. I make some reflection on the carriage of the Planning and Development Amendment Bill 2020. That was largely the representation of more than three years of approvals reform within the planning portfolio dressed up as a rapid economic response. That was misrepresentative of the majority of the bill. I am very satisfied that the government has not engaged in that form of misrepresentation as far as these bills are concerned. There are some similarities, I suppose, not so much in content but in theme.

I take the Minister for Environment and all ministers at their word, particularly when they provide their views by way of contributions in this chamber through second reading speeches and the like. The minister indicated that this is a significant and modernising bill. It is the outcome of a number of years of deliberation and contemplation that spans governments. When the government gets to the point of a consultation draft, it inevitably invites further, deeper and perhaps more narrow consideration among a group of stakeholders, and that obviously means that the end product takes some time to get to us. With respect to that, I will be reflecting on a number of issues put to me by various stakeholder groups, particularly the part IV and part V provisions, which is largely where the action is in the first bill. Those issues also extend to the Environmental Protection Amendment Bill (No. 2), which really deals with the establishment of cost recovery support via regulation. The issues that I will identify traverse both bills. I will return to that when we get to the suitable point under consideration.

I make an observation that is similar to the one that I made during the debate on the Planning and Development Amendment Bill, which is twofold. First, "reform" is the most abused word in the entire Australian political lexicon. Reform means all things to all people at all times. Reform finds itself accompanied in sentences with other words such as "streamlining", "fast-tracking", "efficiency" and the like. These are all good words. I have not seen a government bring in legislation and provide by way of a second reading speech or the explanatory memorandum that goes with it a commitment to increase duplication or make things more inefficient or cumbersome. All

governments have shared this desire from at least the 1980s macroeconomic and microeconomic reforms onwards for streamlining, fast-tracking, reducing duplication and cutting red tape and green tape—all kinds of coloured tape. No-one talks about adding more tape. I will not say that it is with some measure of tiredness or cynicism, but when many industry operators hear about another government's great commitment to regulatory reform and to fast-tracking and streamlining, one can see their eyes roll back in their head at quite a degree of rapidity, because they have heard this before. Essential to all reform is that it is bedded down by way of black-letter law and suitable regulatory instruments, and that it is absolutely driven into an organisation's culture, informs the systems that the organisation operates and its practices of behaviour, and permeates its culture. Until regulatory or legislative changes are embedded at that level, there has not been reform, so to some degree, a commitment to reform or to amendment, such as the amendments contemplated by this bill, will not be accomplished through the mere passage of this bill in some amended form; nor will it be accomplished by way of gazettal of the regulations that emanate forthwith.

I will make brief reference to the fact that a quite large regulatory drafting load will occur as a consequence of the passage of this bill—if, indeed, that work has not already commenced. I am actually starting to become a little concerned about the pipeline of regulatory work that is bedevilling parliamentary counsel and the legally qualified staff within the departments of state. I think a significant backlog of work is being built into the system. With regard to the calling on this chamber as a house of review and scrutiny—I want to make it abundantly clear that this is not necessarily as a consequence of this bill, so I am not reflecting on the minister, his staff or his departmental officers—quite often, when concerns are raised around measures such as cost recovery or anything else, legitimate concerns or queries are waved away or kicked down the road with, "Don't worry about that; that'll be dealt with as we draft the regulations."

A significant number of regulations are being drafted and we have very little insight into their content. Our capacity to scrutinise regulations and potentially move to have them struck down—regardless of which portfolio or minister they originate from, or what particular legislation we are dealing with—will obviously be curtailed by the fact that, as of the end of November this year, Parliament will be prorogued and we will move into a caretaker government. We have no insight into when the forty-second Parliament might be called, so a significant window of opportunity will be opened up for regulatory mischief to be made. That is a reflection not on this particular legislation or the regulatory instruments that will come from it, but on all regulations.

I will make a brief aside. I understand that an omnibus bill will be introduced in the other place this week, titled COVID-19 Response and Economic Recovery Omnibus Bill 2020, which actually traverses the territory of the current Environmental Protection Act and a number of other acts as well. It will seek to ex post facto regularise, normalise or validate certain processes of decision-making and certain decisions that have occurred, and we have absolutely no insight into what those facts are. I will bring this back to the bill, Madam President, but further to that, and worryingly, there has also been an indication of a supervening Henry VIII power by way of part 7 of that legislation that will introduce such a degree of sovereign risk in this territory as to be intolerable and difficult to curtail, because we will potentially be in a state of perpetual prorogation, if that is even a word. Effectively, it would mean the suspension of parliamentary practice and oversight.

There is a very real risk here that certain pieces of legislation that are amended or scrutinised in this place to the best of our ability—and which, by their very nature, necessitate the drafting of regulatory instruments—will result in unintended consequences, and the oversight capacity of this house will be diminished. Realistically speaking, if this bill passes at the end of this or next week, we will be in no position to scrutinise the regulatory work that will be necessitated as a consequence until well into next year, at which point it might be too late, depending on the regulation and its consequences. I just say that as a cautionary preamble. Obviously, we are not here to unfairly detain legislation, but if there is an opportunity for the minister or his advisers to provide sufficient detail in the course of debate, it will be very much welcomed, because I think as a jurisdiction we are heading into very dangerous territory.

That was the preamble, and as I said, I will return more to the substance of the bill, but I will also make an observation about the spirit of the legislation. I have dealt with what I will call the approvals space from the perspective of someone who was, a very long time ago—more than a decade ago—a ministerial staffer. I hesitate for emphasis; that was more than a decade ago, and I have done other things. I subsequently went on to be a user of the regulatory system—very briefly in the mining sector, and then more extensively in the property development space. Approvals are an interesting concept. I do not think people can fully comprehend them until they go through the experience for themselves. Quite obviously, I come from the side of politics that is very mindful of the time value of money and the need to not duplicate unnecessarily or to constrain the achievement of our full economic and cultural ambitions with insensible regulation. We are not in the no-regulation space; we are about sensible, practical regulation that is fit for purpose, understandable, consistent and predictable. I think that is effectively the Holy Grail of all regulation, and it is probably more honoured in the breach than in the observance.

I will say about the way in which approvals were dealt with in the early to mid-2000s to the 2010s that there was a creep of offsets as a concept, to mitigate perceived or actual environmental impingement. Offsets were interesting, at both the state and federal level. I will reflect upon an experience I had in a company that will remain unnamed that

dealt with a commonwealth jurisdiction on the issue of offsets. Long story short, to get a simultaneous mine pit, rail and port project up, there was an environmental management plan that had to be lodged with the commonwealth government. It was difficult at that time to get useful, constructive feedback from that commonwealth department about the adequacy of the environmental management plan. Invariably, non-scientifically validated areas of concern would come back, and they could be trivial issues—for example, about the stock image of a quoll that looked a bit too well-fed for the department's liking. I am not being frivolous; these are actually real-life examples.

One could not establish a necessary connection between the kind of activity, whether it was vegetation clearing or digging a hole, and the kind of offset that one would be obligated to commit oneself to so that one could jump that particular hurdle and then jump the next hurdle and the next hurdle. If companies, particularly in the mining space, were big and well resourced, they could fight these things. A smaller startup was obligated just to live for the next six months. Effectively, they would potentially suffer the death of a thousand cuts. It became quite clear that there was no consistent or coherent logic on behalf of commonwealth departmental officials about the necessity of a particular offset and how it would achieve a superior environmental outcome, if at all. Issues about whether it was cost effective or would further impinge the extraction of resources were not always front of mind. Issues about the time value of money of a certain approval being delayed by another two, three or four weeks for a potentially insignificant, marginal or contestable claim fell on deaf ears.

That was a real insight into how approvals were managed across the country. It was an unedifying but instructive experience to go through, and I think it reflects quite poorly on Australia as a whole over time, given we are at the very cusp of self-recognition as a minerals and energy superpower. Without using hyperbole, that is what we are. We often constrain ourselves unnecessarily from the full achievement of that realisation. I know that is not everybody's realisation, but, fundamentally, if we were to reduce Australia to what its strategic competitive advantages are, its natural abundance of minerals and energy, mineral sands and the like, is where we fit into the world. That is what makes us significant. That is what buys us a seat at the table to talk about global social issues as much as anything else. This is what gives us economic weight. It is also what undergirds the importance of Western Australia as a jurisdiction within the commonwealth because of our natural endowment.

I am pleased and I take it to be a stated fact that the minister is committed to achieving the appropriate balance between that full economic realisation and the protection of our environment. I will quote from the opening of his second reading speech. This is not to fill in time, but I think it is the ethic that should guide all our deliberations, and it is a good one. I quote from the minister's second reading speech, and he says —

> Western Australia is home to some of the world's most biologically diverse flora and fauna, as well as some of the world's most significant natural resources. For this reason, finding a balance between delivering on the full economic potential of our resources and the protection of the environment is vital. The need to ensure that our precious environment is protected for current and future generations and that environmental legislation works efficiently to support a sustainable economy is particularly relevant at a time when we are moving to support recovery from the impact of the COVID-19 pandemic.

I was probably a little too brisk in my appreciation of no reference to COVID-19, but at least it was avoided in the title of the Environmental Protection Amendment Bill. However, the point the minister makes is a very, very serious one. I think it is a sensible bipartisan point as well, and it is that spirit with which we launch into the contemplation and scrutiny of this bill. But I do want to reflect on whether over the last three and a half years the McGowan government has lived up to that mantle. I think it is a contestable claim that it has always been an unambiguous supporter of the mining industry. I think a number of decisions and positions have been adopted over the last three and a half years that might call that into question. I will not rake over old coals right now, but that opportunity may well come.

However, I want to seek clarity before I get into some of the issues that I think are pertinent to this bill and reflect on one thing that I talked about before—namely, offsets as an area of some ambiguity. Powers to create offsets are embedded in this bill. I do not necessarily think they are well explained, described or curtailed for this reason: under the previous Barnett government, there was a commitment to a bilateral agreement of a sort. Perhaps the minister can fill me in as we traverse this territory because I highlight that the commitment to enter into a bilateral agreement with the commonwealth was announced yesterday. There was such a thing called the strategic assessment of the Perth and Peel region that was colloquially referred to as the green growth plan. I have never seen detail of that plan. As I understand it, the ambition or strategic intent of that policy was to at least provide some development certainty. Yes, we are not talking about the kinds of industries in the Pilbara, Gascoyne or great southern, but as a principle, it was designed to stop this ever-expanding disproportionate growth in offset ratios.

Particular land developers in Perth were giving away land with some measure of expediency to the degree that if that behaviour carried through, there would be very little in the way of developable residential, commercial or industrial land in the entire Perth metropolitan and Peel regions. For that reason, it was determined that perhaps

what might be a better idea, particularly when there is interaction with the Environment Protection and Biodiversity Conservation Act, was that we strike a deal with the commonwealth about effectively what is in and what is out—what is developable and what is quarantined for environmental purposes with some perpetuity, or at least over 30 or 40 years to give an adequate time frame.

It was an inheritance of the McGowan government—it was not its policy; it was an inheritance. Nevertheless, after some review, the government continued on that line. It was, however, one of the administrative victims of the new priorities that emerged within government as a result of the COVID-19 pandemic. It has been kicked indefinitely into touch. I do not know when it will come back. I think the potential of that plan was profound in providing a better sense of clarity between extracting the appropriate economic value out of land, particularly for housing stock, and preserving our environmental inheritance. I am curious about what has happened with that and whether, potentially, some elements of that plan might be subsumed within a potential bilateral agreement with the commonwealth.

I want to also reflect briefly on an issue that has not emerged in recent times but has been gestating for a number of years now. It relates to the number of environmental officers within the minister's department who have the capacity to undertake approvals work. As I recall, I asked the minister about this in either the last budget estimates or annual report hearings process. I want to use this opportunity to seek an update from the minister about the process for staffing those positions. I am concerned about this because if we are legitimately dedicated to striking the right balance between economic accomplishment and environmental preservation, I would have thought that ensuring that we had the right number of appropriately trained and experienced staff on hand to manage the approvals backlog was, frankly, an absolutely compelling strategic requirement. From what I understand out of industry, that is not necessarily the case; there are still some gaps to fill. Frankly, I refer to the minister's and the Premier's statement from yesterday concerning the agreement or the intent to enter into a bilateral agreement with the commonwealth—it is welcomed by just about everybody, it must be said—that such a thing might eventuate in a six-month reduction in the decision-making time frame. I think everybody will acknowledge that that will be the right approach because nothing really is advanced in an extended decision-making period. What is important is, obviously, the quality of the decisions.

Yesterday, the Minister for Environment and the Premier said that WA has about $100 billion worth of development proposals in the pipeline that would benefit from a bilateral approval agreement. Why people who are experienced in industry and this space might roll their eyes at yet another government announcement, irrespective of whether it is a Labor or Liberal government, or a federal government working with a state government, is that they have heard a lot of this before. Development proposals worth $100 billion in the approvals pipeline obviously behoves the state government to ensure that it has enough qualified people or people who can be accredited by a virtue of amendments to this act to undertake that work. That is not a trivial point at all; it is absolutely critical. It goes to my earlier remarks about how it is very easy to talk a big game about reform, but reform or transformation in any corporate entity requires not only policy statements or messages from the CEO—it demands implementation. I sometimes think that governments of all persuasions perhaps miss the obvious point: that what they are engaged with is, firstly, cultural transformation, which is almost perpetual. If governments are looking to improve their regulations and their systems, why not think a little outside the box and employ either a consultant or someone who is responsible and has some experience in systems engineering? That is because a lot of these issues fundamentally become systems issues or engineering issues, as much as they are human, policy, regulatory or indeed legislative issues.

I turn to the major portions of this legislation. These are not insignificant bills; I take that as read. This is potentially significant reform if it is fully embedded, but for what it is worth, I think it is very wise. I will quote from the explanatory memorandum, which states —

- Improving regulatory processes under Part IV to streamline the administrative efficiency of the environmental impact assessment process, and reducing duplication of assessments and approvals.

That is fundamentally an opportunity that, for whatever reason, has gone begging or has been difficult to bed down, so I congratulate the government for moving on this and making something of it. By way of observation, and why I made the process-engineering observation, largely speaking, aside from ministers, where bureaucracies can act or their attention goes is to the front-end approvals process. That is where all the effort is invested. That is a cost. I speak here from the perspective of an applicant or a proposer: that is their principal hurdle. But the issues that emanate from that are more around compliance with other things—sub-approval approvals, certifications or compliance certificates and the like. That compliance load also requires a significant degree of review, with the potential for overhaul. Those issues do not necessarily get the kind of attention that they deserve, but that is really how unjustifiable costs enter into the process. There is potentially an economic impact on that, which could and possibly should be measured.

My colleague the member for Cottesloe made this observation in the other place in the course of debate on these bills, and he drew upon his quite extensive experience: that compliance issues effectively become the placeholder for

better environmental outcomes, and that firms, acting under licence or approvals, direct all their attention to this daily compliance-monitoring culture. When we strip them back, some of the individual line items of compliance do not make a lot of sense, but there is an obligation that they are complied with because the risks of noncompliance are too great to countenance. They are the kinds of issues that always exercise the attention, quite rightly out of necessity, of senior management and, indeed, the board. This is one of the issues. I am not sure whether this bill sufficiently addresses those kinds of problems that emerge in the application or the operationalising of any endeavour, post the major up-front approvals piece. That is probably what we need to do next, as a jurisdiction.

By way of the amendments in the Environmental Protection Amendment Bill 2020 to part IV of the act, which is also dealt with in the second bill, which is to be read cognately, some cost-recovery provisions are introduced. Philosophically, I am troubled by those issues to some degree, in that I am not sure that we are talking about the ordinary business of government. I would surmise that some in industry are reasonably comfortable with those provisions; others might be less so. It is not an issue upon which the progress of this bill will come a cropper, but we need to get a better sense of what might be the result of creating these provisions—these new powers—particularly in light of what I said about the drafting of regulatory instruments and the capacity for this place to exercise any measure of reasonable oversight, which is our obligation.

I am not going to talk about clearing provisions, although there are issues there. I will first acknowledge that amendments in this bill will effectively allow for the implementation of a bilateral agreement. That intent was announced yesterday. I think that is an absolute necessity, but, again, decisions made at a strategic level are only of any value if they expedite the approvals process in an economically reasonable way and in a way that does not damage the environment but potentially leads to improved environmental outcomes.

I will also talk about the concept of "cumulative impacts" that is being introduced. Ostensibly, it is introduced in part 2 of the Environmental Protection Amendment Bill 2020, and a ribbon runs through the rest of the legislation. I am reading everything simultaneously, forgive me, being reasonably new to the portfolio. But an interesting subsection is introduced at clause 4. The explanatory memorandum states —

> It also introduces a new section 3(1B) … which states that the effect of a proposal on the environmental includes its cumulative impacts. While this has been the understanding of the current provisions, this is now clarified.
>
> The term "cumulative impacts" relies on its ordinary meaning, which may change over time in a similar manner to the term "significant" used in the EP Act.

One might make the observation that this sounds reasonably sensible and that it would at least avoid the death-by-a-thousand-cuts approach of having an overly localised environmental assessment for each proposal as it is provided. It makes sense to relate proposals with like proposals if they share some sort of area or they are affecting the natural environment in a consistent or related way. However, to give emphasis to terms that are used and commonly understood, but potentially ascribing them a changed meaning is legislatively perilous. I will just quote here, because I have used this new portfolio as an opportunity to reach out and make contact with those who possess great and detailed knowledge. This document is accessible to anyone who might have the interest. It is from the Allens legal firm website and is titled "10 Key Things You Need to Know About Proposed Changes to the Environmental Protection Act 1986 (WA)". I am not in any way working on commission there, but I found it to be a useful document! I quote from this document, because it makes not an insignificant observation, particularly when this issue is referred to and given some focus in the text of the legislation. It states —

> The proposed reforms to the EP Act will include new section 3(1B) to confirm that the 'effect' of a proposal on the environment includes the 'cumulative effect of impacts of the proposal'. 'Cumulative effect' is not defined and, as many practitioners will know, there is no generally accepted methodology for a cumulative impact assessment.
>
> Although the explanatory memorandum to the Bill describes this as a 'clarification', the consideration of the cumulative effect of impacts is not mandated under the current legislative framework and is ultimately discretionary.

It is always a problem if something is ultimately discretionary. Discretion can be used wisely, it can be used unwisely or it can be used punitively, depending on the individual or the organisation that wields the discretion. That was my editorialising, and I will return to the document. It continues —

> The proposed amendment will have implications for proponents at all stages of the environmental impact assessment process, including when determining whether a proposal is a 'significant proposal' for the purposes of Part IV. Ultimately, this aspect of the reforms would benefit from further clarification, potentially through publication of guidance material on the methodology for cumulative impact assessments, as foreshadowed by the EPA's Strategic Plan (2019–2022).

I might use this opportunity to beseech the minister in his response, if he has the capability of doing so, to answer that charge effectively put of a lack of clarity about the apparent clarification here. I think that is a not a trivial thing. If not, it no doubt will be an issue that we must return to in Committee of the Whole House.

Although I was not intending to initially, I also might talk about the new opt-in clearing referral process. I think clearance issues generally will exercise some members of this chamber more than others. I will quote again from the same organisation. It is absolutely up to the minister whether the government accepts these criticisms as being valid; nevertheless, issues from a source that has nothing really invested in the process of this bill are worth raising. With respect to this, the document observes —

The Bill proposes to introduce a new 'optional' referral system for clearing proposals. In short, proponents will have the option to refer non-exempt clearing proposals to the CEO for a determination as to whether a clearing permit is required. This referral process will give the CEO a new power to effectively 'exempt' clearing proposals from the permit requirements under the EP Act. Such exemption would be personal to the referrer and cannot be transferred.

In making a determination, the CEO must have regard to statutory criteria including the size of the area, relevant environmental values, current scientific knowledge and whether conditions are required to manage impacts. Referrals and decisions will need to be published but there is no requirement for these documents to be kept on the public record unless it later forms part of a permit application. If the reforms proceed, these published clearing referral documents are likely to be of keen interest to all stakeholders for their 'precedent' value.

That is probably the case, and I would be very interested in the minister's response to that. I will just make an observation about the bill as a whole. Much of what might be created here is at the moment untested, at least in WA, and there are probably some very interesting precedents that might be foreseen or foreseeable, but others might not be so. What that does to the mission statement of preserving and improving our environment and heritage and allowing sensible economic development to occur is another thing.

I also reflect on another aspect of this bill that relates to the introduction of a new levy for environmental monitoring programs. Again, at the outset, I make the observation that across government there is obviously some temptation for cost shifting or to outsource research tasks via other means. I am interested in what might emerge as a consequence of, first of all, the introduction of a new levy. If we are talking about the creation of a new special-purpose account, and I think we are, generally special-purpose accounts are buried very deeply in the budget papers. No-one looks very interestedly at them, but they cumulatively hold a very large balance. Individually, there is very little in the way of external oversight of whether those accounts are used appropriately. I will just mention this. First of all, I am yet personally to be convinced that this is a necessary area of focus under this legislation, but I will always accept a sound argument. There also has to be some sort of threshold, one would think, about the scientific value of whatever monitoring task is being sought by the department and funded by way of this levy. Governance arrangements around these sorts of things need to be very tightly managed. I refer to other levies and trust accounts such as mine rehabilitation accounts and the like that, to the best that I recall, are largely unexpended, but, when they are expended, have unfortunately been the avenue or instrument to corruption and self-enrichment. All governments introduce levies at their peril. There has to be a coherent, logical and scientifically valid explanation of why this might be imposed as a cost on industry again, but once that is done, the governance arrangements have to be absolutely watertight. We also want to see some lift in overall portfolio management performance, and I am not necessarily sure that that will occur as a consequence of the passage of this bill.

I promised the chamber that I would not go on at length, and I will not. I will bring my very modest contribution to its conclusion, and members can all breathe a sigh of relief, no doubt! Nevertheless, it goes without saying that the growth of amendments on the supplementary notice paper is probably a very clear indication that this bill will be passed by virtue of sufficient argumentation provided in defence of its details, not just on the vibe of the thing. These COVID-19 times potentially risk lowering the threshold of parliamentary scrutiny. This is an opportunity to discharge our duties as they come to us. I have every expectation that my friend and esteemed colleague Hon Dr Steve Thomas will plug the many gaps that would have been evident to a knowledgeable operator in this space, which has come by way of the inconvenient divestment of the portfolio to me. Nevertheless, I look forward to a robust and meaningful exchange with the government during Committee of the Whole.

The DEPUTY PRESIDENT: The question is that the bills be read a second time, but before we launch into that, I advise that we are currently experiencing some technical difficulties with the electronic timer. Until the technical electronic timer is back in order, the clerks will keep time. The clerks will ring the bell once when a member has five minutes remaining and ring the bell twice when a member's time has expired. There is, of course, no requirement for any member to simply keep speaking until they hear the bell, but that is a matter for them.

HON RICK MAZZA (Agricultural) [3.20 pm]: The Deputy President will be pleased to know that I am the lead speaker for the Shooters, Fishers and Farmers Party for the Environmental Protection Amendment Bill 2020 and the Environmental Protection Amendment Bill (No. 2) 2020 cognate debate; therefore, the clerks will not need the timer for this period and so it might be an opportunity for the technicians to repair it before I finish.

A lot of work has gone into the proposed amendments to the Environmental Protection Act. The explanatory memorandum tells us —

> The Environmental Protection Amendment Bill 2020 amends *the Environmental Protection Act 1986* —

It is 30-odd years old —

> … to improve and update it by streamlining and improving regulatory processes for the protection of the environment in Western Australia.

At the briefing, the advisers said that a number of matters had arisen and there was a lot of jury-rigging to try to maintain the management of the legislation. They had basically cleaned up the bill and made sure it was much more streamlined to support us through these modern times.

The explanatory memorandum continues —

> The Bill will be supported by amendments to the *Environmental Protection Regulations 1987*, *Environmental Protection (Clearing of Native Vegetation) Regulations 2004* and the making of new regulations necessary to implement the reforms.
>
> The main areas of reform in the Bill are:
>
> - Improving regulatory processes … to streamline the administrative efficiency of the environmental impact assessment process, and reducing duplication of assessments and approvals.
> - Introducing cost recovery provisions …
> - Clarification of provisions dealing with strategic assessments using terminology consistent with that used in other jurisdictions. These amendments will provide clarity and align the Environmental Protection Authority's (EPA) ability to conduct strategic assessments with similar processes in other jurisdictions.
> - … to ensure the clearing provisions are efficient, targeted, flexible and transparent while ensuring the protection of native vegetation with important environmental values.
> - … to improve the efficiency of regulation of emissions and discharges.
> - Modernising and improving defences, investigation and enforcement powers, and providing for enhanced … penalties.
> - … provide for environmental protection covenants to which the … (CEO) may enter under conditions …
> - … enables regulations to be made for the development of environmental monitoring programs to address cumulative environmental impacts in particular areas or from certain industries and to recover the costs of monitoring.

I would be interested to hear from the minister what the cumulative environmental impacts may entail when it comes to clearing an area. I raised it with the advisers and was given an answer that I am not completely happy with. If there were a district where some clearing had taken place and there was some run-off to a watercourse, if one landholder removed an amount of vegetation under permit, would that reduce the ability of other landholders in that catchment area to clear some land? I would be interested to hear information around that.

The explanatory memorandum continues —

> - Amending appeal provisions to improve consistency.
> - Establishing consistent transparency and publication requirements throughout the EP Act, providing a head power for a system for the accreditation of environmental practitioners, and increasing penalties for certain environmental offences.

The reforms in this bill cover 118 clauses. They are very significant and I am sure many people welcome these amendments. The Environmental Protection Act in WA is our primary protection legislation and it is timely that these reforms take place. I will not cover off each of the 118 amendments of the bill; it is a very substantial bill, but a couple of areas of this bill are of particular interest. Although I support environmental protection—I think any reasonable thinking person has a concern for the environment to make sure that it is protected—it really needs to be balanced with private property rights, the required red tape and fair terms of engagement. I also have a few questions on fire mitigation.

One area of interest is the regulation of environmentally sensitive areas and another is the clearing of native vegetation to protect structures from bushfires. The EP act prohibits the clearing of native vegetation unless there is an exemption or the landholder has a permit. A guide is provided to landholders about exemptions for clearing

for particular purposes; however, these exemptions do not apply to environmentally sensitive areas. Although exemptions may provide for clearing for low-impact or infrastructure-type matters, such as fence lines or for bushfire mitigation, if it is in an environmentally sensitive area, those exemptions do not apply.

A permit to clear can be obtained from the Department of Water and Environmental Regulation and can cost from $400 to $10 000. Should a person clear native vegetation in an ESA without a permit, they commit a criminal offence, which can be a fine of up to $250 000 for an individual or $500 000 for a body corporate, which is quite substantial. For each day the offence continues after a notice of an alleged offence is given, a fine of $50 000 for an individual and $100 000 for a corporation can be imposed, so people would not want to continue to be in breach of a notice.

What constitutes "clearing"? "Clearing" is defined under section 51A of the act —

> ***clearing*** means —
>
> (a) the killing or destruction of; or
>
> (b) the removal of; or
>
> (c) the severing or ringbarking of trunks or stems of; or
>
> (d) the doing of any other substantial damage to,
>
> some or all of the native vegetation in an area, and includes the draining or flooding of land, the burning of vegetation, —

That is an interesting one —

> the grazing of stock, or any other act or activity, that causes —
>
> (e) the killing or destruction of; or
>
> (f) the severing of trunks or stems of; or
>
> (g) any other substantial damage to,
>
> some or all of the native vegetation in an area;

In theory that sounds quite good, but according to that definition "the grazing of stock" is defined as "clearing" and that has caused some major problems for some people. To assist with the interpretation of the act, the 2015 guideline "A Guide to Grazing of Native Vegetation under Part V Division 2 of the Environmental Protection Act 1986" sets out the requirements in relation to the grazing of native vegetation, including when the grazing of native vegetation is considered to be clearing under the act. In determining whether grazing causes substantial damage and is therefore clearing, the guide states —

> Sustainable grazing at levels that are consistent with existing, historic grazing practices where such grazing does not result in significant modification of the structure and composition of the native vegetation is not considered to be clearing.

Unfortunately, for ESAs, there is no exemption. Of the 98 000 or so privately owned parcels of land, many are grazing stock and they would be in breach of the regulations. A few people have come unstuck with that and I will cover that later on.

This brings me to the environmentally sensitive areas themselves. Currently, under section 51B of the Environmental Protection Act, the Western Australian Minister for Environment may, by notice, declare an area or a class specified in the notice to be an ESA. Clause 4(1) of the Environmental Protection (Environmentally Sensitive Areas) Notice declares 10 categories of land as ESAs, including —

(a) a declared World Heritage property …

(b) an area that is included on the Register of the National Estate …

(c) a defined wetland and the area within 50 m of the wetland;

(d) the area covered by vegetation within 50 m of rare flora …

(e) the area covered by a threatened ecological community;

(f) a Bush Forever site…

With some exceptions —

(g) the areas covered by the following policies —

(i) the *Environmental Protection (Gnangara Mound Crown Land) Policy 1992*;

(ii) the *Environmental Protection (Western Swamp Tortoise) Policy 2002*;

(h) the areas covered by the lakes to which the *Environmental Protection (Swan Coastal Plain Lakes) Policy 1992* applies;

(i) protected wetlands as defined in the *Environmental Protection (South West Agricultural Zone Wetlands) Policy 1998*;

That covers a substantial area of our state.

Section 51B(4) of the act deals with declaring an ESA, stating —

> Before a notice is published under this section the Minister shall —
>
> (a) seek comments on it from the Authority and from any public authority or person which or who has, in the opinion of the Minister, an interest in its subject matter; and
>
> (b) take into account any comments received from the Authority or such a public authority or person.

My understanding is that an interested person would be somebody who owns the land, but the forty-first report of the Standing Committee on Environment and Public Affairs, which was very expertly chaired, of course, by Hon Simon O'Brien in 2015, contains a very comprehensive background into how ESAs were established in this state and the fact that there was little, if any, notice given to landholders. That still provides a major problem for landholders in the state. It has not been rectified. Despite the recommendations put forward in this very useful report, many of those things have still not been covered off, and a lot of people are still suffering as a result of that, or are blissfully unaware that they are vulnerable to breaches of the Environmental Protection Act if their property is an ESA. This bill seeks to repeal that section, which is of concern to me, too. Section 51B(4), which provides a requirement for a person, government authority or those with an interest in the land to be notified, will be repealed under this bill.

On 8 April 2005, the Environmental Protection (Environmentally Sensitive Areas) Notice 2005 was gazetted, which declared ESAs across vast areas of the state. As I mentioned earlier, there are about 98 000 parcels of land privately owned within the state that are declared ESAs, and that was revealed in that forty-first report. Landowners who had a direct interest in the land were never notified, consulted or given the opportunity to provide comment before the minister decided to declare their land an ESA. On 17 June 2014, petition 42 was tabled in the Legislative Council to repeal the ESA notice based on the fact that the government failed to fulfil the requirement of section 51B of the act, which was going to affect the livelihood of an estimated 3 000 to 4 000 property owners and their communities from Kalbarri through to the south west corner to the east of Esperance. In 2015, the petition was considered by the Standing Committee on Environment and Public Affairs, which produced this forty-first report. Petition 42 requested the repeal of the Environmental Protection (Environmentally Sensitive Areas) Notice 2005. The report made 13 findings and nine recommendations. The committee acknowledged that writing to owners whose land was affected by the ESAs would be an extensive task and a large undertaking, but one that should have been done when the ESA notice was introduced, stating —

> … it seems extraordinary to the Committee that a Government would apply the restrictions of ESA status to 98 042 titles without formally notifying the landowners.

There was a response from the Minister for Environment at the time to what was the committee's recommendation 9, which was that each of those private landholders be notified. I will not read out the entire response, but in part it said that it is not considered necessary or practical to write to each affected landholder. I would contest that that was a very poor response, because it might not be practical or necessary from the government's point of view, but I think, from the landholder's point of view, it is very important that they understand their obligations if their property has an ESA notice on it. As I said, the committee acknowledged that it would be an extensive task and a large undertaking to write to the affected landowners of those 98 042 titles. Recommendation 9 in the 2015 report was that the Minister for Environment direct the Department of Environment Regulation to write to each person.

Obviously, a lot of farmers raise livestock, which is very important to them, not knowing that they are on an ESA piece of land. We have discussed on many occasions in this place the impact of ESAs on Mr Peter Swift in the south west. He bought that land, and because the ESA was not registered on his title, his conveyancer did a search and found no problem. His mortgagee did a search and found no problem. He borrowed the money provided by the mortgagee and he bought the land. Some time later, he received a notice from the Department of Environment Regulation stating that he had illegally cleared land on his property. The department charged him and the dispute went to court. To cut a very long story short, he won that case, and there was some criticism from the magistrate on the conduct of the environmental department at that time. The fact of the matter is that the stress and the possibility of a $250 000 fine caused him great despair; even after he won that case, he was told that he could only raise cattle on that land under permit, he would have to apply for a permit every five years, and the department could cancel that permit at any time. For him, the land was not very useful as he could not plan ahead. On top of that, his great concern was that the value of his land would greatly diminish now it was known that an environmentally sensitive area existed on it. Since then, I think the Forest Products Commission has purchased the land from him

to assist and try to mitigate the situation that he is in. It is all well and good for environmental protection—as I said earlier, I think that everybody who is reasonable thinking understands that we need to protect the environment—but that must be balanced with what is right and just for those people who own the land.

I received a very disturbing email from Mr Peter Swift last Friday. He had basically suffered a breakdown over this issue, had been put into mental health care and sedated. I rang him to find out whether he was okay, because some of his comments worried me. Fortunately, the Department of Health had been monitoring him. He said that the office of the I would say very responsible member for South West, Hon Adele Farina—a very committed member—had been contacting him on a regular basis as a welfare check to make sure that he was all right. I do not know where it is going to go for him, because I cannot see any scope for any other financial compensation, but he is basically now a broken man because of what has been done to him by the environmentally sensitive area notice that was put on his land that he was unaware of when he purchased the land. I think we need to put a human face to the issue of providing just terms for people whose land has been affected or the value of which has been diminished due to environmental conditions being put on their land for public benefit.

I am very pleased that Hon Dr Steve Thomas has an amendment on the supplementary notice paper to register a notice on the title to say that the land contains an ESA. We have a good opportunity right now because at the moment we have a ministerial notice and we will move that to regulations, which will be gazetted. That is part of what this bill is going to do—it will change the way that ESAs are put onto land. There is an opportunity now, when those regulations are gazetted, for a notice to be given to landholders and, in turn, a notice should be put on the title. I have argued for this in this place on three or four occasions. I will be interested to see what the report of the inquiry into private property rights will reveal next month. It is very important that anybody who buys land with a view to either farm or develop it understands that sort of encumbrance on the land. I am very pleased that Hon Dr Steve Thomas has taken that up. I have an amendment on the supplementary notice paper to provide some compensation for those people whose land has a diminished value. There may be some cases in which an ESA on the land does not change the value of the land depending on the use, but there may be scope where there is an impact. People should be able to apply for compensation if the value of their land is greatly diminished because of a public benefit for environmental protection. As far as putting a notice on the title is concerned, I have been given all sorts of excuses as to why that cannot be done, but if we can put a memorial on a title to say, for example, that it is a high-risk mozzie area, surely we can do that for ESAs under a section 70A notice.

We have to be mindful that we do not enter into such an eager program for environmental protection that we basically have regulatory theft—that is, to basically steal the equity out of land by diminishing its value through environmental restrictions. Another term that has been used is that basically the property rights of that land are sterilised, and I think it is a pretty good term.

Another point I want to raise is clearing to protect properties from fire. I remember in the last term that some amendments that came to this place were passed. I think one of those amendments was that a person, through exemption, can clear up to five hectares. It was one hectare and it was changed to five hectares as the area that can be cleared in one year. People cannot exceed five hectares within one year. I think the other part of the amendment—I am relying on my memory; I think the Minister for Environment was here and spoke on it in opposition.

Hon Stephen Dawson: Not in this role, I wasn't.

Hon RICK MAZZA: No, I think the minister was in opposition at the time. I think the minister was the speaker for the opposition on that amendment. Another amendment was that people could clear within 20 metres of buildings for fire protection. Twenty metres is not very far when a roaring fire is heading your way with a 35-knot wind behind it—it is not very far at all. Of course, this does not apply to ESAs. This is for properties that do not have an ESA on them. It is important that landholders have scope to mitigate fire risk around their property. We have seen examples over east of people being prosecuted for clearing, but after a major fire went through, theirs was the only building standing. There are good reasons why there should be exemptions for clearing when it comes to mitigating fire risk. I note that Hon Dr Steve Thomas has an amendment on the supplementary notice paper for a 25-metre fire buffer so that no flames reach a dwelling.

Hon Dr Steve Thomas: A residential dwelling.

Hon RICK MAZZA: A residential dwelling. I would like to hear about that when Hon Dr Steve Thomas provides his second reading contribution. At the moment, we can regulate distances that people can clear from buildings, but 25 metres does not seem like a great distance for a dwelling. By including it in the act, that distance is locked in. Perhaps that should be regulated to provide for some flexibility, because more area around a property may need to be cleared to prevent it from being burnt. That is something that we can discuss. Hon Dr Steve Thomas might have good reasons for his amendment, and I will be interested to hear them.

Hon Dr Steve Thomas: If I thought I could get away with more, I would have given it a go.

Hon RICK MAZZA: I know that some other states go up to 50 metres.

I am interested to hear from others about this amendment bill when we get into committee. I have a few questions about some of the matters that I have raised. I may have some questions about the amendments proposed by Hon Dr Steve Thomas that deal with the fire zone. With that, I will be supporting the bill but I have questions about it.

HON DR STEVE THOMAS (South West) [3.45 pm]: It would be nice to think that if the clocks were not working, everybody would have unlimited time. I originally had every intention of spending a bit of time on the Environmental Protection Amendment Bill 2020, but the Minister for Environment has been saved by Hon Tjorn Sibma, so he should be very grateful. To be honest, I am quite saddened to lose the environment portfolio, for which I have enormous passion, as does the minister, I am happy to say. I have found our stoushes over the last couple of years quite interesting. I suspect it became obvious to the leadership of the Liberal Party that I had become far too gentle and far too soft on the minister. No doubt he will suffer with the additional scrutiny and forthrightness of Hon Tjorn Sibma! There was far too much bonhomie in the chamber! It is time to muscle up as we move into election mode. I will miss our stoushes, and I am sure I will continue to make something of a contribution.

Hon Stephen Dawson: I'll miss our stoushes.

Hon Dr STEVE THOMAS: Excellent. As I leave this position, I appreciate the interactions I have had with a variety of the minister's staff, who have been excellent over three years. They are incredibly inclusive. I hope the same will be extended to Hon Tjorn Sibma. I have always been able to speak to the minister's staff and have a frank conversation about the goings-on of the day. I have always appreciated that, and I am sure that will continue into the future.

The Environmental Protection Act is obviously the prime area of protection for the natural resources of the state of Western Australia. It is of critical importance. It is also one of the hardest acts to read. When members look at the bill before the house today, they have to sit down with the bill and the act and sometimes the marked-up act to work out precisely what is going on. As Hon Tjorn Sibma said, there are a number of good amendments in the bill before the house, and the opposition will support the bill. That is not to say that we do not think we can make it better. I have put forward a number of amendments on the supplementary notice paper that I think will improve the situation. Some of those I intend to take fully to the vote. Some of those might depend on the response from the minister and the alternatives that he might provide in relation to a number of things.

Let us work briefly through the Environmental Protection Act and the amendments in the bill. Part I provides the preliminaries. Part II is about the Environmental Protection Authority and its functions. The changes proposed in the bills are all supported. There is some very basic stuff, such as being able to conduct business online as opposed to being present. All those amendments are sensible and should be supported.

Part III of the Environmental Protection Act 1986 is headed "Environmental protection policies". I think this is a fairly underused component of the Environmental Protection Act. I would be interested to find out from the minister how many new environmental protection policies there have been in the last decade. I say the last decade because that would cover a number of governments from both sides of politics. I do not think this is a Labor versus Liberal debate. But there has not been a large number of environmental protection policies developed, and in my view it is a highly underused part of the Environmental Protection Act.

If the government had wanted to have a firm position on greenhouse gas emissions, for example, it would have been preferable to do so through an environmental protection policy, rather than the Premier firstly encouraging the head of the Environmental Protection Authority to make a strong standard and policy within the EPA framework that would have been binding, but then forcing the EPA to backflip on that process. That effectively neutered the strength and position of the EPA and, particularly, its chair, who is a very good person and a strong protector of the environment—Dr Tom Hatton, a man of enormous resource and worth. I thought that was a dreadfully shameful position to find ourselves in. I would have thought using an environmental protection policy would have been the obvious alternative to that process. In my view, this was not even an issue for the Minister for Environment, who I suspect was sidelined in that process by a highly overactive Premier. I think that issue was an embarrassment to the state of Western Australia and this Parliament, and I maintain that the sensible way forward would have been to use an environmental protection policy under part III of the Environmental Protection Act. That might be something that future ministers and governments might like to take on board. Having worked in the planning portfolio, I know that there are obviously some state planning policies that are good and some that could use a bit of work. Environmental protection policies, as part of the act, are extremely important and, I think, highly underused.

We then move to part IV of the act, "Environmental impact assessment". I will go into a bit more detail on this later, because it is a critical part under which industry tends to go head-to-head with the EPA and governments. It leads onto part V of the act, "Environmental regulation", which deals with a number of things, but in particular deals with pollution; pollution offences; clearing native vegetation, as mentioned by the previous speaker; and works and works approvals. These are critical matters and we need to go into those provisions in far more detail. I am sure that we will spend some time during Committee of the Whole House looking at these matters.

I will start with some of the very positive components of the Environmental Protection Amendment Bill 2020 and the Environmental Protection Amendment Bill (No. 2) 2020. There are some very good things in them for which the government should be given some credit. The first is the functioning of the EPA under part 2 of the principal bill. Those amendments should go through with, I suspect, broad support across the chamber. There is also the implementation of environmental monitoring programs and the potential application of a fee. This is likely to be a fairly contentious component. Environmental monitoring programs currently exist, and the one that is raised with me all the time is the program around emissions at the Burrup Peninsula. I am sure my good friend Hon Robin Chapple will discuss that at some point in the future.

These things exist, and I do not think that the capacity to implement them further, with the potential for the collection of fees to do so, should frighten members. In my view, industry is generally prepared to pay an adequate fee for service, and if that fee for service provides a better outcome for the delivery of whatever issue the industry is interested in, it is usually reasonably comfortable with it. From my consultations around this bill, I think that is going to be the critical component that we will need to look at, and whether there is reward for effort. Fee for service actually requires service, not just a fee, and as long as that is the outcome, I think this part of the bill deserves support. Of course, it is incumbent upon us to make sure that service is actually delivered, and we want to see some improvements in the process. If we do not see improvements in the process, it is just another tax. The government needs to be very wary about adding another tax, but we will give that one the benefit of the doubt.

I turn now to accreditation schemes. The government is proposing to accredit environmental research, particularly environmental consultants, so that we can have a degree of comfort that the standard of work that will be provided in assessments will be up to scratch. I think this is a reasonable outcome as long as it is a voluntary process. If someone goes about the process of obtaining registration because they think it is good for the business, that is a reasonable outcome. Industry is, of course, concerned, and I suppose this is a particular concern for the larger players in the sector who have large environmental departments of their own and do not necessarily want to go through the process of registering all the members of their teams. I therefore understand why the government, for those reasons, has decided to make this part of the bill voluntary. As long as that continues, it is also worthy of support. We will ask the minister to confirm that it is still the case that the scheme will remain voluntary over the longer period.

I have to say, one of the best parts of the legislation—although it may not seem so from the outset—is the capacity to develop bilateral agreements, particularly with the commonwealth government, which is obviously the target. This issue has a long and sordid history. People have been trying to develop bilateral agreements with the commonwealth government for a very, very long time—maybe not as long as we have been alive, Hon Robin Chapple, but for a fair while! There is an old truism in politics: the greatest interest is always self-interest. These things go along merrily with good intentions until the rubber hits the road and somebody has to start conceding a bit of power. They then usually disappear in a puff of non–carbon emitting smoke, and that is the end of the debate. I am particularly pleased to see that this is in the bill, and I understand that that debate is back on again. In fact, the commonwealth government appears to be prepared to concede some ground on environmental approvals under what would be a bilateral agreement empowered by this part of this bill.

If the minister achieves that outcome, he will have taken a major step forward in an area of government that has probably taken small baby steps for some period of time—so I wish him godspeed with this one. It is not the easiest thing in the world, and I suspect we will find, as we so often do, that although governments might agree on outcomes and projects, and it is all very friendly and bonhomie rules the day, when there is a political advantage to be taken with a group of people opposing something, things might change. The history of the federal Environmental Protection and Biodiversity Conservation Act is quite interesting. It is not a very old act. Traditionally, lands and waters were managed by the states, although the commonwealth government took an overview and got involved with international agreements and treaties. Then, of course, politics came into issues like damming the Franklin River in Tasmania. Suddenly, the commonwealth government needed to intervene, because there was a strong political imperative to do so. Thus we saw the genesis of the commonwealth government being involved in the environmental approvals process—a political genesis, not an environmental one. That is always a sad outcome.

The reality is that there have always been passionate environmentalists on both sides of politics; absolutely. I consider myself a far right–wing environmentalist, and I will maintain that until I die. I am not the only member of the Liberal Party who has been in that category. Sir Charles Court did some very interesting things: he stopped the wholesale clearing of the Collie catchment, and people took pitchforks, feathers and tar to him for doing so!

So I am not the only one in that category. But it is good to see that the commonwealth has conceded a bit of ground. I understand it is at least at the point of talking about allowing the state to conduct most of the work on environmental approvals, but without necessarily conceding the final decision-making process from the commonwealth. That, honourable members, is where the rubber will hit the road. For the most part, the state provides all the research and all the capacity. The commonwealth has a very limited amount of resources and people it can put to these things. It tends to rely on the work done by the state government approval process. It has traditionally sat like an overlord

at the back saying yes or no at the end of that process. I will be incredibly interested to see whether that shifts. I understand there is a genuine intent. I think the federal Department of Agriculture, Water and the Environment has very little intent but is being dragged along. I will be very interested to see whether the political intent has the capacity, because the potential savings are reasonable. It is not absolute; it will not mean that approvals are immediately ticked off. It will mean, potentially, a concurrent approvals process as opposed to a sequential approvals process. I suspect that we are talking about saving only a few months, but on major projects, those few months are very important. I wish the minister well in getting that delivery. I think those are the things that make this Environmental Protection Amendment Bill worthy of support.

Let us talk about some of those things. We cannot see how much time we have left, so it is very hard to time ourselves.

The ACTING PRESIDENT (Hon Adele Farina): You have 30 minutes.

Hon Dr STEVE THOMAS: See; it has almost gone!

Let us talk about some of the things that I think can be improved. Although the bill before the house is not a bad bill, I think some areas could certainly use improvement. I will talk about environmentally sensitive areas, because they were raised by Hon Rick Mazza. It is an issue that I have been dealing with for 20-something years. It is an issue of great concern for a number of people and I think we have an opportunity to do something about it. For those members who are not aware, the development of environmentally sensitive areas, or ESLs, came about following the Swan coastal wetland policy, on which documents and a plan the minister and I, I am sure back in the day, had a reasonable amount of interaction. The Swan coastal wetland policy certainly identified a reduction in the amount of natural wetland on the Swan coastal plain. That was true. It then set about identifying that which remained and started to talk about how those areas would be controlled. The first problem identified by Hon Rick Mazza was that a lot of the remaining areas were on private property. It has to be said that the Swan coastal plain wetland policy was immensely problematic and somewhat flawed in that it did not necessarily identify environmentally sensitive wetlands. It was basically conducted by the use of satellite photography and what is called geomorphic datasets. The outcome of that was that any piece of land that had water on it in winter was identified as potentially a wetland by the Swan coastal plain wetland policy. Effectively, it was land everywhere that was low. It might have been land a farmer had used or grazed or was sitting there. It could have identified a bit of a sports oval that was wet at a point in time. What did not happen then, and still has not happened for the vast majority of places transformed into environmentally sensitive areas, was for someone on the ground to decide that what it looked like from the satellite and geomorphic dataset was actually what it was. There are therefore plenty of areas under the old Swan coastal plan wetland policy that did not need to be protected; they simply got wet in winter. This caused a huge amount of angst at the time, so much so that the Swan coastal plain wetland policy was not proceeded with. It was an enormous issue—I am trying to remember the years; it was 2005 to 2007 or 2008. I had to attend the protests and sometimes I think I was lucky to get out with my skin on. I was in the opposition and we were not supporting it, but it was tar and feathers again. The environment is a highly emotive issue on both ends of the argument. It was quite an interesting time.

This process has morphed into what is called "environmentally sensitive areas". A fair proportion of the group of people who were incredibly concerned about the Swan coastal plain wetland policy became incredibly concerned about ESLs. The most important thing, from my position, is that there are 90 000-odd land titles that have ESLs associated with them and most of those landowners do not know that. Effectively, if someone happens to access Landgate's database and finds the right Excel spreadsheet that has the list on it and finds their way through to their property, they have a chance of working this out. Frankly, I do not think that is good enough. If the government is going to attach a set of conditions or criteria to a person's land title, in my view there is no excuse not to have them on the land title so that the purchaser, whether it is them or the next purchaser, realises there is something on their land title that may or may not impact on their capacity to use that land in the way they want to use it. I have to say that a lot of people were overly panicked about ESLs as they were with the Swan coastal plain wetlands policy, thinking they could never use the land again and could not graze cattle on it.

Hon Stephen Dawson: ESAs as opposed to ESLs.

Hon Dr STEVE THOMAS: Sorry, areas. What did I say? I said ESL—emergency services levy! Thank you. I am getting overexcited. We will get to burning later.

People were concerned and there was a scare campaign. I remember the scare campaign, saying that if people ever ran cows on there again, they would be tarred and feathered. There was an overreaction. However, in some cases, it certainly had an impact. In my view, there is no excuse for not putting an ESA on the land title, because it may well impact someone's capacity to use the land in the manner in which they expect to use it. The argument might be that an ESA on the land title might affect the price of the land. That was an argument that came up in the original debate many years ago; that is, if we put an ESA on the land title, people will know the land title is blighted and, therefore, the price will go down. My argument against that is that if there is an ESA on the land, the price is being pushed

down by the fact that the ESA is on the land. Registering it on the title simply tells people it is there. We are artificially keeping the price up by keeping it secret. That argument was used at the time and I think it is completely fallacious—that if a blight on the land is identified on the title, it might push the price down. It is the actual blight that will push the price down, not the fact that somebody has identified it. This is the old crime example. It is not that I committed the crime that is the problem; it is that I got caught. This is my concern with not having an ESA on the title. If the argument is that it might push down the land price, it is not the listing on the title that will push down the land price, but the fact that it is on the land at all, no matter what registration form is used.

A particularly interesting debate occurred in the place that shall not be named about environmentally sensitive areas and the new proposal. The proposal the government is putting forward in this bill is to have ESAs proclaimed by regulation. To be honest, I am not violently opposed to it being proclaimed by regulation. Regulation in that manner will be a disallowable instrument; in fact, that was tested in the lower house when the Parliamentary Secretary to the Minister for Environment was asked specifically whether the list of ESAs will be subject to potential disallowance in either house of Parliament. He answered, quite distinctly, yes, so they will be a disallowable instrument. I am therefore not particularly opposed to them being put in place by regulation. That will result in a change in the system, and I hope it results in a change in the system. Everyone I have spoken to who has attempted to work out their situation with having an environmentally sensitive area on their property has generally got very confused by the computer system and where to find it. The parliamentary secretary was asked —

> On the issue of the declaration of environmentally sensitive areas by regulation, will that allow for the removal or alteration of an area by regulation? What effect will that have on the original declaration made when this policy was introduced in, I think, 2005?
>
> **Mr R.R. WHITBY**: Yes; they can be removed and regulations will replace it.

He was then asked —

> Will it replace the existing declarations or will they remain the same?
>
> **Mr R.R. WHITBY**: This will provide the new list of ESAs and the old ones will be defunct.

As I understand it, the old record of ESAs being on 90 000-odd titles across Western Australia will be defunct and replaced by a new system under which they will be replaced by regulation. That is a very good idea and I commend the government for doing so. If at the same time the house sees fit to pass my amendment and require that in the newly gazetted regulations, putting an ESA on a property must be listed on the title of the property, I think the outcome will be that the government and the department will have to decide whether they really want those properties to be listed as an ESA or whether this is just an ambit claim on 98 000 pieces of title. At the moment it is very easy to just put them on the little Excel spreadsheet and there it is, with no effort required by the department. If the department has to go to the effort of putting it on the title, it will do so only for those areas that matter. I suspect we will find that there will be a significantly smaller list of people's titles with an ESA on them because of the effort required for the department to put them on there. That would be a very good outcome for the people of Western Australia. If the government then wants to blight someone's land—whether we call it a blight or not, let us use the term that is out there—it should not do so without the community's expectation that there is a real reason to do so.

Hon Rick Mazza also has an amendment on the supplementary notice paper about compensation on ESAs. I am happy to look at that. I have to raise a couple of difficulties with it though, and probably the most important is that it is very hard to put a financial price on the impact of an ESA, and it would be very difficult to deliver. I am proposing to make life onerous for the department in my amendment, and I do so utterly unashamedly because government departments should not impact on the private community and people's own land easily. But it may be a step too far to suggest that a compensation payment be a component of that, because the difficulty is setting a reasonable level of compensation. I have been around long enough to see that most of the stories of people who have claimed to be negatively impacted by many of these regulations are almost universally more complex than they seem. It is often far too easy for people to claim they have been blighted when in fact their use of the land has not changed. I am prepared to debate and argue to a point at which I might change my mind on Hon Rick Mazza's amendment, but my difficultly with supporting it at the outset is precisely that, and I thought I would give him a bit of notice by addressing it in my contribution to the second reading debate so that he understands those particular difficulties. Otherwise, it is absolutely critical that we take this opportunity to put ESAs exactly where they need to be in relation to landowners. That is a necessary evil on the basis of saving the environment, and we no longer do it lightly. That is the driving force of the amendment that I will seek to move in an upcoming period.

Let us move on to another significant issue that is probably far more negotiable: time frames on approvals processes. It is absolutely the case that everybody complains about the time frames on approvals processes. I do not think I have ever yet had somebody come along and say, "I put in an application for an approval. Gee, they did that quickly and we've been ready to go at a rapid rate of knots." It is not meant to be the easiest system in the world, because

we are trying to save the environment, so it will not be that simple. However, I have a series of amendments aimed at a specific area, and they are effectively called the stop-the-clock provisions of the approvals process. It happens like this: Hon Tjorn Sibma puts in an application to develop his large acreage—his ranch—in the northern suburbs somewhere. He puts in an application to the Department of Environment Regulation to put a development on there. The Environmental Protection Authority has a look at it and needs to decide whether to assess it or not. At that point, a 28-day-period of approvals process starts and it has 28 days in which to make that decision, except, of course, that the EPA has a very limited set of resources. It has to seek information to see whether it is appropriate. The EPA seeks information from the departments of water, lands and environment, and just about everybody else, including local government, and says, "Give us some information; give us your opinion. Tell us what you think of this development." Once that happens, the clock stops. If that is a complicated question, the clock might stop for some time. I do not want to use individual cases that might reflect upon specific developers or even specific members of the EPA or government departments, but I could give members some general examples. I know of a company looking to do a development. It did a flora survey and it was decided that the flora survey was done at the wrong time of year. However, the time of year in which it was supposed to be done had then passed, so the company had to wait until the next year to do the flora survey that was deemed appropriate. That added 14 or 15 months just to get the information in. That all happens within that 28-day period of whether to assess.

Further in the legislation is the actual assessment process itself. The first and most interesting thing is whether to assess—the 28 days and the clock stops. The government has recognised that this is an issue. It is proposing to make a change to this particular part of the legislation. In fact, I will quote from the second reading response of the parliamentary secretary in the other place, because that was obviously raised. The place that shall not be named seemed to spend a lot of time on approvals processes and timing. I do not propose to go into the same level of detail; however, concerns were raised about the stop-the-clock proposals. The parliamentary secretary said —

> The response is that there is a new stop-the-clock provision in proposed new section 38F that will tighten the use of the existing provision. It can be used for only a specified period, and if not met, the clock restarts regardless of whether it is received. We agree that timeliness of decision-making is important and timeliness of decisions is a key focus of these reforms.

I think the government has accepted that timeliness is an issue. In debate on the planning bill, we discussed whether the Environmental Protection Act was a major blocker of developments in Western Australia, and it turned out that of the proposals that would have been picked up, there were only two and neither was fully assessed. I do not know how long it took to get to the process not to assess, but they both proceeded without a full assessment. The EP act gets blamed for all sorts of things that are not necessarily true. I know a lot of people would have us throw out the EP act and have open slather. I spend a fair bit of time amongst businesses saying that is a very irresponsible position to take, and I note the minister and I share a similar opinion on that.

Obviously, the government has some concerns about the stop-the-clock process. I will be interested in the second reading response from the minister, and no doubt when we get into Committee of the Whole House we will debate whether new section 38F will be an adequate tightening of the existing restrictions on the decision about whether to assess. As suggested, the clock will restart at some point, regardless of whether it is received, but that does not necessarily mean that the various government departments that might be asked for advice cannot seek various extensions. This will occur under the bill. Proposed section 38G is the replacement of the old part that set the 28-day referral system. It states that within 28 days of the referral proposal, the authority must decide whether to assess and give written notice of that. But we have to jump back to proposed section 38F of the bill when determining the period that is disregarded. Effectively, the authority may, by written notice, request that a person provide it with additional information, and that is covered in proposed section 38F(2). Proposed section 38F(3) states —

> In determining whether the 28 day period set by section 38G(1) —

Which is what I referred to before —

> has ended the following are to be disregarded —

If the requisition is complied with within the compliance period, the time between when there is a request and when an answer is received is disregarded, but if the requisition is not complied with, the entire compliance period is disregarded. What happens at that point then? The EPA will not go ahead without getting a response—or that is how I read the proposals in the legislation. How is the statutory time frame then in force? I am pleased that the statutory time frame has been toughened up, but it is not toughened up to the point at which there is some flexibility in the system for various departments to tell the EPA that they need to do their flora survey next September or that they are not certain and they need more time. Unless the government is telling us that those government departments do not make it a priority to try to get that information within 28 days, which I suspect is not the case, there will effectively be significant extensions of the process. Therefore, we have not necessarily toughened up this legislation to a point at which it applies a sufficient goad, as it were, to require that information in a set or restricted time frame.

I have put some amendments before the chamber that will put in much more specific time frames. Those amendments are on the supplementary notice paper for members to read, and I will go into them in some detail afterwards. In my first amendment, I am suggesting that if information is requested from a government department, it be given 14 days, after which the exempt period ends. That will put a bit of pressure on government departments, and I can imagine government departments loathing it with a passion. I have to be honest and suggest that after my work of the last three years, I am not sure whether I am on the Department of Water and Environmental Regulation's Christmas card list anyway, so it probably has not changed the outcome significantly, but I do not see why I should necessarily change my nature now.

Hon Stephen Dawson: They don't send Christmas cards anymore, so don't feel like you're missing out!

Hon Dr STEVE THOMAS: I have not been slighted then, okay! I am sure that upon learning I had shifted in my portfolios, they had a nice cup of tea and a quiet, contemplative milk arrowroot biscuit!

Hon Stephen Dawson: I actually don't think that is the case! Your sensible nature will be missed.

Hon Dr STEVE THOMAS: Really?

Several members interjected.

Hon Dr STEVE THOMAS: Yes, certainly.

I have put a 14-day compliance period in the amendment, specifically in the area of whether to make an assessment. I am prepared to get into a significant debate about what those time frames should look like or other potential ways to toughen up that legislation. I think we will do a disservice to the community if we do not take this opportunity to toughen up this legislation and stop extending the approvals process to the point that it becomes onerous, and the first thing is the component of whether to assess. I will be very interested in that debate. I have put in an exempt period of 14 days. If the requisition is issued to someone who referred the proposal, I think it could be the entire compliance period, because there is no point penalising the proponent if they do not get off their backsides—that is a parliamentary word! We are going to run out of time. If they do not get the work done in that time, that is their own fault. If it gets dragged out at that point, that is their problem, not necessarily mine.

The ACTING PRESIDENT: By way of clarification, you have got another five minutes.

Hon Dr STEVE THOMAS: Okay. It went too quickly! I intended to be here for hours, Madam Acting President, and the time just disappeared. It disappears so fast. I will have to wait for the budget speech!

In my very limited time remaining, I will raise two issues, which, again, are issues I think need addressing, perhaps with a little bit of flexibility in the system, and they relate to land clearing. I might get stuck with one minute to go. There are two issues here. I have an amendment on the supplementary notice paper. I do not think it is appropriate for a person to have to apply to clear native vegetation in the immediate surrounds of their residential dwelling. I accept that other bits of legislation such as the Bush Fires Act allow clearing to be done, but if we read them, the clearing is allowed to be done only under imminent threat of a bushfire. If there is a bushfire in the offing, the land around can be cleared. But if there is native vegetation surrounding a property, in my view, a person should not be required to attain a clearing permit. New South Wales and Victoria have both adopted similar legislation to my amendment. In both cases they have a 50-metre or 25-metre boundary, depending on the height of the vegetation, that is exempt from the requirement to obtain a clearing permit. I think that would be an excellent outcome for Western Australia—not for all buildings, but for residential dwellings where a person and their family reside. It is onerous in the extreme to require a person to obtain a clearing permit for land within a certain distance. I think the government might take this one on board and argue with me about the distance that that should be, but given the exemption exists in bushfire-prone areas in New South Wales and Victoria now as a result of the various inquiries into the bushfires in those states, I would have thought it was worth looking at from a state government perspective, and I will be pushing that fairly hard.

The other issue I would like to talk about in my very brief time is the use of fire as a fuel-reduction mechanism and how that impacts on the clearing regulations in Western Australia. If I could have come up with a very good amendment that exempted fuel-reduction fires from the clearing regulations, I would have done so. The reason I have not presented one is that my difficulty is how we stop people then using the pretext of fuel-reduction burning to clear any piece of land anywhere. Someone who is refused permission to clear can drop a match on the land and effectively clear it by fire, and if they are smart enough, they can burn hot enough to make sure pretty much nothing survives and suddenly they have a clear block. However, genuine cool-burn fuel reduction needs to be exempt from the laws. Again, bits and pieces of other acts give that freedom, so components of that are in other acts. A generalised exemption would be a very useful component if we could find one. I have not come up with the wording myself, but if I can, I will get it to the minister sometime during the Committee of the Whole debate. I am about to finish. How much time do I have left—one minute? I timed that beautifully, Madam President. I did that specifically for you.

The PRESIDENT: Good start!

Hon Dr STEVE THOMAS: Those are the critical issues. I would have spent a lot more time talking about this. I do not think it will be the quickest of committee stages, but I reiterate that we support the bill. We intend to make it better to the greatest capacity we have.

Debate interrupted, pursuant to standing orders.

[Continued on page 4530.]