ENVIRONMENTAL PROTECTION AMENDMENT BILL 2020

Committee

Resumed from 5 November. The Chair of Committees (Hon Simon O'Brien) in the chair; Hon Stephen Dawson (Minister for Environment) in charge of the bill.

Clause 28: Sections 45 to 45C replaced —

Progress was reported on the following amendment moved by Hon Dr Steve Thomas —

Page 37, lines 23 and 24 — To delete "on the environment;" and substitute —

that cause material environmental harm or serious environmental harm;

Hon STEPHEN DAWSON: I thank Hon Dr Steve Thomas for his contribution when we last sat. He has certainly raised some interesting points around offsets, but I indicate that I am not in a position to support this amendment. This clause applies only to part IV of the Environmental Protection Act, and more specifically to offsets applied as a ministerial condition after the Environmental Protection Authority's assessment of a significant proposal. As the honourable member will be aware, section 37B of the EP act defines "significant proposal" as "a proposal likely, if implemented, to have a significant effect on the environment". This clause therefore does not relate to small-scale native vegetation clearing; instead, it applies to things like large-scale mine sites or renewable energy projects, such as the one planned in the Pilbara, where it is proposed that many hundreds of thousands of hectares will be cleared. I hope that reassures Hon Dr Steve Thomas that this new provision under part IV of the Environmental Protection Act will not result in any future offsets being applied to trivial environmental impacts. In fact, to do so would be contrary to the WA offset framework that was first developed by the Barnett government, which applies to offsets under the EP act.

The threshold of this policy is a significant residual impact. It is explicit in this policy that, although environmental offsets may be appropriate for significant residual environmental impacts, they will not be applied to minor environmental impacts. This means that the government will only consider offsetting a significant impact that is left after the proponent has made efforts to avoid, minimise and mitigate the impact. This offset policy is consistent with other jurisdictions, which creates a common standard across Australia, where the same concepts apply in each state. Hon Dr Steve Thomas's amendment would therefore create complexity for businesses that operate in multiple states. Importantly, it is consistent with the offsets policy applied by the commonwealth government under the Environment Protection and Biodiversity Conservation Act. This is a key element of the bilateral agreement and is one of the reasons for my not supporting Hon Dr Steve Thomas's amendment.

The commonwealth Minister for the Environment, in accrediting the state's process to issue approvals on the commonwealth government's behalf, will want confidence that the state's approach to offsets is not inconsistent with the approach to offsets taken by the commonwealth government. I also expect that the commonwealth-led national environmental standards, which will underpin any bilateral agreement—perhaps even the bilateral agreement itself—will include specific requirements in relation to offsets. I am confident that the state can meet these requirements based on our current approach.

In common with Hon Dr Steve Thomas, I believe offsets need to be more strategic to play a role in improving the condition and extent of native vegetation. The member raised examples of offsets for small amounts of clearing. Currently, offsets for clearing are frequently in the form of a contribution to a fund for the purpose of establishing and maintaining native vegetation. Both I and my department recognise that land acquisition—which, as the member knows, has frequently been an offset—is not delivering the environmental outcomes that are sought and is frustrating to proponents. Accordingly, the McGowan government has committed $8 million from the native vegetation clearing offsets account to supporting jobs in revegetation in regional WA. As part of the $60 million Green Jobs plan, these activities are being complemented with $15 million of new funding for a native vegetation rehabilitation scheme. This will result in the strategic outcomes that we are all seeking, as well as creating much-needed regional jobs.

The government recognises the need for rigour, high-integrity governance standards and good science to inform the use of offsets, and this is probably at the heart of Hon Dr Steve Thomas's concerns. Since becoming minister, I have initiated a review of the offsets framework developed under the previous government in 2011 and 2014. The review found that the framework was generally sound, but identified a number of opportunities for improvement. The review recommended improved standards of governance in the operation of funds, which has resulted in the inclusion of a new head of power in the EP amendment bill. Two stakeholder groups were established to inform the WA environmental offsets review—an intra-government steering group and a stakeholder working group—and these groups were consulted during the development of the environmental offsets review report and draft implementation plan. Although the government has not finalised the implementation plan, the review did not find

any defects in the heads of power, and most of the improvements are already well underway. For these reasons, I am not in a position to support the proposed amendment.

Hon Dr STEVE THOMAS: I thank the minister; that was a pretty comprehensive response. What is the minimum amount of environmental harm that currently is being used to require offsets?

Hon STEPHEN DAWSON: It needs to have significant residual impact.

Hon Dr STEVE THOMAS: Can the minister advise us which section of the current act empowers the offsets?

Hon STEPHEN DAWSON: It is not in the act, but it is in the policy that came into being in 2011 under the former government.

Hon TJORN SIBMA: I will admit to being a little perplexed by the apparent risk the inclusion of the words moved by Hon Dr Steve Thomas presents to the finalisation of a bilateral agreement with the commonwealth government. I make the observation that the full-court press defence against this amendment is disproportionate to both its terms and its intent.

First and foremost, I want to clarify something. I perhaps jumped over this many months ago when this bill was first read in. To whose environmental standards for offsets is the state being now held? Is it the commonwealth government's standards under the EPBC act, or Western Australia's standards under the EP act? It appears to me that we are not talking about a bilateral agreement at all; we are effectively assuming a degree of multilateralism and that this is supposed to be a model form of legislation, in which case I think other issues are generated. Without having the requisite resources to know, it seems that the fundamental strategic opportunity presented to the opposition by the government and industry is that this is a trade-off between speed and the actual on-the-ground impact, if you like. Under the current scenario, it is absolutely likely for there to be companies that are obliged to provide potentially larger offsets than they would be under a state jurisdiction, on the promise that perhaps their approval might potentially be expedited by some six months or so. I would like to clarify what the advantage is in this bilateral agreement, if we are potentially moving faster but sterilising more land in a way that is not justified by our own scientists in the Environmental Protection Authority and the Department of Water and Environmental Regulation. If the minister could address that issue, it would help orient me through the rest of this debate.

Hon STEPHEN DAWSON: First, honourable member, it is not model legislation; that is not what is before us and will not be before us in terms of a bilateral approval. As we have indicated previously, the state is in dialogue with the commonwealth on an approvals bilateral agreement. We have been working closely with the commonwealth at all levels, from the department to the ministerial office. We do not have an approvals bilateral agreement at the moment, as the member would know. Offset policies are different between the two jurisdictions and we need to ensure that there is consistency between the Environmental Protection Act and the Environmental Protection and Biodiversity Conservation Act. The change that has been suggested by Hon Dr Steve Thomas would put us out of whack with other states and territories, and the commonwealth will try to have consistency across the board. The commonwealth's intention is to have a bilateral agreement with Western Australia in the first instance, and ostensibly for that to lead the charge, and for other states and territories to follow down the road. Having different terminology and different offset policies between the states and the commonwealth will be a significant barrier. The commonwealth wants confidence that our policy is in line with commonwealth policy. In terms of extra requirements, already under the EPBC act, different things are required and the commonwealth has different focuses from those in Western Australia. If focuses are to be aligned, the two offset policies obviously would need to be aligned, too.

Hon TJORN SIBMA: I take the minister up on this matter because I think it is worth trying to explore the issue in some depth so we at least walk away from debate on this clause a little wiser. I have interpreted the minister's response to indicate that if these words were inserted, to some degree the capacity of the state government to enter into a bilateral approval agreement with the commonwealth will be jeopardised. Is that the right interpretation for me to draw?

Hon STEPHEN DAWSON: That is correct. The accreditation process would be at risk.

Hon TJORN SIBMA: How has that position that is attributed to the commonwealth, in the answer the minister has provided to me, been provided to the government?

Hon STEPHEN DAWSON: I am told that it has been told to us through many years of consultation, because, of course, talk of bilateral approvals has been around for a very long time. In the past, they have fallen over at the last hurdle. It has been said numerous times over the years.

Hon TJORN SIBMA: From the minister's answer, I take it that that has effectively been a touchstone in representations between state and commonwealth governments for a number of years through different complexions of government. However, my question pertains very basically and specifically to this amendment. Has the federal minister written

to the state minister to suggest that anything along the terms countenanced here by Hon Dr Steve Thomas would undermine the state's capacity to enter into a bilateral agreement with the commonwealth? Has that occurred?

Hon STEPHEN DAWSON: There has been no piece of correspondence to that effect from the federal minister to me. However, my bureaucrats have been in a dialogue with the commonwealth for some time. In fact, one of my advisers here has been around for a very long time—no disrespect to her—and has had numerous conversations over many years on this very issue with the commonwealth. It is fair to say that there are some people who do not want a bilateral approval agreement between the state and the commonwealth, and it is fair to say that there are people who are trying to put barriers up to that. We see commentary in the media from various people who are opposed to it. My advisers tell me that this amendment is a barrier, and it is likely to slow down, if not derail, a bilateral approval agreement.

We need to be reminded of the benefits of a bilateral approval agreement. These include the likelihood that a proposal could be through the system at least six months quicker than ordinarily would be the case if we were to continue with state approvals and commonwealth approvals. That six months is a significant period. If we were to value the range of projects that need to go through approvals between the state and commonwealth, that six months could save millions, tens of millions or even hundreds of millions of dollars. Therefore, we are very keen to get this agreement with the commonwealth done.

As I indicated previously, I have been very happy—I remain happy—to take on board sensible amendments to the bill before us. That is how I operate. If the amendments add to the bill, I will certainly take them on board. But if they do not and detract from the bill and create the chance of derailing the bilateral approvals with the commonwealth, I stand firm against them. If opposition members say that they want to derail a bilateral approval agreement with the commonwealth or slow it down or push it out or whatever, I would be disappointed in them. But, as I have indicated, my advisers have told me very strongly that should this amendment pass, it has the possibility of derailing, and at the very least delaying, any kind of bilateral approval agreement. That would be a shame given what we have been through in the last six months with COVID-19. We are very grateful that the resource mining sector in Western Australia has continued to operate, but there are more opportunities in this space to create jobs without detracting from environmental protection. This bill before us would allow us to go into a bilateral approval agreement with the commonwealth, and this amendment before us would slow that down or derail it totally. I urge honourable members to vote against the amendment.

Hon DIANE EVERS: I will not take too long here because I, like the minister and Hon Dr Steve Thomas, agree that our offset system is not working well. We need to address that to make sure that it does work. I would like the minister to clear this up for me. I believe the minister said that the issues that this clause relates to are already quite significant—it is significant environmental harm. Hon Dr Steve Thomas has moved an amendment to say that we should actually call it "material environmental harm". The member's amendment would bring into play the chance of offsets at a lower level of environmental harm. Is that how it seems?

Hon STEPHEN DAWSON: I am told that including Hon Dr Steve Thomas's amendment could actually set a higher bar for offsets.

Hon DIANE EVERS: I refer to what the minister said at the beginning of this debate and what this clause applies to. If that is the case, the material one excludes trivial or negligible environmental harm. I guess I am looking for the definition of "trivial" or "negligible". Would developments in which a dozen trees or a couple of hectares are cleared be considered trivial or negligible?

Hon STEPHEN DAWSON: There are two significant parts of the Environmental Protection Act. I think what the member was talking about is in part V of the act, whereas this clause applies only to part IV of the EP act and more specifically to an offset applied as a ministerial condition after the Environmental Protection Authority's assessment of a significant proposal. It does not apply to clearing; that is very different.

Hon DIANE EVERS: Okay, so part IV applies to significant proposals. What would be considered negligible or trivial in those cases that would not come under material environmental harm?

Hon STEPHEN DAWSON: The EPA would consider the conditions. I do not know whether anyone uses the terminology "negligible" or "trivial", but it already looks at and makes decisions on what is a significant residual environmental impact. I am not aware of a definition of that, but the EPA already makes those decisions all the time. If it were a minor environmental impact—for example, the removal of a tree—that would not be captured, whereas the example I gave earlier of the proposed Asian renewable energy hub in the Pilbara would require a significant amount of clearing. In that case, we are talking about hundreds of thousands of hectares, I believe. That is significant. If it is a tree or a couple of trees, the EPA ordinarily rules that out.

Hon ROBIN CHAPPLE: The minister mentioned that one of his advisers at the table has been with the department quite a long time; I have been dealing with the environment for quite a long time as well. Offsets are a really

interesting component. I have seen many offsets that have no relativity to the project that has gone ahead. Is there any definition of how an offset should be established? In the example the minister just mentioned, would that be a land offset? If it were the case of some tingle trees, would it need to be an offset of other tingle trees in another area? An offset for a gas plant involved a penguin rehabilitation centre on Garden Island. That was a really bizarre offset. I would like to try to tease out what is the offset that the minister is talking about.

Hon STEPHEN DAWSON: Honourable member, this is not the right part of the bill to discuss offsets. That relates to part V of the act. It is later on. This is not the part of the bill to ask that question.

Hon Robin Chapple: You actually identified it here.

Hon STEPHEN DAWSON: It was only for part IV of the act and ministerial conditions. It is not for the offsetting of big amounts of clearing. That is part V of the act, which is covered later in the bill.

Hon ROBIN CHAPPLE: On that, can the minister please describe the types of offset he will be looking at from a ministerial perspective in this regard?

Hon STEPHEN DAWSON: This comes from the EPA recommendation that the EPA would suggest what an offset should be in the ministerial conditions, but it could be a biodiversity offset, for example.

Hon TJORN SIBMA: Thank you.

The DEPUTY CHAIR (Hon Adele Farina): That is all right. Hon Tjorn Sibma.

Hon TJORN SIBMA: I was pre-empting getting the call, which is very unseemly of me, particularly so early in the week. My apologies to Madam Deputy Chair and to the chamber.

On the back of our last exchange, I think it is well understood that the opposition has repeatedly expressed the desirability of entering into a bilateral agreement with the commonwealth. We see the wisdom in having a single environmental assessment document, a single review process, a single appeals process and a shorter overall assessment period. We see absolutely no value in a duplicative set of arrangements, but have sought to appreciate the intended operation of what is proposed. We will accept the government's advice to us on this amendment, but may I just say that I am unconvinced by the argument the minister has put. It does not seem to be based on any fact. There has not been any exchange between respective ministers dealing with this matter. Since we are the first jurisdiction within grasping distance of entering into a bilateral agreement, the Western Australian jurisdiction has all the leverage in this conversation, and anyone who has had much experience in negotiation understands that leverage is everything. We seem to be capitulating pre-emptively, but I will leave it there. I think we have made our point. We are unlikely to be successful; we will let the matter rest. This is absolutely no reflection on individuals at all, but what we have here is effectively the codification of bureaucratic preference at both the state and commonwealth level. Obviously, that is something to take into account, but governments determine policy direction.

Hon STEPHEN DAWSON: I appreciate Hon Tjorn Sibma's comments. We are working with the commonwealth government at the moment to determine the accreditation process. This amendment would simply increase the risk of us not getting accredited if we change the legislation around offsets. I am advised that the last bilateral agreement under consideration and in negotiation between the two governments fell over because of offsets. There are some learnings in place. Some people remember that and do not want this one to fall over for the very same reason. Not all public servants between the commonwealth and the state are of the same opinion. We want to make sure that we are not creating obstacles for ourselves on the road to a bilateral agreement, and quite simply the amendment before us would create an obstacle.

Hon Dr STEVE THOMAS: I thank the minister. It has been a very constructive debate. I also question the need to necessarily comply with the federal legislation. However, I do appreciate the input and I suspect that I may have come up with a better way to do the things that I am attempting to do, and that is later in the bill. I will try to give the minister some warning of that before we get too advanced. For that reason, Madam Deputy Chair, I seek leave to withdraw the amendment that I have moved.

Amendment, by leave, withdrawn.

Clause, as amended, put and passed.

Clauses 29 and 30 put and passed.

Clause 31: Sections 46B to 48 replaced —

Hon STEPHEN DAWSON: I have an amendment standing in my name at 27/31 on the supplementary notice paper. This amendment will ensure that a proponent is given notice that there is a possibility that the minister may withdraw their ministerial statement on the basis that it has not been substantially commenced within the required period. It was always the intention that this would occur only after discussions with the proponent about the cause

for the delay and the need to apply for an amendment to extend their substantial commencement date prior to its expiry. This amendment gives proponents comfort that they will be accorded procedural fairness. I move —

Page 47, line 10 — To insert after "Minister" —

and the proponent of the proposal

Hon Dr STEVE THOMAS: I have an amendment on the supplementary notice paper that will do the same thing. I am happy to rely on the minister's use of the department in terms of wording. I alert the chamber to the fact that I will support the minister's amendment, which will circumvent the need for my amendment, which is next on the supplementary notice paper.

Hon STEPHEN DAWSON: I should have said that when I moved my amendment. The member is correct: my amendment agrees with the sentiment expressed in Hon Dr Steve Thomas's amendment. We are doing it in a different way, but it will deliver the same outcome.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 32: Part IV Division 2A inserted —

Hon STEPHEN DAWSON: I have an amendment on the supplementary notice paper standing in my name at 37/32 and I will advise the chamber of the reason I will move that amendment. During the consideration of a cost-recovery model, Parliamentary Counsel's Office advised that amended wording will ensure that there is an ability to determine appropriate fees. The determination of fees will be according to criteria and formulas set out in regulations. The cost-recovery model, as I have indicated previously, will be subject to extensive consultation before the regulations are made. I move —

Page 51, line 28 — To delete "prescribing" and substitute —

prescribing, or providing for the determination of,

Amendment put and passed.

Clause, as amended, put and passed.

Clause 33 put and passed.

Clause 34: Section 48BA inserted —

Hon Dr STEVE THOMAS: I move —

Page 53, lines 12 and 13 — To delete the lines and substitute —

(b) if a requisition is issued to the person who referred the proposal and is not complied with within the compliance period — the compliance period;

(c) if a requisition is issued to a Government Department and is not complied with within the compliance period — 14 days.

This amendment is another one of my attempts to put in a statutory time frame for the approvals process. I do not propose to spend a lot of time on it. The truth is that the arguments that we have made before are the same as the arguments that I would be putting now. I am attempting to restrain the capacity to delay the approvals process. We have quietly gone into the night on most of these and we will intend to do so with our honour and dignity intact in the same way.

Hon STEPHEN DAWSON: Again, I thank Hon Dr Steve Thomas for how he has conducted himself in this debate thus far. As I have indicated previously, when the government has thought that a time frame amendment would benefit the bill, it has agreed to it. But when a time frame amendment puts at risk whole project time frames in the sense that the Environmental Protection Authority may well take a more conservative approach to assessment, it has said no. The EPA has 28 days to determine whether a scheme that has been referred to it should be assessed. We think that time frame is appropriate, so we do not support the amendment of 14 days.

Amendment put and negatived.

Clause put and passed.

Clauses 35 to 43 put and passed.

Clause 44: Sections 51B to 51D replaced —

Hon Dr STEVE THOMAS: I am trying to keep up! We are moving through this bill quickly and, in doing so, we are helping the government with its parliamentary agenda.

Hon Stephen Dawson: Thank you.

Hon Dr STEVE THOMAS: The minister is welcome. I move —

Page 59, lines 21 to 28 — To delete the lines and substitute —

51B. Registration of an environmentally sensitive area by regulation

(1) Regulations may declare as an environmentally sensitive area for the purposes of this Part —

(a) an area of the State specified in the regulations; or

(b) an area of the State of a class specified in the regulations.

(2) Before a regulation is declared under this section, the CEO must —

(a) notify each owner or occupier of the land to which the environmentally sensitive area would relate of their intention to declare by regulation an environmentally sensitive area; and

(b) take into account any comments received from any owner or occupier of the land to which the environmentally sensitive area would relate.

(3) The CEO must deliver a memorial of an environmentally sensitive area to the relevant land registration officer.

(4) The memorial must be in a form approved by the relevant land registration officer.

(5) The relevant land registration officer must register the memorial and accordingly endorse or note the appropriate register or record in respect of the land to which the environmentally sensitive area declaration applies.

Honourable members, we have come to one of the most important clauses of the bill; that is, the vexed issue of environmentally sensitive areas, which has been the subject of parliamentary inquiries in the past and has caused great angst in regional communities. It is an issue in which the state seeks to protect land owned by private individuals without necessarily recognising the impact that it has on those private individuals. It would be very easy, as a party that has an interest in property rights, to simply suggest that environmentally sensitive areas should not be declared, but that would be a detrimental position for the state to take. The state needs to have the capacity to protect areas that it thinks needs protecting. That is not the question. The question is: what information should be related to the owners of the land, the private landowners, and what impact should that be allowed to have? If, as is frequently suggested by governments, the declaration of environmentally sensitive areas has limited or no impact, my first question is: why would we not register that on the land title? The argument that will come back will be that if it is put on the land title, that may devalue the land; that is, if an encumbrance like this is put on a land title, it will devalue the land. I will address this in the first instance by saying that whether it is on the title does not affect the value of the title but whether it exists affects the value of the title. An encumbrance on the land, whether it is hidden or open, is not the question. The question is: is there an encumbrance upon the land? The duty, therefore, of a landowner who is selling the land to tell the next landowner that they have an encumbrance, if it is not on the title, is actually questionable. The question is: what are we afraid of in putting the title on the land? If the argument is that this will have no material impact, which government often does and departments often do, there should be no fear in putting it on the title. But if it has a material impact, we get to the second part of this debate. If the government says today that it has no significant impact, that this simply exists and it does not hurt anybody, it would have no objection to it going on the land title and the government would support my amendment.

The government has its own amendment in relation to the recognition of environmentally sensitive areas. I am pleased that the minister has done that. At the very least, the minister has recognised that there is a problem—that environmentally sensitive areas, as arbitrarily decided by the department and the CEO, actually cause a problem. If there was no problem, the minister would not have his own amendment trying to counteract mine. I will talk in detail about the comparison of the two amendments. My amendment says if the government places an encumbrance on somebody's private property, that should be registered because that encumbrance is passed down when the land is sold. The ESA process was diabolical when it was first set up. It started under what was called the Swan coastal plain wetland policy. All sorts of areas were picked out. They were not picked out because somebody looked at the land and said, "Here is an issue"; they were picked out because the geomorphic datasets and desktop studies suggested that at some point those Swan coastal plain areas would have water on them. I have to say that a lot of farmland has water on it in the middle of winter, including a little bit of mine. That is usually the best bit to try to feed cows and sheep. A lot of places out there are not so much wetlands but what we like to call damplands—they get wet in winter. In summer, it is normal farmland. What happens to that land? It can be identified as an environmentally sensitive area and suddenly there is an encumbrance upon the land. My amendment does not propose that we scrap that. Other members might be more forthright and say, "Why don't we get rid of the ESA process altogether?"

I do not think that is the best outcome for the state of Western Australia. I am suggesting that we do it honestly; when people are told the government is going to blight their land with an encumbrance placed by the state, that we are at least honest enough to say so. The way it is currently done is absolute deception.

I am very pleased that the Minister for Environment has recognised this system has to change; that is fantastic. On the supplementary notice paper, the Minister for Environment has an alternative amendment to mine. My amendment places the encumbrance upon the title, because in my view it is there until the encumbrance is removed. The minister's amendment allows at least a conversation with the landowner. Right now, a landowner can have an ESA put on their property without being told. It has been the history of this government and the previous one. Multiple governments have gone through this process of putting an encumbrance upon a property but not bothering to tell the landowner when it was done. If a landowner were clever enough and understood the system, they could try to find the listings somewhere on the Department of Lands' website, but it should be a far more obvious and simple process.

I give the government its due: the minister has picked up on this issue. Following my amendment on the supplementary notice paper, the minister also has an amendment related to environmentally sensitive areas. It states that the CEO must notify the owner and take into account any comments. I am always concerned about taking into account any comments. I take into account the comments of my children all the time, but they very rarely get their way. My wife takes into account my comments, but I usually do not get my way either! It is absolutely the case that somebody's comments can be taken into account without giving them an inch. In my view, that is not sufficient. I am not frightened of telling the truth to landowners in Western Australia. I think they deserve to be told the truth; that is, if the government impinges upon their land, the government should have the courage to tell them so.

An amendment on the supplementary notice paper in the name of Hon Rick Mazza is coming up, which deals with compensation for the encumbrances. I say this at the start of that: the first step in my view is to recognise and admit to an encumbrance, if it exists. Compensation or no compensation is the second consideration after that. If members do not support the recognition of an encumbrance, it is very hard to support a compensation mechanism for them. In my view, it is very hard to say a landowner should be compensated for an impact when members do not believe the impact should be recorded and registered. I think that is a very difficult position for anybody to take. My view is that the most honest and upright position is to acknowledge that the state of Western Australia is placing an encumbrance upon the land of these people. Personally, I think we should apologise for the way that it has been done in the past. We should acknowledge that they were not consulted, were not listened to and were not told, and we have decided we can do it better in the future.

It was suggested during debate in the lower house that as part of the revamp of the EP act, all of these ESAs might have to be reviewed. I am interested to know whether the minister could give us some grounding on that. Close to 100 000 land titles in Western Australia are impacted and impinged by this process. That number may change if a proper process of assessing them is undertaken—it may not. If the government decides they are all there for valid reasons and that all 98 000 or whatever it is of them are important, fine, but justify it. At the very least, we should have people walking on that bit of land to say, "Yes, it is absolutely an important environmentally sensitive area", rather than relying on desktop studies. We are so many years behind. We have lost a decade in which these things could have been introduced. Hon Robin Chapple was probably around for some of these debates in 2003, 2004, 2005 and 2006. It kicked off somewhere around that time. We have lost 15 years in which we could have identified what is required and what is not. Let us do it right this time. Let us identify what we need, apologise for the impact, but say that it is absolutely required for the betterment of the environment of Western Australia and that is why it is recorded on the title.

Hon STEPHEN DAWSON: Even though I intend to oppose the amendment standing in the name of Hon Dr Steve Thomas, I understand what his amendment is trying to achieve. I appreciate the work he has put into it and the collaborative nature in which he moves these things forward. As the member indicated, for some time now I have been trying to work through the issues associated with environmentally sensitive areas. I, too, in the last Parliament, was a member of a committee that looked into this issue. Hon Simon O'Brien was the chair; I was the deputy chair. Former member Hon Paul Brown was on there, as was Hon Samantha Rowe. I have missed somebody.

Hon Samantha Rowe interjected.

Hon STEPHEN DAWSON: Anyway, it has been around for a while. Obviously, it has been around since 2005 when these came in.

Hon Samantha Rowe: The other member was Hon Brian Ellis.

Hon STEPHEN DAWSON: Hon Brian Ellis was the fifth member—good work.

We have been working on addressing many of these elements for some time. As members will see on the supplementary notice paper, I have proposed further changes to this part of the act. I agree that owners should be notified and consulted prior to an ESA being applied to their property. This is why I have proposed that the CEO must notify the

owner or occupier of land of a potential future ESA intersecting with their property and that the minister must take their comments into account. The government amendment clarifies that this comprehensive notice and consultation process must occur before a new ESA is placed on a property through regulations.

I also agree that it is important that potential buyers are aware of ESAs before buying a property. That is why ESAs are now included in Landgate's property interest report. My further amendment to this clause will enshrine this in law and ensure that landholders have better access to accurate information about ESAs on their land. The department is continuing to update publicly available information on ESAs and PIRs, and Landgate has information on its website about PIRs. My office and the Department of Water and Environmental Regulation have also been engaging with the Real Estate Institute of WA and Landgate to ensure that this information is accessible. Already, REIWA has a link to PIRs on every property listed for sale, and it is open to including a notice about PIRs on REIWA contracts for the sale of land, and the offer and acceptance form. I am aware that REIWA has articulated this clearly to some members of this place and that outcome would significantly increase public awareness. I have asked the director general to prioritise the regulations for ESAs, which will ensure that consultation with all potentially affected property owners who may have an ESA are aware of what it means. We will also explain the new expedited referral process, if they are looking to clear native title vegetation.

Following the making of regulations, we commit to notifying all those who have ESAs defined in regulations to ensure that they are aware of them. It is better to consult at this time than immediately, as it is likely that fewer ESAs will be proposed in draft regulations. Through this bill, we will establish a new referral system. The referral system will greatly assist landholders who are uncertain about the presence of ESAs or the need for a permit. The bill will allow landholders to refer proposed clearing to the department for a decision about whether a clearing permit is required. The CEO would then determine, against criteria contained in the bill, whether a permit is required, and this decision must be made within 21 days of the referral. There will be no cost for the landholder in making a referral.

An example of how this could benefit landholders, particularly within an environmentally sensitive area, is clearing for a crossover within an ESA. Currently, clearing for a crossover between a road and a property within an ESA requires a clearing permit, and exemptions through the clearing regulations do not apply. Another example is fence line construction on freehold property within an ESA. Again, clearing for fence lines require a clearing permit within an ESA, as exemptions through the clearing regulations do not apply. Both these scenarios are subject to the criteria in the bill being met. This clearing could occur through the referral decision rather than through a clearing permit. The criteria in the bill under new section 51DA include that the area proposed to be cleared is small, relative to the total remaining vegetation in the region. It also includes the significance of the vegetation and the level of scientific knowledge about it and whether any issues associated with the clearing would warrant conditions through a clearing permit. With this, it means that decisions can be quick and easy and ensure that the environment is protected. It is a win for all, from my perspective.

In relation to ESAs having a memorial, as I have indicated, we are not supportive of these amendments. Unlike a number of members in this place, we do not support putting memorials on over 98 000 titles. This is not something that any of these title holders are likely to want. Since becoming Minister for Environment, I do not believe I have been approached, or indeed lobbied, by anybody requesting that a memorial be placed on their title for anything, let alone for this. To do so would be an incredibly crude way of approaching the issue. I note that the approach proposed by Hon Dr Steve Thomas was not supported by the former Liberal Minister for Environment Albert Jacob, when he was minister, neither do I think it was supported by Hon Terry Redman in the previous government. The approach is not supported by the Urban Development Institute of Australia, REIWA, Landgate, DWER or seemingly anyone else with a deep and vested interest in the issue.

I know that REIWA has written to at least one member, if not multiple members, in this place and advised that it does not support the registration of ESAs on title. It considers Landgate's property interest report a suitable document in which all property interest can be described, including environmentally sensitive areas. REIWA's view is that the certificate of title should solely be used as a registration of ownership. REIWA agrees with the position put forward by Landgate in the recent Standing Committee on Public Administration private property rights report, which states —

> … to register all interests on the Certificate of Title would undermine the integrity of the Torrens system. Landgate submit that the Torrens title system does not guarantee full disclosure of all interests affecting land on a Title, and an attempt to do so could potentially undermine the principle of indefeasibility.

It is REIWA's view that it would be prudent to have all notifications or interests in one location. My proposed amendments contribute significantly to making the property interest report the source of truth. If it is about transparency ahead of a potential purchase, the issue will be dealt with by our changes around property interest reports. If it is about having a quick response to the need to clear native vegetation within particular ESAs interacting with a property, we will have an expedited pathway through our new referral system, and this process will be free. If it is about future ESAs, we have made strong commitments about undertaking consultation for the regulations. I have proposed

further amendments to ensure that each landowner or occupier is notified and invited to comment prior to the ESA regulations being made.

The approach proposed by Hon Dr Steve Thomas has significant resource implications. It does not create value, the costs versus benefits simply do not stack up, particularly when we note the changes and improvements to this process already undertaken by the government. As I have indicated, I do not support the amendment.

Hon RICK MAZZA: I would like to congratulate Hon Dr Steve Thomas for moving this amendment today. Listening to the response from the minister, I am quite alarmed at some of the comments made about the fact that the certificate of title is only for the registration of ownership. That is not what the Torrens title system is about.

Hon Stephen Dawson: By way of interjection, I indicate that that is REIWA's view.

Hon RICK MAZZA: That is disappointing from REIWA.

One of the main features of the Torrens title system is to also include encumbrances on it. There have been a number of reports, as the minister pointed out, and one from a committee he was a member of, the Standing Committee on Environment and Public Affairs. Its forty-first report on petition 42 disclosed the fact that 98 042 private parcels of land have environmentally sensitive area restrictions on them. Unfortunately, those people are generally not aware that they have those restrictions, and the minister said that he has not had approaches from people who are interested in having ESAs noted on their title, or any complaints about it. That is mainly because, for a start, none of them even know about it. I think that one of the reasons the previous Minister for Environment was not enthusiastic about notifying all those owners is the tsunami of issues that might arise from that. In fact, recommendation 9 of the committee report said —

> **The Committee recommends that the Minister for Environment directs the Department of Environment Regulation to write to each affected landowner to advise of the existence of the ESA and its impact.**

The recommendation was that each landholder be advised. The landholders then, I suppose, could assess their situation. People have been hurt and damaged by the failure of the Torrens title system because they have unknowingly purchased a property with ESA restrictions, which has then had ramifications for them.

The property interest report has been referred to by the minister. Page 49 of the thirty-third report by the Standing Committee on Public Administration, about its recent inquiry into private property rights, states that the property interest report is not infallible. If someone has an inkling that there could be something they need to look at and they spend their $60, there is no guarantee that the environmentally sensitive area would be on the property interest report. In the conclusion at page 56, the report states —

> The Committee accepts that the purpose of the Torrens land title system is to provide certainty of ownership. However, failure to disclose relevant interests by any mechanism can threaten private property rights by undermining purchasing confidence. The Committee is therefore also of the view that the Torrens land title system can, and should, disclose all interests affecting property, as opposed to only the select list of interests currently included on a Certificate of Title.

A certificate of title is fundamental to the integrity of property ownership in this state; therefore, the suggestion that these interests should be just put on another piece of paper for someone to dig up somewhere really does not serve the people of Western Australia. After reading the report, I am really concerned that this is more about easing bureaucratic administration rather than serving the community properly. It is a bureaucratically easy way of handling this and is not about having processes in place and information available for members of the public to properly identify what they are buying, what they are mortgaging, what they own and what restrictions apply to environmentally sensitive areas.

In the 1970s or 1980s, the country areas water supply regulations restricted environmental clearing of land in some catchments. At the time, those restrictions put a memorial on the title. That memorial would also state whether injurious affection had been paid for. Those environmental protections ceased in about 2005 when directives were put in place. The latest Standing Committee on Environment and Public Affairs report also suggests that when an ESA is applied to a property, there should be a site visit to make sure that there is not some cadastral mapping system of wetlands and that the ESA is warranted. That will be very useful.

It is interesting to note the debate that took place when the forty-first report of the Standing Committee on Environment and Public Affairs was released. Paragraph 9.20, it states —

> Noting an ESA of the Certificate of Title was raised during debate in the Legislative Council, where a number of Members supported this measure. For example, Hon Robin Chapple MLC stated, in support of comments made by Hons Mark Lewis MLC and Rick Mazza MLC:

> *when title deeds are passed on there needs to be a clear indication of the status of the land … we need to make sure that where there are issues of environmental sensitivity on a property that at the time of sale they are clearly identified I take on board what Hon Rick Mazza said: it is an impost on the person taking on the title.*

That was a very wise statement from a longstanding member of this chamber.

It is not good enough for that information to be put on a property interest report and that somebody will have to spend $60 to find out about it. The amendment moved by Hon Dr Steve Thomas should be supported by this chamber because it is in the interest of all Western Australians. It will make sure that people know what they are buying and are aware of their obligations. I also have an amendment on the supplementary notice paper that is about just terms of compensation if land is devalued in some way.

With that, I support the amendment.

Hon AARON STONEHOUSE: I am pleased to rise to lend my support to the amendment moved by Hon Dr Steve Thomas. We are dealing with perhaps one of the most important issues that this fortieth Parliament will deal with—that is, that most fundamental right, the right to private property. It is the right that underpins every other right—the idea that a person owns the fruits of their own labour. With the amendments moved by Hon Dr Steve Thomas, and the amendment that will be moved by Hon Rick Mazza, clause 44 deals with the interplay between the government infringing on those rights, perhaps with appropriate and just cause, and how we put in place checks and balances on the infringement of that right, and perhaps even compensation around the infringement of that right. Specifically, proposed section 51B relates to how we inform people about the encumbrances upon on their land through environmentally sensitive area restrictions. A very good case was made by the previous two speakers that the title is the most appropriate place to list such encumbrances as ESAs and that the property interest report is an unreliable way of doing that. I think it is absolutely imperative that those people who have property with an ESA encumbrance, or those people who seek to buy property who may like to know whether there is an ESA encumbrance, have that information presented to them in a way that is clear, easy to understand, reliable and is presented up-front at the point that they are engaging in that transaction. Having an ESA on the title, listed through a memorial, if that is the most suitable way, is the most appropriate way to do that. I am very happy to support this amendment and I look forward to debating an amendment that deals with just compensation for such encumbrances.

Hon DIANE EVERS: It feels as though we are looking at one of those issues that in opposition seems like a good idea, but in government, does not; otherwise, the current opposition would have done it over the past two terms. We are looking at doing something that seems logical and is appropriate for people to be aware of. I imagine every landowner out there would want to know whether this was the case. My concern is that if we are talking about the need to communicate with a landowner, engage in communication back and forth and negotiate how to put it on the title, we are looking at a significant cost for 100 000 titles. I am very interested to know whether the costing has been done; and, if it has not, why not; and, if it is possible to even come up with an approximation of what it might cost to go through those titles and put the appropriate information on them.

Hon STEPHEN DAWSON: I have before me correspondence from the director general of the Department of Water and Environmental Regulation, Mr Mike Rowe. It states —

> Based on the updated costs of notifications under section 70A of the Transfer of Land Act 1893, and the number of titles which include ESAs (98,042), the cost of notification without any allowance for the administrative resources required to undertake the process would be more than $17.1 million. This does not account for removal of areas without native vegetation, as to do this would require further investigation.
>
> It is beyond the resources of the Department of Water and Environmental Regulation (the Department) to undertake this process without an appropriation including salary costs for additional positions or the imposition of a fee or cost recovery charge to cover these costs. The Constitution Acts Amendment Act 1899, at s.46(3) states that "the Legislative Council may not amend any Bill so as to increase any proposed charge or burden on the people". Therefore, the Legislative Council cannot ensure that the resourcing required to implement this amendment is provided.
>
> Based on the requirement for an appropriation to implement Dr Thomas's amendment, and the inability to impose cost recovery due to section 46(3) of the Constitution Acts Amendment Act 1899, it is the Department's opinion that this change cannot be made by the Legislative Council.

Noting the time, I have provided a copy of this correspondence to the Clerk. I would ask that you, Madam Deputy Chair, come back and give us a ruling on this correspondence.

The DEPUTY CHAIR (Hon Adele Farina): Are you proposing to table the correspondence?

Hon STEPHEN DAWSON: I am.

[See paper 4583.]

The DEPUTY CHAIR: Noting the time, I ask the advisers to leave the chamber for the taking of questions.

Committee interrupted, pursuant to standing orders.

[Continued on page 7592.]