ENVIRONMENTAL PROTECTION AMENDMENT BILL 2002

Second Reading

Resumed from an earlier stage of the sitting.

MRS C.L. EDWARDES (Kingsley) [4.05 pm]: Prior to the luncheon suspension I was talking about the new object and principles of the Environmental Protection Act as outlined in proposed section 4A. Paragraph 4 of that proposed section is headed "*Principles relating to improved valuation, pricing and incentive mechanisms*" and states in subparagraph (3) -

> The users of goods and services should pay prices based on the full life cycle costs of providing costs and services, including the use of natural resources and assets and the ultimate disposal of any wastes.

This is one of the principles for the protection of the environment of this State for which people are to have regard. This principle means not only that any application for assessment will have to include the full life cycle costs of providing those goods and services but also that the users of those goods and services will have to pay for those costs. That is an extraordinary principle to put into the Environmental Protection Act. I do not have an issue with the principle. The principle is fine. However, when we seek to incorporate such a principle in legislation, the community is entitled to know whether it will have an impact in the form of increased prices for goods and services, and businesses are entitled to know whether it will have an impact on their accounting processes and be yet another impost on them.

I will raise some other issues during consideration in detail, a number of which the member for Vasse has already raised. One issue is the clearing process. I suggest that is not an easy determination for any minister in any Government to make. A person may not have cleared his land for decades, yet all the people around him have cleared their land. It may then be determined that that area requires a greater level of conservation and it is declared a no-go zone for clearing. That will mean that if that person then makes an application to clear his land, he will be prohibited from doing so, even though all the people around him have cleared their land and can use it in a productive way.

Mr B.K. Masters: Because he did the right thing and did not clear his land he is then penalised for it.

Mrs C.L. EDWARDES: Yes. The critical question is if there is a public benefit in that person not clearing his little square of land in that area of cleared land, who should pay for that?

Mr M.W. Trenorden: Particularly if that person cannot maintain his income. Many of these people need to increase their acreage in order to maintain their income.

Mrs C.L. EDWARDES: Yes, particularly when the economy goes up and down, as it does. We talked earlier about the principle of the triple bottom line; namely, social, economic and environmental factors. The sustainable process and the sustainability principle often override the other two elements of the triple bottom line; namely, the social and economic consequences of the decision. I will go through the clearing process in some detail, because having had the opportunity of making a number of decisions in that area I know how difficult that can be. I know also some of the concerns of individual landowners who believe they have a right to do what they want with their land, yet because of some of the bigger issues, particularly salinity, they are being penalised compared with other people. The critical issue is that no compensation is available for people who are not able to use their land in a productive way even though all the people around them have that opportunity because they cleared their land at a much earlier stage.

During consideration in detail, I will also focus on the appeals process. The Minister for the Environment and Heritage currently conducts the appeals process under her portfolio, and she intends to continue to do so in the future, which is in direct conflict with the Minister for Planning and Infrastructure's position of Caesar appealing unto Caesar. Legislation is still before the House that will take the Minister for Planning and Infrastructure out of the town planning appeals process and give that responsibility to the tribunal. Having done that job for a number of years, I think that is recognised as a good process. Over the past few weeks I have consulted with people in the industry and asked them whether they have any concerns with the current appeals process, and they have told me that they do not.

[Leave granted for the member's time to be extended.]

Mrs C.L. EDWARDES: They are able to discuss their issues with the minister, and other people are also invited to express their views, opinions and ideas. The individual can make a very big difference. People often mention how cooperative Derek Carew-Hopkins is. He is willing to enter into discussions with people.

On one occasion when I was the Minister for the Environment, I had to make a decision about Cape Range. In the room with me were highly acclaimed scientists from the Museum, universities and conservation groups. It was interesting that we were unable to reach a satisfactory decision on the matter because there were so many

different views. I can understand the difficult situations that the Minister for the Environment and Heritage might have to face. I wonder where the appeals system will fit into the new state administrative tribunal. I understand that it is excluded from the Government's thinking at this stage. However, through a briefing of the member for Vasse, I understand also that that decision might be reviewed later. I wonder whether it is an exercise in futility to change the appeals process now if it will be the responsibility of the state administrative tribunal in the future.

A major issue has always been third party appeals. Under the Environmental Protection Act, anyone can appeal an environmental decision. Not all people who argue against third party appeals have understood that. The fee for an appeal used to be only $10; I do not know whether the minister has increased it. That extremely low fee enabled anybody to appeal against an environmental decision. All of those decisions are publicly advertised and are available on the Internet; it is a very open process. Various elements of the environmental appeals process are valuable. I would hate that process to be replaced by a system that is not as communicative, timely or cost-effective as the current system. Even after the change of government and the change of ministers, the system still works just as effectively.

I will take some time during consideration in detail to refer to the codes of practice. The environmental legislation currently provides for environmental protection policies. EPPs, as they are known, are a very strong form of regulation. It is not well known that they are not legislated for in Parliament. An EPP is a prime tool of environmental legislation. I wonder how codes of practice will be put in place and dealt with. Why would the Government use codes of practice instead of EPPs, which have proven to be a very strong tool to protect the environment in this State?

I have regularly debated the definition of "environmental harm", although I do not mean in the sense of offences being opposed; that was not the issue. I wanted to provide a definition of environmental harm for people who have the power and approval to carry out work that might fall within the definition of the two offences that flow from it. That matter was the subject of some considerable debate, and I know it still is for the current Minister for the Environment, having read her second reading speech.

Environmental legislation provides for a series of defences. That means there is always a concern that people may be tied up in the court, whether it is the Government in defence of one of its proposals, or a small player. The litigants will have to pay a lot of money to defend their rights. A better way to proceed, which was being explored by the previous Government, is to provide exceptions to the rule. In that way, people would not have to provide a defence if they had approval to legitimately conduct whatever they were doing. In that case, there would be no offence; therefore, there would be no opportunity to be taken to court by a third party. To provide for defences recognises that environmental harm may have occurred. However, people will have to defend any action against them in court, which costs money and takes time.

During consideration in detail, I will raise other matters, including the removal of the statute of limitations for tier 1 offences. Why has the Government gone down that path and totally removed the statute of limitations? The period of limitation could have been extended. I will also refer to the introduction of performance bonding. That overlaps with other legislation. I will explore how that interacts with the Mining Act and the Land Administration Act, because there appears to be some duplication. The land clearing provisions are also duplicated, often with the Soil and Land Conservation Act. I want to know how that issue will be dealt with. There are protocols and memorandums of understanding; we have all been there and done that. Sometimes they work and sometimes they do not; however, certainty for the community is what we need to provide. That is what we attempt to do with any legislation. The issue then is how environmental harm will impact on land clearing.

I will finish my contribution to the second reading debate with a couple of issues. First, this legislation does not address the interaction with planning. When we left government, discussions were taking place between the Department of Environmental Protection and the then Ministry for Planning about which of the changes that had been put in place several years ago were working and which were not working. It was identified that a number of issues related to easing the process were not working as well as they should be. Amendments were being discussed at that time. I ask the minister to tell the House where those discussions are at currently.

Secondly, on a couple of occasions I have heard the Premier talk about what the Gallop Labor Government will do with the environmental legislation. On another occasion I have heard him refer to the penalty provisions. Although there are a couple of changes to the penalties, as well as a couple of new offences, including the change to the definition of environmental harm and its flow-on effect, I remind the House that the legislation that was introduced in 1997 was at the leading edge of offences and penalties, particularly when compared with the penalty amounts in other States. Although it has been said that Western Australia is always at the leading edge of environmental considerations, that was a major step forward. In some respects it was a major leap for the Government to require such penalty amounts.

I also want the minister to address the aspect of waste management in the new legislation. When we left government, I had released a paper titled "Towards Zero Waste". An energetic group of 15 members put together that major document. I had given them the challenge of providing some proposals that people could read and then say, "Wow, that is exactly what this community needs." That challenge was met and this fantastic document was released. I would like to be reassured that the legislation is progressing towards zero waste. There is no need to talk about halving, reducing or minimising waste; I do not want to hear that language any more. We want zero waste. There is a use and a value for everything. The Bill indicates that the principles relating to improved valuation, pricing and incentive mechanisms are new principles. That is also one of the aspects highlighted in the "WAste 2020" report. The issue I have with that is how the minister will seek to apply that principle across the board for any application that is made. By including it in that way, we will not bring the community with us, in particular the business community and the users of all those goods and services. The problem I have is that the minister may undermine the good intent that is meant by that principle. I will explore that issue during consideration in detail.

MR M.W. TRENORDEN (Avon - Leader of the National Party) [4.23 pm]: In the interests of ensuring that the environment is protected for future generations, the National Party will not oppose this Bill. However, members of the National Party will raise with the minister certain areas of concern. We also will move some amendments to the Bill, and I will indicate what those amendments will be so that they do not come as a surprise to the minister.

I also thank the minister for the briefing we received today; it was timely. We indicated to the minister's staff the areas with which we have concerns and those parts of the Bill we will seek to amend. As I am sure the minister understands, this Bill will be watched very closely by people in regional and rural Western Australia. There is a great deal of nervousness about these sorts of Bills.

Mr P.D. Omodei interjected.

Mr M.W. TRENORDEN: There is huge concern in other States, particularly New South Wales, about the direction in which this legislation has moved. People in regional areas and those involved in the industries in those areas have been watching the outcomes of similar Bills in other States. They have been very concerned about the practices in other States. I do not want to put words into the minister's mouth - I hope my comment is correct - but I understand that she does not want to go down the path that New South Wales has gone down. However, I suggest that the minister says that clearly to rural and regional people. I am not talking about people in agricultural areas; I am talking about industries, miners and developers. People are talking about how this Bill will operate, because they tend to make assumptions. I have heard people make the assumption that they will not be able to carry on with the practices they expect to be able to carry out in good conscience. The real issue for Western Australia and the people working in those industries is that probably 90 per cent or more of people will do the right thing. A small percentage of people will not do the right thing, as always. However, we cannot focus on the 90 per cent of people who will do the right thing; we need to focus on the percentage of people who will not do the right thing. That is the message we need to send to people.

I do not like the slant of the Bill; it seems to have a negative or defensive angle. Other than rewrite the Bill, I cannot do much about that. The areas with which we have serious reservations include the interpretation, as I have just outlined, and the practical application of the legislation, and not just now but over a period. Circumstances that the minister and I have not thought about - certainly not in a week of discussing the Bill - will always arise and court cases will take place. In this vast area of human activity, items that will surprise the minister and me will always pop up. It is those areas that we are worried about, and we will raise those issues during consideration in detail.

We also have concerns about the impact on the rights of landowners, miners and industry. We want to deal with that issue because it is very important. Members of the National Party are strongly pro-development; however, we want to give it the right environmental pitch. We want people to be able to get on with their lawful and traditional practices.

We are surprised by and have a high degree of concern about the lack of time lines in the Bill, and we will move an amendment seeking to include time lines in the Bill. I ask the minister to explain why time lines were not included. In our briefing, we were told that time lines have a two-fold outcome: if the time line cannot be met, the activity must be either proved or opposed. That is not the real world. We ask the minister to give consideration to a measured, considered and accountable process in which the time line can be extended, but not on the basis that Fred Nurk has been on holiday for a month and has not had time to do it, or he is unsure about the consequences of his actions. We want these time lines to be implemented on a practical and logical basis and not established by individuals or some third party. We are not saying that person has to be a judge, but it should be someone who is accountable in that process. Why not introduce time lines so that the process can be extended? At least people will then know what they are doing. The most important thing is that people should

know where they stand at the beginning of this process. They should either win or lose at the beginning of the process and not have to still be arguing about it in four years, which currently is the case for some.

Dr J.M. Edwards: Are you talking about only the land clearing aspect or the whole Bill?

Mr M.W. TRENORDEN: No, more than land clearing. If a decision has been made to take some sort of action, there should be a time line, because people have experienced the pain of a lack of certainty. It does not matter so much if it is BHP Billiton or Len Buckeridge, but it does matter if it is Mr and Mrs Jones or a small farmer or property developer to whom money and time are exceedingly important. They must have some certainty. Can the minister give me some assurance that she will ensure that money does not prevail; that is, if people have money they will get through more quickly than if they do not have money? We want to make sure the minister gives that issue considerable thought. We do not want the thousands of small people out there to be even more disadvantaged by the legislation because they do not have the funds. There should be equity and a balance between agencies, the people who are promoting their proposals and those who will be affected. As much as we agree with the minister's push to protect the environment, this must be done with a balance of equity for all the people involved.

I wish to ask the minister two things about land clearing. The minister should institute an extensive awareness program. I know the Government has said it will cut advertising and those sorts of things, but it would be in everybody's interests if there were a good, solid educational program that was not just a matter of going to the Western Australian Farmers Federation, the Pastoralists and Graziers Association of WA or the Chamber of Minerals and Energy. They may represent only one-third of all farming people. The minister should ensure the program captures everyone, because this is a substantial change. Members of the National Party will not criticise the Government for spending money on promotion and advertising to get that message across, because the issues are important.

We are substantially concerned about fast-tracking the grey areas - not the areas that the minister can say are likely to be covered by the Bill, but those areas that which we have not thought about but which will occur. We need to be sure, particularly in the early days before the codes of practice are established, that people have a right to fast-track their position within days so their livelihood can continue. I understand the minister is moving to establish a code; over a period that will establish practice and provide clarity. It will also provide clarity early for known activities. However, many things will pop up that the minister has not thought about, and a few smart people will try to use the legislation to their advantage. We want to know that the minister has thought this process through and that there will be quick resolution of these grey areas until the practices and procedures have been bedded down. I ask the minister to respond to those issues during her reply.

We will be introducing amendments about time lines, and I ask the minister to think about them. Most of the pain will be felt in the area of uncertainty. We know that some people have been bankrupted by this process, and that is grossly unfair. If people are not allowed to clear, they should have been told on day one, or certainly after a short period. That is why I argue that there should be a time line. We will not argue about a reasonable mechanism to extend the time lines, but it would be disappointing to have no time lines. If that provision is not in the legislation we will criticise the Bill, and I think we will get support.

We want an assurance from the minister that the activities will occur concurrently. If a miner, developer or farmer is taking action against a number of agencies, there must be a guarantee that those actions can be taken concurrently and one matter does not have to be concluded before moving to the next. That is a critical area, and I ask the minister to comment, because if it is the minister's intention to ensure that issue is covered, we would like her to say so during her response.

We are also concerned that applicants not be held in limbo because of an agency's inability to resolve an issue. It is not acceptable for an agency to put someone on hold because of a difficulty within that agency. Again, that is why we will be asking for time lines. An agency cannot take its time to make up its mind what its position will be and impose pain on the individual who is waiting for an assessment. We will argue that the agency must conclude its part of the assessment process and make the result clear to the proponent. The minister is aware that in other parts of the world facilitators are used for these processes. If there is a need for a facilitator to make sure that an agency is kept at speed, that process should be implemented.

During the briefing, one area that did cause some concern was the expression about a monetary contribution to a fund. We are worried about the ability to pay and about the fund growing as time goes by and as people see what those dollars are used for. In relation to proposed section 51I(2)(b), we want the minister to give some assurance that the monetary contribution will be based on a reasonable agreed amount between the parties and that the mechanism will not favour those with the ability to pay. We are concerned that some people may be able to resolve their situation by coming up with money, and those who do not have money will not be so fortunate. Even if that tendency were to develop over a number of years, we would be concerned about it. I seek an extension of time.

[Leave granted for the member's time to be extended.]

Mr P.D. Omodei: What is the member's point of view on the requirement to fence and those things?

Mr M.W. TRENORDEN: A provision will allow things to be done in lieu. Money can be put aside as compensation for what cannot be done. That is easy to do if people have money. I will speed up because I will not get through this in 15 minutes, although I will have an opportunity at the consideration in detail stage to say more.

I was very disappointed to hear the minister talk about drawing a line in relation to compensation payable. Even though we totally agree with the compensation provision, it does not refer only to money; it covers a range of possibilities. It can be provided through discounted local government rates or remuneration for the role of custodian, for example.

Mr P.D. Omodei: Tax rebates.

Mr M.W. TRENORDEN: Yes. Compensation covers a broad spectrum and we expect a broad spectrum to apply. We were very pleased when John Anderson announced this review and we ask the Government to participate in it.

Dr J.M. Edwards: I am sure we will.

Mr M.W. TRENORDEN: I was disappointed to hear the minister say that no compensation would be paid.

Dr J.M. Edwards: I am probably defining it too narrowly. We are certainly looking at a range of other measures.

Mr M.W. TRENORDEN: I make that point because compensation covers a range of things. If society says a person cannot use his land, he should be paid for it. I strongly support that view but not in a blanket way. We would also want it to be dealt with in a prescriptive way. That will require a fair amount of debate.

Mr P.D. Omodei: I think we will finish up with a class action against the Government one day on property rights and compensation for land that is being taken out of farmers' control. There will be no alternative.

Mr M.W. TRENORDEN: Yes. The Department of Mineral and Petroleum Resources will have control of mining tenements. No doubt the minister will expect us to ask whether this Bill will in any way impinge on that process. We want her assurance that that will not be the case.

In her second reading speech the minister refers to "a level playing field where everyone is treated the same - government and private, city and country, small business and big business". We want the minister to abide by that statement. We would like an indication of how the minister will achieve the balance between big business and small business, and financial and non-financial aspects. We desperately hope she will achieve that aim.

The National Party will seek to remove the penalties from the Bill. On the day penalties are included in a Bill, they become obsolete. It is bad drafting practice to include penalties in Bills. It means that the Bills must be reviewed at some stage for that purpose alone. The National Party will seek to have the penalties incorporated in delegated legislation.

The National Party is concerned about the "big stick" approach. Neither the minister's second reading speech nor the Bill provide reassurance and positive reinforcement. I am sure the minister has argued that incentives will lead children and adults to the right place before a big stick will. This is no different. We would like the minister to consider how assistance and incentives can be included in this process. I understand the big stick will always be available, but I hope it will not be the major enticement in the process.

The Bill introduces the concept of environmental harm and refers to material environmental harm, serious environmental harm, damages, cost, threshold amounts etc. We would like some clarification of environmental harm which, in itself, is not an offence. The explanation in the Bill is not clear. We are not sure precisely what the minister means by environmental harm. The offences of material harm and serious environmental harm need to be clearly understood by the public. The Bill contains a range of approval processes that serve as defences against the charge of material harm or serious environmental harm. We will ask the minister to explain those approval processes at the consideration in detail stage.

I hope that the public scrutiny process will allow the minister to address the concerns of industry groups about the Bill, and that she makes that clear to us. During that period, people may approach her, and I ask her to let us know if that occurs. This Bill represents substantial, long-lasting legislation and we would like to know about people's concerns.

Like other speakers, we are concerned about normal day-to-day sustainable farming, mining and commercial practices. Part 5 of the Bill allows the minister to require financial assurance as a condition of approval or exemption under the Act. The National Party seeks assurances that the financial assurance requirement under proposed section 86B in the Bill will be imposed not as a matter of course but only in extreme cases in which

high environmental risk is involved. The obvious reason for that is the issue of who has money and who does not have money. We want to know how the minister will apply that. We understand that people will have to provide funding for activities other than their current activities. However, we do not want that requirement to provide financial assurance up-front to impinge upon economic activity.

The National Party will seek to amend the proposed time lines in the Bill. Before the consideration in detail stage we would like the minister to think about whether she can accept flexible time lines. It would be fantastic to reach an agreement because she would satisfy a fair slice of the National Party's concerns about this Bill if we could deal with time lines. We would like her to think about what would be reasonable with or without time frames in relation to assessment by the EPA, land clearing or appeals. We need to know what the minister thinks are reasonable time frames.

We are nervous about removing the statute of limitations. We understand from the briefing, and we would like assurance from the minister, that she is considering removing the top end of the range of the statute of limitations. The last thing we, or the minister's relations in Beverley, need is someone to provide an obscure reason 20 years into the future that something has occurred. These are the kinds of areas that can get muddied and legal action can be taken and the surprise decision can occur. We would like some assurance from the minister on how that will work, why it is in the Bill and how it can be limited to what has been outlined in the Bill. The National Party is concerned that its scope may widen. If there is no cut-off period, the likelihood is that people's memories will fade and papers will get lost, so all those things are important.

The National Party will debate issues of interpretation of the practical application of the Bill, and I am sure the minister has received representations from people on those issues. We are concerned and will talk to the minister about the Bill's impact on land holders, miners and industry and about time lines. As I have said several times, I would like some feedback on why time lines were not included in the Bill, and what would be a reasonable time line. The minister would admit that many of the delays that are experienced are caused by the lack of time lines. People need to know where they stand early in the process not only for their own peace of mind but also because they do not have infinite amounts of money. It is all right for the top end of the market, but not for the bottom.

I am also concerned about the lack of a drum muster, which is loosely related to the Bill, and I ask the minister for her indulgence. Chemicals are used across the State, and the number of empty drums is building all over the State, not just in the wheatbelt. With products like glyphosate, it might be necessary to go through the same sort of delivery regime that applies to fuel, in which the tanker would go to the property and drop the glyphosate in sizeable containers. We know that people are using glyphosate in quantities of 1 000, 2 000 and 5 000 litres. Would it not be better for the environment to reduce the number of drums? I acknowledge that for marketing reasons chemical suppliers want different types and shapes of drums, so that their product can be recognised by the consumer on the retail floor. However, people who buy in bulk can get a price advantage, and there would be fewer drums, if permanent containers could be located on farms, and the producers would have the responsibility of keeping them clean. If they did not, they would be foolish. The farmers who did not use those volumes would still be able to purchase 20, 50 or 100 litre containers from their retailers. It would limit some of the manufacturers' marketing opportunities, but the drum muster is extremely serious, with large numbers of drums lying around the countryside.

I was concerned to hear that somebody had gone through the wheatbelt and drilled holes in these drums so they cannot be used by anyone. I guess that is so a competitor cannot use their drums. However, it makes the drums pretty well useless for anybody else who may have wanted to pick them up. We have to reduce the ever-increasing number of drums. I would like to discuss the possibilities with the minister at some stage. One possibility, instead of having tanks dropped on their properties, is that farmers could go to the producer. That would be my second choice, because it would be harder to convince the retailer of that option. When consumers ask retailers for a product, there is some competition, but if they rang the supplier and said they wanted a certain brand of glyphosate delivered - as with Caltex, BP or whatever - there would be a substantial environmental benefit and it would also save consumers some money.

MR J.P.D. EDWARDS (Greenough) [4.55 pm]: I support the Bill. I seek some assurances from the minister in her reply. I will direct my remarks on this Bill to land clearing. I understand that I probably do not have very long to speak this afternoon, so I will keep my comments reasonably broad.

Historically, since Western Australia has been a State and has developed over the years, farming communities were encouraged in the early years, and certainly in the past 60 or 70 years, to clear land, and were paid to do so. An enormous amount of land was cleared right up to as few as 15 years ago, perhaps even 10 years ago. However, the whole issue of land clearing has changed to one of farmers being penalised if they clear land. There are farming families that have been around for generations - I can think of some in my own electorate who have been there for six generations - whose fathers, grandfathers and great grandfathers before them cleared the

land and were paid to do so, and everybody thought it was quite right and proper. Things have changed, and rightly so. Rules, regulations and legislation have been brought in to make sure that does not continue.

I seek leave to continue my remarks at a later stage.

[Leave granted for speech to be continued at a later stage.]

Debate thus adjourned.