ENVIRONMENT COURT BILL 2019

Introduction and First Reading

Bill introduced, on motion by **Hon Diane Evers**, and read a first time.

Second Reading

HON DIANE EVERS (South West) [11.12 am]: I move —

That the bill be now read a second time.

The Environment Court Bill 2019 creates a new independent, expert court and reforms the current environmental appeals system. Western Australia has a unique environmental appeals system. Unlike other Australian states, appeals are not decided by a specialist independent tribunal or court, instead going through a convoluted and non-transparent bureaucratic process that ends in the minister determining the appeal—the same person in charge of making final decisions about these approvals. Our statutory Office of the Appeals Convenor is an effective body; however, under the current system appeals are conducted behind closed doors, excluding the public from these important deliberations on environmental decision-making, and without a clear framework for the process, leading to confusion about the scope and nature of appeals.

We have seen that the government's proposed reforms of the WA Environmental Protection Act 1986 do not address issues with environmental appeals. This is despite calls for third party appeal rights reform from many in the community, including conservation groups, the National Environmental Law Association and the Law Society. We know from looking to other jurisdictions' experience that an environment court does not open the floodgates of disputes. The level of disputes remains low; however, those disputes can be resolved through a clear, transparent and expert process that in the end delivers greater certainty for proponents and access to justice for the community. Although governments may wish to retain maximum control over these decisions, political sensitivity should not be allowed to outweigh the democratic and legal rights of citizens to participate in the process. Our system needs reform to modernise and improve the current appeals system and ensure these important questions of environment and development can be decided in an informed, independent and open process in which all sections of our community can have confidence.

This bill reforms the existing environmental appeals system through the creation of a new, independent and specialist body, the environment court. The environment court acts as both a merits appeal tribunal and a court for judicial review of applications under existing environmental legislation. To carry out both of these functions as expertly and efficiently as possible, the environment court is to be made up of both judges, being legal practitioners of at least eight years' experience, and specialist members with experience in relevant fields such as planning, environmental science, cultural heritage and natural resource management. These roles will be appointed by the Governor, keeping the environment court independent and free from undue political and administrative interference. The efficiency and efficacy of the environment court is of utmost importance. Rather than being required to take these matters through the Supreme Court, the environment court will offer a mechanism for the just and straightforward resolution of environmental disputes. The bill requires that the court act according to equity, good conscience and the substantial merits of cases before it, rather than being bound by technicalities and legal forms that cause undue expense and delay and that most of the community cannot understand without significant legal assistance.

The bill makes specific provision for people to appear before the court with or without legal representation, maximising access to justice regardless of access to lawyers. The court will also operate transparently, including through conducting public hearings. The current environmental appeals system is administered behind closed doors, excluding the public from participation and visibility over these key decisions. A further point of fundamental importance is the requirement for the environment court to have regard to the public interest. This is not a requirement in the current environmental appeals system, which lacks these significant principles on which appeal decisions should rightly be made when the community is affected.

As mentioned, the environment court will deal with both merits appeals and judicial review of decisions and conduct under environmental legislation. In the latter category, the court will take over some jurisdiction from the Supreme Court, deploying its specialist knowledge along with legal experience to resolve these cases more efficiently. In terms of merits review, the other key aspect of the bill is the repeal and reform of part VII of the Environmental Protection Act 1986, which currently deals with environmental merits appeal. Replacing the convoluted and complicated administrative process, the new part VII clearly sets out what can be appealed and by whom. This is broken down into publicly reviewable decisions, being those that are apt to affect the environment and public interest at large, such as Environmental Protection Authority reports and ministerial approvals, and limited reviewable decisions, being those that relate more directly to a person or corporation such as refusal to grant approvals. Compared with the current framework, there are more decisions that would be available for review by the environment court, reflecting the demands of the community for greater accountability over environmental decision-making. In determining an application for merits review, the environment court is empowered to stand in

the shoes of the original decision-maker and effectively substitute its own carefully considered decision, remit the decision to the original body or simply make a formal declaration as to the state of the law.

The environment court can be a powerful institution for the efficient and effective resolution of environmental disputes. The combination of judges and technical experts, a transparent, flexible and practical process, the requirement to consider the public interest, and the inclusion of useful and reasonable powers will significantly improve the administration of environmental decision-making. The community demands and deserves an appeals system that is clear, independent, expert and equitable. The environment court and associated amendment of the WA Environmental Protection Act 1986 is a necessary reform for environmental justice in WA.

Pursuant to standing order 126(1), I advise that this bill is not a uniform legislation bill. It does not ratify or give effect to an intergovernmental or multilateral agreement to which the government of the state is a party; nor does this bill, by reason of its subject matter, introduce a uniform scheme or uniform laws throughout the commonwealth.

I commend the bill to the house and table the explanatory memorandum.

[See paper 3454.]

Debate adjourned, pursuant to standing orders.