

## RIGHTS OF NATURE AND FUTURE GENERATIONS 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)** [11.04 am]: I move —

That the bill be now read a second time.

The Rights of Nature and Future Generations Bill 2019 will provide a formal legal recognition of the rights of nature and future generations. Although corporations have been provided with artificial legal personality, our legal system continues to ignore and contradict the rights and systems of nature—the first law. Our current system sets out the processes and requirements through which activities that harm nature and future generations may be undertaken. Failing to appreciate the laws of nature, and instead seeking to impose ourselves upon it by construing the environment as property or as part of a bureaucratic process, has created serious problems, such as climate change, which our current legal frameworks are completely unable to address. Other jurisdictions, such as New Zealand, India, Ecuador and Bolivia, have moved to legally enshrine the rights of nature. There is a growing realisation that our current systems have failed and communities are demanding change. They include organisations based in Australia, such as the Australian Earth Laws Alliance, through which academics, lawyers, students and First Nation people are advocating for the recognition of the rights of nature.

Rights of nature laws do not prevent development and industry outright, but they do provide a necessary and reasonable means by which the community can hold to account those activities that interfere with the very existence and vitality of our ecosystems. Our legal system gives a voice to corporations when nature, ecosystems, native species and future generations are voiceless.

The bill will provide access to justice through a simple and equitable mechanism for the rights of nature and future generations of Western Australians to be formally recognised and actionable in the courts. The introduction of offences in this bill, which clearly prohibit significant interference with these rights by governments and corporations, provides recourse for nature and future generations both legally and in practical terms through restoration and payment of damages. Legislating for the rights of nature and future generations gives recognition and visibility to those whom our legal system has ignored and shut out for so long.

The bill is designed to secure the rights of nature and of current and future generations, and recognises that First Nation people have a special right and responsibility to country and a unique role with respect to these rights. The bill aims to begin the shift in our legal system away from artificial constructs of corporate personality and bureaucratic processes, and towards respect for the first law. These principles are provided as the objects of the legislation. The bill sets out a clear and modest framework of rights for nature in clause 6, and for present and future generations in clause 7. Nature is accorded the right to exist, flourish and be restored, and present and future Western Australian generations will be provided a right to a healthy environment, including clean air and water. The bill also includes the right of nature and people to a safe climate system and vibrant community of life. These are necessary and basic bottom lines; indeed, it is difficult to see how the other elements of our legal system, society and economy can even function without these conditions.

To reflect the importance of these rights, strong penalties for significant violations are provided for in the bill. Individuals found to have significantly interfered with the rights of nature and future generations can be penalised through a fine of \$500 000 and five years in prison. For corporations, the fine imposed will be \$5 million. Further, directors of corporations that contravene these rights could be found to have personally committed those same offences. With these strong penalties, we can ensure that serious environmental damage does not become a mere cost of doing business.

It is still important to note, though, that the offence in the bill is for “significant interference”, and not merely everyday activities that might have some effect on nature. The rights in this bill attach to nature, ecosystems and generations as a whole, rather than to individual elements of these things. That means that the rights and offences framework in the bill will operate when it is most needed—to provide redress for those activities that interfere with and undermine the rights of nature and future generations to such a significant degree that they compromise existence and other fundamentals like clean air and water, and a safe climate.

As part of this redress, the bill also provides for damages to be payable. These damages will ensure that those who undermine the rights of nature and future generations are liable to remediate and restore those rights. It is a basic application of the polluter-pays principle, making those who profit from environmental harm accountable for the costs to the community and nature. In addition to the offences for violations of these rights, the bill creates an express duty on the state to implement and enforce the rights of nature and future generations. Under this provision,

the government is required to take positive action to ensure that nature is able to flourish and be restored, and that the people of Western Australia can enjoy clean air and water, a safe climate and the incredible and unique biodiversity that we are so proud of. This should be a minimum standard that our governments are held to, but unfortunately they so often fail the community in these matters. The bill provides a simple mechanism to hold the government to account in this public duty.

The rights of nature and future generations are held by all. The bill includes an open standing provision that enables any person to bring proceedings in enforcement of these rights, such as an action for an offence or an injunction to prevent activities in breach of the legislation. The standing provision also gives particular recognition to First Nation people through an additional right to be joined to any proceeding.

The rights of nature and future generations should be inalienable and fundamental in our legal system. Other legislation that might sanction significant harm to these rights should therefore be subject to this bill. This is further reflected by an invalidating provision in the bill which stipulates that permits and authorisations for activities that are inconsistent with rights of nature and future generations are of no effect. Governments should not have the power to sanction significant degradation of the environment, such as species extinctions as we saw in the approvals for the Yeelirrie uranium mine, over-allocation of water for coalmining in Collie or uncontrolled greenhouse gas emissions from the massive LNG projects in our north west that are fuelling the climate crisis. Nature is of course a common and public asset to be enjoyed by the whole of the community for generations to come. But more profoundly than this, nature does not abide by our artificial legal constructs of impact assessments, conditions and approvals. Statutory permits to violate first laws will not protect from the natural consequences of these activities. This bill provides a simple mechanism for communities to protect nature and themselves from irresponsible government and corporate action. This bill will correct some of the imbalance in our legal system, which accords greater rights to corporations than nature, setting out clear and reasonable bottom lines for holding governments and corporations to account for environmental harm. It is a necessary step in protecting our environment for current and future generations of Western Australians, giving a voice to the voiceless.

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 3453.]

Debate adjourned, pursuant to standing orders.