Extract from *Hansard*
[COUNCIL - Thursday, 21 August 2003]
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Mr Tom Stephens; Deputy Chairman; Hon Peter Foss; Hon Murray Criddle; Hon Dr Chrissy Sharp; Hon Robyn McSweeney; Hon Bruce Donaldson; Hon Derrick Tomlinson; pursuant to standing orders. Debate interrupted; Hon Kim Chance

ENVIRONMENTAL PROTECTION AMENDMENT BILL 2002

Committee

Resumed from 20 August. The Deputy Chairman of Committees (Hon Barry House) in the Chair; Hon Tom Stephens (Minister for Local Government and Regional Development) in charge of the Bill.

Clause 23: Section 100 amended -

Progress was reported after the clause had been amended.

The DEPUTY CHAIRMAN: I indicate to Hon Christine Sharp that as her next four amendments on this clause are consequential, they can be moved en bloc.

Hon CHRISTINE SHARP: I think to do so would facilitate the passage of the Bill. However, one other matter needs to be cleared up. My first amendment, 148/23, contains a typographical error. Although it is not my typo, in many ways it is my fault as these were very late amendments. Members know that late amendments are not a good thing, and I have already apologised to the Chamber for this situation. As a result of the pressure under which these amendments were inserted, the amendment needs to be amended slightly to include "lines 2 and". It will then read -

> Page 31, lines 2 and 5 - To delete "14" and insert instead "21".

In every other way the amendments remain identical. As I said yesterday, the purpose of the amendments is to change section 100 of the Environmental Protection Act that deals with the appeals process. Appeals can be lodged for matters relating to various provisions in the Act, and the appeals are dealt with through section 100. In each case, I wish to extend the period during which appeals can be lodged from 14 days to 21 days. In doing so, it would bring the appeal time frame in line with lodging appeals on, for example, licence conditions, which is dealt with in a different section of the Act. I went through the arguments yesterday why these are good amendments. Therefore, I move -

> Page 31, lines 2 and 5 - To delete "14" and insert instead "21".
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> Page 31, line 7 - To delete "14" and insert instead "21".
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> Page 31, line 9 - To delete "14" and insert instead "21".
>
> Page 31, line 12 - To delete "14" and insert instead "21".

Hon PETER FOSS: I feel I must rise at this moment because, having been the subject of some criticism by Hon Christine Sharp recently for putting amendments on the supplementary notice paper a day or so before we considered a matter, and having been duly admonished for doing so, I must raise the slight inconsistency of approach by Hon Christine Sharp. On the other hand, I applaud her right to make late amendments. It would be wrong for the Committee not to consider an amendment purely because it is late. It is better to be ultimately right than consistently wrong. The Chamber should seriously consider any amendment that any member feels necessary in the course of the deep consideration of the committee stage. Members think of things during consideration that did not occur to them before. The committee stage is designed to consider clauses in detail and to produce alternatives. If members are not prepared to deal with amendments considered to be made on the run, members should ask that progress be reported on the committee stage. If members need more time, they should not reject an amendment out of hand. If it cannot be considered in the time allocated, members should state that they need more time and ask the Committee to report progress or postpone the clause. Members should not reject any amendment that might make the Bill better simply because it is late.

The House sent this Bill to the Standing Committee on Legislation to make what looked to be an unworkable supplementary notice paper into a workable one. Had the House tried to operate under normal circumstances, it would have been totally perplexed -

Hon Simon O'Brien: Can the minister get that ringing phone for me?

Hon Tom Stephens: My apologies, Mr Deputy Chairman. I think it's my wife.

The DEPUTY CHAIRMAN (Hon Barry House): Standing Orders are very clear on this issue.

Hon PETER FOSS: I do not know whether that constitutes an interjection, but I am sure it is unruly.

Hon Simon O'Brien: If it is a message from Warnie, I want it tabled.

Hon PETER FOSS: It is amazing how a mobile phone can interrupt one's train of thought.

It was unfortunate in this case - I think we had to be a bit careful - because we sent this to the Legislation Committee. That committee, particularly the staff, put a lot of work into compiling these documents to assist us. It probably involved several thousand dollars worth of printing. The idea was to allow for a smooth passage of the legislation. This amendment moved by Hon Chrissy Sharp is an obvious and simple one; some of the others are not quite so obvious and simple, but we will have to put up with those. However, I defend her right to move at any stage any amendment that she thinks fit and that as a member of Parliament she believes is her duty to bring before this Parliament. I will not criticise her for doing that because, ultimately, the aim is to pass the best Bill possible . Even though this amendment is late, I do not think she should have to apologise; it is something that is her duty as a member of Parliament to do.

Hon TOM STEPHENS: The arguments used by Hon Peter Foss concerning the way the committee should handle the input of amendments, even at a late stage, are the exact arguments I will draw upon - while accepting the right of the member to lodge an amendment of this sort at a late stage - to oppose the amendment because of the practice that has been adopted in the consideration of appeals that are lodged. There is no need for this amendment to extend the period from 14 days to 21 days; it will unnecessarily delay the process. Just as Hon Peter Foss has argued that the committee should take into consideration this amendment, that is the process that is adopted in the handling of these issues. Rather than extend the formal period to 21 days -

Hon Peter Foss: Extended if necessary.

Hon TOM STEPHENS: If new information becomes available that is communicated to the department, it will not be accepted as a formal submission under the processes of this -

Hon Peter Foss: What if an appeal has not actually been lodged? Is that a problem?

Hon TOM STEPHENS: A late communication, such as a letter, can become a letter of interest. As part of the department's processes, it can consider these issues. My understanding of the process is that, first, the Government is not aware of any problem with the current provision that limits this to 14 days rather than 21 days. No-one is aware of any pressure that would argue in support of this extension. The advice to me is that the current process is to take into account, where appropriate, the issues raised in considering the assessment. Issues that are raised in what would then be considered an informal process, such as a letter of interest, would be handled in this way. It will not be accepted as formal material lodged under the provisions of this section of the Act but will nonetheless, through the processes of the department, be taken on board in the way that new information is absorbed by the department in assessing these issues.

Hon PETER FOSS: I am totally sympathetic to having a short time limit. It is possible that the process is already too long, and courts normally work on that basis. The minister referred to a basic period of time, and if people need more time, they can apply for it. Something is needed to keep the time moving along. I would like one concern clarified. I can understand the situation when somebody has lodged an appeal and everybody else is sending in further documentation, but does this deal with the provision of making the appeal in the first place? I concede that if it were an appeal by the proponent it would not be a problem, because obviously they would know what was happening. Presumably all they will need is the 14 days and they might just miss an advertisement. If nobody lodges an appeal, what impact does it have then? What is the point of sending it in late?

Hon TOM STEPHENS: It would not count at every opportunity but, in the departmental processes that are on track for assessing its decisions, it will still take on board any late submissions or commentary on the issues that it is considering. This does not need to be done as part of an appeal process; these are the normal processes of the department when issues that have been raised in this informal way outside an appeal process are dealt with. I hope that throws some light on this issue for Hon Peter Foss.

Hon PETER FOSS: What would they be considering at that moment if nobody lodged an appeal?

Hon TOM STEPHENS: The reason for the difficulty in immediately responding is that a lot of different sets of circumstances could apply. It is not simply a matter of an appeals process; it can involve the assessment process, the issue of time lines and other issues, or the level of assessment. In those circumstances, information or commentary that has been made outside the formal lodgment of an appeal will be processed by the department, even in the absence of formal lodgment of an appeal. It could involve the level of assessment or what conditions are to be set for an approvals process. In those circumstances the department would be dealing with a range of circumstances. I guess the honourable member is more familiar with this procedure than most.

Hon Peter Foss: Probably.

Hon TOM STEPHENS: In those circumstances, the member will know the sorts of issues that came to him as a former Minister for the Environment outside the formal lodgment of an appeal. The commentary is: the Environmental Protection Authority report, conditions of approval, the level of assessment and the mode of assessment. These are all the issues upon which there can be commentary outside the formal lodgment of an appeal.

Hon PETER FOSS: I will refer to the other side of the minister's argument. When somebody submits a proposal, it is referred to the EPA, it is assessed and considered, the level of assessment is set and somebody lodges an appeal. What is the maximum number of weeks that would be added to that process if all these amendments were made? It is not only one week. I think the minister has raised a valid point. It might come in several times. How many weeks could it add altogether to the process, and what is the average time now for the process?

Hon TOM STEPHENS: On advice, the answer is three weeks.

Hon MURRAY CRIDDLE: The main issue is whether or not people get to know what is going on. Will the minister clearly outline the process through which people will become aware that something is about to happen? It does not matter whether the period is 14, 21 or 50 days; if the process is no good, people will never get the message.

Hon TOM STEPHENS: A number of processes are advertised in the Press to alert people, including the level of assessment, the release of the proponent's documents and the report of the Environmental Protection Authority. A fair flow of public information is available to interested parties, and, presumably, the interested party to which Hon Murray Criddle refers would be acutely aware of when these issues emerge.

Hon Murray Criddle: That is the critical point.

Hon CHRISTINE SHARP: If I understand the minister correctly, he does not support the amendments because it is the practice of the Office of the Appeals Convenor - although an appeal must be lodged within 14 days - to not necessarily provide at that stage the whole suite of information that will be used in support of the appeal. The appellant can provide that information later if he or she is unable to provide that level of detail within the time frame. Is that what the minister has been saying?

Hon TOM STEPHENS: The Government is opposed to the amendments on the basis that they would add unnecessary time and cause delay in the handling of appeals. There is within the assessment process of the department and the EPA an opportunity to have considered additional information received after the effective cut-off date for the lodgment of a formal appeal if it is new information. Issues brought up later in an appeal can be taken into consideration. That practice and custom has been developed and on that basis the Government is unaware of any pressure from any quarter, other than these amendments, to extend these periods. An extension would cause unnecessary delays. We would be delighted if the member would withdraw the amendments, but if she persists with them we will oppose them.

Hon CHRISTINE SHARP: Hon Peter Foss was not in the House yesterday when I explained that these amendments were provoked by two issues that I had dealt with in my electorate during the recess. One issue was the proposed mining at Ludlow tuart forest. A few people missed out on an opportunity to lodge an appeal within the time frame because they were unaware of the proposal and they did not have time to deal with it in the time frame. That is why I moved the amendments and I will continue to persist with them because they are worthwhile.

I briefly thank Hon Peter Foss for his generosity. I gave him a serve the other day on late amendments to the Cannabis Control Bill. I agree with his basic principle, as I am sure all members in this place do, that members have a responsibility to move amendments that they believe have merit or importance. In that way this debate is a living process and members must bear in mind that principle.

The other day I complained about the late amendments to the Cannabis Control Bill because I did not understand their effect; they were a complex suite of amendments. Hon Peter Foss was correct when he said that it is appropriate to postpone complex amendments, as we did the other day, to allow members who are actively dealing with the legislation time to understand their implications. Today I moved some simple amendments, the effect of which I believe members dealing with the Bill will understand pretty easily. It is difficult for backbenchers like me, who do a lot of work on different Bills at the same time without legal advisers, apart from help from other members in this place, to respond as fast as the Government would like. That is a real issue for me, as my current legislative workload is very heavy.

Amendments put and negatived.

Clause, as amended, put and passed.

Clauses 24 to 27 put and passed.

Clause 28: Section 3 amended -

Hon TOM STEPHENS: I move -

Page 36, line 11 - To insert before "but" -

and includes dead vegetation unless that dead vegetation is of a class declared by regulation to be excluded from this definition

It is not clear in the explanatory notes whether the current definition of vegetation includes dead vegetation. There are circumstances in which the clearing of dead vegetation must be controlled, such as vegetation that provides important habitat, is an essential source of nutrients, is required to stabilise the soil or is a source of seed for regeneration. Also the removal of dead vegetation must not be allowed as a loophole for unauthorised clearing. With this amendment, the definition of native vegetation will include dead vegetation unless that dead vegetation is of a class declared by regulation to be excluded from the definition. The considerations that I have listed and the clearing principles in schedule 5, as inserted by clause 116, will provide a basis for those regulations. The regulations should also include an exemption for the burning of dead wood for camp fires. In the drafting instructions for the regulations, these issues are currently being consulted upon, but it is intended to protect dead vegetation that is within an area of native vegetation; that is, dead vegetation that comprises an area of native vegetation. That is the intent of the regulations that are being worked on, which I hope will remove some of the fears expressed by members in the second reading debate and also in the debate on the first clause.

Hon ROBYN McSWEENEY: I cannot support this amendment. There are enough problems with what is native vegetation let alone what is dead native vegetation. People in the south west area, and probably in many other areas, collect dead vegetation for their fires. People in the area do not have gas online; they have wood fires. First the Government creates state forests and then it creates national parks. There are some areas of state forest from which people can collect their free firewood. Now the Government wants to provide collection areas for firewood so that it can control where people go and it could make them pay money for their firewood. What about the private farm owners who have dead native vegetation on their properties? Every year it is a big event. Everyone collects their wood and then they have a big burn off. It is like a big camp fire. Grandfathers collect their grandsons and they go around the farms. I suppose it is a culture in farming practice. That is just one thing I think the Government is trying to stop.

Small timber millers also go onto private property, and I mentioned this matter earlier. Some of those timber millers have invested $40 000 in private property. They make furniture from both live and dead trees. A lot of products come from the fine wood furniture industry. Private property no longer seems to be private property. That is a big concern. I hope the minister can tell me that the regulations will still allow that to take place. There are trees that are a danger, and we have spoken about that in this Chamber. Sometimes trees extend over fence lines. Recently a friend of mine was fined rather heavily because he removed trees that extended over his fence line and cut them up for firewood. He ended up in court over that issue. I note that there are some exemptions for fence posts and the like on private property. However, can the minister explain further the exemptions that will be in place? He has said that consultation is occurring on the regulations. The minister mentioned camp fires. A lot of people who use the beach light camp fires. I know that that has slowly been eroded over time.

As a matter of interest, I went online to see how the other States regulate the clearing of native vegetation. The New South Wales Act allows seven trees per hectare a year to be removed from private land for use as firewood. That Act provides a bit more control than this legislation will because that is defined. Can the minister explain to me how much wood farmers can take, given that they cannot even clear a hectare without clearing permits? That must be clearly defined because a lot of farmers are very afraid of the Environmental Protection Amendment Bill. The Government is making regulations, but I have not seen them - no-one has. Western Australia's Wildlife Conservation Act lists the species and the firewood industry is managed by the state forest department. The Victorian Act refers to the loss of hollow-bearing trees in Victorian native forest, and a draft action statement has been prepared. Local planning schemes are being used in Victoria to control the clearing of dead hollow trees on private land in the range of the red-tailed black cockatoo. In those shires a permit is required to fill dead hollow trees with a diameter at breast height of greater than 60 centimetres. The areas affected by those controls are detailed on a map provided to the shires. In that way, the shires know what to expect. However, we do not.

I would like the minister to answer my questions. I cannot agree with the amendment that the minister has moved, unless he can provide a better explanation about the removal of dead native trees. Even people living in

areas affected by salinity will not be able to remove dead trees. I understand that some of those trees are used for habitat etc. I would like some explanations about what I have put forward.

Hon PETER FOSS: This clause, along with a number of other clauses, is a Henry VIII clause. I do not particularly like Henry VIII clauses. I will explain the difference between delegated legislation that gives the power to create a simple offence and Henry VIII clauses. A Henry VIII clause allows the Government to alter the plain meaning of the word of a statute. This amendment provides that native vegetation means X and that the words native vegetation can be altered by government regulation. We deal only with the word of a statute. We have been told by the minister that these regulations will be made, but we do not know what will be the wording of the statute. Normally we can disallow regulations if we do not like them. However, if we disallow these regulations, we will end up with something that we do not want, because we have started with a statute that is very wide in its terms. The minister is saying that the terms of the legislation are far too wide but that he will fix it by regulation. What can Parliament do about that? We cannot disallow it because it is already too wide. The minister has said that the Government will make it reasonable in time. We are saying to the Government that this is broad legislation and we know it is too broad, but the minister is saying that the Government can fix it by regulation.

This is another amendment that does exactly the same thing. Whenever people have asked the minister questions about this or that, he has said that it will be okay when the regulations are in place. As legislators, we must pass legislation so that it is okay when it passes through this Chamber. That is all we can do. That is why the Parliament has always objected to a statute when the Government has the power to frame the final meaning of that statute and when we cannot exercise any reasonable power over it by disallowance. Disallowance would defeat what we are trying to do because we cannot bring it back to what we think is reasonable.

I do not want to be told what the regulations will provide. I want to know what the Act will provide. We should bear in mind that we are seeking to amend section 3 of the Environmental Protection Act, which is the general definition section. The change we make here will have implications for the entire Act. What do we find in another section that provides that certain things are illegal? Again, it is a general blanket prohibition that can be ameliorated by regulation. If that definition is applied to another part of the Bill, the Government is saying, "Don't worry; we'll fix it later by regulation." The Government is expecting the Parliament to take a great deal on trust that somewhere along the line it will fix things. However, this is the last chance for the Parliament to amend this Bill. From now on, the legislation itself will be run by the Government - not the administration of this legislation. It is almost a double Henry VIII clause because it is a Henry VIII definition, which then has an application for other Henry VIII clauses.

An example of how the Act will impact on people is as follows. I have planted many trees on my property. Out the back I have a *eucalyptus camaldulensis*, a river gum, which is native to Western Australia. In my front yard I have a *eucalyptus maculata*, which is native to New South Wales, and a *eucalyptus nicolii*, another native of New South Wales and Queensland. Are these trees native vegetation?

Hon Murray Criddle interjected.

Hon PETER FOSS: The *eucalyptus camaldulensis* is a local.

Hon Christine Sharp: No it's not.

Hon PETER FOSS: It is. River gums can be found around Perth.

Hon Christine Sharp: They do not grow in Perth. We have *eucalyptus rudis* in Perth.

Hon PETER FOSS: That is true; and the hooded gum, *camaldulensis*, is also found here. It is one of the most widely distributed trees in Western Australia. It is certainly a Western Australian tree.

Hon Christine Sharp: It is certainly a Western Australian tree, but it is not a Perth tree.

Hon PETER FOSS: Yes, but it is a native tree. What is native vegetation? It includes any tree that is of indigenous, aquatic or terrestrial vegetation. If Hon Chrissy Sharp likes, I will plant a *eucalyptus rudis*, or some other local species, in my yard. Is it native vegetation? It does not come within the exclusion clause because it is not vegetation in a plantation. To be vegetation in a plantation it must be one or more groups of trees, shrubs or plants, intentionally planted or propagated with a view to commercial exploitation. I did not plant my tree with a view to commercial exploitation, although I would probably now vow that I did. The only way I could do anything with this tree is on the basis I had planted it for commercial exploitation. I planted it for aesthetic reasons. In fact I did not plant it; my wife did.

Hon Ken Travers: Were you misleading the House then?

Hon PETER FOSS: The parliamentary secretary is again seeking to filibuster this debate.

It is not therefore a plantation. Under the clearing provisions, any form of clearing contrary to section 51(c) and (d) of the Act is illegal. Another Henry VIII clause applies because the final form of that clearing is to be determined again by regulation. We are supposed to have faith that this Government will not maliciously want to get stuck into people like me who plant trees in their front garden. If the Government is careless enough to fail to pick up situations such as mine, I will be caught by the Act. It is rather frightening because I do not have any great faith that the Government will think to include that in the regulations. If it cannot think to include it in the Act, why will it think to include it in the regulations? Why will that situation suddenly be thought of because regulations are being drafted, when it was not considered for inclusion in the Act? When this amendment is passed, what would happen if, as sometimes happens, a limb fell from my tree into my swimming pool. This is not a purely hypothetical possibility. *Eucalyptus camaldulensis* has a tendency to shed limbs that regularly fall into my swimming pool. Am I obliged to leave it there on the basis it is native vegetation until the regulation is implemented? I do not want to know what the regulations provide; I want to know what the Act will provide. If the Act does not provide it and I must wait on a regulation, the Act is faulty. We have a duty with legislation of this importance to think provisions through and include them in the Act. If it is a matter of extending a regulation, that is fine. If Parliament wants to stop a regulation from being extended, it need only disallow it. However, I do not want to end up with a situation in which it is futile to disallow a regulation because the net result will be to make things worse.

Hon BRUCE DONALDSON: I am very thankful that 100 years ago legislation like this was not in place. One of the greatest engineering feats, still acknowledged worldwide, is the Mundaring Weir pipeline to Kalgoorlie, which supplies farmlands along the way. The Water Authority used the timber from the water catchment areas at Mundaring and the surrounds of the state forests to fire the boilers because they did not have alternative energy sources. Without that, this engineering feat would not have occurred and Western Australia's economy would have been very much the poorer today. It has been proved that although the vegetation in those water catchment areas was thinned out, the water run-off into our dams was greater. Murdoch University and the Water Corporation are undertaking trials on controlled burning and the removal of some of the forest floor with the prospect of selective thinning. We are much more aware of making sure we do not plant pine trees in the catchment areas because they soak up water. Some of the pine plantations were planted in good faith in some of the valleys of the water catchment areas and, as the water seeps down, it is absorbed by the pine trees.

I have been a member of the Standing Committee on Delegated Legislation for four years so I am familiar with the meaning of a Henry VIII clause. I do not think anyone in any Parliament around Australia would be very happy if those clauses became operational. A large amount of time at various conferences has been devoted to the topic of Henry VIII clauses. If this Bill is passed on the basis of trusting the Government to draft the appropriate regulation, we should assume immediately that any further research in the water catchment areas would need to cease because it would be illegal unless the regulations provide that research can continue carte blanche.

What about local government and the road reserves? Given the way this Bill is shaping up, local governments will have to provide permits even for the widening of a road verge. Road verges contain native vegetation. They were set aside many years ago - thank heavens - when the Surveyor General carved up Western Australia. These road reserves were put into place for the movement of vehicles, farm machinery or stock. The road reserves were never designed to be nature strips. We have discussed the reasons they were used as nature strips. At the time, that made sense to many people as shelter belts had not been created. That has changed over the years, thank heavens. Unfortunately, the people in the banks and the financial world who were in power at the time created a situation in which the road reserve became like a nature strip or a shelter belt.

The size and volume of farm machinery and traffic on many of our country roads have increased. Some of those roads are unsealed. How will local governments be able to handle this legislation? Anybody who has been into the wheatbelt would know that the native vegetation includes wodgil trees. The presence of a wodgil tree means that the land alongside it is not very good. Those trees develop a fungus on their outer bark that chokes them to death. The trees literally split and fall over. I do not suppose Hon Murray Criddle has any wodgil trees in his area.

Hon Murray Criddle: I am sure we have a wodgil.

Hon BRUCE DONALDSON: These trees are a nuisance when they fall over. They fall not only onto the farmer's fence but also in many cases on roadsides where there is shoulder build-up or restoration or widening by the council. That inhibits movement on the road. If an exemption is not provided - we cannot say that it will happen - what will happen to the local government trying to remove some of that native vegetation? What

would happen if an old tree fell across a road? If I were the council, I would not send out a work force to shift and cut up that tree because I would not know whether I would be charged for removing some native vegetation. As Hon Peter Foss said, we are relying on a belief in the regulations that might apply. I think Hon Robyn McSweeney already has a local government permit. Is that correct?

Hon Robyn McSweeney: There are specific permits for local government.

Hon BRUCE DONALDSON: I wonder what effect this will have. It means that once again we will have a quandary amongst local government, the Water Corporation and private landowners.

I had a property in the south west. I know what happens to some of the native vegetation in that area: it dies.

Hon Murray Criddle: It did this year because it was too dry.

Hon BRUCE DONALDSON: The vegetation falls over. What should a landowner do? Should he or one of the local service organisations or sporting groups cut up that vegetation? Such groups used to sell fallen vegetation as firewood, especially if it had been down for a few years. Will this legislation ban that activity? A great old jarrah tree or salmon gum might die and fall over. What should the farmer do with it? Should he shift it or let it lie and apply for a permit? As far as I am concerned, some of the rules that will apply are over the top.

Hon Peter Foss: It would be okay if they were in the Act, but they are not.

Hon BRUCE DONALDSON: That is right. These questions are asked on a continual basis. It is the old story of, "Trust me, I am from government and here to help" or, "The cheque's in the mail". That is the scenario we face. Unfortunately in this day and age, a member of the Government who says that he is there to help is greeted by a cynical smile. This happens across politics; I am not referring to a particular party. That is how people see politicians. Once again, we are at the mercy of having to believe what may happen. People say that Christmas will come around. I will not be comfortable having to wait to learn what will be the real effect of this legislation on landowners, local government and the ability of government agencies to operate.

One of the great things that finally has emerged is the understanding that it is not only the rainfall decline but also the tremendous build-up of the forest floor and the canopy within catchment areas that has affected the water flow into our dams.

I shall vote against this amendment of the Government.

Hon MURRAY CRIDDLE: I ask a very simple question. The amendment states -

> . . . includes dead vegetation unless that dead vegetation is of a class declared by regulation to be excluded . . .

What does that mean?

Hon TOM STEPHENS: Debates in this Chamber always take an interesting twist when they turn to discussion of regulation and the long-debated and discussed Henry VIII clauses. I have always watched those debates with some mixed interest. I am not a great fan of old Henry VIII and his clauses. I enjoyed his earlier life more than his later life.

Hon Norman Moore: I think he did too.

Hon TOM STEPHENS: Hon Peter Foss provided the Chamber with a definition of Henry VIII clauses. I am sure we run the risk of embarking on a protracted three-day debate on Henry VIII clauses. If that is what the Chamber wishes to do, it will be a long time before we see the passage of this legislation. I refer to the definition of a Henry VIII clause provided by Butterworths and contrast it with what Hon Peter Foss previously explained to the Chamber was his view of such a clause. Comparing and contrasting the two will enable members to decide whose view they wish to accept: that of the distinguished and eminent former Attorney General or that of Butterworths. A Henry VIII clause is -

> A clause in an enabling statute that the delegated legislation made pursuant to it overrides earlier statutes or the enabling statute itself in the event of an inconsistency.

Hon Peter Foss: The clear wording of the legislation is that the Government will not allow the clearing of any native vegetation. This amendment enables the Government to remove the clear wording. It means that the final form of this legislation will be determined by government and not Parliament.

Hon TOM STEPHENS: A provision in the Act represented a real Henry VIII clause in which the underlying obligation of the Act was effectively modified. The current Opposition when in government inserted section 123(4), which reads -

> Regulations made under subsection (1)(b) are valid and have effect even if they are inconsistent with or repugnant to a provision contained elsewhere in this Act.

We are not doing that here. We are of the strongest view that detail such as that which has been canvassed in this Chamber is the appropriate level of detail that is dealt with by regulation. That regulation obviously must be consistent with the Act. The provision of exemptions in regulations cannot properly be called a Henry VIII clause in our view. The term relates to an inconsistency clause in an enabling statute - the delegated legislation made pursuant to the passing of the legislation that overrides earlier statutes or the enabling statute itself in the event of an inconsistency. What is objected to in such a clause is the potential for legislation by fiat; increasing obligations under the law by subsidiary legislation which does not receive the same scrutiny as legislation voted on by Parliament. In this case obligations are moderated by the exemptions provided for in section 29 of schedule 2 of the Act. Under that schedule there are already provisions for prescribing many things by regulation, including premises that must be licensed, unreasonable noise, a trade, industrial plant, pollution and waste. There is an underlying obligation to ensure that the intent of Parliament is not undermined by such regulations. The regulations are tabled and, of course, subject to disallowance by Parliament. God knows we have seen some disallowances tabled in Parliament today and taking up parliamentary time.

I want to deal with some of the detail that has been raised. The definition of native vegetation is not too broad. There is no foreshadowed narrowing of that definition.

Hon Peter Foss: Does that mean that my house trees are caught?

Hon TOM STEPHENS: No. Page 117 of the Bill, part 9, clause 110, states -

> **"native vegetation"** has the meaning given by section 3(1) but does not include vegetation that was intentionally sown, planted or propagated unless -
>
> (a) that vegetation was sown, planted or propagated as required under this Act or another written law; or
>
> (b) that vegetation is of a class declared by regulation to be included in this definition;

I would have thought that one could quickly see from that that Hon Peter Foss's tree is safe.

Hon Peter Foss: My swimming pool?

Hon TOM STEPHENS: Hon Peter Foss can swim without fear. He can pick up a branch without fear. More importantly, the beautiful native vegetation I have planted in my garden is safe and not subject to the fears that have been articulated.

I recognise the technique. I have used it in parliamentary debate and before in my schooldays. I have given the worst possible example and extrapolated -

Hon Peter Foss: It is perfectly proper.

Hon TOM STEPHENS: Absolutely. I would express the worst possible example and fear. However, members' fears are ill-founded. They quite clearly do not represent the intent of this Bill and the Government. The provisions of the regulations will interplay with the way in which the Act operates to ensure that people do what they have been doing.

Hon Robyn McSweeney referred to timber mills. People currently require approval to remove trees for sale, whether dead or alive. Approval is given under section 23D of the Wildlife Conservation Act 1950. A proposed amendment will make a licence given under section 23D exempt from requiring a clearing permit. The regulations that will come into effect will specifically exempt a person who is collecting firewood for personal use. However, permits are already required by people who are collecting firewood for sale.

The issue of local government and roadside clearing was also raised. A later clause in the Bill proposes purpose permits. Hon Bruce Donaldson also raised the point, and I am sure debate will continue when we reach that clause. There has always been a conflict between road safety and roadside vegetation. It is a question of people's desire for a level of aesthetic attractiveness of the roadside and tackling the issues of road safety. The debate over roadside verge maintenance has been longstanding. The Government is committed to developing a code of practice in consultation with local government to tackle the issue and to make it easier for local government to operate under the Act. I sense this could be a long and protracted debate. I do not intend to speak extensively on the issue.

On the question of advice about the interpretation of the way forward with some of this legislation, there is sometimes a conflict between the view of parliamentary counsel, parliamentary draftspeople, members of the

Chamber and our Clerks on the way they prefer clauses to be written. The Government operates with the advice of parliamentary counsel. We are well advised on the processes that we adopt. That is consistent with the past practice of Governments of all persuasions. Oppositions raise the worst fears during debate. I have been part of that process. However, the Opposition should not be deluded into thinking that those worst fears will be the way in which the Bill will operate.

Hon PETER FOSS: The minister has not addressed the point I raised, which is this: the definition relies on matters being subtracted from. To that extent it removes the possibility of parliamentary supervision. We cannot disallow a subtraction because the effect would be that we would end up with an unacceptable whole. That is the point I raised. The usual way of having parliamentary supervision is to allow a minister to go so far under a statute and to make further delegated legislation which we have the capacity to stop. The problem is that this legislation starts off by going too far. The minister then says that the Parliament can always control that by disallowance, but it cannot. It cannot be controlled by disallowance because one would end up with an unacceptable whole. It cannot be said that not enough has been taken out. What if the Government never brings in the regulations? The legislation must be considered as it is. As it stands, it is unacceptable, and the minister admits it is unacceptable. He asks us not to worry as the Government will bring in regulations to make it right. The degree of subtraction cannot be controlled. As it will alter the definition, the amendment is unacceptable. The Chamber has no proper control over how the Government will finally frame the legislation through its delegated legislation.

I had a degree of comfort that my current trees are safe. Can I take a little advice from the minister? My trees drop seeds and little trees spring up around my garden. Am I advised to lop them all off at birth in case they grow? It appears that if I allow a tree to grow naturally from one of my native species, it would not fall within the exemption. Perhaps a little sign should appear in the newspaper warning people not to let a tree grow naturally in their back garden as it will be caught by the clearing provision! The public should be advised of that possible hazard. Some trees grow vigorously with some form of natural propagation once planted. Am I correct in saying that the legislation will cover only those trees planted by a person, not those that subsequently grow from any natural process?

Hon TOM STEPHENS: Members can rely on the last words of the definition of propagated as meeting the needs of any trees that flow from the original planting.

Hon Peter Foss: Not in English, you cannot.

Hon TOM STEPHENS: Yes, in English.

Hon Peter Foss: My wife was a plant propagator for many years. I think I know what she did.

Hon TOM STEPHENS: The propagation is happening as a result of the original planting, which led to subsequent propagation. The member's little saplings are safe.

Hon Peter Foss: Is that the case even if I did not intentionally propagate them?

Hon TOM STEPHENS: As I hope my kangaroo paws and other natives that will no doubt generate other plants are safe.

Hon Peter Foss: Good point. They are not propagated by you.

Hon TOM STEPHENS: Once they drop seeds in the garden after the initial planting, they will be ongoing. Therefore, they will be protected by the definition.

The member also raised the issue of the regulations being disallowed. The Government is not unfamiliar with the process in which brinkmanship is played in the House with the disallowance of regulations.

Hon Peter Foss: People would not want to move the motion. It would be banned. If you make it worse, you do not move for disallowance.

Hon TOM STEPHENS: Disallowance can be moved and accepted, which can have the effect of driving the Government back to immediately re-regulate to fix up the part of the regulation that is offensive to Parliament. That has occurred in my portfolio in my time in government. I have wrestled with certain issues -

Hon Peter Foss: Of your creation.

Hon TOM STEPHENS: It was the decision of Government to regulate in certain areas, and it ran the risk of having the regulations disallowed and having the task of working out what to do next. Does one come to Parliament and remove the part that is offensive? I had to have those regulations ready.

Hon Derrick Tomlinson interjected.

Hon TOM STEPHENS: It can happen easily; I have seen it happen to shadow ministers of their own volition.

The definition is appropriately based with the concept of environmental harm, in which the impact is modified by the thresholds that apply to environmental harm.

Hon Peter Foss: It is not clearing.

Hon TOM STEPHENS: It is the interplay of these issues. Take it in its totality. If members focus on some specific part, of course some area can be highlighted that -

Hon Peter Foss: That is what people do in prosecutions.

Hon TOM STEPHENS: Prosecutions will be embarked upon in these cases only -

The DEPUTY CHAIRMAN (Hon Barry House): Order! The Committee must stick to the rules of debate by which questions are posed and ministers respond. I am aware that other members want to raise matters.

Hon MURRAY CRIDDLE: I return to the original amendment and ask the question I asked before. I hope I get an answer this time. We have had many other answers provided but not the answer to the question I posed. What is the reason for this amendment? What will it mean in regulation, and what do the words "dead vegetation is of a class declared" actually mean?

Hon TOM STEPHENS: The words mean what they say; the words contain their own meaning.

Hon Murray Criddle: When you say "of a class", what is a class?

Hon TOM STEPHENS: The opportunity is left open for someone to present a category or class of vegetation that could be declared by regulation to be excluded from this definition. It creates the possibility for tackling people's worst fears that dead vegetation, somehow or other, by having been included in the Bill, could end up causing a problem. To ensure that, if someone comes up with a class of a problem down the track, the provision can be utilised to protect areas from the worst excesses of the legislation; that is, by utilising regulations to state that the class of dead vegetation be exempt from the provisions of the Act. The amendment will make the power available to regulators to protect a set of circumstances that no-one has currently envisaged.

Hon Murray Criddle: What about live vegetation and people wanting to take it to make pickets for tomatoes, as they did in the Geraldton area for years?

Hon TOM STEPHENS: I think this point was raised in the lower House. It is to be covered by the regulation.

Hon Murray Criddle: That explains why we do not need the amendment.

Hon CHRISTINE SHARP: This discussion about the Government's amendment is missing an indicative list of what the Government intends to exempt under the proposed regulations. Although the thinking may not be complete, I would like the minister to provide an outline of the different categories the Government thinks at this stage will comprise the groups included in the regulations. I hope the minister will be able to do that shortly.

I strongly support this amendment because it will not work as its face value would suggest. This is a very clever amendment because it attempts to prevent illegal clearing. It will ensure that a loophole does not exist in the way the clearing permit system has been crafted that would enable certain unscrupulous landowners to, one by one, as a project, ringbark different trees within a patch of remnant land. That could be over a considerable time frame. Eventually, the whole patch would be dead, and they will say that they may as well remove the trees because they are dead. The practical effect of this amendment is to prevent clearing by stealth through people killing individual trees in a stand or other vegetation, and then arguing that they can remove the vestiges. Obviously, to make the clearing permit system work overall, the protection is needed. No loophole should enable that to happen. It is a clever and important amendment. I cannot possibly imagine it will be used in a way to prevent people taking firewood and such matters.

I remind members that there are enormously complex laws affecting landowners as it is, yet prosecutions are rare. That is one of the things I continually complain about. For example, there has never been a single prosecution for illegal drainage in this State. Farmers put saline drainage water into nature reserves, completely against the law. For goodness sake! They do not get prosecuted, let alone someone taking a few stakes for some tomato bushes or a tree for firewood. We must get real about how this legislation will be used in the field. It will be used to prevent clearing by stealth, and that is why we strongly support it. The minister's response was very helpful and it really knocked the Henry VIII argument on the head. If the regulations are going to subtract something, as Hon Peter Foss as pointed out, that means that by definition they are not Henry VIII arguments,

and this House will have ample opportunity, if it does not like the detail of the regulations when they are gazetted, to debate the matter and consider disallowance at that stage.

Hon PETER FOSS: The point we are making is this: in its broad sense, as it is now framed, it is too wide. The minister himself has admitted there will be occasions when this legislation will be seen as too wide. All we can do is wait for him to bring in the regulation. If he never brings in the regulation, what can we do? There is no supervision of Parliament. We say this legislation is unacceptable because its final form depends upon its being framed by government in a manner over which we have no control. The member may think it is not wide enough. If it is not wide enough she can vote for it, because she knows she can control its being narrow. We cannot say we think it is too wide. What parliamentary control is there over the narrowing? None. To say we can move a disallowance is a nonsense. If we think the regulations are too narrow, what will disallowing them do? We would be totally poking our own eye out. What if the Government never brings in the regulations? We cannot do a thing. We are saying this is an unacceptable clause because we are told not to worry about the clause and the Government will make sure, even though it looks like it is unnaturally wide, it does not operate that way. We are being told to trust the Government: this is the legislation, we are allowed to make the final determination on the breadth of this legislation, and we cannot control it. We can stop it getting narrower, but we cannot force the Government to carry out its promises, because ultimately it will be capable of operating so as not to cause absurdities. We are saying that we should have legislation that does not cause absurdities in the first place; that is why we should get rid of the absurdities. If it has to be broadened, it should be done by way of disallowable dedicated legislation. That is the only way for Parliament to maintain control; if it says we can go this far, and if we want to go further, we should see the Government about it. We have a problem because we say this is too far and it contains absurdities. I am sure the member will find that because of the absurdities inherent in this legislation, there will be problems. At that stage the Government can decide whether it will deal with the issue. We as a Parliament are deprived of participation in that, and that is why I think we are being told that this legislation will work out okay, because we will fix it. The Government is saying to hand over to it the final decision on what form this legislation will take, and not to expect to participate in that, because if we happen to think it is too broad, that is tough.

Hon TOM STEPHENS: Hon Peter Foss's fears may have been correct, other than for the fact that in the lower House the Leader of the National Party successfully moved and had carried an amendment that is contained within the Bill before the House, in part 1, preliminary. It states -

> **2. Commencement**
>
> (3) The day fixed under subsection (1) for Part 9 or a provision in Part 9 is not to be earlier than the earliest day on which regulations made for the purposes of section 51C(c) of the *Environmental Protection Act 1986* as inserted by section 110 are laid before the Legislative Assembly under section 42(1) of the *Interpretation Act 1984.*

Hon Max Trenorden dealt with these issues and had them drawn to the attention of the Government, and the provision was inserted into the Bill in that way. The definition was too broad for general application of the Act. The Bill simply narrows the definition with reference to clearing permits and there is a schedule of statutory exemptions. Further detail is left to the regulations, and these must be brought in before proclamation, as required under that provision of the preliminary section.

Hon CHRISTINE SHARP: Could the minister please provide us with an indication of what classes these regulations are likely to cover?

Hon TOM STEPHENS: With reference to the regulations that are currently being considered, in this section it is intended to protect dead vegetation that is within an area of native vegetation and dead vegetation that comprises an area of native vegetation. That is what is currently being considered under these regulations - just in those areas alone.

Hon PETER FOSS: I am very grateful to the minister for drawing my attention to this, because I was thinking of a similar provision myself, but it does not go quite far enough. If the minister wanted this to have the effect he says it does - going back to that clause - he would have to also say "and ceases to be capable of disallowance pursuant to that section." All it means is that we will know what it is, but we cannot do anything about it. Even if we move to disallow it, it is in force, and all we would be doing is exactly what I said before. It is a nice answer, but it is wrong. Perhaps the minister would like to recommit it to a later stage and add those words - then it would have the impact he says it does - and I would accept that. However, it does not have that effect and the Government obviously does not intend it to have that effect. As Hon Murray Criddle said, he tried to draw the minister's attention to that and the Government objected. So much for the effect of it; the Government

rejected it having that effect earlier in the committee stage, and who am I to reflect on the decision of the Committee. We are stuck with that decision and it does not work the way the minister said it does.

Hon TOM STEPHENS: As the Deputy Chairman will note, the member was dealing with a clause that has been passed. I do not agree with the view of Hon Peter Foss and I do not intend to engage in discussion on an issue on which we quite clearly disagree.

Amendment put and a division taken with the following result -

Ayes (14)

Hon Kim Chance	Hon Jon Ford	Hon Louise Pratt	Hon Giz Watson
Hon Robin Chapple	Hon Graham Giffard	Hon Jim Scott	Hon Ed Dermer *(Teller)*
Hon Sue Ellery	Hon Nick Griffiths	Hon Christine Sharp	
Hon Adele Farina	Hon Dee Margetts	Hon Tom Stephens	

Noes (13)

Hon Alan Cadby	Hon Ray Halligan	Hon Norman Moore	Hon Bruce Donaldson *(Teller)*
Hon Murray Criddle	Hon Frank Hough	Hon Simon O'Brien	
Hon John Fischer	Hon Barry House	Hon Barbara Scott	
Hon Peter Foss	Hon Robyn McSweeney	Hon Derrick Tomlinson	

Pairs

Hon Kate Doust	Hon Paddy Embry
Hon Ken Travers	Hon George Cash
Hon Ljiljanna Ravlich	Hon Bill Stretch

Amendment thus passed.

Hon ROBYN McSWEENEY: I ask the minister what is environmental harm? The definition of environmental harm is very much open to abuse. I looked up the legal definition of environmental harm, as opposed to the Government's definition in the Bill. In strict legal terms environmental harm is a general term used to describe the adverse environmental impacts that result from the release or discharge of pollutants or other hazardous substances. The term environmental harm is seldom used in practice. The more popularly used term is pollution. Pollution is defined as any change in the physical, chemical or biological characteristics of air, water or soil, which can affect the health or survival of forms of life in an undesirable way, or which may alter the environment to its detriment or degradation.

The definition in the Bill of pollution is direct or indirect alteration of the environment to its detriment or degradation, to the detriment of an environmental value, or of a prescribed kind that involves an emission. The definition in the Bill of harm to the environment is removal or destruction of or damage to native vegetation, or the habitat of native vegetation, or alteration of the environment to its detriment or degradation or potential detriment or degradation. I ask the minister why is the word potential included in the definition? I note Hon Murray Criddle proposes an amendment to the definition.

Yesterday on the question of environmental harm I gave the example of canola. The Standing Committee on Environment and Public Affairs met farmers in Canada who grow organic canola, as opposed to genetically modified canola. I ask the minister who in Western Australia would be responsible if farmer A's GM canola crop cross-pollinated farmer B's non-genetically modified or organic canola? Would the Government be sued for environmental harm because farmer B did not want GM canola on his property? In Canada organic farmers are suing - I think - the Canadian Government for what amounts in Western Australia to environmental harm. This Government does not know whether new crops that may be developed in the future will cause environmental harm.

A defence to environmental harm is linked to normal farm practices under section 5 of the Agricultural Practices (Disputes) Act 1995, which states -

> For the purpose of this Act an agricultural practice -
>
> (a) shall be taken to be a normal farm practice if -

(i) it is carried out and managed in a manner consistent with proper and accepted customs and standards, as established and followed in similar agricultural operations under similar circumstances; or

(ii) it complies with the requirements of a Code of Practice relating to an operation of that kind, being a Code of Practice that has been made or approved by the Department of Environmental Protection or under any written law,

but it may include the use of innovative technology and management practices; and

(b) if the owner or the person carrying on the agricultural operation concerned fails to comply with an order made by the Board as to the carrying out or management of that agricultural practice, may thereafter be taken not to be a normal farm practice.

The Government needs to be a bit clearer about normal farming practices. What are they and what will the Government do about environmental harm under normal farming practices? A lot of farmers are concerned about environmental harm, and so are Western Australia's two peak bodies, the Western Australian Farmers Federation and the Pastoralists and Graziers Association. Members need only read the *Countryman* to see the letters that have been written on the issue.

The Western Australian division of the Urban Development Institute of Australia says that the Government's definition of native title vegetation relating to clearing permits requires refinement. It says that there is no area threshold or biological condition criterion contained within the definition of native vegetation, notwithstanding that the capacity to achieve long-term biodiversity protection is directly linked to a minimum size area to be conserved and its current biological conditions. It says also that schedule 5 lists the principles for clearing native vegetation, some of which are extremely broad and need to be defined; for example, high level of diversity, significant habitat for fauna, extensively cleared areas and vegetation that is in association with a watercourse or wetland. It considers that these principles require better and quantitative definitions, and so does the Liberal Party.

Hon TOM STEPHENS: Principles, by definition, are broad. The critique of the industry body misses the point in the way principles apply and are applied by the officers responsible for this legislation. Issues relating to modified agriculture are governed by commonwealth legislation, not by state statutes. This area will effectively be covered by the powers of the Commonwealth. The member has introduced an issue that is not relevant to this debate.

The definition of environmental harm follows the form of the existing definition of pollution, but takes into account problems that have arisen in court cases. On page 37 of the Bill is the definition of pollution, which is followed by the definition of environmental harm. Section 50 of the Act contains a separate offence of placing waste where it is likely to result in pollution, so the references to potential pollution are not required. The specific reference to native vegetation and habitat in the first paragraph of the definition of environmental harm makes it clear that this form of harm to the environment is specifically included. It will have the effect of saving the prosecutor the need to argue in court in each case that the harm to native vegetation or habitat is environmental harm. That is why it has been included in the definition. Paragraph (b) of the definition of environmental harm is deliberately broad because experience has shown that environmental vandals, as has been pointed out to the Chamber by Hon Chrissy Sharp, have been inventive in creating new and unanticipated ways of harming the environment. This was evidenced by, for instance, the blowing up of the coral bommies at Rottnest Island to create an unauthorised mooring site.

Hon Peter Foss: By the previous Labor Government.

Hon TOM STEPHENS: To my knowledge it was not by the Government.

Hon Peter Foss interjected.

Hon TOM STEPHENS: I was not aware of that.

Hon Peter Foss: Dallas Dempster and his mates.

Hon TOM STEPHENS: That was not the authority, surely. Surely the member is saying that it was individuals.

Hon Peter Foss: They knew it was happening because they already had applications from people under the law.

Hon TOM STEPHENS: I hear the interjections of the member, but it is not a matter to which I am privy. I hope that the member's questions on this issue have been adequately dealt with.

Hon ROBYN McSWEENEY: For the clearing of native vegetation, the Bill states -

"clearing" means -

(a) the killing or destruction of;

(b) the removal of;

(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, the grazing of stock, or any other act or activity, that causes -

(e) the killing or destruction of;

(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;

Can the minister give me a couple of examples of what is meant by draining or flooding of land, given that I am referring to irrigation and given that the Rights in Water and Irrigation Act will be changed?

Hon TOM STEPHENS: When we deal with page 117 of the Bill, I will provide the member with more examples. However, diverting a watercourse could cause the flooding and killing of vegetation. In those circumstances, the relevant provisions will apply.

Hon ROBYN McSWEENEY: Does the minister not think that is a bit dangerous when farming is considered? He means trees in the city's backyard, and that is fine. However, I am concerned about farming and farming practices. Somebody could be caught quite badly under this provision. When we deal with that clause, I will talk more about what I think. However, I point out that some farming people will get burnt badly.

Hon TOM STEPHENS: As members will appreciate, the thrust of the legislation is simply that we do not kill off native vegetation without thinking about exactly what we are doing. In these circumstances, would it be appropriate, for instance, to divert or drain saline water onto an area so that it caused the destruction of native vegetation? Could a better approach be adopted in handling saline water? The member is correct, but she is referring to page 117 of the Bill. For the benefit of the Committee, I suggest we deal with that issue when we get to it.

Hon CHRISTINE SHARP: This moment needs some recognition. The insertion of the notion of environmental harm into the Environmental Protection Act is a great thing. It has been recognised by Governments of all persuasions that it needs remedying since the notorious Palos Verdes case, which took place at least 10 years ago. The previous Minister for the Environment in the coalition Government, Cheryl Edwardes, began the process that we are now completing in the Chamber of rectifying the glaring loophole in the Act. The only harm that the Act recognised came under the concept of pollution and, therefore, the concept of pollution did not protect the environment from certain other types of detrimental activity. This is a very important step forward and has been widely recognised by people of all political persuasions. It is really good that we are doing that right here and now.

Hon MURRAY CRIDDLE: I do not think anyone would argue that the environment is not very important. The farming community - the group that is most familiar to me because I am active in that area - has taken enormous strides to improve its work practices. Members need only drive into the agricultural regions to see the enormous improvements in not only tree planting but also a range of mechanisms to benefit the environment. That includes minimum tillage and deep ripping etc that aid not only agriculture but also the environment. It is unfortunate from my point of view that drought has been so bad in the past couple of years that it has caused a great deal of environmental damage. The issue here is that people must use some commonsense. People in the agricultural and other industries who have followed the processes required to gain permission to clear and the like have heard some very poor explanations for why they cannot do things. The slowness of the decision-making process has added to their lack of satisfaction. That is why there is a backlash against statements such as "environmental harm". The people involved have no confidence in the people who are charged with measuring environmental harm. I have just had a phone call about a press release containing detrimental comments about the National Party's amendments to this clause that I will move shortly. The National Party will move those amendments because it does not have faith in the decision-making process nor the people who will judge what is environmental harm. People do not understand the words "harm to the environment involving removal or destruction of, or damage to native vegetation; or the habitat of native vegetation or indigenous aquatic or terrestrial animals". It is no good my saying any different in here. They have no confidence in the process.

I say to the minister, the National Party will vote against these definitions until it has confidence in the process. We have talked about regulations, codes of practice and what is written in the Act. However, people are affected by what happens on their land in the regions. In some situations people have cleared land, a few suckers have grown and people have said that they cannot be cleared, it may not be possible to clear them or they possibly can be cleared. That illustrates the difficulty with the Act and insecurity people feel trying to operate without regulations or a code of practice in place. The Minister for the Environment can say that the National Party is against the environment and its members are acting like vandals. However, in reality, the people in the farming community are saying that they have no confidence in the process.

Hon TOM STEPHENS: The clearing permit process that will be implemented with this legislation will address the slowness referred to by Hon Murray Criddle. This clause is aimed at making a single streamlined process available for the application of clearing permits. That should be done without great delay. From time to time, in this Chamber we on all sides of politics state our fears about the way legislation can impact on the community. When the animal welfare legislation was introduced in this Chamber, the Committee could have been persuaded to the view of members opposite; that is, the enactment of the Bill would mean that all husbandry practices as we knew them would stop and, suddenly, farming practices surrounding the handling, shipping and mustering of animals were all over. Those fears were articulated. I assured people at the time that the Government would implement regulations that would establish codes of practice to protect the operation of that Act.

Hon Robyn McSweeney: What about the live sheep trade? You didn't protect them very well.

Hon TOM STEPHENS: Now Hon Robyn McSweeney is coming from the other side of the argument. We cannot win.

Hon Kim Chance: Don't you like the live sheep trade?

Hon Robyn McSweeney: I didn't say that.

Hon TOM STEPHENS: Hon Robyn McSweeney wants it every which way.

Members' fears expressed during that debate have proved to be unfounded. The Government expeditiously delivered regulations that have provided the codes of practice available to people in agriculture with the opportunities for defence from prosecution under the Act, which is working extremely well. I have not seen the congratulatory remarks from any members opposite who beat up the fears they had about the legislation at that time. However, industry has widely embraced it and can see how it will be deployed. Likewise, members' fears about this Bill are unfounded. The processes will deliver some streamlined opportunities. I can envisage that with the enactment of the legislation, the portfolio will seek the resources to ensure that the processes are streamlined.

Historically, the definition of pollution was thought to have included environmental harm. The amendments before us restore that breadth.

Clause, as amended, put and a division taken with the following result -

Ayes (14)

Hon Kim Chance	Hon Jon Ford	Hon Louise Pratt	Hon Giz Watson
Hon Robin Chapple	Hon Graham Giffard	Hon Jim Scott	Hon Ed Dermer *(Teller)*
Hon Sue Ellery	Hon Nick Griffiths	Hon Christine Sharp	
Hon Adele Farina	Hon Dee Margetts	Hon Tom Stephens	

Noes (13)

Hon Murray Criddle	Hon Frank Hough	Hon Simon O'Brien	Hon Alan Cadby *(Teller)*
Hon John Fischer	Hon Barry House	Hon Barbara Scott	
Hon Peter Foss	Hon Robyn McSweeney	Hon Bill Stretch	
Hon Ray Halligan	Hon Norman Moore	Hon Derrick Tomlinson	

Pairs

Hon Ljiljanna Ravlich	Hon Paddy Embry
Hon Ken Travers	Hon George Cash
Hon Kate Doust	Hon Bruce Donaldson

Clause, as amended, thus passed.

Clause 29: Section 3A inserted -

Hon MURRAY CRIDDLE: I move -

Page 38, lines 2 and 3 - To delete "or potential detriment or degradation".

The definition of environmental harm includes the trigger of potential environmental harm. The National Party considers that definition unreasonable. Combined with the expanded use of the precautionary principle, as defined in the Bill, this definition of environmental harm could be used to block new developments or expansions on the basis of notional impacts for future environmental values. A more acceptable outcome would be for the controls to apply to only those activities that actually or are likely to cause environmental harm. This amendment seeks to remove from the definition of environmental harm the words "or potential detriment or degradation".

Hon TOM STEPHENS: The Government opposes the amendment. It would have the effect of leaving the chief executive officer effectively powerless to stop actions that would clearly lead to environmental harm. He would be required to wait until the harm had occurred. I do not think that even Hon Murray Criddle would think that consistent with the ambitions of the community we all are elected to serve. The amendment is inconsistent with the changes made elsewhere to allow for admissions onto premises to enable pre-emptive action to be taken before harm to the environment occurs. This amendment will stop authorities dealing with potential pollution or potential environmental harm. If we were to adopt the process that is suggested, CEOs, Governments and legislators would be held up for complete ridicule.

Hon MURRAY CRIDDLE: I pointed out that the Bill contains a precautionary principle. The minister's statement totally disregarded that point.

Hon ROBYN McSWEENEY: We support Hon Murray Criddle's amendment. I do not support what the minister said. We support the proposal to remove the word potential from the definition of environmental harm. We are strongly of the view that for an offence of environmental harm to have occurred, there must be some level of actual harm. The introduction of the concept of potential harm raises a definitional issue about what is considered potential harm. The scope for the interpretation of this clause is very wide, which would be detrimental to certainty of process and, therefore, the implementation of the Act.

Hon CHRISTINE SHARP: We do not support Hon Murray Criddle's amendment. In many cases there is a lapse of time between the activity that provokes the problem and the subsequent harm. I use the example of the drainage of saline water off-site into an area of remnant vegetation. That would cause the ground water to rise. There would be a lapse in time before the vegetation died. If it is considered that that activity should be prosecuted, the prosecution should occur before rather than after the damage has taken place. I also imagine that were we to wait for the harm to occur, it would be difficult for the prosecution to demonstrate the range of values or environmental values that may have been harmed by a particular detrimental action as it would be very hard to prove what invertebrate fauna were living in a creek system after that creek system had become saline and so on. I think there is a general understanding that the inclusion of the word potential will help to ensure that the legislation works to prevent environmental harm and give some effect to its objective.

Hon DERRICK TOMLINSON: I listened with some interest to what Hon Christine Sharp had to say. An alteration of the environment to drain saline water from here to there is an alteration that will be to the detriment or the degradation of the environment. It is environmental harm.

Hon Christine Sharp: Not necessarily.

Hon Peter Foss: It is.

Hon Christine Sharp: It depends where A and B are.

Hon DERRICK TOMLINSON: It is interesting. I think of the environment as a dynamic system. A dynamic system is one in which each of the parts is totally interdependent. If one of the components is changed, all other components will consequently change to maintain homeostasis. We are now suggesting that we can change that system and not harm it but potentially harm it. The concept of potential harm is created. By changing the system, we are creating a new environment. That new environment may, by some process, result in changes to the water table - to use the member's example - the death of trees, the trauma of fire or whatever. That environment may be further changed, which causes detriment to the system.

I am not quite sure what the member means by potential harm. People either harm the environment by changing it or they change the environment. As a consequence of that change there may be subsequent changes to the environment which are harmful, but one cannot necessarily predict those changes. If people do not change

dynamic systems because of potential harm, they do not change the systems. The consequence would be that there would be no alteration of the environment at any time whatsoever, because any alteration of the environment has the potential for future environmental harm. That is the nature of a dynamic system, which is fundamental to dynamic systems. I would suggest that the potential degradation is an absolute nonsense. Why do we persist in this place in legislating nonsenses? I have no objection to preventing an alteration of the environment which is detrimental or will cause degradation, but to take it to the next stage and say that we will not do it because of the potential is an absolute nonsense.

Hon PETER FOSS: I am glad that Hon Derrick Tomlinson has taken up this point because I believe that we have a problem with the words that Hon Murray Criddle used. What is clear is that if people do something there can be harm. What they might not realise until some time in the future is that the harm has been caused, because it then starts to manifest itself. The harm took place when the action was taken and the manifestation is purely the damage that shows later. The harm is done from the moment someone does it and the damage is inevitable from a causation point of view.

I give the examples of the failure to keep out weeds, the failure to poison foxes and cats, and the failure to control dogs, which would cause potential harm. I am not suggesting that we should try to catch that. What I am trying to suggest is that the harm is not the end result; the harm is when somebody does something to somebody else. For instance, if someone has a motor vehicle accident, often the damage that is done to that person may not manifest itself for a long time afterwards, but the harm was done at the time of the accident. There must be another word to express the point of view that Hon Murray Criddle is seeking to express. I believe that the member is rightly pointing out that it may be a matter of argument about whether harm has been done in the early days. Harm becomes manifest when the inevitable consequences result in what one says they will result in.

I do not have a problem with what Hon Murray Criddle is trying to achieve, and I do not think that Hon Derrick Tomlinson has either, but I think the word "potential" is not the right word. I believe it is the incorrect terminology. I do not know what the right word should be. Although I sympathise with the scenario the member gave, I have significant problems with the word that has been used to describe it.

Hon CHRISTINE SHARP: We all understand that the environment is part of a dynamic process, but Hon Derrick Tomlinson was not taking account of other dynamics. They include the dynamics of time, which I believe is critical. The word "potential" has inherent in it change over time. A landowner might do something. At some time in the future an inspector might decide whether material environmental harm has been done. At the moment of deciding whether there has been an offence, the time frames for making that decision can go either way. It might be that the inspector needs to look into the future and say that at that moment a discharge of saline water has not caused the death of vegetation in a nature reserve, but we know enough about dynamics to know that the vegetation will probably die in three or four years. We therefore need to look forward, and that is the potential. At the same moment an inspector might need to look back at the past and say that because he was not there when the change took place, he does not know what might have been living in a creek, what vegetation might have been growing there or whether weeds were expressed there. The inspector might therefore say that he knows what the action was but he cannot prove whether during the lapse of time such-and-such has changed because he does not have proof of the original situation. Therefore, the time dynamic is critical for making prosecutions effective.

Hon DERRICK TOMLINSON: I do not think that we are in disagreement. These dynamic systems exist not only in space but also in time. All dynamic systems have a temporal dimension. The tendency for a system to maintain or restore homeostasis will change not only physically but also temporarily. Temporal change, because it is constant, causes physical change - things die. Inevitably everything dies. That change is the consequence of the temporal dimension of the dynamic.

If by deliberate action there is a change to the environment, one cannot change the environment in one place and not change it in another, because the whole system is interrelated. One cannot say that a farmer's paddock is one environment but the nature reserve next door is a different environment; they are both part of the same dynamic, interrelated system. Therefore, if a decision is made that a change to the farmer's paddock or an alteration to the environment will change the whole dynamic of the ecosystem, it is harmful - full stop.

Part of the temporal dimension that the member is arguing is that the consequential change will not manifest itself until some time in the future. That does not change the fact that the harm was there. If, however, the farmer clears his land and the judgment is made that that change in the homeostasis of that bit of the environment will not cause detrimental change to another part of the environment - that is, the nature reserve next door - there is no harm, if that is the judgment. However, one cannot then say that there is no change in the dynamics of that ecosystem which is detrimental, because there might be. There is a potential for everything.

There is a potential that some people might crash a 727 into this building. With any luck, they will do it while I am speaking and I will go down in a crash of glory.

Hon Peter Foss: Nobody would know.

Hon DERRICK TOMLINSON: What a dreadful waste that would be then!

It would be a nonsense to say that a change should not be allowed forever because at some uncertain time in the future other changes may be made consequential upon that change. The argument is that every change to the environment has the potential to change other parts of the environment because it is a dynamic system. It is not an environment in which one paddock is different from another paddock as though they are two different environments - they are one and the same. Hon Chrissy Sharp and I exist in the same physical and temporal space and are part of that environment - correct?

Hon Christine Sharp: Yes, unfortunately.

Hon DERRICK TOMLINSON: Unfortunately, yes. Fortunately, I will occupy a different space from Hon Christine Sharp in the very near future.

It is a nonsense to argue for prohibiting things on the basis of their potential harm. They are either harmful or they are not harmful. Harm that might occur in the future is a consequence of the harm caused now - full stop.

Hon PETER FOSS: Hon Derrick Tomlinson and I are arguing whether the harm is presently manifest. There is a harm, but it may not presently be manifest. I see the word "potential" as not having any temporal involvement. I give an example. A child has potential. That means the child starts out with the capacity to do something, but he or she will need to do many other things before the potential is realised. If a stone is cast from the top of a hill, it has potential energy. Nothing will happen until that stone is pushed off and it rolls down the hill. The word potential does not carry the meaning that the member seeks to give it; namely, an inevitability over time that something will occur. Potential harm needs some other event before the harm occurs. Something else must intervene. That would not be a concern except that the member seeks to punish people merely for that potential. Everything one does has the potential for harm, but without something else it will probably not cause harm. I am sure that is not what Hon Chrissy Sharp is trying to say. She is trying to argue that whether or not the harm is now manifest, it will cause the hazard as sure as night follows day. It is not potential that the sun will rise tomorrow. It does not require something else for it to occur. I suppose one could say logically that the sun may potentially not rise because we might get hit by a comet.

Hon Derrick Tomlinson: But the sun would still rise somewhere.

Hon PETER FOSS: Yes. My point is that potential carries the concept that something else must happen. It is the reverse of the member's claim. It is not that it will happen if something else happens; that is, that the harm will happen in the course of time as sure as night follows day, even though it may not be presently obvious to the doubter. I think that is the intended idea with this amendment. I do not have a problem with it. However, I have a problem with the words presently used. As Hon Murray Criddle indicated, what is not called into play by that definition? It could be anything. If a crop is planted, it could cause environmental harm if it were set on fire while being harvested. The paddock would be filled with flammable material. Potentially, the planting of a crop could cause environmental harm. It probably would not cause harm because it would need something else to happen, but potentially it might cause that harm. The Liberal Opposition is not rejecting Hon Chrissy Sharp's concept - it would be silly to argue against the concept - but it poses a problem because the provision contains a word that could be better framed. There are two possibilities. From Hon Chrissy Sharp's point of view, the worst is that the Palos Verdes case could be revisited. It would be ironic to draft the measure so widely that the Supreme Court held out the Palos Verdes case and said that the law is so nonsensically wide that the court must read it down. Potentially, this provision is in exactly the same position as the principal Act: it was so widely drawn that the court could read it down and say that Parliament could not have possibly meant it to be so wide. I am sure after hearing debate, it would not be possible that Parliament would apply "potential" with such a wide meaning. The member thinks it means something different. Hon Derrick Tomlinson and I would support something different. The remaining words are almost as wide as the words in the principal Act, and they may suffer the same fate as the original words.

Hon TOM STEPHENS: I hope that members can take on board the discussion we have had, listen to the following example and see whether the issue can be brought to some conclusion. Picture the example of a property owner who chooses to construct a swimming pool. He has gathered up a large amount of water in a dam, and he decides to breach that dam. A lot of water is in the dam for the pleasure of the property owner. However, the neighbouring property owner has seen that dam being built and may even be aware of the intention of the property owner to breach the dam; therefore, he builds a levee bank to protect his property from the

potential harm from the dam being breached. That act of breaching the dam could be considered to be the cause of potential harm.

Hon Peter Foss: I agree. Construction of the dam is a potential harm, but it will not cause harm until it is breached.

Hon TOM STEPHENS: The breach may not cause the harm because the levee bank will be in place to protect the neighbouring property. The bank is built and the harm is averted. There is no way to get back to prosecute under the existing statute. The words as proposed in this provision will enable a successful prosecution.

Hon Peter Foss: I agree with the example. It could pick up almost anything.

Hon TOM STEPHENS: The difference here is that this statute tries to tackle different sets of circumstances. I lost my appetite a long time ago for long and convoluted conversations about the philosophy of the use of language.

Hon Derrick Tomlinson: How long ago?

Hon TOM STEPHENS: A long time ago. There could be debates about more appropriate use of words here; for example, one could double with the word "likely" as opposed to "potential". On the basis of the advice I have received, the Bill contains words that will work. Hon Peter Foss has correctly pointed out that if this section were to be deployed, the courts would look carefully and closely at it. They will have a very high threshold test that will have to be met before a successful prosecution can be mounted under this section. However, there may be sets of circumstances in which this section will be usefully deployed and in which the threshold test, even when high, will be passed, and it may be appropriate to mount a prosecution and for the courts to consider that prosecution and find in favour of the communities. Preventative action by third parties should not lessen the seriousness of the offences. That is the point I was trying to make about the neighbouring property owner and someone embarking upon actions that can lead to potential harm, even if the person has successfully been able to divert it.

I can sense that we are about to embark upon a long and protracted philosophical discussion and an analysis of the etymology of the words and the like. However, for the information of the House, I will be leaving here at one o'clock. Hon Kim Chance has always been much better suited to long philosophical discussions.

Point of Order

Hon DERRICK TOMLINSON: It is unlawful for any person to threaten a member of Parliament in the course of his speech.

The DEPUTY CHAIRMAN (Hon Adele Farina): I will not take that as a point of order.

Debate Resumed

Hon MURRAY CRIDDLE: I do not want to go on forever about this. Obviously members have made up their minds, but more learned members will obviously make some other points if they wish. The dam that the minister was talking about will never be built because there will always be the potential for a helluva good rainstorm to come along and breach it, so that it will not hold water in the future. That is a very simple explanation from a bloke who does not think much wider than simplicity. People have grave concerns about that issue. The proposed section states -

> **"environmental harm"** means direct or indirect -
>
> (b) alteration of the environment to its detriment or degradation . . .

That simple statement totally confuses the issue. If it were cut off at "or degradation" in the first instance, it would make a deal of sense.

Hon PETER FOSS: I will take up the example given by the minister, because it exactly shows the problem. Firstly, this is not merely semantics, because we are now dealing with a clause that was intended to overcome the effects of the Palos Verdes case. We are not just setting up something new; we are trying to fix the problem in the Palos Verdes case. The point that has been put is that this clause is just as bad as the provision that missed out in Palos Verdes. The court does not set thresholds. That is not the way the court works. The court interprets and then it applies that interpretation to whatever the situation is. If it catches the dam that the minister referred to, it will also catch the crop that I referred to, because if a crop poses a fire hazard with the potential to set fire to a reserve, it has the potential in the same way as that dam has. As long as it has the potential, it is caught. The court has to reinterpret it so that potential does not mean potential. Therefore it will not catch the dam or the crop. I have no idea what it will catch, but it will not catch what Hon Chrissy Sharp is talking about because that is not even in the words. She is not talking about potential; she is talking about a word where it is not a matter of

potential but a matter of actuality - it has happened; it is a matter of finding out when it will show up. What the minister is talking about, I agree, will fall within the words, but it will get read down by the court, and the court will read down the minister's dam and my crop. What Hon Chrissy Sharp is talking about is not in the Act at all, unless it is already in the part that Hon Murray Criddle or Hon Derrick Tomlinson has pointed out, because once it has happened it has happened. As a member of the Government, the minister must look at that clause and he must be very careful that he does not include something that will get read down by the court and he does not end up with what he wants. The only hope is that the court will read it down and say it is nonsense. The court will say, on the basis of what Hon Derrick Tomlinson has said, that what Hon Chrissy Sharp wanted to cover is already covered without those words.

Hon CHRISTINE SHARP: This has been a really interesting debate. The word potential is an excellent word and I am pleased it is in the definition because, as Hon Derrick Tomlinson has pointed out, we need to have the sense of dealing with dynamic systems. It is really important. I do not believe Hon Murray Criddle's amendment will be successful. This is absolutely critical to the operation of the legislation. However, in case some members think they may lose sleep over this and that this is a retrograde step, I assure them - because we are here amending the definitions at the beginning of the Act - that at proposed section 16 the Environmental Protection Authority itself will sort it all out for us, because it is now to be charged with the responsibility at proposed subsection (n) to establish and develop criteria for the assessment of the extent of environmental change, pollution and environmental harm. We can think that this is in good hands and that it will work effectively.

Hon ROBYN McSWEENEY: The word potential is excellent for the Greens. It plays right into their hands. "Conduct affecting the environment" means -

> (c) conduct, or an operation or activity, that is a potential cause of pollution or environmental harm;

Wood fires in the city cause potential pollution.

Hon Peter Foss interjected.

Hon ROBYN McSWEENEY: I am not so sure. The Department of Conservation and Land Management's fire burn-offs cause pollution. I could go on and on. The word potential plays right into their hands.

Hon DERRICK TOMLINSON: I want to respond to the minister's analogy. In August 1967 the main road between Esperance and Ravensthorpe was flooded, not because there had been heavy rainfall - it always used to rain in Esperance in those days - but because a dam was breached. The dam was breached not by an act of any human being but by an act of God. The dam breached because of the volume of water in it. As a consequence the road was flooded. If we were to accept the argument that altering the environment - that is, building a wall and scooping out a hollow to catch run-off water - had the potential to cause harm - that is, the dam wall being breached and the water changing the environment below the dam wall - the dam would never have been built. However, if the principles to be applied stated that if a person does X, the consequence Y is a harmful consequence; that is, the harm exists at the time of the action -

Debate interrupted, pursuant to standing orders.

Sitting suspended from 1.00 to 2.00 pm

Hon DERRICK TOMLINSON: Had the parameters to which Hon Christine Sharp referred been in place to describe the detrimental or degrading effects of changes to the environment, that dam would never have been built. The harm was the dam, not the subsequent inundation of the road. The harm of the dam was the impediment or the blocking of the natural flow of the water. At any time, there could have been consequential damage or an effect caused by that - but that was the harm. All the assessment had to describe was that the impediment to the natural flow was to the detriment of the environment, not to the detriment of the environment because a road was inundated. The road could have very well been built somewhere else. The dam wall was still the detrimental impediment to the flow of water. My argument is that the consequences of change are taken into account in all environmental assessments and one of those might have a temporal dimension. For example, we know that if land is cleared in particular soil types, contours and environmental places, the damage that follows from that is caused not to the land that is cleared but to the land nearby, because the watertable rises according to contours. It will not rise and break the surface and bring salt to the surface at the point at which it is cleared but at some other point where the watertable is closer to the surface. The watertable will rise across the whole contour, but will break the surface only at a particular place in the contour. Therefore, we would not say, "You can't clear that because it will harm that particular paddock." We have to say, "You can't clear that because it will harm that paddock." That is not a potential; it is real in its dimensions. The harm is the clearing.

The harm is not in the salinity. The salinity is an unfortunate consequence of the original harm. The salinity is not a potential; the salinity is a probable consequence of the combination of these factors caused by, or in the context of, the clearing.

Hon Christine Sharp reinforced the argument when she said that the Environmental Protection Authority will be entrusted with establishing the parameters. It will establish the parameters of harm, which will take into account the temporal dimension of the environment. Everything is potential. The question is one of probability, not potential. If there is a high probability that the action will have consequential effects upon the environment, it would be unwise to do it. If there is low probability, the risk could be taken. For example, if my leg is cut off in an accident, my body will restore homeostasis, except it will be a different system. It will be a system without that component. For as long as I am lying in bed or sitting in a chair there is no harm because my body will heal itself and it will restore homeostasis. However, it will be a different system, will it not? The harm will manifest itself when I try to walk. However, the harm is not that I try to walk; the harm is that I do not have a leg. I suggest that not having a leg has the potential to stop me from walking unless I have a prosthesis. The argument of potential harm is a nonsense, particularly when we talk about a dynamic system that is the nature of the environment. There will be a detrimental effect on the environment, which will be manifest either immediately or in the future. Given the knowledge that is available, we should be able to say that this will cause that, and if this will cause that and there is a high probability of that occurring, this should not proceed. I strongly recommend that those words be deleted.

The DEPUTY CHAIRMAN (Hon Jon Ford): Before we proceed, I remind members that they are required to speak from their seats. If members become animated and hop, they should do it from their places.

Hon KIM CHANCE: I have listened to the greater part of the debate, although I missed the debate regarding the dam because I had to go to a meeting. No member in this Chamber would argue about the concept of the necessity for the assessment of a particular proposition to include its future harm or the potential that exists for future harm. Let us set that aside, because I am sure we are all agreed on that. The issue - although it has been somewhat elusive tracking down what it is - centres around the semantics of whether potential is the right word or whether likelihood or future would be better words. The proposed amendment to delete reference to potential, future or likelihood would be to radically change not only the shape of the Bill but also current practice in respect of the Environmental Protection Act and other legislation that has the same purpose.

The legislation with which I am most familiar is the Soil and Land Conservation Act. Hon Derrick Tomlinson used an example from the Soil and Land Conservation Act rather than the Environmental Protection Act. Therefore, I will continue that analogy. The member spoke about the latent nature of environmental degradation involved in land clearing. He said that the spatial effect of land clearing at point A may be manifest at point B, not at point A. The degradation is spatial and temporal. Although even quite extravagant land clearing might cause environmental degradation through wind or soil erosion, the effects of salinity - Hon Derrick Tomlinson touched on this - might not appear for 25 or 30 years in a sand plain environment such as Jerramungup where the dynamism of water in the soil substrata is quite fast. The effects could even take as long as 80 to 100 years to develop in some of the wheatbelt valleys where the water moves much more slowly. There is a spatial and temporal separation of cause and effect. The Environmental Protection Act already makes allowance for potential spatial and temporal effects of an action. Those actions currently exist in law. The Soil and Land Conservation Act is very clear about the effects that can cause the commissioner to issue a soil conservation notice. It can issue a soil conservation notice on the basis that an action - in this case the clearing of native vegetation - could cause salinity in another place at another time. It is a requirement for the assessment of potential for damage under the current law.

Hon Peter Foss: What word does it use?

Hon KIM CHANCE: Because it is not expressed in such precise terms, it requires the commissioner to make a judgment about whether the action proposed will cause -

Hon Peter Foss: That is the point. We are not objecting to the concept, but to the word.

Hon KIM CHANCE: That argument is outside the terms of this amendment. The terms of this amendment are to remove -

Hon Peter Foss: The words must be deleted before suggesting another.

Hon KIM CHANCE: In the absence of that -

Hon Peter Foss: I can suggest one.

Hon KIM CHANCE: No other words have been suggested. I am not saying that we will not consider another word. However, it is almost a matter of semantics because whatever word is used, we will be considering a potential effect. I do not believe that the choice of another word will make any practical difference.

Hon PETER FOSS: The amendment was moved because, as the legislation stands, it reads as it means, which is objectionable. It is not for the Opposition to suggest what the alternative word should be at this stage. The Opposition should say that that word is a dangerous word because it will encompass practically everything. We have heard the debate. We understand the matters that the Government thought it would cover. No alternative word has been suggested because it is appropriate for the Opposition at this stage to say only that it does not like that word. We have debated the matter enough for the Government to know why we do not consider the word to be appropriate.

I am not moving an amendment; I am suggesting what the Government actually means to say. The Government is talking about the alteration of the environment to its detriment or degradation whether or not it is immediately manifest. The minister even used the word manifest - perhaps because I used it beforehand and he picked it up. I understand that is the intention of the Government's amendment. Rather than get involved in semantics, does the word manifest meet the Government's intention of what the legislation means?

Hon KIM CHANCE: Only in part. What the member has said has dealt with the temporal but not the spatial side of the argument. To simply replace the word potential with the word future, or words to that effect, deals only with the time aspect, not the space aspect. If the damage caused as a result of actions on location A were manifest in location B at the same time, the choice of the word future would be limiting.

Hon PETER FOSS: I purposely did not use the word future. We are getting back to the argument we had yesterday - although the minister was not here for it - about what is a cause and what is an effect. In law, a person is deemed to have caused an inevitable consequence of an effect even though the effect might not be felt for a long time. For example, a foreseeable consequence of a person who was injured in a motor vehicle accident is that he will suffer from arthritis in 20 years as a result of his injury. Whether his condition is manifest at the time is not purely a temporal matter; the damage has happened because of what the accident has done to him and it is known what will happen to him.

The minister is concerned about whether it is possible to intercede. Could another word be used? We should work on this matter. The minister is saying that something has happened and without further intervention it will have an effect. I agree that that should be covered. The word manifest might not be appropriate in the event that something is done that would require an enormous expense to prevent the natural ordinary consequences. I am sure there is an appropriate word. The word manifest picks out the things in the event that an action has been caused but its consequence has not been detected. Perhaps we should think about what that word should be. However, it does not seem that the word potential is correct, because that word is used before the damage or the event occurs. In the example given by Hon Christine Sharp, the mere construction of a dam onto which somebody can drop a bomb gives the potential for damage. The building of the city of Perth gives the potential for terrorists -

Hon Kim Chance: But that all falls within the scope of the assessment of risk.

Hon PETER FOSS: No. Recently we were told by some people that having a car park out the front of Parliament gives the potential for a terrorist attack. Putting a car park out the front is hardly an act of terrorism any more then constructing a dam is an act of environmental vandalism. If it takes something else to cause harm, it is something that is potential. Potentially every dam is a disaster. Potentially every crop is a disaster. I gave the example of a person sowing a crop that may catch fire through natural consequences. It could be struck by lightening, catch fire and spread into the next-door reserve. That crop has the potential to cause damage. There is hardly a thing in life that does not have that potential. I am sure that by our sitting here today we have the potential to do something bad to somebody, but of itself we would not say we should be restrained simply because that act of doing it has that potential. Our coming together has the potential for us to be blown up by terrorists, but that does not mean it is inherently wrong for Parliament to come together because of the terrorist risk that it poses. We need a word other than potential that picks up, first of all, that the damage has been caused and it is not manifest, and, secondly, that without something else happening, it will happen. In other words, in the circumstance to which the minister has referred we may be able to construct some sort of dyke that will prevent the effect of clearing from causing salination of another place. That is possibly the other thing the minister was trying to say. It is another temporal example, because there is time between the happening of the event and the manifestation of the damage; however, they are both the same sort of thing.

We need to come up with another word. Hon Murray Criddle quite validly said that he does not like the word potential because it picks up on a lot of things that, as a result of this debate, are not what we want picked up. I

could come up with another word that picks up on manifest and the other, but that is probably not a good way to deal with it. Hon Murray Criddle made a good point and I am loath to go past it or for us to just go to a vote on it because we have our point and the Government has its point. This is an opportunity to find a better word. There may not be a better word. If that is the case, we will go to the vote and stick with potential. However, it seems that we could probably come up with some word that says what the minister intends and what I intend - perhaps not what Hon Christine Sharp intends, because she wants to include anything that has the possibility at some stage to cause harm, no matter how much it requires the intervention of God or Saddam Hussein to do it. We should use a word that means what the legislation says it means.

Hon KIM CHANCE: I have listened carefully to what has been said and I can see no reason to alter the original position. However carefully we choose the word or the phrase - it could be a whole paragraph - to express what we mean, if it is condensed to one word, it is an analysis of the word potential. I cannot see that any other word can be used which has the same meaning and which, at the same time, expresses the issues that have arisen as a matter of concern.

As happens with many other assessments that we make in life, the Environmental Protection Authority in this instance is making an analysis of risk. Nobody could have put it better than Hon Peter Foss did on an earlier occasion when he referred to environmental harm and how the simple act of breathing causes environmental harm. That is the very reason that there is a separation in the Bill between environmental harm, which in itself is not an offence under the proposed amendment, and material or serious environmental harm, which is or can be an offence. Whenever we make assessments about anything we do, such as crossing a road, there is a risk. There may not be a serious risk of environmental harm but there is a personal risk. When the EPA makes a decision in its analysis of the potential for environmental harm or serious or material environmental harm, it will weigh up those risks. We could be dealing with a proposal that does not deal with straight pollution, such as the construction of a highway alongside a wetland. If, in assessing the risk that will occur, the EPA is not able to make a balanced judgment about whether the benefits exceed the costs to the environment in that matter, and if it has to wait until the road is actually constructed to find out what the problems are before it can say, "Oops, harm has occurred. We had better do something about it", then that is a disaster.

Hon Derrick Tomlinson: We are in total agreement on that.

Hon KIM CHANCE: By taking out those words we would be -

Hon Peter Foss: But you have a double potential here.

Hon Murray Criddle: It says direct or indirect.

Hon KIM CHANCE: We are talking about whether the EPA should be able to consider the potential for harm.

Hon Derrick Tomlinson: By your own argument, spatial and temporal.

Hon KIM CHANCE: Indeed they are spatial or temporal or both -

Hon Peter Foss: It can do that because it can look at the potential for primary harm in assessing it, not prosecuting it.

Hon KIM CHANCE: All I am saying is that it is necessary for the EPA to have that capacity -

Hon Peter Foss: But you have mixed up two different things. One is the assessment of proposals, and the EPA already has the capacity to look at the potential for environmental harm - I do not have a problem with that. However, this is different because it is dealing with harm that has actually happened.

Hon KIM CHANCE: I thought I had covered that when I indicated that the EPA should not have to wait until it has seen harm created. Earlier in the debate we referred to drainage. For example, a drain may be half constructed; therefore, it still has the potential to cause environmental harm because the drain has not reached the wetland to which it is targeted. If the department becomes aware that the construction of a drain that intends to take saline water into a freshwater wetland has started but is not yet complete, the action has not yet caused environmental harm. If we presume that the drain is being constructed without any authority -

Hon Peter Foss interjected.

Hon KIM CHANCE: Yes, but the department has to make a choice about whether it should put a stop to the construction of that drain or wait -

Hon Peter Foss: That is another section. You are writing it into the definition. You are not saying that if something is being done -

Hon KIM CHANCE: No, I am talking about a judgment being made about potential environmental harm.

Hon Peter Foss: But this creates an offence.

The DEPUTY CHAIRMAN (Hon Jon Ford): Order, members! The minister has the call.

Hon KIM CHANCE: Yes, and if a drain is part completed, what is the department to do? Should it wait until the drain is completed and then launch a prosecution, or should it launch a prosecution before the drain is completed?

Hon Peter Foss: The department could prosecute the people concerned for building it without permission.

Hon KIM CHANCE: Possibly it could, but that is separate from this issue.

Hon Peter Foss: Why would the department need to prosecute them for causing environmental harm when in fact the offence is building a drain without permission? That is what they should be prosecuted for; otherwise we will end up with people being prosecuted for causing environmental harm, whether it is or not.

Hon Ray Halligan: You are making a rod for your own back, because you are -

The DEPUTY CHAIRMAN: Order, members! This is not a debate by interjection.

Hon KIM CHANCE: The question I raised was whether the departmental officer should have a capacity to put a stop to the construction of that drain. This is not solely about prosecution.

Hon Peter Foss: No, but there could be a clause that deals with that.

Hon KIM CHANCE: I think I have responded to that. There is a limitation on what an officer can do under the powers in the Act. If the power to act based on the potential for something to occur is taken out, and if the department must wait until after it has occurred before it can provide for that action to be stopped, the capacity of the department is necessarily being limited.

Hon Peter Foss: I do not have a problem with that, but that can be dealt with in a different way. Maybe I can speak.

Hon KIM CHANCE: Okay.

Hon PETER FOSS: We are dealing with a definitions section. I am quite supportive of the concept of the assessment of proposals requiring approval; that is, they are assessed on the basis of their potential to cause environmental harm. In other words, they are assessed in advance of it happening. That is not a problem. I do not have a problem with the department saying that it is rejecting approval on the basis that if someone did what he wanted to do, it could cause environmental harm. I have no problem with a provision that states that if a person does something without approval, he can be stopped from doing it; nor do I have a problem with a provision that states that if a person starts to do something that, if continued in the fashion in which he intended to do it, could cause environmental harm, that can be stopped. If a person causes serious environmental harm, I also do not have a problem with that being an offence and the person being prosecuted. However, I have a problem with something that states that if a person is deemed to have caused environmental harm because he did something that did not cause environmental harm, the department can prosecute that person for causing environmental harm. I will explain why. The minister said that the Environmental Protection Authority will work out what is serious environmental harm. The ordinary citizen must obey the law. The law should not be dependent upon what the EPA thinks is the law. Therefore, if a definition states that environmental harm is whatever the EPA thinks it is and that is it, that is hardly what one would call a fair law.

Hon Kim Chance: It would have to prove that.

Hon PETER FOSS: I will give an absurd example. The words may be broad enough to pick up eating chocolate. The EPA may decide to prosecute someone for eating chocolate. That person would say that that is nonsense. However, the EPA would say, "That is what the words say. The words include eating chocolate. You were seriously eating chocolate, and therefore we will prosecute you for it."

Hon Kim Chance: But no court would accept that.

Hon PETER FOSS: Hang on. I have taken an absurd case, and there are obviously degrees. However, the principle is important. It should not be based on what the EPA thinks or does not think should be prosecuted; it should be based on the wording of the Act. I am saying to the minister that everything, almost without exception, has the potential, within the ordinary meaning of that word, to cause environmental harm. Therefore, everything up to wherever the EPA decides to place the logical and sensible line between sense and nonsense is prime facie an offence. If a person goes to court, he does not go to the court to say that the law does not say that; he goes to the court to say that the law does say that, but it is nonsense. It is very important that the words be clear.

The problem that the Government has with the fact that the offence is serious environmental harm is that it all encompasses the words environmental harm. I will give an example, because that is always very good for getting people's attention. Instead of the word potential, we may add the words "alteration of the environment to its detriment or eating chocolate". When we get to material environmental harm, it means environmental harm that is neither trivial nor negligible; and if that includes eating chocolate, it means eating chocolate that is neither trivial nor negligible. It does not help to have the word material if the definition is in itself nonsense.

Hon Kim Chance: Now go to paragraph (b).

Hon PETER FOSS: Sure. The word is or.

Hon Kim Chance: Or results.

Hon PETER FOSS: It does not say and; it says or. Therefore, it must be neither trivial nor negligible. Similarly, when we get to serious environmental harm, it means harm that is irreversible, of a high impact or on a wide scale. Once a person has eaten the chocolate, it is irreversible; it has gone. Does the minister get my point? I have used the classic method of reductio ad absurdum, not because I am suggesting that it does include eating chocolate, I must say, but because I am saying to the minister that what is in the definition is important. I believe that the appropriate way to pick up the examples that the Government has of stopping a person when he has embarked upon something that, if continued, will cause environmental harm is to have a provision that states that. Does the minister accept my point? The way to pick that up is to have a provision that states that if the EPA is of the view that a person has commenced an action that, if continued, would cause environmental harm, the EPA may move to prevent it; it can issue an order to stop it. Then those matters can be dealt with. That is the way to deal with it, not by widening the definition.

I suggest to the Government that the words that should be used are these: whether or not then manifest and whether or not by human intervention the damage or detriment could be avoided. That picks up the second of those points. The first one is that people may not be able to see it now, and the second one is that theoretically it could be stopped from happening, because a dyke could be built. The point about it is that someone has started the event that, if not stopped, will either manifest itself or happen in the future. That is what I think we are trying to say. We have only just come up with those words and I would prefer not to arrive at the words in that fashion. That surely provides what the Government is trying to arrive at. If not, I would like to know what it is trying to arrive at. We at least need to know the intent of the amendment, if that is not what the Government intends. Will the minister at least provide a statement of intent? I do not know whether that will have any impact on the court, because it will be allowed to consider this debate only if the provision is ambiguous. I do not think the words are ambiguous. They may be nonsensical, but they are not ambiguous. If that is not what the Government means, what does it mean; if it is what it means, does the minister have any objection to perhaps coming back to the debate on this clause and the question of putting in those words at a later stage? Hon Murray Criddle understandably did not seek to address the minister's concerns because he was not aware of those concerns. That has come out only in the course of the debate.

Hon KIM CHANCE: I note what Hon Peter Foss has said. However, much of what he said concerns an assessment by degrees. Clearly, matters might be raised reductio ad absurdum in a number of aspects of law. I often ponder, for example, how, in the absence of the written law being clear on the matter, a court makes the distinction between assault, aggravated assault and grievous bodily harm under the Criminal Code. There are clearly differences between those three offences but, as far as I am aware, the distinction is not clearly spelt out in the Criminal Code.

Hon Peter Foss: I beg to differ.

Hon KIM CHANCE: Well, not to the extent that if one bone is broken it is an assault and if two bones are broken it is aggravated assault. That issue is spelt out if we are talking now in terms of prosecution, which I think we are. The factors around the meaning of material environmental harm are clearly spelt out.

Hon Peter Foss: We are dealing with the original definition. I do not have a problem with that definition but with the earlier one.

Hon KIM CHANCE: I will nonetheless take Hon Peter Foss's advice and move on from this clause so that we can have a little time in which to consider what he has said. Hon Peter Foss said that these are perhaps not the most perfect words.

Hon Peter Foss: I would not stand by them in the long term. It was just to illustrate the point I was trying to make.

Hon KIM CHANCE: It seems to be a trivial matter. It is possible that it is not. I have heard the member's view that it is not a trivial matter. I am prepared to move on to the next appropriate clause. An amendment may follow that might complicate things. It might be better to move on to another clause, just for a short time, to allow us to consider this question.

The DEPUTY CHAIRMAN (Hon Jon Ford): There are some consequential amendments. Perhaps the minister might like to postpone further consideration of this clause until after clause 54 has been considered, because amendments in clause 29 affect clause 55.

Hon KIM CHANCE: With that advice, I prefer to ask the Deputy Chairman to leave the Chair until the ringing of the bells, so that we might break and reconsider the matter.

The DEPUTY CHAIRMAN: On that advice, I will leave the Chair until the ringing of the bells.

Sitting suspended from 2.44 to 3.03 pm

Hon KIM CHANCE: We have had a look at a range of alternatives, including the well-known legal concept of de minimis non curat lex. For those whose Latin is not quite up to speed, it means the law does not concern itself with trifles - chocolate or otherwise.

Hon Peter Foss: Mind you, there is a very well-known Western Australian case involving that concept.

Hon KIM CHANCE: I am sure there is, but I would rather not provide the former Attorney General with an opportunity to talk about it!

Hon Peter Foss: It happens to be in the area of fisheries. They argued it and did not get what they wanted.

Hon KIM CHANCE: I thank the member for that.

We have considered a range of options, including words along the lines of those suggested by Hon Peter Foss, and also the possibility of replacing the word potential with a word such as likely or likelihood. The second option seems to me to be jumping the second hurdle before the first. We must first be satisfied that the law is clear that certain actions can be taken if potential exists. The second hurdle is the analysis of that potential, and the likelihood of risk would be one of the things that would be considered in that further analysis, along with a range of other issues. To simply identify likelihood as the first hurdle would make it somewhat more difficult, particularly considering further clauses in this Bill that use the terminology - proposed section 50D, for example. Likelihood would then appear in one part of the Bill, and potential, in a similar context, in another part. What is the difference between the two? I thank honourable members for their contributions and their attempt to alter the construction of the Bill in a way they believe would make it more workable. The Government has considered the matter and taken external advice on the views of honourable members, and remains satisfied that retaining the word potential in the Bill in its current construct is the more appropriate way to proceed.

Amendment put and a division taken with the following result -

Ayes (11)

Hon Murray Criddle	Hon Frank Hough	Hon Norman Moore	Hon Derrick Tomlinson
Hon John Fischer	Hon Barry House	Hon Simon O'Brien	Hon Alan Cadby *(Teller)*
Hon Peter Foss	Hon Robyn McSweeney	Hon Barbara Scott	

Noes (12)

Hon Kim Chance	Hon Adele Farina	Hon Dee Margetts	Hon Christine Sharp
Hon Robin Chapple	Hon Jon Ford	Hon Ljiljanna Ravlich	Hon Giz Watson
Hon Sue Ellery	Hon Graham Giffard	Hon Jim Scott	Hon Ed Dermer *(Teller)*

Pairs

Hon Paddy Embry	Hon Tom Stephens
Hon Bruce Donaldson	Hon Nick Griffiths
Hon Bill Stretch	Hon Kate Doust
Hon George Cash	Hon Ken Travers
Hon Ray Halligan	Hon Louise Pratt

Amendment thus negatived.

Hon MURRAY CRIDDLE: I move -

Page 38, lines 5 and 6 - To delete "or potential detriment of an environmental value".

I think I have already made my position clear. The same reasons apply to this amendment as apply to all of the amendments I have proposed to this clause.

Amendment put and negatived.

Hon PETER FOSS: I move -

Page 38, after line 8 - To insert "except where it occurs pursuant to lawful authority."

This amendment should be read together with amendments Nos 2/29, 3/55, 4/55, 5/55 and 6/55. When I first drafted this amendment I attempted to pick up the Government's wording. Unfortunately the Government has since changed its wording, which I take no responsibility for. What I was trying to do was narrow the point of difference between us, not because I particularly like the Government's wording, but because I was trying to pick up something that would do one thing and one thing only; that is, recognise the need for the Government to be able to prosecute without having to disprove all of the exceptions. I accept that the Government should be able to do that. In a criminal case the positions of the defendant and the prosecution are radically different. A defendant has a massive advantage in a criminal case, because all a defendant has to do is show that the prosecution did not prove something that it had to prove. All the defendant has to do is say to the prosecution, "You did not prove that the moon is not made of green cheese, and that was a possible thing that you had to negate; therefore, you have failed." I accept that in the interests of the public it should be possible for the State to say merely, "We will prosecute you, and it is up to you to prove otherwise."

I will now go through how that is actually dealt with, because members will need to understand that in order to understand what I am doing in this amendment. I have proposed an amendment to clause 55 to insert a proposed new subsection (1) in proposed new section 74B. Proposed new subsection (1) reads -

Despite -

That is the word parliamentary counsel now uses instead of the word notwithstanding -

> the exception of the act being pursuant to lawful authority provided in the definition of **"environmental harm"** in Section 3A, in any prosecution for causing serious environmental harm or material environmental harm, it shall be sufficient for the prosecution to aver in the complaint that the environmental harm occurred without lawful authority for the lack of lawful authority, in the absence of evidence to the contrary, to be proved; unless at least 30 days before the day set for the hearing of the prosecution the defendant gives notice to the prosecution in writing giving full particulars of the lawful authority upon which the defendant intends to rely. In such case, all other forms of lawful authority are deemed to have been admitted by the defendant not to apply and the proof of lack of the particular lawful authority of which notice has been given shall lie on the prosecution.

In other words, all the prosecution has to do is aver that there is no lawful authority, and that is sufficient, unless the defendant can provide proof to the contrary. The process is similar to the one the Government has proposed, but it goes one step further, because it gives the prosecution some prior warning. I believe that will be of benefit to the prosecution. There is a bit of a carrot and a stick here. The carrot is that if the defendant says, "This is the lawful authority", the burden falls on the State to prove that - to some extent that is the case in any form of prosecution, even when there is a defence - but the defendant is deemed to waive the argument that any other form of lawful authority applies. Therefore, if the defendant does nothing, the situation is exactly the same as under the Government's provision. However, if the defendant gives notice, the prosecution has to prove the lack of that lawful authority, but at least the prosecution will know which form of lawful authority it is, and the defendant is deemed to have waived the argument for any other form of lawful authority. What is the consequence of doing this? From the point of view of the prosecution, there is no consequence. The difference lies in a civil case. In a civil case, of course, it is a totally different sort of context, because the case must be proved on the balance of probabilities, and the burden of proving any particular fact lies upon the person who is asserting it. There is always a bit of flipping backwards and forwards, and the evidentiary burden can shift many times in the course of a civil case. I fully support the argument that if the State is prosecuting, it should not have to go to extraordinary lengths to negate a defence, and the intention of this amendment is to support that.

However, the situation is altogether different with civil action. Unashamedly I say, it will be civil action that is not supported by the State. The State has the capacity to either stop it if it is its own action or prosecute it if it is not. The State has better methods. It will be action by someone who is not the State. I happen to believe that environmental legislation is not to be used merely for people to delay or block. I am not saying that people

should not have the capacity to sue; they should not have the capacity to delay or block. The difficulty with the current provision is that it applies to both criminal and civil action. It has a particular impact at the level of an interim injunction. With an interim injunction, a court does not try the facts. It does not see that one person presents a number of facts and another person denies them. It will not sit and decide the facts. The court will look to see what the plaintiff has to show prima facie in order to establish a breach. As the provision is drafted, all that has to be established is that it does those things; it does not have to be dealt with pursuant to a lawful authority conferred by the State. My concern is that were it merely a matter of debate and argument over the facts and whether there is lawful authority, that may be sufficient to grant an interim injunction against a person. Such a person may be the State. There is a good possibility that it will be the State. The Government is making a rod for its own back. Why make it that much easier for an interim injunction to be obtained against the State by a third party when the same capacity to prosecute could be achieved - which I support - and avoid the potential for mischief? I am not doing this to try to dilute in any way the reason given by the Government about why it has done it this way. I support it. I am doing this because I think there is an unintended consequence. It has the potential to be used -

Hon Kim Chance: A likelihood.

Hon PETER FOSS: I think the Leader of the House is right. It has the almost certainty to be used by people who should not have that capacity. If the Government has given lawful authorisation to do something, there should not be a starting point for interim or ex parte injunctions. As a matter of practical experience, ex parte injunctions are all too easy to be obtained. The law says that they should not be. I tell members that it is; it is far too easy to obtain an ex parte injunction.

The DEPUTY CHAIRMAN (Hon Jon Ford): I am of the view that later amendment 2/29 is the substantive amendment to this amendment. This amendment is reliant on amendment 2/29, which introduces the definition of lawful authority. The member may wish to postpone this amendment until after consideration of amendment 2/29.

Hon PETER FOSS: That is not a bad idea. I was actually going to refer to amendment 5/55 because until members understand that amendment, they may wonder what amendment 2/29 is all about because it does not make sense in that context. They are all somewhat interconnected. The Committee would not want to include amendment 1/29 without including amendment 2/29. I will finish what I was going to say and the Committee can then decide on postponing the amendment.

It is all too easy to obtain an ex parte injunction. A special appointment then has to be obtained for the hearing for the interim injunction. The problem is that it may take months to obtain a hearing for an interim injunction. Once an ex parte injunction is granted, it always seems to be much harder to get rid of it. Even if a court is inclined to remove it, it is usually done on a special appointment that may take some months to obtain, especially if a number of people are involved in a case. I do not think the end result of a civil case will be any different; the end result will be exactly the same. The potential exists to delay by way of interlocutory injunction, particularly if it is obtained ex parte, in a way that could not be done if it were to apply only to a prosecution. That is my only concern. I see the possibility for abuse and I do not see the need for it in civil cases because it will not make any difference to the outcome. The result will be the same. It will be based on swapping the various onus on the points contained in the arguments. It will make no difference to the ultimate result but that may be several years down the track. To have to wait until that stage before resolving such matters could be extremely unfortunate.

Amendment postponed until after consideration of amendment 2/29, on motion by Hon Peter Foss.

Hon MURRAY CRIDDLE: I move -

Page 38, line 12 - To delete “or potential”.

Page 38, line 22 - To delete “or potential”.

These are similar amendments that I move together to save time.

Amendments put and negatived.

Hon MURRAY CRIDDLE: I move -

Page 38, lines 29 and 30 - To delete “to prevent, control or abate the environmental harm and”.

One of the triggers for determining material and serious environmental damage is if damage results in actual or potential loss, property damage or damage costs that exceed the threshold amount. In the case of material environmental harm the threshold amount is set at $20 000. In the case of serious environmental harm the threshold is $100 000. It is argued that this threshold is too low. This amendment seeks to redefine damage

costs so as to overcome the problem. The proposed amendment will ensure damage costs relate purely to the actual environmental harm rather than all the expenses incurred in preventing, controlling and abating the environmental harm in addition to making good the resultant environmental damage.

Amendment put and negatived.

Hon PETER FOSS: I move -

Page 39, after line 2 - To insert -

an event occurs **"pursuant to lawful authority"** where it occurs -

(a) in the implementation of a proposal in accordance with an implementation agreement or decision;

(b) in accordance with -

(i) a prescribed standard;

(ii) a clearing permit;

(iii) a works approval;

(iv) a licence;

(v) a requirement contained in a closure notice, an environmental protection notice, a vegetation conservation notice or a prevention notice;

(vi) an approved policy;

(vii) a declaration under section 6;

(viii) an exemption under section 75; or

(ix) a licence, permit, approval or exemption granted, issued or given under the regulations; or

(c) in the exercise of any power conferred under this Act;

(d) as a result of an authorised act which did not contravene any other written law;

"authorised act" for the purpose of paragraph (d) of the definition of **"pursuant to lawful authority"** means -

(a) done in accordance with an authorisation, approval, requirement or exemption given in the exercise of a power under another written law;

(b) done in the exercise by a public authority, or a member, officer or employee of a public authority, of a function conferred under another written law;

(c) done as an agricultural practice within the meaning of the *Agricultural Practices (Disputes) Act 1995* in respect of which an order has been made under section 12 of that Act and -

(i) in accordance with the order as to the carrying out or management of that agricultural practice; or

(ii) in the carrying out or management of a normal farm practice, as specified in the order;

(d) done -

(i) as an agricultural practice within the meaning of the *Agricultural Practices (Disputes) Act 1995*; or

(ii) in the management or harvesting of a plantation, and in compliance with a code of practice relating to an act of that kind issued under section 122A or made or approved under any other written law;

(e) an act -

(i) in respect of which notice of intention was given under the *Soil and Land Conservation Regulations 1992* at least 90 days before the act was carried out;

(ii) which is carried out not more than 2 years after the giving of the notice of intention;

(iii) which was not referred to the Authority as a proposal under Part IV, or was so referred and not accepted by the Authority; and

(iv) in respect of which a soil conservation notice, within the meaning of section 31 of the *Soil and Land Conservation Act 1945*, has not been served,

and done in the absence of a soil conservation notice;

(f) without limiting section 74A and paragraphs (a) to (e) of this subsection, an act of a kind set out in Schedule 6; or

(g) an act of a kind prescribed for the purposes of section 51C that was not done in an environmentally sensitive area within the meaning of section 51A.

(4) In subsection (5) -

"commencement day" means the day on which section 110 comes into operation;

"regulation 4 notice" means a notice of intention under regulation 4 of the *Soil and Land Conservation Regulations 1992*.

(5) For the purpose of subsection (2) the definition of **"authorised act"** does not apply to a regulation 4 notice given less than 90 days before the commencement day.

This amendment, which is the second of my amendments on the Notice Paper that relates to this clause - I have already moved the other amendment - was originally in accordance with proposed sections 74A and 74B that the Government is seeking to insert in clause 55. It puts them together in a compendium. Unfortunately, after I had my amendment put on the Notice Paper, the Government moved to delete proposed section 74B(2)(e). I am not sure why it moved to delete it. Obviously there is a reason. If the Government accepts my amendment, it can be amended in accordance. I am reluctant to ask to have it amended because I do not know why the Government wants to make that change. The amendment reflects that there is an exception to what used to be an offence. If the exception applies, it is not an offence. On the other hand, the exceptions still have to be proved because of the provision I mentioned in clause 55.

Hon KIM CHANCE: I had to take a moment to consider this with the change in order because I am not entirely sure why it is preferable to deal with amendment 2/29 before dealing with amendment 1/29. This amendment will put in place a series of articles of proof in terms of the nature of the lawful authority.

Hon Peter Foss: It will change what is an offence into an exception.

Hon KIM CHANCE: Yes. The Government's position is that holding an authority is a defence against an allegation. Hon Peter Foss is attempting to shift that to change the form of the offence of environmental harm to make the question of authorisation an element not of the defence but of the offence. This amendment sets out what must be done to make the question of authorisation an element of the offence rather than the defence. I am still struggling to understand why we are dealing with this amendment before the original amendment. However, I am sure there is a good reason. I do not question anyone's judgment. It puts us in a rather awkward position, because I would rather argue that we ought not be doing it at all, but if the Committee is of a mind to do it, we should deal with this amendment. I would rather deal with amendment 1/29 first. I would prefer, Mr Deputy Chairman (Hon Jon Ford), that we go back to amendment 1/29 and then deal with amendment 2/29, if that is appropriate.

The DEPUTY CHAIRMAN (Hon Jon Ford): This is the preferred method because if amendment 1/29 is passed before 2/29, we would not have a definition of lawful authority. Amendment 1/29 is dependent upon the definition being introduced. If amendment 2/29 is defeated, it would be reasonable to accept that Hon Peter Foss

will withdraw amendment 1/29; however, if it is accepted, it would be reasonable to consider that amendment 1/29 will also be accepted.

Hon PETER FOSS: Mr Deputy Chairman, the problem is this: the minister does not have an objection to the wording of amendment 2/29 because it is the Government's wording. The minister's view is that if we accept amendment 1/29, he would want to see amendment 2/29. That is the difficulty. All the amendments are inextricably tied together. This amendment would not be any good without the amendment to clause 55. I would not accept the amendment to 1/29 if I did not intend to move an amendment to clause 55. I am not suggesting that we merely change a defence into an exception. I accept the Government's objection to that. I am suggesting we do two things: first, we change the defence into an exception; and, secondly, we put in an averment clause that puts us back in the same place as far as prosecutions are concerned.

I did that because when the Government first briefed us on this Bill, it said it had drafted it this way because of the difficulties in prosecution and the burden on the prosecution to prove all the exceptions. That is the logic we were given and I wholly, totally and unreservedly accept that, which is why I will move amendments to clause 55. What was not said by the Government, and which I will not accept and have tried to avoid, is that a similar regime should apply in civil cases. That is why clause 55 refers to "in any prosecution". It does not refer to "in any civil case". It states that because, first, the rules in a civil case are totally different and, secondly, an offence can be prosecuted only by the Government. It is something that is available only to the Government. I am prepared to say that the Government should, to look after the public right on behalf of the people, have that capacity. However, so far as civil cases are concerned, it is unlikely to be the Government and it is very likely to be what is called an officious bystander.

Hon KIM CHANCE: I think I have a way through this. I understand the logic of dealing with amendment 2/29 before 1/29, even though it has an illogical outcome of trying to determine something that would not be relevant unless something else happened later. I intend to proceed debating amendment 2/29 to indicate that the Government will not support amendment 2/29 and to argue against the adoption of amendment 2/29 on the basis that the Government will argue against the adoption of amendment 1/29. I will then argue my case against amendment 1/29 to defend my position on amendment 2/29. That is about the only way -

Hon Peter Foss: If 2/29 were defeated, I would not move any of the other amendments.

Hon KIM CHANCE: In the event that the Committee endorsed amendment 1/29, I would call for 2/29 to be considered because we would be in deep difficulty if amendment 1/29 was passed but not 2/29. That is the only way to move through it. I wish I knew the Latin for "I do not know what comes first, the cart or the horse". Sadly, I do not.

Hon Peter Foss: There is a Latin term for that.

Hon KIM CHANCE: I am sure there is. As Hon Peter Foss said, the Government's words are contained in amendment 2/29. We will oppose them because we will oppose amendment 1/29. Essentially, Hon Peter Foss is seeking to change the form of the offence of environmental harm to make the question of authorisation an element of the offence rather than, as is the Government's position, the defence open to the defendant. He is concerned about the possibility and likelihood that in its present form, the legislation will enable civil litigants to mischievously or maliciously seek an injunction to grant a person who has proper authorisation to stop causing the authorised environmental harm until the court is satisfied that that authorisation exists. In other words, it would be a nuisance litigation.

The problem that the member fears is a possibility now, albeit it is somewhat remote. However, under the present provisions of the Environmental Protection Act, that situation to some extent exists with pollution rather than environmental harm. The amendment scarcely changes the current situation. This is an occasion in which we have a known example that can be used. The offence of pollution already has a defence whereby the defendant can show that the pollution was authorised; that is, that the person who is alleged to be causing pollution is causing pollution but is doing so under a licence. This has been the situation since 1986. I am told that no cases of civil action have been used in the way that has been described.

Hon Peter Foss: That is because no forests were involved.

Hon KIM CHANCE: Forests might not have been involved. However, given the issues that have arisen around Cockburn Sound, the Swan River and the port of Albany, to suggest that the question of pollution -

Hon Peter Foss: I will give you an example, because I was the defendant of a case involving the south west -

Hon KIM CHANCE: Despite all the public attention given to pollution of the waterways and of the air, since 1986 when the potential has been available to take action against polluters, not one civil action for environmental

harm in the way Hon Peter Foss has indicated his concern has been taken. Indeed, the courts have shown in that time that they have been extremely reluctant to endorse the use of civil remedies to enforce the criminal law. Hon Peter Foss argues that there is a potential for the law to be used in that way. He is undoubtedly right. However, the likelihood of the law being used in that way is minimal.

Hon Peter Foss: What is the harm in doing that?

Hon KIM CHANCE: I will get to that because I have more material to get through. Parliamentary counsel and the Crown Solicitor's Office have been asked to consider this issue and both have recommended against that approach. I will sum up their views. It is a case of the prevention being worse than a fairly minor disease. Hon Peter Foss went to some lengths to turn his amendment back upon itself to reduce the difficulties that his approach would cause for the prosecution. I refer now to the averment provision.

The averment provision is not adequate, and I will walk members through why I believe it is not. There is no way that the Director of Public Prosecutions would recommend that action for a prosecution be initiated without knowing whether an authorisation constituting a defence exists. He would not do that. He would not believe that he could proceed without a degree of certainty. Hon Peter Foss proposes that the DPP initiate the prosecution and after 30 days - he initiates blind in respect of the potential for the defendant -

Hon Peter Foss: He would do it in the same way. I did not raise the point. I am dealing with a difficulty raised by the Crown - not me - which said it would make it harder to prosecute because it must prove the negative. This is not my argument. That was the reason for putting it that way.

Hon KIM CHANCE: It would create difficulties. The DPP would be in a position of having to prosecute first to find out whether the defendant had authorisation.

Hon Peter Foss: No.

Hon KIM CHANCE: He would. It would not be until 30 days later -

Hon Peter Foss: How does he find out now?

Hon KIM CHANCE: In the way the legislation is drawn now?

Hon Peter Foss: Yes.

Hon KIM CHANCE: As far as I am aware, because the authorisation is a matter for the defendant to indicate, that matter is open to the DPP and the Department of Environmental Protection to investigate.

Hon Peter Foss: That would be -

The DEPUTY CHAIRMAN: Order members! I have had complaints from other members that they cannot hear interjections because the interjector is too far away from the microphone. This is not an opportunity for debate by interjection.

Hon KIM CHANCE: Under the provisions of the Bill, when an offence is suspected, the chief executive officer issues the suspect with a show cause letter. That is exactly the way it works in the Department of Fisheries. The show cause letter invites the suspect to show cause why he should not be prosecuted. That provides an opportunity for the suspect to produce evidence of authorisation. The suspect then has the opportunity to advise what the authorisation is and the nature of the authorisation. If that is confirmed, the matter that was proposed to end in prosecution would not go any further.

Hon Peter Foss: Why would he do it any differently?

Hon KIM CHANCE: I am not entirely sure.

Hon Peter Foss: He would do it in exactly the same way.

Hon KIM CHANCE: In changing the matter of proof of authorisation to a matter of offence rather the defence, it would shift the onus to the DPP. That is not what this amendment proposes. Perhaps Hon Peter Foss can explain that.

Hon PETER FOSS: In the situation of a defence, an authority would write to a person and ask why he should be prosecuted. The person would have two alternatives: he could say that he has a particular defence, or he could write back and tell the authority to get stuffed.

When the person is prosecuted, he can listen all through the case and then say, "I have this authorisation", and he is then let off. Why do defendants not do that? Because it is sensible to write to the prosecution telling them why they should not prosecute. Anybody with half a brain will do that! In this instance the defendant can do

exactly the same thing. Either way, a defendant can write and say that he should not be prosecuted because he has authorisation or he can tell the prosecutor to get stuffed. The reason for not doing the latter is the same in each case: the person does not want to be involved unnecessarily in a prosecution. If the defendant wants to be involved unnecessarily in a prosecution and he tells the prosecutor to get stuffed, all the Director of Public Prosecutions has to do is issue his prosecution and everything else is proven. When a person who has the authority - in the minister's situation it is the defence - commences a prosecution, there is always the possibility that that person will raise a proper defence. A good prosecutor, even in this situation, will check with all the appropriate authorities to find out whether they will raise a defence because that will not be found out until the defence actually opens its case - "Our case is that we have a defence." The defence will sit through all the prosecution evidence, just in case they can submit another case - because the prosecutor has not proven everything - and will then say, "Our defence is that we have this authority." They will then provide the evidence. They are not obliged to say this beforehand. In this instance the situation is slightly better because if a defendant is so stupid as not to write back to the potential prosecutor to say he has a defence, under this situation the averment is sufficient. The defence can still prove the alternative, but it actually has to prove it. If the defence decides at that stage to write back saying what its defence is, it cannot raise another one.

Under the present situation it can raise several defences, and the prosecution might not be ready for them with the contrary evidence. The prosecution might say that the defendant has the authority but that he did not do this or that, especially when dealing with matters involving clearing - although that is one of the things the minister wants to take out of the legislation. Effectively, that is exactly the same as far as prosecution is concerned. A defendant does not have to say anything. A sensible citizen will offer any defence he has because he would prefer not to be involved in a prosecution. However, a defendant is not obliged to write to the prosecution and say what that defence is. That is the case even now with the changes that we have made to committal proceedings, and these may not even be committal proceedings. Even with those changes a defendant is not obliged to say anything. He can say he is guilty and then, when he turns up for proceedings, he can raise the defence.

Hon KIM CHANCE: I thank Hon Peter Foss for enlightenment on the nature of his approach. It is seen to be a valid approach but it is simply not the Government's preferred approach. The inclusion of the averment provisions vastly improves the original amendment.

Hon Peter Foss: I have always had the averment provision. That was my proposition before the Bill was even introduced in the Parliament.

Hon KIM CHANCE: Right, yes. I understand that Hon Peter Foss has a significant history of dealing with this particular part of the legislation; it goes back to the time when he was the Attorney General or even before that. We recognise his careful thought in this area and in no way does the Government believe his position is invalid; it is simply not the Government's preferred position.

Hon PETER FOSS: That is foolish and it is particularly ironic that the minister who is handling this Bill on behalf of the Minister for the Environment happens to be the Minister for Forestry.

I will deal with the two points the minister made. He referred to pollution and said that nothing had happened. I did say that it was because no forests were involved. However, I say that with considerable experience. Before I came into Parliament I was involved in a case being brought by an incorporated group from Denmark, I think, that sued a client of mine about misleading advertising on a television campaign. We got all sorts of things done - undertakings and so forth - but the net result was that we won the case. We got an order for costs - a very substantial sum of money - but of course we did not get anything back. We had asked for security for costs, but as it was a public interest case it was not ordered. It is not all that often that security costs in public interest cases are ordered. Therefore, an awful lot of money can be spent over a useless case and that money cannot be retrieved.

The second case in which I was involved occurred when I was the Minister for the Environment and in charge of forestry. A Denmark group tried to get an interim injunction against us to prevent us from logging. We merely escaped from that one, not because we were doing anything wrong but because legally we were not bound by the Wildlife Conservation Act. Hon Christine Sharp has the answer to that one; we all have long memories on this. I think we would have won the case in the end, but I was never worried about winning the case; I was worried that the group was trying to stop us from logging. It would have effectively mucked us around for at least that season and possibly another. If we had upped and gone somewhere else, the same argument would have been raised. The group could have effectively, without the case ever coming to a hearing, stopped us from logging state forest, simply because of the way interim injunctions operate. The mere fact that we were not even bound by the law was our saving; it was not because the facts were important. If I remember rightly, in that case the

argument was based on the fact that we had not been able to find certain animals, so they had to be very rare and endangered. The reality was that the case was not decided upon the facts but upon the law.

I am trying to make this law tighter so that we do not get caught again. Admittedly, since I started on this amendment, there is probably not much forest left to protect; it has nearly all been locked up. Perhaps my concerns are not as justifiable as they used to be because not much logging will be going on anyway. However, if the Government thinks that such logging should go on as it has approved, and if it does not want to cause any more damage to the forestry industry, I suggest this amendment as a simple way of doing it.

I will provide a brief history of this situation. We were briefed on this legislation before it came into Parliament. I raised this point and the members involved seemed to show some interest in it. The legislation came in without this amendment and it was moved in the other place. The Bill got to this place and I moved it again. I always prefer it when the Government considers these things and comes back to me again because, when we first discussed it, the Government appeared to be receptive of the amendment. However, it did not deal with it, which appeared to be an omission on the part of the Government.

The Government has not dealt with the actual wording of what I wrote and I did not use a huge amount of drafting precision - I rattled it off and stuck it in the various Notice Papers. However, it worries me that the Government did not get back to me earlier on this and say why it did not deal with it. The reasons it has given do not address the point which I raised and which I have been raising now for over 12 months.

Hon Kim Chance: Yes, I recall.

Hon PETER FOSS: I am not trying to disrupt the Government's legislation; I am just trying to make it workable for Governments. I believe it is legitimate that the Government be the principal player in these areas. I know that others may not agree with me on this, but I believe that the whole concept of government and public administration is that it should be a matter for the Government and not for private individuals.

Hon KIM CHANCE: Again I thank Hon Peter Foss for putting the whole discussion around these two amendments in its context. I concede and the Government concedes that there is a risk. We acknowledge that risk. Therefore, in a sense, we are doing this with our eyes open. Of course, the courts have a form of protective mechanism against malicious and mischievous litigation, although a lot of damage can be done before that form of protection is triggered. All I can say is that this is a risk that the Government is acknowledging and entering into with its eyes open. We are prepared to take that risk because, in terms of the forests, we have confidence that the forest management plan, which will be introduced subsequent to an exhaustive process, fully accommodates the needs of the environment and is an entirely sustainable process. If we are disappointed in that and the member's worst fears come to fruition, we would perhaps have recourse through the courts, or perhaps we would need to come back and further amend the Act.

Hon Peter Foss: I give an undertaking to support such an amendment.

Hon KIM CHANCE: I thank the member.

Hon CHRISTINE SHARP: I was unsure about the arguments, so I was waiting to hear the arguments in the Chamber this afternoon about the alternative scenario that Hon Peter Foss has put forward. Of course, he has managed to press a green button. I do not know whether the purpose of his alternative system is to prevent cases such as the Bridgetown Greenbushes Friends of the Forest case, which sought to halt logging that was killing threatened species.

I remind members that we have clearly been through a decade in which forest management has been an extremely controversial matter. However, in that time only a couple of cases have gone to court. That was a time when people were not only logging old forests, but also logging at a rate that was 200 per cent of the sustainable yield. Therefore, the community sought to use the law at its disposal to bring this matter out in court, because it was clearly not getting the ear of government. If the member were seeking to persuade me of the merits of his alternative scenario, I can assure the House that he failed miserably, and he would have failed to convince many other people also.

Amendment put and a division taken with the following result -

Ayes (11)

Hon John Fischer	Hon Frank Hough	Hon Norman Moore	Hon Derrick Tomlinson
Hon Peter Foss	Hon Barry House	Hon Simon O'Brien	Hon Alan Cadby *(Teller)*
Hon Ray Halligan	Hon Robyn McSweeney	Hon Barbara Scott	

Noes (12)

Hon Kim Chance	Hon Adele Farina	Hon Dee Margetts	Hon Christine Sharp
Hon Robin Chapple	Hon Jon Ford	Hon Ljiljanna Ravlich	Hon Giz Watson
Hon Sue Ellery	Hon Graham Giffard	Hon Jim Scott	Hon Ed Dermer *(Teller)*

Pairs

Hon Murray Criddle	Hon Tom Stephens
Hon George Cash	Hon Nick Griffiths
Hon Paddy Embry	Hon Kate Doust
Hon Bruce Donaldson	Hon Ken Travers
Hon Bill Stretch	Hon Louise Pratt

Amendment thus negatived.

The DEPUTY CHAIRMAN (Hon Jon Ford): Before we proceed I bring to members' attention the risk that members face if they do not move quickly from one side of the Chamber to the other during a division: they may be crossed off on opposing lists. We would sort that matter out in the end, but it might cause some confusion. I ask members to move to either side of the Chamber as quickly as possible when a division is called.

We are dealing with clause 29 and postponed amendment 1/29 moved by Hon Peter Foss.

Hon PETER FOSS: I cannot now proceed with the postponed amendment because the fundamental basis for it has been rejected by the Chamber. I seek leave to withdraw that amendment, and will not move any further amendments in that sequence.

Postponed amendment, by leave, withdrawn.

Clause put and passed.

Clauses 30 to 50 put and passed.

Clause 51: Section 73 amended and transitional -

Hon ROBYN McSWEENEY: The CEO has been given far-ranging powers - the CEO is a very powerful person. Proposed new section 73(1) refers to an inspector or authorised person. Who is considered to be an authorised person? I presume that it is an inspector of the department, as he also has far-ranging powers.

Hon KIM CHANCE: Authorised persons within the meaning of this and other clauses of the Bill, and indeed the parent Act, are persons appointed by the CEO as defined under the authority of the Act. Those persons are not necessarily employees of the Department of Environmental Protection or the Environmental Protection Authority. They can be from outside the authority. For example, that power can be delegated to a shire council or its employee.

Hon ROBYN McSWEENEY: So the CEO of a shire council would have permission under the Act to go on to somebody's land if he suspected that pollution or environmental harm had occurred?

Hon KIM CHANCE: Only if that person were authorised to do so. Indeed, the Act is sufficiently narrow to confine that authorisation to noise purposes in terms of a shire council.

Hon ROBYN McSWEENEY: Only noise?

Hon KIM CHANCE: Yes - only noise within the limits of the authority currently existing within the Act.

Clause put and passed.

Clauses 52 to 54 put and passed.

Debate interrupted, pursuant to standing orders.

[Continued on page 10368.]

Sitting suspended from 4.15 to 4.30 pm