

Hon Derrick Tomlinson); Hon Peter Foss; Hon John Cowdell; Hon Norm Kelly; Hon Dr Chrissy Sharp; Hon Mark Nevill; Deputy Chairman; Hon Derrick Tomlinson; Hon Bruce Donaldson

CONSERVATION AND LAND MANAGEMENT AMENDMENT BILL 1999

Committee

Resumed from 29 June. The Deputy Chairman of Committees (Hon Derrick Tomlinson) in the Chair; Hon Peter Foss (Attorney General) in charge of the Bill.

Progress was reported after clause 51 had been disagreed to.

Clauses 52 and 53 put and passed.

New clause 3 -

Hon J.A. COWDELL: I move -

Page 2, after line 3 - To insert the following new clause -

3. Objects
- (1) The Objects of this Act are -
 - (a) to provide for the protection and conservation of the terrestrial, marine, and aquatic environments of Western Australia; and
 - (b) to promote ecologically sustainable development through the conservation and ecologically sustainable use of natural resources; and
 - (c) to promote the conservation of biodiversity and the maintenance of ecological processes; and
 - (d) to promote a partnership approach to the protection and management of the environment involving governments, the community, land-holders and Aboriginal peoples; and
 - (e) to assist in the co-operative implementation of Western Australia's state, national, and international environmental responsibilities; and
 - (f) to recognise the role of Aboriginal people in the conservation and ecologically sustainable use of Western Australia's biodiversity, by applying best-practice principles of comanagement for the purposes of environmental protection, biodiversity conservation, forest management, and protected area management; and
 - (g) to promote the use of Aboriginal peoples' traditional ecological knowledge with the involvement of, and in co-operation with, the owners of the knowledge.

Although in various statements the Minister for the Environment supported the intent of these objects, in another place she ultimately rejected their addition. The clause sets out the Department of Conservation and the Conservation Commission's commitment to ecologically sustainable development and the use of the environment and natural resources and the protection and conservation of the environment. More importantly, the last object of this amendment seeks to incorporate the participation of Aboriginal people in environmental and national park management. Western Australia is the only State in Australia not to have Aboriginal representation in its environmental legislation. The Labor Party clearly hopes that the Government will support this amendment and thus rectify the omission of Aboriginal people from the legislation. I commend the amendment to the Chamber.

Hon PETER FOSS: The Government considers that the proposed amendment is neither necessary nor desirable and goes beyond the nature of the amendments which have been moved as part of the Bill and is, therefore, not strictly in accordance with the policy of the Bill.

Hon NORM KELLY: The Australian Democrats will support the new clause. It is a travesty that this Government has not seen fit to acknowledge in the Bill the role of the Aboriginal people of this State. As Hon John Cowdell said, Western Australia is the only State that does not make such an acknowledgment.

The Premier's recent announcement in the Kimberley of the new national parks highlights the inadequacies of this Government in allowing proper consultation with Aboriginal people to ensure that when lands are declared

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for such purposes a proper consultation process is in place, as well as provision for ongoing management which recognises the role of Aboriginal people, their culture and their heritage and the future of those lands and the significance those lands have for those peoples. Nothing in what the Attorney General has said tonight or in what the Government has stated in the past few months in answer to what is being proposed satisfies me that we should not also be acknowledging and the Bill promoting ecologically sustainable development in this State. I could go through all the subclauses of this proposed new clause. The Australian Democrats support the amendment.

Hon CHRISTINE SHARP: The Greens (WA) support this clause, which provides objects for this Bill. It is an important strengthening of the overall objectives of the Bill. We are very disappointed that the Government seems to think they are superfluous. I find it curious that the minister has at various times and places supported most of these objects. I am at a loss to comprehend why everyone would not agree that it makes this legislative package more effective to have the objects clearly upfront as the overall rider to the purpose of the Bill.

The announcements two weeks ago of the establishment of the Mitchell River National Park, the Lawley River National Park and the two conservation parks in the Kimberley area were made not only without inviting the traditional owners to be co-managers of those national parks and conservation parks but also without even informing the elders, let alone asking for their consent. It is a real example of exactly why the Bill requires this objects clause. The Government's lack of support confounds me when the Minister for the Environment in the past has expressed support for the recognition of the land management capabilities of Aboriginal peoples. Indeed, after the public forum that was held on these Bills in March this year, I believe the minister met with Aboriginal people and professed to be very favourably disposed towards the inclusion in legislation of the recognition of their role in co-management of nature reserves and national parks. The minister says it, and it all sounds very good at the time, but when we come to this point in the Chamber when the Government has the opportunity to deliver on these recognised objectives, we suddenly find that the minister is remarkably quiet on the matter.

Clearly these objects are to strengthen the Bill and to make it more about conservation than it would otherwise be. It is therefore a real disappointment that the Government does not want to strengthen the Bill and to clearly put upfront the objectives that so many people in the community would like to see. We will be very pleased to support the Labor Party's new clause and we are very disappointed that the Government will not be supporting it also.

Hon MARK NEVILL: I shall not be supporting this clause. Although its sentiments may be noble, it would not really achieve very much. In respect of the management of national parks, there is scope under section 33(3) of the Act for management plans for these parks to be set up. I strongly support the involvement of Aboriginal people in those management plans. It is not always simple and it is not always necessarily productive to have specific statutory provisions for this purpose. By Aboriginal people, are we talking about the traditional owners of a particular area? Aboriginal people have a significant role to play in the conservation of these areas but there are some cultural aspects of Aboriginal people that will not necessarily benefit these national parks. I can recall the Department of Conservation and Land Management in the 1980s buying vehicles for particular Aboriginal communities for wildlife protection officers to use to look after these sorts of issues. Those vehicles were the means of some pretty wanton destruction of our fauna. In some areas of the Kimberley in which I worked 40 years ago the kangaroos have been hunted out. If the last two kangaroos on earth appeared from behind a boulder in that area they would soon be roasting in the coals. That is a cultural response by Aboriginals, not something they do maliciously.

We must have the right people involved in the management of these national parks. I do not believe that anyone, black or white, should be allowed to hunt endangered native species in a national park, although stranded travellers should be allowed to take animals in order to survive. However, modern hunting involving high-powered guns with long-range sights, motorboats and so on can cause extensive destruction. I have seen wanton destruction over the years, so the situation must be managed, and it can be managed under the existing section 33.

The national parks that were recently opened in the Kimberley are the result of 30 years of consultation. Some of the people who did not turn up at the opening have complained to me about their treatment at the hands of the Kimberley Land Council. The council requested them to stay away. Some agonised about whether they would attend because they were torn between different loyalties - they had worked with the Department of Conservation and Land Management for some time and they wanted to demonstrate their solidarity with the body that represents their interests. The argument about the Purnululu National Park and Conservation Reserve and who represents the area has been long running, and it will be a long time before a joint Aboriginal management arrangement can be implemented. The sooner that happens, the better. However, any management arrangement must help to sustain that park.

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CALM has an excellent relationship with Aboriginal groups. I have seen evidence of that from one end of my electorate to the other, even in the Kimberley. The KLC's boycotting of the opening of those national parks was unfortunate. I do not believe the line it put out about the lack of consultation. There has been extensive consultation about these parks. I sometimes feel that the KLC is its own worst enemy in the way that it deals with these issues. It has almost backed itself into a position whereby it cannot behave in a reasonable manner. It appears to be fighting an eighteenth-century class war or perpetuating an argument that started 30 years ago. CALM is keen to work with the KLC, but it takes two to get things done.

Someone has put a lot of work into these amendments and they contain many motherhood statements. After being in Parliament for some time, I have decided to start opposing measures that are not important. Our legislation is laced with myriad provisions which are not necessary and which do not add much.

Hon J.A. Cowdell: You will find many more in the sentencing legislation. It is laced with unnecessary clauses.

Hon MARK NEVILL: I am the greatest critic of this Attorney General's prosecution of his party's law and order agenda.

Hon Peter Foss: I hate unnecessary clauses.

Hon MARK NEVILL: In the Attorney's case I am talking about unnecessary Bills.

The DEPUTY CHAIRMAN (Hon Derrick Tomlinson): Let us return to the clause.

Hon MARK NEVILL: Some of the objectives are good and positive. However, the term "ecologically sustainable" is a tautology. I do not see this amendment adding much to the legislation. It confuses the issue and I will not support it.

Hon J.A. COWDELL: This amendment is not a charter for rampant four-wheel drive vehicles, speedboats or high-powered rifles in our national parks, as suggested by Hon Mark Nevill.

Hon CHRISTINE SHARP: I would like to challenge some of the stereotypes Hon Mark Nevill referred to and his statements about the risks in having Aboriginal people involved in land management. He suggested that they will be shooting everything that moves.

Hon Mark Nevill: That is the stereotype.

Hon CHRISTINE SHARP: He is caught in a time warp. Many Aboriginal people are becoming sophisticated in their synthesis of traditional management practices and their understanding of best practice through the science of environmental management. I draw the member's attention to a short section in the report which I tabled today on behalf of the Standing Committee on Ecologically Sustainable Development and which refers to the 2000 National Conference of Parliamentary Public Works and Environment Committees. The report states -

- 5.1 Dr Bill Freeland, Director of Parks and Wildlife, addressed delegates on the Northern Territory Parks Masterplan. Dr Freeland said that 25% of Aborigines own 50% of inalienable Northern Territory land, thus, any plan for the environment must involve Aborigines in a meaningful way.
- 5.2 Dr Freeland explained that one third of his time is spent engaging with Aboriginal groups who have cultural affiliations with many of the parks and that the Masterplan recognises Aboriginal values.

He then went on to state that 75 per cent of the members of the ranger force in the Northern Territory are Aboriginal. The only problem he identified stemming from that very strong component of Aboriginal management is that some of the rangers must be relocated because they have a tendency to believe that they own the area they service and see tourists as a menace. In other words, they strongly relate to being custodians of the land. For the member to suggest that Aboriginal people are not able to offer a very -

Hon Mark Nevill: I did not say that; there is nothing in the Bill precluding any of that, and it should be encouraged.

Hon CHRISTINE SHARP: Why do we then not encourage that by saying that we will support this objective? As members know, virtually no co-management is occurring at the moment. The member is saying that it is a good thing and he is also acknowledging that it is not happening. Why do members not support it and pass legislation to encourage this development in the management of our biodiversity in Western Australia?

Hon PETER FOSS: I totally endorse the remarks made by Hon Mark Nevill. What matters is what we do, not words such as these that signify nothing.

Hon Christine Sharp: Then let's do something.

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Hon PETER FOSS: The Greens' problem is that they seem to think that moving amendments such as this will achieve something. They insert useless words in legislation and pad the statute books with provisions that will not do anything and think they have achieved something. There are doers and talkers in this world, and the Greens and the Democrats are talkers.

As Hon Mark Nevill said, CALM does have a good record. Hon Norm Kelly spouted nonsense about what he read in the newspapers. That is the sum total of his knowledge of the situation. If he had done some research he would know that Purnululu National Park and Conservation Reserve is the classic example. The problem is not that CALM did not try to involve Aboriginal people but that the Aboriginals involved from the beginning quarrelled and refused to have anything to do with one another or to be involved in a committee that included the others. I know that because I launched the management plan for that park. We tried to get the people to meet but they would not deal with one another.

Hon Mark Nevill: It is still a problem.

Hon PETER FOSS: Does the member believe that we should paternalistically order them to cooperate or pass a law making it illegal for Aboriginal people to object to being on co-management committees and impose a penalty of two years' imprisonment? CALM is willing to work towards and committed to this objective. Members opposite will not make the slightest jot of difference if they succeed in having this rubbish included in the legislation. We already have far too much of this rubbish in Acts. I have managed to have Cabinet pass a resolution designed to change legislative drafting to ensure that we include only those provisions that must be included. It is a losing battle; the statute books are getting fatter and fatter. Hon Mark Nevill might not like my legislation -

Hon Mark Nevill: The presentation is wonderful, but the content is terrible.

Hon PETER FOSS: That is how it should be: Only that which is necessary should be included in a statute. I try to introduce Acts of Parliaments which do not include pious statements or words that mean nothing and which do not increase the cost to everyone because that junk must be stored. Verbose legislation also increases the cost of legal services because every lawyer is required to buy more statute books. The Greens and the Democrats will never be in government, but they think they are achieving something simply by including words in legislation. Those words are meaningless if they have no effect, and this amendment will be meaningless.

As Hon Mark Nevill said, CALM has a very good record. Nothing prevents this happening and nothing requires it to happen.

Hon Christine Sharp: Why not tell us about CALM's record?

Hon PETER FOSS: It is very good.

Hon Christine Sharp: What is it?

Hon PETER FOSS: The member has wasted time all the way through this process by making pious statements about all sorts of things as though she has all the solutions in the world. She makes pious statement after pious statement. If she is genuinely interested to know what CALM does with Aboriginal people, I will happily arrange a briefing. Most importantly, CALM has tried to involve Aboriginal people in employment in national parks. That was the case when I was minister and Dr Shea was chief executive officer, and I am sure that that is still the case under the management of the present chief executive officer. We are passing legislation, not making pious statements. Let us get on with it.

Hon NORM KELLY: I find the comments of the Attorney General totally hypocritical because his Government has said there is no need for this legislation in the first place and he has the hide to say that members should not add to the State's statutes. If the Government truly believes the existing Act is sufficient, the Attorney General should not waste the time of this place introducing an amending Bill.

Hon Peter Foss: You really do not understand.

Hon NORM KELLY: I had not intended to speak again on this clause but, given some of the comments made about the use of national parks by Aborigines, I will briefly relate some of my experiences of working in national parks and my encounters with traditional owners and other users. I refer in particular to the Rudall River National Park. The adverse impact in that park is clearly the result of extensive mineral exploration.

Hon Peter Foss: What a load of cobblers!

Hon NORM KELLY: I am not saying it is permanent damage. The extent of the damage in the Rudall River National Park can be seen on the lines traversing certain areas. I am not saying that it is unacceptable but, in comparison, the impact of traditional owners on that park is minimal.

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With regard to the preservation of native animals, I can remember once coming across an Aboriginal guy along the Tallawana track who wanted a lift to the Balfour Downs station. He had a rifle, the barrel of which was kept on with a piece of fencing wire, and three bungarras he had shot. As far as I know there is no shortage of bungarras throughout that national park. Of course, there is far greater damage in the national park from camels and goats that have been introduced and are widespread throughout the park. I was aware of certain desecration of Aboriginal sites as a result of people working in the mineral exploration field. Most of the people working in that area were reasonable and responsible, but I am aware that some people were not. That is having a far greater impact.

There is no rational reason for the boundaries of the national park. They are simply cadastral boundaries. I am sure that whoever plotted the boundaries had never been near the national park and simply drew some lines to try to encapsulate the Rudall River catchment area. A true boundary would be based on the river catchment area rather than straight lines on a map. The Labor Government found it convenient to change the boundaries so that the Kintyre uranium project, which previously was half a kilometre within the national park boundary, was excised.

Hon Mark Nevill: You have your feet on both sides of the fence.

Hon NORM KELLY: No, I do not. I am saying we must look at the basis of the whole management of the national park. I can understand why traditional owners are so disenchanted with the way in which white people go about their laws. The Kintyre deposit area is known by the traditional owners as bad country. They will not camp in the area for that reason. That knowledge and information is not passed on by the Department of Conservation and Land Management trying to educate other people about the history of the land. I do not have a foot in both camps, but I am saying it is convenient to remember how to make laws and the way in which to determine national park boundaries. We should make sure it is done for the correct reasons.

I see no reason that the objects in the new clause proposed by Hon John Cowdell should not be included. The clause is not just padding; it is an assertion that we value the role of the traditional owners of the land. As I said previously, I find it amazing that Western Australia is the only State that is not willing to acknowledge the traditional owners in land management legislation. It is a disgrace that, given this perfect opportunity to make an amendment, the Government is failing to do so.

Hon J.A. COWDELL: I can only concur with the statement of the Attorney General; that is, the addition of extra words in this Bill is no substitute for a change of government. I trust that real change will be effected by the latter course.

Hon MARK NEVILL: Nothing in this Bill precludes 75 per cent of the people working in national parks being Aboriginal. Nothing in this Bill or the Act prevents joint management of national parks. It is achievable and desirable under the management plans. There can be difficult situations in national parks when the traditional owners have not been living in the area for 40 or 50 years. Some families who identify with that particular area may be living 400 kilometres away in Derby or Broome. It may be that people living in Kalumburu have a more recent association with the land than the traditional owners. It might be better if they were part of the joint management. If these provisions are set up in statutes it may be necessary to include only the traditional owners, and a whole community may need to be built for them to exercise this right of joint management. We must work out a mechanism whereby these systems will work, and there is ample scope within the Act to accommodate Aboriginal involvement.

With regard to the other issue raised by Hon Norm Kelly, in 40 years I have never seen an Aborigine shoot a bungarra.

Hon Norm Kelly: They do.

Hon MARK NEVILL: They may do, but I have never seen it. They usually chase them and have great fun doing it, especially the children. I have seen vehicles with up to eight Kimberley bustards or bush turkeys in the back in areas where they appear to be extremely rare. The Aborigines manage to knock off large numbers of them, using guns of course. Sometimes I do not see this species for three or four years, but east of Esperance one year I saw about 70 in a paddock. I could not believe my eyes. I do not know whether they are a rare and endangered species, but I do not often see them. I do not know that the conservation ethic is evident. Certainly, the Aborigines understand everything about wildlife and ecology, and it is important that we tap into that in a very positive way. Nothing I have said is against the involvement of Aborigines; it is a question of how it is done so that it is productive.

The DEPUTY CHAIRMAN (Hon Derrick Tomlinson): The question before the Chair is that new clause 3 be inserted, and that clause has a series of objectives. So far we have heard a discursive debate about bungarras, bustards and the Mull of Kintyre! I suggest we return to debate on this new clause.

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Hon B.K. DONALDSON: Thank you, Mr Deputy Chairman, for that timely warning. The objectives of this proposed new clause remind me of feel-good, motherhood statements, which are described as mission statements by commercial enterprises. As soon as I read it, I thought Hon John Cowdell wanted to feel warm and fuzzy with this type of interpretation. He must feel an election coming on! I heard Hon Christine Sharp say there had been no consultation on the establishment of new national parks, which was recently announced. That is not correct and it is an outlandish statement to make. She should get hold of the facts before she makes statements such as that in this place.

Paragraphs (d) to (g) in this proposed new clause are of concern. I thought we were trying to get reconciliation in this country but, once again, an attempt is being made to create a division between indigenous people and the white population. That is sad. Hon Mark Nevill's statement is correct; the existing Act is sufficient to accommodate Aboriginal involvement. It is already happening. It is sad that once again an attempt is being made to separate the peoples of this nation. It is unfortunate. I cannot support this new clause.

Hon J.A. COWDELL: I must reject the assertion that this is creating a division within the community between black and white. As persuasive as Hon Bruce Donaldson may be on occasion, I cannot see that he has any basis for the argument with respect to paragraphs (d) to (g).

New clause put and a division taken with the following result -

Ayes (13)

Hon Kim Chance	Hon G.T. Giffard	Hon J.A. Scott	Hon Giz Watson
Hon J.A. Cowdell	Hon Tom Helm	Hon Christine Sharp	
Hon Cheryl Davenport	Hon Helen Hodgson	Hon Tom Stephens	
Hon E.R.J. Dermer(<i>Teller</i>)	Hon Norm Kelly	Hon Ken Travers	

Noes (14)

Hon M.J. Criddle	Hon Peter Foss	Hon Simon O'Brien	Hon Derrick Tomlinson
Hon Dexter Davies	Hon Barry House	Hon B.M. Scott	Hon Muriel Patterson
Hon B.K. Donaldson	Hon Mark Nevill	Hon Greg Smith	(<i>Teller</i>)
Hon Max Evans	Hon M.D. Nixon	Hon W.N. Stretch	

Pairs

Hon Ljiljanna Ravlich	Hon N.F. Moore
Hon Bob Thomas	Hon Murray Montgomery
Hon N.D. Griffiths	Hon Ray Halligan

New clause thus negatived.

New clause 17 -

Hon J.A. COWDELL: I move -

Page 24, after line 14 - To insert the following new clause -

17. Section 33B inserted

New section 33B is inserted after section 33A -

“

33B. Principles on which Department to act

- (1) In the performance of its functions under this Act the Department must take account of the principles of ecologically sustainable forest management.
- (2) In this section the “principles of ecologically sustainable forest management” means -
 - (a) decision making processes should effectively integrate both long term and short term economic, environmental, social and equitable considerations;

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- (b) if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation;
- (c) the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations;
- (d) the conservation of biological diversity and ecological integrity should be a fundamental consideration in decision-making;
- (e) improved valuation, pricing and incentive mechanisms should be promoted.

This new clause provides that in the performance of its functions under this Act, the department must take account of the principles of ecologically sustainable forest management. The definition of “principles of ecologically sustainable forest management” is the same as the definition that was added to this Bill by an amendment that was made elsewhere. While the Government accepted Labor's amendment requiring the Conservation Commission and the Forest Products Commission to abide by these principles, it would not accept the same amendment for the department. We hope the Government will now accept this amendment to ensure that the three bodies that will evolve from the restructure of CALM will abide by the principles of ecologically sustainable forest management. I commend the proposed new clause to the Chamber.

Hon PETER FOSS: This amendment has some serious logical inadequacies and is falsely conceived. Firstly, the department has many functions that have nothing to do with forest management, particularly ecologically sustainable forest management. Also, the department is obliged to act in accordance with the forest management plan to the extent that it is dealing with the forests. The commission will arrive at that forest management plan taking into account the principles that it is required to take into account; and it is then up to the department to execute that plan. Presumably, in view of the measures that have already been put in place, that forest management plan will take into account the principles of ecologically sustainable forest management. It is inherently wrong to then require the department to question the forest management plan just in case it does not follow those principles. The idea of a forest management plan that the department has an obligation to carry out is and always has been the scheme of the Act and is one of the things in which Western Australia has led Australia and the world. To now require the department to start some new questioning or setting of objectives will disturb the fundamental way in which the forests Act used to operate and the way this Act now operates. It is a bit of muddle-headed thinking.

Hon MARK NEVILL: I do not support the amendment. It reads wonderfully and seems to lack a few of the other clichés that we find in these sorts of statements. However, paragraph (b) intrigues me. It refers to lack of full scientific certainty. How can we ever get to a stage where there is no lack of full scientific certainty? I do not believe this amendment will add anything to the Bill.

Hon CHRISTINE SHARP: The provisions in proposed subsection (2)(b) are the precautionary principle, which is much detested by some members sitting close to me, who often speak in this place about this principle of environmental management. However, the precautionary principle is an important underpinning of sound environmental management, because in many cases one does not have full certainty of the irreversible effects until it is too late; for example, extinction is an irreversible process. Therefore, this new clause requires that the forest be managed in such a way that there is no possibility of a species becoming extinct. One known example is the “no regrets” principle with regard to greenhouse policy. I believe Hon Mark Nevill would agree that it is most important in these cases that the precautionary approach be adopted because its omission may have severe consequences. I agree with Hon Mark Nevill that this new clause and the previous new clause have much in common, because they involve a series of principles. Unlike the Attorney General, I like to have principles expressed in law, and I believe that by including this new clause under the functions of the department, the department will be required to adopt an ecologically sustainable approach to forest management. Therefore, I am pleased on behalf of the Greens (WA) to support the insertion of the new clause.

Hon NORM KELLY: The Australian Democrats support this new clause. Paragraph (c) states -

the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations;

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Part of the current pain that is being experienced by timber communities has been brought about by the failure to apply a precautionary principle. Under the existing forest management plan, timber is being logged at an unsustainable level. When the forest management plan was signed in December 1992, it was agreed that the timber industry could not easily accommodate a drastic reduction in sustainable yield and it would be too painful for the industry and the employees to have the industry downgraded in that way, so it was decided to allow unsustainable logging for a further 10 years to give the industry more time to adapt and prepare for the inevitable downward shift in available logging. It is a pity the industry did not take that on board fully, and that prior to the signing of the Regional Forest Agreement it was arguing once again for unsustainable cuts. Therefore, it is important to include this new clause in the Bill in order to prevent unsustainable logging practices from occurring in the future.

New clause put and a division taken with the following result -

Ayes (13)

Hon Kim Chance	Hon Tom Helm	Hon Christine Sharp	Hon E.R.J. Dermer (<i>Teller</i>)
Hon J.A. Cowdell	Hon Helen Hodgson	Hon Tom Stephens	
Hon Cheryl Davenport	Hon Norm Kelly	Hon Ken Travers	
Hon G.T. Giffard	Hon J.A. Scott	Hon Giz Watson	

Noes (14)

Hon M.J. Criddle	Hon Peter Foss	Hon Simon O'Brien	Hon W.N. Stretch
Hon Dexter Davies	Hon Barry House	Hon Derrick Tomlinson	Hon Muriel Patterson (<i>Teller</i>)
Hon B.K. Donaldson	Hon Mark Nevill	Hon B.M. Scott	
Hon Max Evans	Hon M.D. Nixon	Hon Greg Smith	

Pairs

Hon Ljiljanna Ravlich	Hon N.F. Moore
Hon Bob Thomas	Hon Murray Montgomery
Hon N.D. Griffiths	Hon Ray Halligan

New clause thus negated.

New clause 25 -

Hon NORM KELLY: I move -

Page 29, after line 4 - To insert the following new clause -

25. Section 55 amended

Section 55 is amended by -

- (a) inserting in subsection (1a) after the word "reserve" the words "must have an ecologically sustainable basis and";
- (b) by adding after subsection (2) the following subsection -
“
(2a) A continuation of a management plan beyond its expiry by operation of subsection (2) does not apply to a management plan where its purpose, or one of its purposes, is that described in subsection (1a)(c).
”

This amendment was brought about because of concerns of the Australian Democrats and environmental groups about the potential danger that a forest management plan can be extended beyond its original term, thus allowing the continuation of unsustainable logging or outdated silvicultural practices. In the light of my comments a few minutes ago it is imperative that we do not allow that to happen. If we decide to put in place a 10-year management plan we must stick to it. It is imperative that a new management plan be prepared and ready to take over once the original 10-year plan is due to expire. The amendment is in two parts. If this amendment were passed, section 55(1a) of the Conservation and Land Management Act would read -

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A management plan for an indigenous State forest or timber reserve must have an ecologically sustainable basis and shall specify the purpose, or combination of purposes, for which it is reserved being one or more of the following purposes . . .

From that reading we have no reason to expect that that would not be the case. However, in the light of the impact of section 55(1a)(c), "timber production on a sustained yield basis", it is imperative we make that a statutory requirement of this Bill. The second part of the amendment inserts a new section 55(2a). The Standing Committee on Ecologically Sustainable Development investigated this issue when it considered the Bill. As with many of the issues the committee inquired into, it did not reach a unanimous position. However, I note the ability for forest management plans to go far beyond their original expiry date, as highlighted by the industry spokesperson, Hon Bob Pearce, a former environment minister. He referred to the situation in New South Wales and stated -

. . . NSW is still working on forest management plans for 1980 for some forest areas because it has been unable to get agreement on a new one due in part to the convoluted nature of the process. That State just keeps working on the old forest management plan by artificially extending it.

New South Wales operates under different Statutes. However, the Democrats believe the provisions in the Bill will allow for that to occur in Western Australia as well. Counterarguments to this were put, but the committee's report refers to clause 58(2) of the Forest Products Bill that directly impacts on this provision. That clause states that a production contract referred to in section 58(1) has no effect after the relevant management plan has expired. This has been used as an argument, and is referred to in the committee report by Dr Wally Cox, the Executive Director of the Department of Conservation and Land Management. He said that this would prevent an artificial extension of the forest management plan. However, section 55(2) of the CALM Act reads -

A management plan shall state the date on which it will expire, unless it is sooner revoked, but notwithstanding anything in this section or in a plan, a plan which would otherwise expire shall, unless it is revoked, remain in force until a new plan is approved.

That allows the forest management plan to be extended if there is an inability to agree on a new plan. CALM is able to enter into contracts only at the expiration of a current forest management plan. At the moment all existing forest contracts will expire on 31 December 2003 in line with the expiration of the forest management plan. However, I have not been convinced by the arguments of the Government or of Dr Wally Cox that the Government would be unable to extend the forest management plan and enter into new forest logging contracts which coincide with the new expiry date of an extended forest management plan. They are the reasons the Democrats have moved this amendment. It will put more certainty into ensuring that logging contracts and forest management plans for the purpose of logging contracts cannot be extended beyond the original term of the plan.

Hon MARK NEVILL: This is the first time I have heard the expression "indigenous state forest". Is that the politically correct phrase for native state forest?

Hon Peter Foss: It sounds very politically correct to me.

Hon MARK NEVILL: The first part of the amendment to insert "ecologically sustainable basis" does not add anything to section 55(1a). The second part of the amendment that says that a management plan for timber production cannot be extended does not assist the Bill either. What Hon Norm Kelly did not say when he said a management plan had the ability to be extended is that it is required to be done on a sustainable yield basis. That proviso is built into that section. At the end of the day they are only words. We have been debating whether forests are harvested on a sustainable basis for the past 20 years. Some people are totally opposed to logging in indigenous state forests - I hope that is not different from native forests - and dispute that logging in these forests will be done on a sustainable basis. I do not believe the amendment will add anything to section 55.

Hon PETER FOSS: This is an interesting amendment. It is another example of the Australian Democrats trying to govern from Parliament. For people who seem to be so keen on the separation of powers - as between the judiciary and the Government - it amazes me how prepared they are on a national and state basis to write legislation that allows the upper House to govern. This amendment is particularly peculiar, because anyone who has ever looked at a forest management plan will know that it is about total management and not just timber protection. It relates to issues like protection from the encroachment of weeds. A large part of a forest management plan is to look after the forest to make sure it does not suffer some irreversible environmental damage. However, as soon as the management plan expires, CALM will not be allowed to step into that forest; it cannot do anything there. The amendment does not just say CALM cannot cut down the trees, it says the management plan no longer has effect. The Democrats are saying, "Blow the forests." As soon as a forest management plan expires and the Government cannot get the next forest management plan through a recalcitrant

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upper House, the Democrats will say to CALM, "Get out of there. Your management plan does not give you any authority." What a wonderful idea that is! What sort of Parliament would say that CALM is not allowed to look after a forest once a management plan has expired?

Hon Norm Kelly: That is why we refer to timber production.

Hon PETER FOSS: Section 55(1) refers to a management plan for any land, and there can be a conservation plan, a recreation plan, a timber production on a sustained yield basis plan, a water catchment protection plan or a plan for any other purpose being a purpose prescribed by the regulations. It refers to not only cutting down trees but also a management plan. Believe it or not, a management plan is all about management. It deals with every aspect of management. The way this amendment is worded CALM cannot look after the forest. If the piece of land happens to be a forest and the management plan came to an end CALM could not touch it. It could not stop the fire or conduct controlled burning. I suppose the Greens (WA) members would love that!

Hon Norm Kelly: It allows all that.

Hon PETER FOSS: It does not allow that at all.

Hon Norm Kelly: The management plan can continue on for section 55(1a) (a), (b), (d) and (e).

Hon PETER FOSS: No. Hon Norm Kelly does not understand; this is not about forests.

Hon Norm Kelly: It took me long enough to get this draft through the legal minds.

Hon PETER FOSS: Maybe Hon Norm Kelly did not tell them what he was trying to do. It does not say that it stops only for that purpose; section 55(1a) says that if it is being reserved for that purpose -

A management plan for indigenous State forest or timber reserve shall specify the purpose, or combination of purposes, for which it is reserved being one or more of the following purposes. . . .

Once section 55(1a)(c) is included as a purpose, that management plan is out; it is not only the part that talks about cutting down trees. The management plan in its entirety is out, and CALM cannot stop fires; it cannot do anything. Once that proposed new subsection is included the management plan is out. I am not suggesting that Hon Norm Kelly amend it because it shows the stupidity of the Democrats trying to run things. One of the silly things about this is that the Democrats love having the power, but they are not prepared to take the responsibility. The Democrats are prepared to take the power away from CALM to do its job, but if that forest is burnt down because nobody is taking the proper measures will Hon Norm Kelly stand up and resign. Will he say, "It's the Democrats' fault; we stopped them doing that"? Hon Norm Kelly will be gone many years before then. The Democrats continually try to interfere with the whole concept of government. Democrats love to govern from Parliament. It is important that the Democrats understand the roles of the people who have to manage the forest. The Democrats want to set the guidelines. They try to put these tricky little bits in to trip them up and push them in the back. They do all sorts of little things to upset the outcome. The Democrats have so many tricks they should be in a circus. The Democrats always have these tricky little legal points.

Hon Mark Nevill: You let the Democrats build their 750-bed prison.

Hon PETER FOSS: The Democrats were sensible there, because they understood the Government would build it anyway. They wanted to try to put some parliamentary controls around it. We were appealing to the Democrats' sense of trying to keep tabs on the Government. We know the Democrats' tricky little methods. They always want to trip people up and push them in the back, and we will not allow them this time.

Hon J.A. COWDELL: I note the concerns raised by the Attorney General with respect to the wording of proposed section 55(2a). It appears that in fact the management plan might encompass purposes set out in section 55(1a) paragraphs (a) to (e), but if one of them happens to pertain to paragraph (c), this may invalidate other worthwhile sections of the plan. Section 55(1a)(c) provides that timber production on a sustainable yield basis is an agreed part of the plan. This proposed new clause could clearly seriously disrupt the legitimate operation of an ongoing forest product industry. As I say, given the Labor Party's concerns about aspects of the management plan pertaining to paragraphs (a), (b), (c) (d) and (e), we will not support this amendment.

Hon NORM KELLY: A minor point was raised by Hon Mark Nevill about inserting "must have an ecologically sustainable basis" and that in paragraph (c) reference is made to a sustained yield basis. Something that is done on a sustained yield basis may not necessarily be an ecologically sustainable basis, which is about encompassing all the values of the forest to ensure they are not diminished simply to preserve timber production.

Hon Mark Nevill: Have we not separated out most of those representative areas already?

Hon NORM KELLY: That does not mean the ecological values cannot be kept within a working forest. That is why the Democrats are making that point. The Attorney General and Hon John Cowdell said that my

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amendment would rule out the ability to have a management plan that allowed for paragraphs (a), (b), (d) and (e) of conservation, recreation, water catchment protection and other purposes. My understanding and belief is that the Attorney General and Hon John Cowdell are wrong in their interpretation. If a forest management plan were to continue beyond its expiry date, it would have to delete all aspects of paragraph (c) which relate to timber production, but allow those other management practices for things such as conservation, recreation, and water protection in an extended forest management plan. If no agreement could be reached on timber production on a sustained-yield basis, this amendment would require that to stop at that expiry date. However, the Government would then be allowed to amend that plan and allow it to continue under the provisions of section 55(2). I will not labour the point. I was fully aware of the dangers of drafting this in a way that stopped the positive aspects of a management plan such as those promoting conservation and recreation. We therefore went through a lengthy process to draft an amendment to best enable those values and that form of forest management to continue. Without that the timber industry could continue with outdated silvicultural practices or others that are perhaps advantageous to the industry but not to forest management and conservation.

Hon MARK NEVILL: We are getting things out of perspective in this debate. As the Attorney General pointed out, part 59 is about management of land. We are going into very great detail about small areas of land. Throughout this State our crown land and pastoral leases, many of which are Aboriginal pastoral leases because they are not worked any more, are being invaded by about 20 major plants, such as mesquite in the Pilbara, parkinsonia in the Pilbara and Kimberley, rubber bush, Noongoorra burr, neem tree, leucaena, bellyache bush, thorn apple and Mexican poppy. Feral animals such as wild pigs can be found up and down the De Grey River and throughout the Kimberley. Camels, donkeys, dogs, foxes and cats are also found in large numbers in both areas. The vast part of our State is deteriorating greatly; yet we are focussing on these remaining pieces of forest. We are missing the big picture. I am surprised that you have not ruled me out of order, Mr Chairman!

Hon CHRISTINE SHARP: I support the new clause moved by Hon Norm Kelly. I have spoken several times about the difference between ecologically sustainable management and sustainable yield management, so I will not repeat my remarks. Proposed subsection (2a), on which most of the debate has focussed in the past few minutes, is a very thoughtful proposal by Hon Norm Kelly. That is why I am very pleased to be able to support it. I think it is thoughtful because it became clear during the Standing Committee on Ecologically Sustainable Development inquiry that, due to the difficulties with proposed section 60 on the finalisation of management plans and the so-called veto of the Minister for Forest Products over the content of the forest management plan, a serious potential existed for a deadlock to occur. Hon Norm Kelly has investigated further the ramifications for the management plan should such a deadlock occur.

This is not an unreasonable proposition. Section 55(2) of the Act clearly requires that a management plan that would otherwise expire shall, unless it is revoked, remain in force until a new plan is approved. It is very clear, therefore, that a deadlock could continue for some time and leave us in the invidious position of being lumbered with the current management plans that have proved to be contentious in many ways. I am very much looking forward to the end of 2003 when we can finally get on with some new ones. I would hate to think that due to a deadlock in Cabinet over some contentious provisions in the plan we would be saddled with the current management plans for some time after that.

New South Wales was cited as an example of a State that has a management plan that has been continuing under outdated plans for some years. If the Government intended to avoid the repercussions of the management plan being forced to expire, the insertion of the words in this new clause would enable the department to get on with the business of renewing the management plans. If the Attorney General disagrees with the provisions outlined in this proposed new clause, I imagine it will be very easy for him to move an alternative that would avoid a deadlock situation that would mean retaining a management plan that was out of date.

There are other ways this objective could be achieved. Unless the Attorney General wishes to come up with an alternative I will be pleased to support the amendment standing in the name of Hon Norm Kelly.

New clause put and a division taken with the following result -

Hon Derrick Tomlinson); Hon Peter Foss; Hon John Cowdell; Hon Norm Kelly; Hon Dr Chrissy Sharp; Hon Mark Nevill; Deputy Chairman; Hon Derrick Tomlinson; Hon Bruce Donaldson

Ayes (6)

Hon Norm Kelly	Hon J.A. Scott	Hon Christine Sharp	Hon Giz Watson (<i>Teller</i>)
Hon Tom Helm	Hon Helen Hodgson		

Noes (22)

Hon Kim Chance	Hon B.K. Donaldson	Hon M.D. Nixon	Hon W.N. Stretch
Hon J.A. Cowdell	Hon Max Evans	Hon Simon O'Brien	Hon Derrick Tomlinson
Hon M.J. Criddle	Hon Peter Foss	Hon Ljiljanna Ravlich	Hon Ken Travers
Hon Cheryl Davenport	Hon G.T. Giffard	Hon B.M. Scott	Hon Muriel Patterson
Hon Dexter Davies	Hon Barry House	Hon Greg Smith	(<i>Teller</i>)
Hon E.R.J. Dermer	Hon Mark Nevill	Hon Tom Stephens	

New clause thus negated.

Schedule 1 -

Hon PETER FOSS: I move -

Page 56, lines 24 to 27 - To delete the lines.

Page 56, after line 27 - To insert the following new subclause -

- (2) The Minister, by order published in the *Gazette* within 4 weeks of the commencement of this Act, may determine the positions (other than the positions determined under subclause (1) -
 - (a) the functions or duties of which related, immediately before the commencement of this Act, to the provision of administrative, policy or corporate services for the purposes of the performance of the duties referred to in subclause (1); and
 - (b) that the Minister considers appropriate for transfer to the Forest Products Commission.

This is to correct a drafting error. It would have compulsorily required the entire administrative staff to be transferred from the Department of Conservation and Land Management to the Forest Products Commission. That obviously was not the intent; it should be selective. These amendments, along with the deletions in amendment 5/S1, the insertion in 6/S1 and the consequential amendments in 7/S1 and 8/S1, allows the minister to decide what functions should be transferred.

Amendments put and passed.

Hon PETER FOSS: I move -

Page 56, line 28 - To insert after "(1)" -
or (2)

Page 58, lines 4 and 5 - To delete the lines.

These amendments are consequential.

Amendments put and passed.

Hon MARK NEVILL: I move -

Page 59, lines 12 to 18 - To delete the lines.

This amendment is consequential to an earlier amendment accepted by the Chamber which retains the name of the Department of Conservation and Land Management by deleting clause 10 of schedule 1.

Hon CHRISTINE SHARP: I reiterate that I have mixed feelings about the deletion of the name change provisions that Hon Mark Nevill has moved, both on this clause and earlier. By insisting on preserving the name of CALM, he will create a lot of disappointment within the department. From anecdotal evidence to which I am party, many officers in the department were looking forward to the name change and to a new era that did not bear the weight of public conflict they have had to bear for some time. This Bill was an opportunity for them to have a fresh image. It is a pity that Hon Mark Nevill is robbing them of that opportunity. On the other hand, given that many of the provisions of the Bill are seriously inadequate, it is perhaps a good job that those officers have this disappointment because they need to understand that this is not the new era that certainly the

Hon Derrick Tomlinson); Hon Peter Foss; Hon John Cowdell; Hon Norm Kelly; Hon Dr Chrissy Sharp; Hon Mark Nevill; Deputy Chairman; Hon Derrick Tomlinson; Hon Bruce Donaldson

conservation movement was hoping for. Therefore, although it is sad, it is a fitting nomenclature and fitting that the name will remain the same. Therefore, I shall probably support the amendment.

Hon J.A. COWDELL: The Labor Party has already recorded its opposition to the retention of the CALM name but, as the name has been retained and the change of name to the Department of Conservation rejected, this merely becomes a consequential amendment. In that case we will not oppose it.

Amendment put and passed.

Schedule, as amended, put and passed.

Title put and passed.

Bill reported, with amendments.