

**NATIONAL ENVIRONMENT PROTECTION COUNCIL (WESTERN AUSTRALIA)  
AMENDMENT BILL 2009**

*Second Reading*

Resumed from 5 May.

**HON SALLY TALBOT (South West)** [3.15 pm]: The opposition will support this bill. Indeed, I, as the parliamentary secretary at the time, was the person who read the second reading speech into the *Hansard* originally. The differences between my speech and that of Hon Donna Faragher were purely at the whim of some stylistic Nazi in the minister's department!

**Hon Donna Faragher** interjected.

**Hon SALLY TALBOT:** I noticed that it was not exactly the same; nevertheless, in substance and in content, it is identical.

I support this bill on behalf of the opposition as I did when we as the previous government introduced it. Having said that, I believe that it will not be necessary to go into committee. However, I want to raise an issue that has been identified by the Joint Standing Committee on Uniform Legislation and Statutes Review. We have, of course, had two inquiries into this bill—one under the previous government and one relating to the 2009 bill. Both reports recommend that the bill be adopted without amendment. As I say, the opposition is happy to go along with that. The second report in particular draws attention to a slight lack of definition in the amendment bill. That relates to the measure to enable insignificant or minor changes to any national environment protection measures to be made without coming back to the Parliament. For those members of the house who are not quite as conversant with NEPMs as the minister and I are, there are seven NEPMs covered by the National Environment Protection Council. They relate to the following categories of protection measures: ambient air quality, air toxics, contaminated sites, the movement of hazardous waste between states—in Western Australia we call it controlled wastes—the national pollution inventory, diesel vehicle emissions and used packaging. Some very significant issues are covered in those seven NEPM areas. I guess I am seeking from the minister, perhaps to address in her reply to the second reading debate, just a repeat of the assurance that when we talk about minor amendments, we really are talking about amendments that might, for example, be the change of name of a government authority or that sort of thing. Obviously, this will not be defined in the amendment bill. We are therefore looking for continued assurance that no substantive alterations will be made to NEPMs without coming back to the Parliament. On that note I will leave my remarks, and hand over to others.

**HON GIZ WATSON (North Metropolitan)** [3.18 pm]: The Greens (WA) will support the National Environment Protection Council (Western Australia) Amendment Bill 2009. It has taken a while to find its way into this chamber. The bill makes minor changes to the National Environment Protection Council (Western Australia) Act 1996. Like similar legislation in other states and territories, the act is mirror legislation to the commonwealth's National Environment Protection Council Act 1994. Together, this legislation forms a national scheme, providing national environmental standards in identified areas. Hon Sally Talbot has indicated some that already exist, including air quality and water quality. Under the scheme in this legislation, each standard, known as national environment protection measures, are developed with the benefit of community consultation and are ultimately endorsed by the ministerial council with representation from commonwealth, state and territory governments.

A two-thirds majority is required to pass an amendment, which is a good threshold. Hon Sally Talbot outlined the existing national environment protection measures, and indicated that the changes proposed by this bill will provide a simplified process for making minor variations to those NEPMs. I support Hon Sally Talbot's comments that any variations will be minor and not of any significance, so I will be watchful of that. Also, this bill requires five-yearly reviews of the National Environment Protection Council Act and allows any protection council service corporation to provide support and assistance to other ministerial councils. Indeed, this is not very complicated or controversial at all. The Standing Committee on Uniform Legislation and Statutes Review considered, effectively, an identical previous bill in its twenty-second report dated October 2007. The standing committee recommended that the bill be passed without amendment. A finding of that committee was that the National Environment Protection Council (Western Australia) Amendment Bill would give statutory effect to an intergovernmental agreement to which the government was a party; namely, the Intergovernmental Agreement on the Environment. The second finding was that the Intergovernmental Agreement on the Environment was amended on 2 June 2001 by virtue of recommendations made in the report of the National Environment Protection Council titled "Report of the Review of the National Environmental Protection Councils Act (Commonwealth, State and Territory)". The third finding was that the National Environment Protection Council (Western Australia) Amendment Bill does in fact implement the amendments to the Intergovernmental Agreement on the Environment recommended by the National Environment Protection Council in 2001 and as

enacted by the National Environment Protection Council Amendment Act 2002. Hence, the question: why has it taken so long to come to this place in 2009, considering that was seven years ago? The bill that we are debating today was referred quickly to the same committee and the committee's thirty-seventh report recommended the bill be passed with two corrections of a minor typographical nature.

I will comment on the difficulty for Parliament in dealing with mirror legislation. There is unlikely to be any practical way for it to be amended because it needs to mirror legislation in other jurisdictions if it is to work. In that way, the debate is necessarily limited. For example, it would be impractical to amend the provision in this bill relating to how minor amendments to NEPMs should be made because there would then be different procedures between the commonwealth's act and our own act dealing with the same thing. It could be argued that one consequence of uniform legislation is that the Parliament uses a rubber stamp for something agreed to by government ministers, rather than exercising its proper role as the deliberative body responsible for making Western Australian laws.

**Hon Norman Moore:** Hear, hear! You should remember that on all occasions. It is a great principle.

**Hon GIZ WATSON:** We usually do make that comment.

**Hon Norman Moore:** We should be making our own decisions on most things, but we are getting sucked into these environmental issues.

**Hon GIZ WATSON:** Except when it comes to the United Nations.

**Hon Norman Moore:** You are saying that the federal government should not be telling us what to do, just as you saying that the UN should tell us what to do!

**Hon GIZ WATSON:** I am saying that it should be by agreement between the two. My point is that the two should be in agreement. One way around this is for governments to table a draft of the bill in all Parliaments for comment before any government signs off on it. In that way parliamentarians have some opportunity to debate what is proposed at a stage when amendments can still be made. That is something the government might consider. This approach was suggested by parliamentarians who grappled with the implications of uniform legislation in their "Position Paper: By the Working Party of Representatives of Scrutiny of Legislation Committees throughout Australia". That suggestion could be considered with uniform legislation.

With regard to the proposed amendments, it is reasonable to have a streamlined process for minor amendments and we support that. At the moment, any amendment, no matter how minor, must be accompanied by a detailed impact statement, be advertised for two days in a newspaper and be open for at least two months' public comment. Under the new process for minor amendments, which can be used only if all jurisdictions agree, the amendment and explanatory statements are still advertised for a day in a newspaper and are subject to at least one month's public comment. There is some invitation for public comment.

With regard to the five-year review, the act provides for one review five years after the commencement of the act. This review was published in 2001. The amendments would introduce a rolling requirement for review every five years. We have no objection to this and we support that amendment. It is worth noting in this debate how long it took for this bill to finally get to this place considering that the changes proposed by the present bill arose from the five-year review of the commonwealth, state and territory acts that was published in 2001. That is eight years ago! At the commonwealth level an amendment bill implementing the changes was passed in 2002. The second five-year review of the act was published in June 2007, before we had even implemented the outcome of that first review. We are somewhat lagging behind in this process.

The Standing Committee on Uniform Legislation and Statutes Review raised this issue with Mr Robert Atkins, the director of the environmental regulation division of the Department of Environment and Conservation. It is interesting that one reason given for the delay was changes in the department's administration over recent years. Perhaps that is part of the issue.

The Greens (WA) support the bill, though we note the very minor amendments recommended by the recent standing committee report. We would also make the case for future changes to uniform legislation to be tabled in Parliament as a draft before it is approved by participating governments. Perhaps the minister might have a view on adding that step into the process, considering that we seem to have plenty of time to consider these changes.

My final comment is that this is an example of a bill that could have been dealt with very expediently, and probably quite some time ago, if we had agreement on a process of categorising and streamlining business management in the Legislative Council.

**Hon Norman Moore:** Or if we had more time for government business. But let us not go there!

**Hon GIZ WATSON:** I believe that this bill might have been floating around with the previous government. It has been around on the notice paper in various forms for quite a while. I suggest that for half an hour of the house's time we could have dealt with it 12 months ago. The Greens are ever helpful to try to increase the productivity of the Legislative Council.

**HON DONNA FARAGHER (East Metropolitan — Minister for Environment)** [3.27 pm] — in reply: I thank members for their contributions and support of the bill. I also want to acknowledge the Standing Committee on Uniform Legislation and Statutes Review for its report and also for the report of the previous committee of which Hon Simon O'Brien was chairman and I was a member, as well as Hon Matt Benson-Lidholm and Hon Sheila Mills.

As mentioned by the other speakers, the proposed amendments will align Western Australian legislation with legislation of the commonwealth and other states and territories that has been agreed nationally following a statutory review. With respect to specific comments made by members, I will join them to comments on the committee report.

Firstly, I refer to the typographical errors mentioned by Hon Giz Watson. I do not like to see those errors appear, but I have sought advice from the Clerk of the house and they can be dealt with through a Clerk's amendment before they move to the other place. With respect to powers and accountability of the ministerial council and what is determined as a minor variation, I reiterate that for any minor variation to be made to the national environment protection measures, the council must have a unanimous vote for the variation to take place. If the commonwealth or a single state or territory dissents, the minor variation cannot proceed. If it can proceed, the council can then consider whether it should proceed with the variation under the normal widespread public consultation review process that would normally apply for a major variation.

In relation to comments made by Hon Sally Talbot and Hon Giz Watson, and in the committee, on what constitutes a minor variation, I reiterate that what we are talking about as minor variations include such things as name changes and the like. I also advise the house that the issue of what constitutes a minor variation is likely to be considered at the November council meeting of the Environment Protection and Heritage Council. Any determinations that are made about what constitutes a minor variation will be made public. It will be made available on the website so that everyone will know what procedures are in place.

With respect, some of the issues Hon Giz Watson raised relate primarily to the general concept of uniform legislation. Perhaps that is a discussion for another time. I heard Hon Norman Moore's interjections. I am sure that he would be very interested to partake in that debate. I acknowledge the length of time the National Environment Protection Council (Western Australia) Amendment Bill has taken to get to this point. It is interesting that Hon Giz Watson referred to a question in the previous report to which Mr Atkins, who is an excellent officer in my department, responded. Hon Giz Watson did not refer to who had asked the question. I had actually asked the question about the length of time it had taken for the bill to come before Parliament. Even then I was wondering why it had taken so long. I must admit that when I received a briefing from the department about this bill we had a little chuckle that we were talking about the one and the same bill that I had referred to. I take on board Hon Giz Watson's comments. The member also raised the matter of the drafts. I am happy to consider that and will take advice from the department about it.

This is a non-controversial bill. I appreciate the support of the opposition and the Greens (WA). I understand that an agreement has been reached that this bill does not need to go to a committee, and I thank members for that.

Question put and passed.

Bill read a second time.

Leave granted to proceed forthwith to third reading.

Bill read a third time, on motion by **Hon Donna Faragher (Minister for Environment)**, and transmitted to the Assembly.