BIODIVERSITY CONSERVATION BILL 2015

Council's Amendments — Consideration in Detail

The following amendments made by the Council now considered —

No 1

Clause 7, page 18, after line 10 — To insert —

biodiversity conservation conditions means conditions or requirements relating to the conservation or protection of biodiversity or biodiversity components;

No 2

Clause 7, page 18, line 23 to page 19, line 2 — To delete the lines and substitute —

act if —

(a) it is —

(i) an act that is authorised by a relevant authorisation or is otherwise authorised or required under a State agreement; or

(ii) an act that is a likely consequence of an act referred to in subparagraph (i);

and

(b) all biodiversity conservation conditions that apply to or in relation to it are complied with, whether those conditions are imposed under the relevant authorisation, or State agreement referred to in paragraph (a)(i) or imposed in some other way.

No 3

Clause 37, page 32, lines 17 to 32 — To delete the clause.

No 4

New Clause 37, page 32, line 17 — To insert —

37. Minister to obtain scientific advice on listing decision

Before making a listing decision the Minister must obtain and have regard to advice from one or more persons considered by the Minister to have scientific expertise relevant to the matter to which the decision relates.

No 5

Clause 42, page 36, lines 8 to 24 — To delete the clause.

No 6

New Clause 42, page 36, line 8 — To insert —

42. Parliament's approval required for certain proposals

(1) In this section —

proposal means —

(a) a proposal to give an authorisation under section 40; or

(b) a proposal to amend an authorisation given under that section.

(2) This section applies to a proposal if, in the opinion of the Minister, the authorisation or amendment the subject of the proposal could be expected to result in the threatened species to which the proposal relates becoming eligible for listing as an extinct species in the near future.

(3) Despite subsection (2), this section does not apply to a proposal if the purpose of the taking or disturbance to which the proposal relates is to establish a breeding colony or a population in cultivation so that the threatened species can be reintroduced into the wild at a later time.

(4) The Minister must not give the authorisation or make the amendment the subject of a proposal to which this section applies unless the proposal —

(a) has been laid before each House of Parliament; and

(b) has been approved by a resolution passed by both Houses of Parliament.

No 7

Clause 47, page 40, lines 3 to 15 — To delete the clause.

No 8

New Clause 47, page 40, line 3 — To insert —

47. Parliament's approval required for certain proposals

(1) In this section —

proposal means —

(a) a proposal to give an authorisation under section 45; or

(b) a proposal to amend an authorisation given under that section.

(2) This section applies to a proposal if, in the opinion of the Minister, the authorisation or amendment the subject of the proposal could be expected to result in the threatened ecological community to which the proposal relates becoming eligible for listing as a collapsed ecological community in the near future.

(3) The Minister must not give the authorisation or make the amendment the subject of a proposal to which this section applies unless the proposal —

(a) has been laid before each House of Parliament; and

(b) has been approved by a resolution passed by both Houses of Parliament.

No 9

Clause 151, page 95, line 26 — To delete "fauna;" and substitute —

fauna (other than fish or pearl oyster);

No 10

Clause 151, page 96, line 3 — To delete "fauna;" and substitute —

fauna (other than fish or pearl oyster);

No 11

Clause 153, page 98, line 15 — To delete "fauna;" and substitute —

fauna (other than fish or pearl oyster);

No 12

Clause 153, page 98, line 24 — To delete "fauna;" and substitute —

fauna (other than fish or pearl oyster);

Mr A.P. JACOB: I move —

That amendment 1 made by the Council be agreed to.

Mr C.J. TALLENTIRE: I am anxious to speak to these amendments after we gave such careful deliberation to the legislation when it came through this place. We were assured by the minister that the legislation then before us was on a level that meant that it was absolutely watertight, but what have we found? Thanks to the good work of my colleague in the other place Hon Adele Farina, we have found that there are serious deficiencies in the legislation, as indeed we had already indicated. This first amendment relates to the definition of "biodiversity conservation conditions". We have seen that there are some clear problems with this definition. The government has attempted to improve the bill by adding this definition, but it really leaves it very open to all kinds of problems about who actually sets the biodiversity conservation conditions. That will be my first question to the minister, if I can just elaborate a little further. The proposed insertion reads —

biodiversity conservation conditions means conditions or requirements relating to the conservation or protection of biodiversity or biodiversity components;

We are being asked to insert that into a new version of the bill, called a bar-2 version, on page 18, where there is a list of other definitions if my memory serves me correctly, including a definition of "relevant authorisation". The proposed amendment is to be inserted after line 10, under clause 7, "Lawful authority". The definition already there is for "relevant authorisation", but the amendment is for a definition of "biodiversity conservation conditions". I am very concerned about these biodiversity conditions coming under the heading "Lawful authority". These biodiversity conditions could be from anyone—any agency—but not necessarily an agency with expertise in biodiversity conservation. The issue the minister will have to address is whether an officer from the Department of Mines and Petroleum could be deemed to be from a lawful authority and his or her biodiversity conservation conditions were acceptable? If that is the case, I think we have a serious problem because officers are clearly hired by the Department of Mines and Petroleum for their expertise in matters relating to minerals and petroleum; they are not hired because they are biodiversity conservation experts. By leaving the definition of "lawful authority" so open, we are making it possible for someone to describe themselves as a lawful authority and therefore have their agency's conditions imposed on a particular project, when they might be lacking scientific rigour. That issue is going to keep coming up in the course of this consideration in detail stage. They could be lacking the expertise or the technical knowledge required to know what is really at issue. I am very concerned to know how the minister will constrain or define who can place these biodiversity conservation conditions.

[Interruption.]

Mr C.J. TALLENTIRE: I will pause while an unusual sound is heard in the chamber! My laptop has just been removed from me as well!

I need the minister to provide some clarity on this. The definition of "biodiversity conservation conditions" has to be made clear, and the minister needs to tell us from where these definitions can come. That is the issue before us. Is it possible that officers from the Department of Mines and Petroleum or the Western Australian Planning Commission could be the providers of biodiversity conservation conditions? Is it possible that somebody from the Department of Fisheries could be the author of biodiversity conservation conditions? If so, I think we have a serious problem. The minister has drafted this legislation on the run and the evidence is there.

Mr D.J. KELLY: I would like to hear more from the member for Gosnells.

Mr C.J. TALLENTIRE: We have evidence that the minister is writing this legislation on the run; the minister had to agree to amendments in the other place and now this legislation is back here. If the minister had allowed us to do the due diligence, and—I will keep coming back to this point as well—if the minister had consulted the community from the outset, the minister would not be in this position of a bill coming back here with amendments because the minister would have had these issues properly aired and discussed. At least a couple of hours will need to be spent here this afternoon because the minister did not do that up-front consultation. That is typical of the way this legislation has been dealt with, because now we see that it has had to come back here after the other place has considered it. Despite our objections to aspects of it when it came through this place initially and the minister was not open to any of the amendments that we put forward, we now find that we have to amend it because, thanks to the work of colleagues in the other place, particularly Hon Adele Farina, the government has realised that this legislation has some fatal flaws. I put it to the minister that it has many other fatal flaws, but these are the amendments that the minister has agreed to and, therefore, we are constrained in debate to stick to these amendments—and, of course, we will dutifully stick to the issues that are open for discussion.

I refer now to the point around biodiversity conservation conditions. How can the minister have something so open-ended? Clause 7 is boldly headed "Lawful Authority", yet there is no clarity about what a lawful authority is. When we read further on in the clause, we see —

> ***relevant authorisation*** means a licence, permit, approval, consent, registration, exemption or other authority issued, granted, conferred or given under —
>
> (a) this Act; or
>
> (b) the CALM act; or
>
> (c) the Environmental Protection Act …
>
> (d) the Fish Resources Management Act …
>
> (e) the Pearling Act …
>
> (f) an enactment prescribed for the purposes of this definition.

What does "an enactment prescribed for the purposes of this definition" mean? It is very broad; hence my fears that the author of a biodiversity conservation condition could be just about anyone in the employ of the public service. Perhaps the minister will tell me that it can even have authorship beyond the public service. I hope the minister will clarify that point—but I suspect that this is further evidence of flawed legislation.

Mr A.P. JACOB: The short answer to the member for Gosnell's question is that this could not apply to somebody under the umbrella of the agency of the Department of Mines and Petroleum, nor could it apply to someone with the Western Australian Planning Commission. It is important to note that lawful authority arises only when that relevant statute has the formal ability to provide for approvals and conditions that relate to the taking of flora and fauna, and most statutes in this state do not do that.

The "relevant authorisation" definition very clearly spells out those acts as they stand. It refers to the CALM act the Environmental Protection Act, the Fish Resources Management Act or the Pearling Act. Only those four acts have a biodiversity conservation condition–making power and this simply seeks to recognise and authorise those. Paragraph (f) contains an option for "an enactment for the purposes of this definition". That anticipates that at some point in the future there may be another act with a biodiversity condition–making power; it may come from the environmental portfolio or the fisheries portfolio. It is highly likely that it will come from the fisheries portfolio. They would have to be statutes that have the power to provide approvals and licences relating to the taking of flora and fauna, and that is very rare.

Mr C.J. TALLENTIRE: That is reassuring if that is the minister's intent, but we have to deal with the wording before us and the minister has not pointed to me anything here that constrains the agency involvement in the way that the minister is suggesting. The minister has agreed that the Department of Fisheries could be involved. Is the minister suggesting that the limitation on the agencies and the legislation that they administer is defined in this lawful authority clause in the bill? Where is the constraint that the minister is referring to?

Mr A.P. JACOB: The clause when read in its entirety is quite clear in constraining it to those four acts—the CALM act, the EP act, the Fish Resources Management Act and the Pearling Act. It applies only to relevant statutes that have the ability to provide for delegated approvals and conditions. I mean "delegated" as in not through the Biodiversity Conservation Bill. Those acts themselves provide for the ability to approve and provide conditions on the taking of flora and fauna. Someone must be operating under that relevant authorisation to set what is considered to be a biodiversity conservation condition for the purpose of this clause.

Mr C.J. TALLENTIRE: Paragraph (f) states —

> an enactment prescribed for the purposes of this definition.

Where, when and how does the prescribing of an enactment occur?

Mr A.P. JACOB: It would be prescribed under regulation at such a point as these houses of Parliament passed another relevant statute that had that formal ability to approve the taking of and the conditioning of the taking of flora and fauna. It simply anticipates such changes coming through.

Mr C.J. TALLENTIRE: Where does this appear? What does this regulation look like? At the moment, just as long as somebody says that they are acting on an authorisation that is coming under an enactment to prescribe it for the purposes of this definition, they can write one of these biodiversity conservation conditions. Where is the constraint on that?

Mr A.P. JACOB: It is an enactment. It has to go through Parliament and be approved as an act.

Mr C.J. TALLENTIRE: The minister seems to think that that is obvious or something. It is absolutely not clear at all. Paragraph (f) states —

> an enactment prescribed for the purposes of this definition.

Where will that occur? The minister has suggested that it will occur in regulations. How will that be transparent to Parliament? Where will that occur? It is not in place at the moment, so how can we trust that? We want to know what legislation today provides for somebody to write a biodiversity conservation condition.

Mr A.P. Jacob: It is only those four bills at this point in time.

The DEPUTY SPEAKER: Minister, stand when you respond, please.

Mr C.J. TALLENTIRE: The minister's view is that it is all locked down, it is tightly defined and there is no way that somebody from, say, the Western Australian Planning Commission could suddenly be involved in drafting these biodiversity conservation conditions, yet the minister is saying that he is leaving it open. This door is wide open to all kinds of other agencies just so long as the minister decides that he wants to allow them to write a biodiversity conservation condition. That would mean that that would go through. The minister is leaving the door open to any other agency to do this job of writing biodiversity conservation conditions so long as it is convenient to the minister.

I imagine there would be a great temptation with things such as the green growth plan, as the minister describes it—it should be more correctly called the strategic assessment—before government with all the conditions involved there. I imagine that the minister has a great temptation to have officers in other agencies sign off on the biodiversity conservation conditions relating to the preservation of banksia woodlands or the Carnaby's

cockatoo habitat or any of the environmental factors around the place. The minister would be very happy to do that because it would take the responsibility off him.

I think that anyone who reads this legislation would want to know how the authorship of biodiversity conservation conditions will be constrained. It would mean that only people with biodiversity expertise ever do that job. The minister has not provided any guarantee that that will be the case. Can the minister please tell us how he will guarantee that only people with biodiversity conservation expertise will be responsible for the authorship of these conditions?

Mr A.P. JACOB: I am not sure that the member for Gosnells understands that where clause 7 states "an enactment prescribed for the purposes of this definition" it means an act of this Parliament. It would have to go through this Parliament and be approved as an act of Parliament. Only then is there the ability to prescribe it for the purposes of this bill. The member used the example of the Planning and Development Act through the Western Australian Planning Commission. That act would have to be amended to contain the ability for biodiversity conservation setting, which would have to come through Parliament. If it were to be agreed by a future Parliament that that is a course of action it seeks to follow, this provision would simply allow for it to be prescribed as a bill into that table.

Mr C.J. TALLENTIRE: Would it not be better to remove proposed paragraph (f) and should a situation arise in the future in which somebody operating under the Planning and Development Act wants to provide a biodiversity conservation condition, then, at that stage, the legislation could be added to this list rather than leaving this gaping hole in the legislation, proposed paragraph (f)? Why would the minister not require that there be an amendment to the legislation to add additional agencies?

Mr A.P. JACOB: It is because that would be a bureaucratic waste of time. If any other legislation were to be amended, or even a new bill was to be introduced into this place—either in this Parliament, which is unlikely, or any future Parliament, whatever its make-up—if it were to have been drafted in such a way that it has the formal ability to provide for approvals and conditions that relate specifically to the taking of flora and fauna, that bill could be prescribed to have that biodiversity conservation condition related to it. However, the bill has to have that ability to perform the function. The Planning and Development Act does not and neither do any of the acts that currently sit under the Department of Mines and Petroleum, as far as I am aware.

Mr C.J. TALLENTIRE: The minister is saying that he thinks it would be inconvenient to have to bring an amendment bill to this place to add another piece of legislation to this list, following on from the current list that includes: this proposed act, the Conservation and Land Management Act, the Environmental Protection Act, the Fish Resources Management Act and the Pearling Act. If, say, we wanted to add the Planning and Development Act to the list, an amendment would be required to be brought to this place. The minister thinks that would be a waste of time; rather, he wants to have an all-encompassing clause—a catch-all in proposed paragraph (f)—that allows him to make any other legislation, at any other time, the source of a biodiversity conservation condition. That hardly inspires anyone with confidence. There are all sorts of other reasons that other pieces of legislation operate, and quite rightly so, but they do not operate for biodiversity conservation. For example, a state agreement act does not operate for biodiversity conservation; it provides some sort of surety between a private entity and the state of Western Australia. How can we be sure that the minister will not somehow add in, through subsidiary legislation, that "an enactment prescribed for the purposes of this definition" might be a state agreement act with a company that is obviously not interested in biodiversity conservation—it is about extractive resources or something—and, clearly, it would not have the expertise to be involved in this? Why would the minister not remove proposed paragraph (f) so that we can be sure about what we are dealing with?

Mr A.P. JACOB: Member for Gosnells, I think we are more or less going around in circles. As I said, this allows for that possibility into the future. I stand by the clause.

Mr D.J. KELLY: Could the minister explain this to me. The clause refers to the Fish Resources Management Act and the Pearling Act. Legislation has already been passed in this house to abolish both of those bits of legislation and replace them with the Aquatic Resources Management Act. I understand that the Aquatic Resources Management Bill is now being debated in the Legislative Council. Can the minister explain to me how the two bits of legislation will work? Will the Aquatic Resources Management Bill have a consequential amendment when it is passed in the other place to amend this legislation, or will the new Aquatic Resources Management Act be an enactment prescribed for the purposes of this definition? I know that it is a bit complicated because we are passing new legislation that refers to legislation that this house has already moved to abolish. I wonder whether the minister can explain how those two bits of legislation will work together.

Mr A.P. JACOB: The member for Bassendean is correct; the Aquatic Resources Management Bill is progressing. If this act were to be progressed first, it would need to contain some amendments because when bills are drafted, they cannot be drafted in anticipation of what a future bill that overlaps it may or may not have

in it as it runs through Parliament. Some amendments would be made in the Council, if that is the way it falls through. However, all the amendments that apply to this clause have been instated to essentially ensure that the overlap is minimised, wherever possible, and there is a clear delineation between the two acts in their operation. That is the intent of these amendments to the Biodiversity Conservation Bill. Similarly, there may well be some minor amendments to the Aquatic Resources Management Bill to ensure that each bill clearly does what it is intended to do and to minimise that overlap, wherever possible.

Mr D.J. KELLY: The minister is right. In the debate around this bill and the Aquatic Resources Management Bill, one contentious issue amongst a number of stakeholders was how the two bills would interact. So that I can convey it to the stakeholders who have spoken to me about it, if we pass this legislation, will the Aquatic Resources Management Bill that is currently before the Legislative Council need to have further amendments made to it to accommodate this legislation, or will this legislation need to be amended at a later date? From the minister's answer, I am not sure of the process that needs to be followed. Will further amendments be made to the Aquatic Resources Management Bill or will further amendments be needed to the Biodiversity Conservation Bill afterwards?

Mr A.P. JACOB: My understanding is that the Aquatic Resources Management Bill is likely to need minor amendments that will allow it to recognise that the Biodiversity Conservation Bill has become act.

Mr D.J. KELLY: Will the Biodiversity Conservation Act not also need further amendment because it refers to the Fish Resources Management Act and the Pearling Act? Once the Aquatic Resources Management Bill has passed, those two bits of legislation will have been abolished. Will this legislation also need further amendment?

Mr A.P. JACOB: No. I believe the intention is that consequential amendments will address those references within the Biodiversity Conservation Act.

Mr D.J. KELLY: Sorry, will consequential amendments be made to this bill or the Aquatic Resources Management Bill?

Mr A.P. Jacob: No; they will be in the Aquatic Resources Management Bill.

Mr D.J. KELLY: Have the amendments currently been drafted and are they included in the bill? Are there consequential amendments in the current Aquatic Resources Management Bill to give effect to this, or will further amendments need to be introduced in the Legislative Council?

Mr A.P. JACOB: As I said in my opening comments, they cannot actually be presented as consequential amendments to the Aquatic Resources Management Bill until such time as the Biodiversity Conservation Bill 2015 is enacted through this place. Yes, two very significant bills are going through this place at the same time. Should this one pass today, which I very much hope it does, it will provide us with a trigger for those consequential amendments to recognise the existence of the Biodiversity Conservation Bill 2015.

Mr C.J. TALLENTIRE: I have a further line of inquiry. Minister, the various pieces of legislation are detailed in that provision. I am going to leave aside the clause 7(1)(f) open door because I think that is just impossible to contemplate, really. It makes for all sorts of possibilities that are too difficult to contemplate. I will deal with paragraphs (a), (b), (c), (d) and (e). Officers operating under those paragraphs may well have expertise in certain areas, but who actually is authorised to be the author of one of these conditions? These are majorly important pieces of advice—of obligation—and I would be really pleased if the minister could outline some of the sorts of biodiversity conservation conditions he is already contemplating. Perhaps the minister can give me an example of one, and then he can demonstrate to us the officer level and the role in the public service that an officer drafting these conditions would have. It really is important that we understand exactly how these conditions will be authored, because they are often the only hope for a species that is about to be taken and suffer some incredible upheaval. The solution to it that the government will present is that there is a biodiversity conservation condition. If there is some sort of property development around Busselton that might result in the displacement of western ringtail possums, a biodiversity conservation condition will be written to decide or outline how that animal is going to be translocated or how we are going to ensure that there is not going to be a reduction in population numbers. That is the sort of thing that I am keen to hear more about. I know that the minister must have in mind examples of biodiversity conservation conditions. I would like the minister to tell me of an example, and at the same time indicate who in the Department of Parks and Wildlife will be authoring these or who in the Department of Fisheries, operating under the Fish Resources Management Act, would author a biodiversity conservation condition, so that we can test whether the right people are authoring these very important conditions.

Mr A.P. JACOB: I think we are well and truly debating the relevant authorisation part of clause 7. I propose that we vote on the biodiversity conservation clause—the amendment before us—and then move to this one, just for the sake of, I guess, tidiness on the way through.

Mr C.J. TALLENTIRE: I think this issue of who writes these biodiversity conservation conditions is very much the issue that is before us right now. I do not understand why the minister does not want to answer my concern; I am giving the minister the opportunity. The minister is across these sorts of issues in his portfolio; he can give me some examples of a biodiversity conservation condition that he is contemplating.

The DEPUTY SPEAKER: Thank you, member for Gosnells. I think the minister has a relevant point in that under amendment 2, the question of the authorisation is canvassed, whereas amendment 1 relates to a definition. I think the member's question can be put under the next amendment.

Question put and passed; the Council's amendment agreed to.

Mr A.P. JACOB: I move —

That amendment 2 made by the Council be agreed to.

Mr C.J. TALLENTIRE: This is another amendment to clause 7 on page 18. It reads —

Clause 7, page 18, line 23 to page 19, line 2 — To delete the lines and insert —

act if —

(a) it is —

(i) an act that is authorised by a relevant authorisation or is otherwise authorised or required under a State agreement; or

(ii) an act that is a likely consequence of an act referred to in subparagraph (i);

and

(b) all biodiversity conservation conditions that apply to or in relation to it are complied with, whether those conditions are imposed under the relevant authorisation, or State agreement referred to in paragraph (a)(i) or imposed in some other way.

Madam Deputy Speaker, I took your advice and moved on from the definition, even though, of course, under that definitional clause there was that opportunity to realise the constraints that surround that definition. But here we have it clearly before us that we are contemplating a situation involving a state agreement. As I mentioned earlier, a state agreement is a device—a piece of legislation—that seeks to give a degree of certainty to a developer, usually a resources industry developer proponent, about the support of the state for their project, and as such is a piece of legislation between the state and that developer. Why are we contemplating a state agreement act that has the potential to have authorship of a biodiversity conservation condition?

Mr A.P. JACOB: Even as a minister, we come under this Parliament, so whatever this Parliament passes, or may choose to pass in the future, we are required to adhere to as a matter of law. State agreements pass through this Parliament, so I am simply recognising that this Parliament holds a higher level of authority in these things.

Mr C.J. TALLENTIRE: Is the minister suggesting that the people who draft state agreements or, more particularly, the people who operate under state agreements—they, of course, are people in resources companies—have the competency to draft a biodiversity conservation condition?

Mr A.P. JACOB: It would depend on the containing of that head-making power in the state agreement act. But if it were contained within that state agreement act and if it were passed by this Parliament, yes, we would recognise it under the Biodiversity Conservation Bill 2015. Ultimately, all these things are up to this Parliament. That is simply all we are making accommodation for.

Mr C.J. TALLENTIRE: What would that look like in a state agreement act that comes before this place? Is the minister suggesting that some special clause would be in there that would alert a future environment minister or shadow environment minister to the fact that the state agreement act empowers a private company of some description to write biodiversity conservation conditions? Would it be explicitly there, or do we just have to take it that any state agreement act that comes through this place could allow for the writing of biodiversity conservation conditions?

Mr A.P. JACOB: No, member for Gosnells, it would have to be explicitly there. I use section 62 of the Fish Resources Management Act, "Management plan, miscellaneous provisions in", as an example. Section 62 reads —

Without limiting section 56(3), a management plan may —

…

(k) regulate the handling, release, disposal or possession of any bycatch in the fishery, including by requiring the use of bycatch reduction devices;

It is a very specifically spelt out head of power. Only the four acts that are listed under this clause currently provide that head of power. It will need to be clearly spelt out in the statute. Should it come through this place in such a way that it is clearly spelt out, there is the opportunity to recognise that under our bill. I also make the point that biodiversity conditions or relevant authorisations only apply, or do not apply, in the case of listed threatened species or threatened ecological communities.

Mr C.J. TALLENTIRE: I thank the minister for raising that. I would like the minister to detail how biodiversity conservation conditions do not apply to threatened species or threatened ecological communities, but they can apply to anything and everything else. Is that the case?

Mr A.P. JACOB: They apply only to the taking of flora and fauna, as is detailed in the bill.

Mr C.J. TALLENTIRE: The minister said only where there is a taking of those animals or plants. The minister is suggesting that a biodiversity conservation condition would be written only by a person who is operating under one of these acts. I said during the debate on the amendment to clause 1 that we need to know the level of competency of the people who are writing these biodiversity conservation conditions. It is one thing for a person to work under one of these pieces of legislation; it is quite another to know that person's skill level. There are some wonderful people operating at very senior levels who could say that they are working under the Conservation and Land Management Act. However, that does not necessarily mean they have expertise in the drafting of biodiversity conservation conditions. A person who does not have any zoological knowledge might be called upon to author a translocation plan for an animal that they know very little about. This raises a key issue: how can we be sure that the authors of these conditions have the necessary expertise?

Mr A.P. JACOB: The same as we can be sure right now, member for Gosnells, because this is occurring right now under the four acts that are listed here. The clause as it is written does not envisage any widening of the scope of those acts. That is currently happening under those four acts. In fact, under those four acts, there is not any curtailing of those biodiversity conservation conditions to threatened species or threatened ecological communities. This amendment actually curtails, to a certain extent, the delegated decision-making authority of those persons, if we want to call it that—although it is not really delegated, because they operate under their own statute, which gives them a clear head of power to do it. Currently, there is no restriction on whether they do it for flora and fauna that is not listed. This bill will restrict the decision to flora and fauna that is not listed.

Mr C.J. TALLENTIRE: Minister, that does not solve the problem that there is no transparency. The public will have no inkling about a person's expertise or level of competency. Surely the minister should be seeking to allay public concern by ensuring that the process is transparent and people can understand the circumstances to which the biodiversity condition has been applied, where the peer review has come from, what process has been used, and what expertise from universities and elsewhere has been called upon. How can people have any confidence about this process? I contrast that with an assessment under part IV of the Environmental Protection Act and the public environmental review that is currently out for comment for the Helena and Aurora Range—Bungalbin—proposal. The potential biodiversity conditions are outlined in that document. People can read those conditions. They can see which scientists contributed to the compilation of that document. They can see which botanists—it might be Ecologia Environmental Consultants or whatever—contributed to the translocation plan for a tetratheca species or whatever example we want to take. People are then able to be part of that process by putting in a submission and challenging it. The minister is proposing that that be done behind closed doors. The minister might describe a person as an expert, but they might not have expertise about the particular animal or plant that is the subject of the biodiversity conservation condition. However, the public would never know that. Where is the transparency in this process, minister? Why is the minister not insisting that there be transparency around the authorship of these biodiversity conservation conditions?

Mr A.P. JACOB: I think that in many ways the member for Gosnells has answered his own question. I am glad the member used a part IV EPA act process as an example of public engagement that he would hold up. This clause prescribes the Environmental Protection Act as one of the bills that could be used in the operation of that process because it has its own clear head of power to enable such a process to be undertaken. This bill simply recognises that.

Mr D.J. KELLY: I am interested in the wording of the proposed amendment to clause 7 to insert a new paragraph (a)(ii), which states —

an act that is a likely consequence of an act referred to in subparagraph (i);

Firstly, why it is necessary to insert those words? Secondly, why have the words "likely consequence" been used rather than words that are more rigorous, such as "inevitable consequence"? Obviously, if something has been authorised under one of those pieces of legislation—if we accept the minister's reasoning—we do not want people to run foul of this legislation. However, I do not, as the first port of call, understand why the minister needs to extend that to say it is not just acts that are authorised, but acts that are a likely consequence of an act that has already been authorised. That, to me, means that what is authorised extends beyond what is authorised to occur under those four pieces of legislation. If the purpose of this legislation is to permit only activities that have already been authorised under that legislation, why is it necessary to go beyond that in this bill by including paragraph (a)(ii)? Secondly, if there is good reason to go beyond those authorisations, why has the minister chosen to authorise acts that are simply a "likely consequence" rather than acts that are an "inevitable consequence", or even a "necessary consequence", or something that is a bit more robust? If a person is authorised to do A, and that is likely on the balance of probabilities—which is another way of putting it—to result in something else happening, the minister could take action to ensure that the act that is a likely consequence of A does not happen. However, under this legislation, that person will be let off. The person been authorised to do A, and the person is now permitted to also do B, just because it is a likely consequence. The person could have been authorised to do A, and B is a likely consequence, but if the person does X, Y and Z, it is not going to happen.

I do not understand why the minister has gone beyond what is authorised under those acts and has broadened it with this new paragraph; and, secondly, why the term "likely consequence" is used instead of something that is inevitable or more stringent or rigorous.

Mr A.P. JACOB: In the first instance, proposed paragraph (a)(i) is constrained to any acts that are authorised by a relevant authorisation. That is quite tight and relates to four specific acts referred to in clause 7(1). Nobody has concerns about the Environmental Protection Act, nor do I think there are any concerns that the Conservation and Land Management Act and the Fish Resources Management Act are among those acts that allow an action to be taken. In order to operate a biodiversity conservation condition under relevant authorisations, a clear head of power is required under one of those acts. If this Parliament has given that head of power and there is a likely consequence that may impact on a species that is covered by the Biodiversity Conservation Bill—again, I stress, this does not relate to a threatened species or a threatened ecological community because those are excluded and it is not listed as a threatened species—if there is a likely consequence to that species as a result of those actions, but if it was performed under authorisation of the Fish Resources Management Act, that action is not liable for prosecution under this bill.

Mr D.J. KELLY: The minister has just explained the consequence of this amendment, but he has not explained why it is necessary under this legislation to exclude from prosecution acts that are a likely consequence of another act that has previously been authorised. I am trying to think of an example. An act could be authorised under the Fish Resources Management Act, but because of the limits of that legislation, the authorisation deals only with the aquatic environment, but it impacts on a terrestrial species—maybe what has been taken under the act is a land-based animal that is a food source for something—so the Fish Resources Management Act would not necessarily take that into account. It seems to me that by extending this authorisation this clause gives people a get-out-of-jail-free card. If something that has been authorised under another act has a consequence that would otherwise be unlawful under this legislation, and it is something that could be avoided—it is not inevitable and it is not unreasonable in the circumstances to take action to avoid that consequence—then just because it is a likely consequence, the minister allows it to happen and there is no prosecution. If we accept the minister's premise in proposed paragraph (a)(i) that acts authorised under other legislation should be exempt from prosecution, paragraph (a)(ii) goes one step further. Just because something has been authorised under another piece of legislation, an act that would be unlawful under this legislation is, in effect, permitted simply because it is a likely consequence. I get back to the point that it does not mean it is an inevitable consequence or that to avoid it would be unreasonable, impractical or whatever. They get a get-out-of-jail-free card just because it is a likely consequence. There are a lot of consequences in this world, especially in the environmental space, that can be avoided if remedial action is taken. I completely understand the minister's logic, even though the opposition may not agree with it, as to why he wants to prevent people from being prosecuted under this legislation for acts that are authorised under other legislation, but I do not understand the need for paragraph (a)(ii), which is this "likely consequence", which is a get-out-of-jail-free card.

Mr A.P. JACOB: Member for Bassendean, I give the example of fisheries that are authorised under the Fish Resources Management Act. Under proposed paragraph (a)(ii), fisheries would be required to use the highest level of conditioning to avoid any bycatch—that is, the best knowledge, the best provisions, the best possible conditioning—but all of us would recognise that from time to time there will be bycatches for various reasons. That is something that happens in that industry. There are sometimes unintended consequences and while the industry tries to minimise them as much as possible, they will occur from time to time. Paragraph (a)(ii) simply seeks to recognise, when it is read in with paragraph (b), that provided they had

implemented all of the biodiversity conditions that related to them, if there was a small level of bycatch, which there will be from time to time, they would not be prosecuted under this bill for that. I stress this goes far further than the existing situation, because that does not recognise threatened species within that and so does not exclude threatened species, whereas this bill will.

Mr D.J. KELLY: I have not heard an argument as to why this amendment is necessary. It includes paragraph (a)(i) and paragraph (b). I understand the logic of saying that if an act that has been authorised under a different bit of legislation and all the biodiversity conservation conditions that apply have been followed—that is, those two things have been complied with—there should not be a prosecution under this legislation. I do not understand why paragraph (a)(ii) refers to some other "likely consequence" and there cannot be a prosecution. If it was a likely consequence that was identified and authorised under another bit of legislation, for example, fish management plans under the Fish Resources Management Act that include what is an acceptable bycatch, it would be dealt with under that legislation. It seems to me that this bill makes lawful things that are not permitted under other legislation, because if they were permitted they would already be dealt with. The minister is putting in a whole new category of things that will be free from prosecution under this legislation because he has added a paragraph that refers to an act that is a "likely consequence" of what has been authorised elsewhere. Can the minister give us an example that might necessitate this provision? It seems we have all these stringent protections and then he has thrown in a "likely consequence" and that will also be protected from prosecution.

Mr A.P. JACOB: As I have said on a number of occasions, this amendment recognises relevant authorisations under those acts. It constrains them further than they currently are constrained. They are currently relatively unconstrained, but if they have lawful authority to approve an act and this Parliament has granted that lawful authority, it is only fair that this bill allows for that to be considered to be lawful authority and therefore for the purposes of this bill not something that they would be prosecuted for. Similarly, as I said, a bycatch incident, which will inevitably occur, is not something that they would have been licensed to do. They would not have been licensed to catch a sea snake, for example, in performing a fishing act under the Fish Resources Management Act but this bill recognises that from time to time there are consequences that will occur and provided that the lawful authority, which this Parliament has granted those other agencies through acts of Parliament, has been complied with, they are not liable under the Biodiversity Conservation Bill, with the exception of threatened species.

Mr D.J. KELLY: I will just take up the example that the minister referred to. Is the minister saying that if a person with a fishing licence under the Fish Resources Management Act catches a sea snake, for example, they will not be liable for prosecution under this legislation if that is considered a likely consequence? Is the minister saying that that will apply only if the taking of that sea snake as part of the bycatch is also authorised under the Fish Resources Management Act—because I would have thought it could not be?

Mr A.P. Jacob: No.

Mr D.J. KELLY: Okay. If a person has a licence to take fish for something and a consequence of that is that they are going to catch sea snakes, the taking of those sea snakes is not considered under the Fish Resources Management Act, because that legislation does not refer to sea snakes. Is the minister saying that if someone goes out and fishes in a way that takes a lot sea snakes and therefore threatens that species, even if they could avoid doing that by a mitigation method—where or how they fish—there will be no requirement under this legislation to mitigate against the consequences to terrestrial species or whatever if what they are authorised to do has that likely consequence, and that even if it could be avoided, they do not have to take any action to avoid it?

Mr A.P. JACOB: I am saying that we would trust the Fish Resources Management Act or a future aquatic resources management act to regulate that. That is the purpose of those bills and they also have within them the power to do what we are referring to as biodiversity conservation conditions. It is still my expectation that biodiversity conservation conditions will be applied to those licences to seek to minimise bycatch whenever possible; however, we recognise that is the domain of the Department of Fisheries and its acts of Parliament to regulate how that should occur. We do not think that if it is being delivered under the Department of Fisheries' acts, it should also be picked up under biodiversity conservation legislation.

Mr C.J. TALLENTIRE: I am concerned about the apparent equivalence the minister has ascribed to these pieces of legislation. My previous example of a formal assessment under the Environmental Protection Act that contemplated the case of a species that might be the subject of a biodiversity conservation condition under that legislation would be very different because we have the submission phase and then eventually there would be appeals and the whole process that comes with that act. When it comes to the Fish Resources Management Act, or for that matter its eventual replacement—the aquatic resources management act—there are no appeal rights or submission phases; yet, the minister has them listed in this legislation as if they are similar and have similar

rigour about them. That is hardly the case, minister. How can the minister put that these pieces of legislation are in any way equivalent in terms of the level of authority, consultation or appeal rights that they give to people?

Mr A.P. JACOB: The member for Gosnells is free to raise that in the debate on the Aquatic Resources Management Bill when it comes back to this place.

Mr C.J. TALLENTIRE: Unfortunately, minister, at the moment we are focused on biodiversity conservation conditions and looking at the mechanism by which they would be required and the authorisation process. The minister is suggesting that this legislation gives people the right to author these biodiversity conservation conditions under various pieces of legislation, but he has not tested to see whether there is any standard that these pieces of legislation are meeting. In what I said previously, the minister can see that they are not similar at all. The pieces of legislation are quite different in their capacity to engage the community and to provide for submissions. They are very different in their ability to provide appeals. The minister has just taken it to mean that they provide the same level of rigour and we will allow any authorship of a biodiversity conservation condition under any of these pieces of legislation to be held in the same esteem. How can that be? They are not; they are clearly very different.

It really worries me that the minister is talking about people in the Department of Fisheries. The member for Bassendean talked about sea snakes and in recent years we have seen the example of Australian sea lions. Under the Department of Fisheries' legislation, there was reluctance and a very slow recognition of the problem of sea lions going into craypots and getting caught inside the craypots. All the industry had to do was to ensure that sea lion excluder devices were fitted to each craypot. It is very simple to do; it is a spike that sits in the bottom of the craypot that makes the opening at the top of the craypot too small for a sea lion to get into. It has to be said that the legislation was incapable of keeping up with this problem, but, eventually, industry came to the party, and I understand that now—I trust this is the case—all craypots have sea lion excluder devices. That is just one example in which we need to have rigour about the implementation of biodiversity conservation conditions. First and foremost, we need to ensure that we have experts working under that legislation who have the knowledge—recognising, minister, that I do not think there is anyone in the Department of Fisheries who would pretend to be an expert on Australian sea lions, because that is just not that agency's area of operation. That is one issue. The other issue is that what the minister is suggesting with this legislation would not allow for the presentation of arguments around appeal rights and the opportunity for people to present appeal rights.

Where is the minister putting in place a mechanism to test the rigours of the various pieces of legislation? The minister has to test two things: the expertise and qualities of the drafters of the conditions and that the legislation they are operating under meets a certain standard. The minister has suddenly said that we will whack together these one, two, three, four, five pieces of legislation as if they are all quite similar to provide for people to be able to write biodiversity conservation conditions. We know that is not the case; they are not similar at all in the way they provide for community consultation, appeals and submissions. Can the minister tell me how he is doing that? Is there some test that the minister will bring in? As we have this other category of the enactment of prescribed legislation, how is the minister going to test whether some prescribed legislation in the future meets the standard required? Where is that test? Where is the test for the legislation and where is the test for the people involved?

The DEPUTY SPEAKER: The question is that amendment 2 be agreed to —

Mr C.J. TALLENTIRE: Madam Deputy Speaker.

The DEPUTY SPEAKER: Member for Gosnells.

Mr C.J. TALLENTIRE: I did not hear a response from the minister. He is refusing to respond. Can we get that on the record if it is the case that he is not answering the question?

The DEPUTY SPEAKER: Member for Gosnells, it is not for me to direct the minister; he has chosen not to respond. The question is that amendment 2 be agreed to.

Ms L.L. BAKER: I was enjoying the shadow minister's explanation, and I wonder if he might be able to complete it, please?

The DEPUTY SPEAKER: Member for Gosnells.

Mr C.J. TALLENTIRE: We have seen that the minister does not want to respond, so I want it to be clear for people reading this in *Hansard* that the minister does not see a need for there to be equivalence when it comes to the various pieces of legislation that will be used to develop these biodiversity conservation conditions. I think that is appalling because we could have a very serious threat to a species, as we had with Australian sea lions. In fact, the minister might be able to tell me: were they a threatened species at the time when that issue was a live issue?

Mr A.P. Jacob: I wouldn't be able to say.

Mr C.J. TALLENTIRE: Can the minister's adviser tell us?

Mr A.P. Jacob: They were.

Mr C.J. TALLENTIRE: They were a threatened species?

Mr A.P. Jacob: So they would've been excluded under this clause that I'm providing.

Mr C.J. TALLENTIRE: Was that because they were a threatened species? That is some reassurance, I suppose. I am sure it is the case that there will be other species that may not be threatened at the time that the biodiversity conservation condition is being drafted, but if that condition is improperly drafted, we can be sure that the numbers will plummet and they will become a threatened species. That is something that anyone would be fearful of and that is why we need to make sure that whoever writes these conditions has the right level of expertise and, at the same time, is writing with the authorisation of a piece of legislation that provides for the same sorts of standards as we see in the Environmental Protection Act—not, I have to say, the standards we see in the Fish Resources Management Act or the Aquatic Resources Management Bill, if it becomes an act. Those pieces of legislation just do not have the same standards of transparency. I hope the minister will, on reflection, give us a fuller explanation rather than silence, because I think that is what people who read this debate will expect to see.

Mr A.P. JACOB: I am not the Minister for Fisheries and I do not have carriage of that legislation, and —

Mr C.J. Tallentire: But you've authorised those acts.

Mr A.P. JACOB: Do not interrupt, member for Gosnells; I was very polite on your way through. That legislation and the form that that legislation takes is up to this Parliament. I have said that many times in answers now. We are simply allowing, under this bill, that when this Parliament has authorised that power under a statute, we recognise it under that legislation; that is all that is happening here. What form those bills take is as much up to the member for Gosnells as it is to any other member of this place, and he is obviously free to debate them, as every other member of this place is, when they come through. The Aquatic Resources Management Bill is not before us and I am not the Minister for Fisheries, so I cannot really answer the member's question.

Mr C.J. TALLENTIRE: The minister is right; those pieces of legislation will come before this place, but when we consider them, I will be mindful that it certainly has not in the past been the case—I suspect it is unlikely to be the case in the future—that people will anticipate that one of the reasons for the legislation being in existence will be its role in determining a biodiversity conservation condition. I am not sure that that is going to be mentioned at all in the Aquatic Resources Management Bill and it certainly is not mentioned in the Fish Resources Management Act. Why has the minister authorised the Fish Resources Management Act? He knows the content of that legislation. He is right; the Parliament, years ago—back in 1994—was responsible for the content of that legislation, but it was clearly not written in contemplation of this legislation in 2016. The minister is saying that this legislation can include a provision that allows for the Fish Resources Management Act to be the overarching legislation that enables the drafting of a biodiversity conservation condition. Why is he allowing legislation that he knows bears no resemblance to the Environmental Protection Act to be included in this list of legislation that will empower people to write these very important conditions?

Mr A.P. JACOB: Hopefully, this is the last time I have to say this: this lawful authority will arise only in situations in which the relevant statute has the explicit formal ability to provide approvals and conditions relating to the taking of flora and fauna. I read out earlier for the member for Gosnells the example of the Fish Resources Management Act, which allows for the regulation of the handling, release, disposal or possession of any bycatch in the fishery, including by requiring the use of bycatch reduction devices. It is constrained specifically to those four acts because they explicitly spell out the ability to do that.

Mr C.J. TALLENTIRE: So the minister agrees that there was a need to find some level of equivalence around the taking, but he does not accept that there needs to be some level of equivalence or a standard met in the actual process that determines whether or not a species can be taken under any of these pieces of legislation. He admits or, I hope, understands that the Fish Resources Management Act and its future successor do not have the same provisions as the Environmental Protection Act. Can the minister confirm that he understands that?

Mr A.P. Jacob: They provide for ecologically sustainable fishing, member for Gosnells, and it's up to this house what form those bills take.

Mr C.J. TALLENTIRE: But the minister has authorised the current legislation—the Fish Resources Management Act—and he should be aware that that does not have —

The DEPUTY SPEAKER: Member for Gosnells, I really cannot see where the Fish Resources Management Act is under debate under amendment 2. If you can confine your questions to the amendment at hand, we can move on.

Mr C.J. TALLENTIRE: Thank you, Madam Deputy Speaker. I point out that we are amending clause 7 of the bill —

The DEPUTY SPEAKER: Yes, I am aware of that, thank you, member for Gosnells, and I am aware that that act is mentioned further down in clause 7, but we are discussing the proposed amendment to insert a new clause 7(2)(a) and (b).

Mr C.J. TALLENTIRE: One of the key things is the competencies of people and, indeed, the legislation to authorise the writing of a biodiversity conservation condition, and —

The DEPUTY SPEAKER: Thank you. Can you put your question in relation to this amendment, please?

Mr C.J. TALLENTIRE: Can the minister explain how the various pieces of legislation are tested to see whether they meet a standard, and what is that standard?

Mr A.P. JACOB: It is not relevant to the amendment. We debated this ad nauseam when the bill originally came through and I think the Deputy Speaker is correct; we should confine our comments to the amendment.

Mr C.J. TALLENTIRE: I think we have to learn from a mistake that was clearly made when this legislation went through this place initially. This area was not properly discussed, the minister did not want to give it time, and as a result it has been through the other place and has had to come back here. If we do not give this legislation the thorough scrutiny it requires, we will have more problems and we will find that we will need to make amendments in the future because the legislation is deficient, so I think it is very important that the minister really engross himself in this process so that we can really flesh out the details. The issue of equivalence is absolutely essential to the successful operation of this very important aspect of the bill—the writing of biodiversity conservation conditions. If we do not get this right, we will have under one piece of legislation biodiversity conservation conditions being written that are of a very high standard, and under another piece of legislation biodiversity conservation conditions being written that are seriously deficient and not even open to some form of appeal. How can it be that we will have such a variation in the standards that will be applied to the setting of these conditions?

Question put and passed; the Council's amendment agreed to.

Mr A.P. JACOB: I move —

> That amendment 3 made by the Council be agreed to.

In moving this amendment, I note a minor clerical error. "Clause 37, page 32, lines 17 to 32 — To delete the clause" should read "Clause 37, page 32, lines 17 to 22 — To delete the clause".

Mr C.J. TALLENTIRE: We noted this and we just want to be clear about the nature of this error. It is a fairly substantial one because it actually suggested that many more lines would be deleted than are actually proposed for deletion. The minister did not see fit to advise us of this error earlier on. I think we need to pause and study it in some detail to check whether it is simply a clerical error. As I said, this is the first time the minister has mentioned it and I think we need to look at page 32, clause 37, and what is being contemplated here. The clause is headed "Minister may obtain advice on listing decision". It is proposed to delete that. I heard verbally from the minister that he wants to delete lines 17 to 22, when the actual text in the notice paper states that he wants to delete lines 17 to line 32.

The DEPUTY SPEAKER: Member for Gosnells, perhaps I can clarify. A note here from the Clerk of the Legislative Council identifies that that was a typographical error and, therefore, the correct lines are 17 to 22. It is a typographical error.

Mr C.J. TALLENTIRE: Thank you, Madam Deputy Speaker. As I said, that is the first advice I have received of that, so my preparations were around the potential for this deletion to include lines 17 to 28. I was not sure where the remaining four lines might be. I contemplated that the minister wanted to delete "Nominations in respect of certain listings", proposed paragraphs (a) and (b) —

The DEPUTY SPEAKER: Member for Gosnells, that is not relevant now because we are talking about lines 17 to 22. Thank you.

Mr C.J. TALLENTIRE: I am just pointing out, Madam Deputy Speaker, that I have not been advised in writing of this. I do not know whether that is how we are to proceed and whether it is only a verbal correction, but I would ask that in the future we at least receive written notification when errors are in the notice paper.

The DEPUTY SPEAKER: Thank you, member for Gosnells. Your comments are noted. Do you have a question in relation to —

Mr C.J. TALLENTIRE: No, I have not received written notification.

The DEPUTY SPEAKER: Member for Gosnells, I will have to seek advice on that. Put your question and we will come back to you with a response.

Mr C.J. TALLENTIRE: My question is: will there be written notification to confirm that the notice paper in front of me is wrong?

The DEPUTY SPEAKER: Thank you, member for Gosnells. I have received advice that the statement I have made that we received written notification from the Clerk of the Legislative Council that it is a typographical error is in *Hansard* and, therefore, the advice is that we are dealing with the deletion of lines 17 to 22.

Mr C.J. TALLENTIRE: Will I not be receiving written notification?

The DEPUTY SPEAKER: The written notification will be in *Hansard*.

Mr C.J. TALLENTIRE: But we are debating it now.

The DEPUTY SPEAKER: Member for Gosnells, can you put your question about this amendment?

Mr C.J. TALLENTIRE: If there are mistakes in the notice paper, we need a written correction.

The DEPUTY SPEAKER: Member for Gosnells, I am advised that the mistake was in the Council's message, so that is not a mistake in the notice paper. It is a mistake in the Council's message. I take your point that there should be a written notification. I will make that point to the staff of the Legislative Assembly. In the meantime, I think we need to proceed with your questions about amendment 3, which we have all been advised concerns the deletion of lines 17 to 22.

Mr C.J. TALLENTIRE: This is my final point on this, I hope, Madam Deputy Speaker. People refer to the notice papers for clarification of what is before the Assembly. They do that retrospectively and anyone picking up notice paper 225 will be misled by the notice paper.

The DEPUTY SPEAKER: Thank you, member for Gosnells. I have already said that your point is taken. We now have in *Hansard* that the amendment has been made and that it was a mistake in the message from the Legislative Council. We have a letter from the Clerk to that effect. I do not think much can be served by belabouring this point and we need to move on to your question. Thank you.

Mr C.J. TALLENTIRE: Madam Deputy Speaker, I do not want to debate the point, but can an addendum be made to the notice paper so that someone who searches the notice papers can see that there is a mistake in notice paper 225?

The DEPUTY SPEAKER: I have given you an assurance that I will be discussing that with the Clerk and we will come back to you on how that can be remedied. Can you now put your question, please?

Mr C.J. TALLENTIRE: I am concerned that that is not a matter of certainty, there is no guarantee that that change can occur, because it reflects poorly. As I said, people refer to the notice paper. They do not necessarily refer to *Hansard* at the same time.

The DEPUTY SPEAKER: Member for Gosnells, I am not quite sure what will satisfy you, but one possibility is that the minister could make a formal amendment to change that nomenclature. But, really, what has happened has been well defined. The Clerk and the staff take on board your comments. We will come back with our response on how to remedy the situation. We need to proceed with debate on amendment 3 as clarified.

Mr C.J. TALLENTIRE: I think your suggestion is a good one. If the minister would like to move an amendment to correct the notice paper, we can have a clear written record.

The DEPUTY SPEAKER: Members, perhaps we should move on to amendment 4 while we seek further advice on this, because there may be implications to amending the amendment and I would like to seek further advice. If it is agreeable to the minister and to the members present, perhaps we will move to amendment 4. Are you in agreement, member for Gosnells?

Mr C.J. TALLENTIRE: Yes, Madam Deputy Speaker. Can I have confirmation that we will come back to this one?

The DEPUTY SPEAKER: Minister, the procedure is that you postpone consideration of amendment 3 until the end of the consideration in detail stage. That will give the member for Gosnells comfort that we will return to this amendment, and then we can proceed to amendment 4.

Further consideration of the Council's amendment 3 postponed, on motion by Mr A.P. Jacob (Minister for Environment).

[Continued on page 5870.]

Mr A.P. JACOB: I move —

That amendment 4 made by the Council be agreed to.

[Quorum formed.]

Mr C.J. TALLENTIRE: This amendment seeks to insert the following lines, which read —

37. Minister to obtain scientific advice on listing decision

Before making a listing decision the Minister must obtain and have regard to advice from one or more persons considered by the Minister to have scientific expertise relevant to the matter to which the decision relates.

It is very interesting that the government has seen fit to amend this clause because, of course, the opposition moved a substantial amendment on the nature of an independent scientific committee. We worked very hard to draft amendments so that there would be a rigorous process to establish a scientific advisory committee with people of the upmost confidence, skills and expertise in the many areas of biodiversity that our state is home to. It took considerable effort to draft it, canvass it with stakeholders and discuss it so that we were confident we could bring something to this house. However, when we brought the amendments to this house, the government was less than enthusiastic about their contents. In fact, they were just dismissed out of hand. The minister said that they were unnecessary and the government opposed them. However, before us, we now have an eventual amendment to the very clause that the opposition sought to amend. This demonstrates that when the Labor Party does its research and has very careful, thorough discussions with stakeholders, it does it well. When it brings amendments to this place, they are sensible, well researched and well considered. It is very disappointing that the amendments were not considered when the legislation went through this place. However, when the legislation was debated in the Legislative Council, a serious flaw was discovered in what the government proposed and it determined that provisions around the independent scientific committee needed to be amended. That is why this amendment is before us. Proposing a scientific advisory committee does not really tell us very much. It does not tell us who would be on the committee or what process the people on it would have gone through to get to that position. The provision does not enable us to know when the scientific advisory committee will meet or how to contact it. None of that information is contained in proposed new clause 37. That is a serious problem. We really need to know how any interested stakeholder would be able to engage with the scientific advisory committee. We need to know which people would be on the scientific advisory committee and their expertise. We also need to know when they would be meeting and the items on their agenda. The scientific advisory committee should not be a secret club that meets just in the Department of Parks and Wildlife's back rooms. The scientific advisory committee should be open to the public and have an ear to the public's concerns as well as the expertise that resides beyond the committee. Can the minister explain how this amendment, which he eventually agreed to, goes anywhere near meeting the standards of the amendment that we put up when the legislation was last in this place?

Mr A.P. JACOB: Member for Gosnells, we debated this provision at length when the bill came through the house previously. The concern that the member repeatedly outlined was that the provision allows only that the minister "may" seek advice. I have consistently given assurances not only that every previous Minister for Environment has sought advice, but also that it is always my practice to seek such advice. As far as I am aware, the advice has always been followed; it is provided by the existing Threatened Species Scientific Committee. I have assured the house that that would continue. Accordingly, we have agreed to an amendment that picks up the current function that is in practice. The minister seeks advice and we are requiring that the minister must seek that advice. In his comments, I do not think that the member means to cast aspersions on the existing Threatened Species Scientific Committee. Very eminent people are on that committee; from recollection, Dr Andrew Burbidge is the chair and the committee is generally formed by a number of representatives from academia and the Museum, and senior scientists who have had careers through the Department of Parks and Wildlife. The point of dispute really comes down to whether it is a statutory committee or a committee as it has functioned until this point. The Liberal–National government has a clear policy position of limiting statutory authorities wherever possible, so it does not intend to create a new statutory authority. However, we recognise that the committee performs a valuable function and, by making this amendment to the bill, we are saying that both I, as the current minister, and any future minister must seek advice. I will happily put on the record that I envisage that that instrument is the Threatened Species Scientific Committee.

Mr C.J. TALLENTIRE: The minister admits that he has realised the error of his ways when the legislation went through this place the first time. He has now agreed to this amendment that was put forward in the other place; however, I suggest that the minister is not going anywhere near far enough. The minister named the current chair of the committee. I think it is important that we know who all the members are. How many members does the committee currently have? When are its meetings? The minister does not want a statutory scientific advisory committee, but he should have a committee that is at least open to the public. What is the point of having these meetings if they are held in secrecy? Why would the minister not want the committee to have the benefit of expertise from outside the room? The minister suggests that because it cannot be a statutory committee, he cannot possibly outline the details of the committee in the legislation. Nothing in the legislation that is before us tells us what areas of expertise the committee members might have. All we have is the provision that the minister must "have regard to advice from one or more persons considered by the Minister"—currently the member for Ocean Reef—"to have scientific expertise". Surely the minister would want reassurance that those are the right people. One of the best ways to do that is to make very open and transparent who is on the committee. Can we see the committee's current membership? Is that information readily available on the Department of Parks and Wildlife's website? Is information readily available to us about when the Threatened Species Scientific Committee will next meet?

Mr A.P. JACOB: This proposed new clause, member for Gosnells, is not about the committee. If it were about the committee, it would be creating a statutory committee, and that is not our intention. All we are saying through this amendment is that the minister must seek scientific advice, and I have flagged that it would be through the Threatened Species Scientific Committee. A clear point of policy difference exists between us and the opposition on that. We do not support the creation of a new statutory authority. The Threatened Species Scientific Committee has existed for many years and functions well as it currently stands, so I envisage that it will continue in the same vein.

Ms S.F. McGURK: Has the minister received any correspondence from any conservation groups or individuals around this amendment, particularly on whether there will be any independent advice—that is, whether the advice that the minister would be seeking perhaps would not be as independent as people might like? The minister would be appointing the people with expertise at the time of wanting advice on a particular matter, but that might not be as independent as having a permanent statutory advisory body. Has that particular issue been raised with the minister?

Mr A.P. JACOB: The short answer is that I do not believe I have received any correspondence since the amendment was moved in the Legislative Council. It may be making its way through the system up to me, but, to the best of my recollection, I am not aware of any that I have received. It is neither here nor there because we are not seeking to create a statutory authority, and we have no intention of doing so. However, picking up on the concerns that were raised by members opposite, we are happy to require that the proposed new clause states that the minister "must" seek scientific advice, rather than "may", albeit the intention was always that that advice would form part of the decision-making.

Ms S.F. McGURK: I understand that the Leeuwin Group, which comprises a group of eminent scientists, has in particular criticised the lack of scientific oversight of the Biodiversity Conservation Bill 2015. I am wondering whether that group has raised concerns. On this amendment the concern is that the minister will appoint a scientist or expert to give advice on a particular issue, instead of receiving advice from someone at more arm's length from the minister. Has that issue been raised by, for instance, the Leeuwin Group? Has the Leeuwin Group, which is a group of scientists, raised this particular issue? Certainly, on the first draft of the bill, before this amendment came before this house, the Leeuwin Group was raising those issues. That group of scientists strongly criticises the lack of scientific oversight contained within the bill. I understand that this amendment goes some way to addressing those concerns, because it states that the minister must obtain and have regard to advice from people with scientific expertise, but the concern is that the minister gets to decide who has the scientific expertise rather than it being at more arm's length. Has the Leeuwin Group raised those issues with the minister, or has the minister met with it?

Mr A.P. JACOB: That is not the case at all, member for Fremantle. In fact, if it were to be a statutory authority, it would be on the recommendation of the minister. It is actually the complete opposite of the scenario the member has outlined. As it stands currently, the committee is formed internally; I cannot recall making appointments or changes to the committee. The substantive question was whether I had received correspondence. No, I have not received correspondence since this amendment was drafted.

Mr C.J. TALLENTIRE: Minister, the Threatened Species Scientific Committee is one body that we are interested in, but I gather the minister is well aware that there is also a threatened ecological communities scientific advisory committee. Is the minister proposing to retain that one? What is the state of play with it?

Mr A.P. JACOB: No decision has been made at this time, member for Gosnells. Again, that largely happens operationally, and that actually delivers the level of independence that the member for Fremantle was just flagging. Under this proposed new clause, I would be required to receive scientific advice before making any decision on a listing around a threatened ecological community, and I must have regard to it.

Mr C.J. TALLENTIRE: The minister's interpretation of who will be able to provide him with the right scientific advice is of interest to me. Could the minister detail the sorts of areas of expertise that he would expect to have in this scientific advisory committee, albeit a non-statutory one?

Mr A.P. JACOB: It is not a committee, member for Gosnells. This proposed new clause does not create a committee. That is the whole point of difference between our side and the other side. The proposed new clause reads —

> … the Minister must obtain and have regard to advice from one or more persons considered by the Minister to have scientific expertise relevant to the matter to which the decision relates.

I have flagged to this house that that will continue to be the Threatened Species Scientific Committee.

Mr C.J. TALLENTIRE: I am struggling to follow the minister's answer. On the one hand the minister said that there will not be a committee. The minister began by saying that he would just consult scientists, who might be the relevant scientists, but finished by saying that he would consult with the scientific advisory committee. Which is it?

Mr A.P. JACOB: This proposed new clause will not create a committee. I have read it out a number of times. Subsequent to that, the member asked about the mechanism I intend to use. I am happy to answer that: the existing Threatened Species Scientific Committee.

Mr C.J. TALLENTIRE: Then we get to the real point—I have already asked this, but the minister has not answered it yet. What expertise and areas of specialty would the minister expect to see on that scientific advisory committee? Perhaps the minister's adviser will be able to tell the minister about the current areas of expertise of members of the scientific advisory committee, because I want to be able to discuss with the minister some of the gaps that might be there.

Mr A.P. JACOB: I pose a question back to the member for Gosnells: does the member for Gosnells have any objection to the make-up of the existing Threatened Species Scientific Committee? I suspect the member knows many of the individuals on it, and that the member would agree with me that it is currently well appointed; that will continue. There is absolutely no intention on the part of this government to create a new statutory authority. We would have to go part way down that statutory road to achieve the outcomes that the member is seeking. We could go around in circles on this for quite some time, but I think that the amendment before us really picks up on the vast majority of the objections to this bill that the member has previously raised and the concerns of the Leeuwin Group that the member for Fremantle mentioned.

Mr C.J. TALLENTIRE: Minister, I do not think we are going round in circles; I think we have to get to the bottom of this issue. I am disappointed that the minister does not have with him a list of the current membership of this non-statutory body. When we look at the membership—the minister is right—we can see that there are people with good, strong expertise. Some of those people are outstanding in their knowledge of particular areas. However, there are clearly some gaps, and that is what I want to come to. However, before I go to that, I want to raise one issue with the minister. The list includes a number of people who are staff of the Department of Parks and Wildlife. They are good people. However, they might have a conflict of interest because what the department wants to do might be at odds with what the other members of the committee have advised. How will the minister resolve that?

Mr A.P. JACOB: Now the member is getting it! That is part of the reason why this is a far better approach. Although it would technically be the threatened species scientific committee, if for a particular species I sought to get outside advice, this clause would allow that flexibility. This clause allows the most flexible approach to be taken. It provides that the minister of the day must obtain and have regard to scientific advice. It does not prescribe the specific scientific advice. That is because that scientific advice is incredibly broad, particularly when we are dealing with a state as biodiverse as Western Australia. That is why the wording needs to be this loose. Other than that, the only way I could pick up on every possibility the member is raising is if we co-opted every Western Australian scientist or every other scientist who had some area of expertise relating to Western Australian biodiversity. We believe this is the best approach, and that is why we have put forward this amendment.

Mr C.J. TALLENTIRE: The minister has not addressed the potential for there to be a conflict of interest.

Mr A.P. JACOB: That will stand just as strongly in the instance in which there may be a conflict of interest.

I want to pick up on one point. The member said that some of those individuals work for the Department of Parks and Wildlife. I suspect that some people who currently do not work for the Department of Parks and Wildlife have at some point in their career worked for that department. The nature of this business in Western Australia is that many of those people cycle through the department at some point in their career. I do not think the member could draw from that the aspersion that that would in any way entail some level of conflict of interest. However, in the event that a conflict of interest did arise, there is no statutory authority here. The minister of the day can seek that scientific advice from any person or person who has scientific expertise particularly relevant to the matter to which the decision relates. That is how the clause is drafted.

Mr C.J. TALLENTIRE: The minister is overlooking the point that these committees function well only when they are open to the public and when there is a transparent process for gaining scientific advice. The minister is suggesting that he as the current minister, and future ministers, can go into the marketplace and get scientific advice that suits their argument and that is, perhaps, readily accessible. However, that scientific advice will not be credible if it is not brought to the attention of the community via a statutory body or via a body that has transparency. That is the key to this. The minister has described this as being all about the statutory nature of what we are suggesting. I put to the minister that we need a process that is transparent and that the public can see and engage with. The minister is, rightly, I think, defending the current arrangement with the scientific advisory committee. The minister might be able to tell me this: How many times has that committee met in the last two years? When does it hold its meetings? When are its meetings open to the public for ideas? When do we even get to hear about the minutes of its meetings?

Mr A.P. JACOB: Is the member for Gosnells implying that scientific advice is not credible unless it has gone through community consultation beforehand?

Mr C.J. TALLENTIRE: I am saying that we need to have transparency about all these things.

Mr A.P. JACOB: There is transparency. The minister of the day can always be asked questions in this place. There is also a number of other transparency mechanisms that apply.

Mr C.J. Tallentire: Where is the transparency? We have to rely on things coming to Parliament.

The ACTING SPEAKER (Ms J.M. Freeman): Member for Gosnells!

Mr A.P. JACOB: As I have said, we have no intention of creating a statutory authority. In any event, I do not see that a statutory authority would lead to any better scientific advice outcome. In fact, I can see many avenues through which it could lead to a worse outcome. I wholeheartedly disagree with the statement that in order for it to be quality scientific advice, it must have a round of community consultation behind it.

Mr C.J. TALLENTIRE: The real problem with this amendment is that it is dependent on the minister's interpretation. It states that the minister must obtain and have regard to advice from one or more persons considered by the minister to have scientific expertise. What competency does the minister have to determine whether a person has scientific expertise in a particular area?

Mr A.P. JACOB: That would be an even bigger problem for a statutory authority, member for Gosnells.

Mr C.J. TALLENTIRE: No, minister, it would not, because a statutory scientific advisory committee would hold transparent meetings and the public would be able to critique the operations of that committee. The minister is also aware that our proposed amendments did not stop at the creation of the committee. We also talked about the various processes for the recommendation of a species for a listing or the recommendation of a threatened ecological community species for a listing. We also talked about the potential need for the committee to have recommendations and to receive advice on a delisting. None of that is a possibility under the way the minister has arranged things in this bill. It is all done under the opaqueness of an agreement between the minister and a person who the minister deems to have scientific capability. Why would the minister want to run the risk of being accused of taking advice from a person who has a particular scientific bent that coincides with the minister's view of the world? Why would the minister not want to use a statutory body that can apply rigor to these issues? The minister keeps saying that he is from a party that is ideologically opposed to statutory committees. We have any number of statutory committees. The minister knows full well that the Environmental Protection Authority is a statutory body. In some cases, we need to have these sorts of committees. That is because the issues that are at stake are too important to risk on the vagaries of a relationship between the minister and a person who the minister thinks might have scientific expertise in a particular area. The minister should elevate those sorts of cases to statutory body status. This is one such body. Why would the minister not want to give our state's biodiversity that protection and recognition by ensuring that it has its own dedicated statutory authority? Why would the minister leave himself open to all the problems that will arise just because he wants to

have relationships behind closed doors with particular scientific advisers about whom the public will never be aware and will be none the wiser?

Mr A.P. JACOB: I have answered that question.

Ms S.F. McGURK: I am interested in the issue that the member for Gosnells has raised about the criteria that will be applied by the minister, or a future minister, to determine whether a person has the stature or scientific expertise to advise on a particular matter. Perhaps I could say anything at the moment, because the minister is texting as I am asking him a question. Is the minister that bright and that on to it that he can listen and text at the same time? Is that right, minister? It is very unusual. Under the current wording of this clause, what will prevent the minister, or a future minister, from taking scientific advice from a person who has no scientific expertise, or questionable scientific expertise, relevant to the matter? From my reading of this clause, it is entirely up to the minister to decide whether the person has scientific expertise.

Mr A.P. JACOB: The clause states that the person must have scientific expertise relevant to the matter to which the decision relates.

Ms S.F. McGURK: From my reading of the clause, it will be entirely up to the minister to decide whether the person has scientific expertise relevant to the matter. It is not whether the person has academic qualifications, whether their material has been peer reviewed, or whether they have some level of independence. It will be entirely up to the minister to decide. Under the current wording of this clause, what would guard against a situation in which the person who was appointed by the minister to give advice had no scientific expertise relevant to the matter?

Mr C.J. TALLENTIRE: There is nothing from the minister, I take it? I am interested in hearing more from the member for Fremantle.

Ms S.F. McGURK: I am surprised that the minister does not say anything; he just sits there and says absolutely nothing. He does not get up to answer.

Ms M.M. Quirk: He is agreeing with you.

Ms S.F. McGURK: He is agreeing, is he? Could the minister at least show some manners and get up and address that question?

Mr A.P. JACOB: Absolutely, member for Fremantle, but I have answered it about six times already.

Mr P.T. Miles interjected.

Mr A.P. JACOB: I thank the member for Wanneroo—the member for Fremantle was not in the chamber then. Proposed new clause 37 states that that person must have "expertise relevant to the matter to which the decision relates." That is no different from a statutory authority. For example, appointments are made to the Environmental Protection Authority and I make those recommendations on, up and through. In fact, from my recollection, the definition in the Environmental Protection Act is somewhat broader than this definition. This is a very constrained definition about the source of that advice. The minister of the day will be answerable under other parts of this bill for the action that that minister takes on that listing and, from memory, it must be published. There is a range of accountability mechanisms, member for Fremantle, in not only this clause but also other clauses. It requires notification of a minister's decision and the notice must include reasons for a decision as well. The bill contains all of those accountability mechanisms. The member can keep asking me the same question from slightly different angles all night, but that remains the answer.

Mr C.J. TALLENTIRE: Can the minister confirm this is the clause that was put forward by the Greens in the other place?

Mr A.P. Jacob: Yes.

Mr C.J. TALLENTIRE: It is interesting that the minister is defending the Greens' drafting of this amendment in this curious alliance between the Liberals and the Greens. I refer to the whole issue of how this legislation would work. If the minister had a scientific advisory committee comprising a mixture of state service employees and people who are independent of government, perhaps employed by universities or working in their own consultancies or whatever, and it was in a statutory form, would that not give the protection needed when deciding on important matters upon which the future of various species depends? Why would the minister not want to have the utmost transparency? It comes down to transparency. How will the minister achieve that transparency when he is letting everything hinge on his interpretation of someone's scientific credentials? What is the test that the minister will apply to someone's scientific expertise? Surely that question can be answered, minister.

Division

Question put and a division taken, the Acting Speaker (Ms J.M. Freeman) casting her vote with the noes, with the following result —

Ayes (29)

Mr P. Abetz	Mrs G.J. Godfrey	Mr R.S. Love	Mr J. Norberger
Mr F.A. Alban	Mr B.J. Grylls	Mr W.R. Marmion	Mr D.T. Redman
Mr C.J. Barnett	Dr K.D. Hames	Mr J.E. McGrath	Mr A.J. Simpson
Mr I.M. Britza	Mrs L.M. Harvey	Mr P.T. Miles	Mr T.K. Waldron
Mr G.M. Castrilli	Mr C.D. Hatton	Ms A.R. Mitchell	Mr A. Krsticevic *(Teller)*
Ms M.J. Davies	Mr A.P. Jacob	Mr N.W. Morton	
Mr J.H.D. Day	Dr G.G. Jacobs	Dr M.D. Nahan	
Ms W.M. Duncan	Mr S.K. L'Estrange	Mr D.C. Nalder	

Noes (16)

Ms L.L. Baker	Ms J.M. Freeman	Mr M.P. Murray	Mr C.J. Tallentire
Dr A.D. Buti	Mr F.M. Logan	Ms M.M. Quirk	Mr P.C. Tinley
Mr R.H. Cook	Mr M. McGowan	Mrs M.H. Roberts	Mr B.S. Wyatt
Ms J. Farrer	Ms S.F. McGurk	Ms R. Saffioti	Mr D.A. Templeman *(Teller)*

Pairs

Ms L. Mettam	Mr P. Papalia
Mr V.A. Catania	Mr W.J. Johnston
Mr M.J. Cowper	Mr J.R. Quigley
Mr M.H. Taylor	Mr D.J. Kelly
Ms E. Evangel	Mr P.B. Watson

Question thus passed; the Council's amendment agreed to.

Mr A.P. JACOB: I move —

That amendment 5 made by the Council be agreed to.

Mr C.J. TALLENTIRE: Given the error made previously, we need to check there is no error here. The minister is seeking to delete lines 8 to 24 on page 36. I want to put on the record that when this bill was previously in this place, the opposition wanted to delete this clause and replace it with a very rigorous process around the so-called God clause. The opposition put to the chamber a detailed amendment that sought to protect our native species and ensure that the most rigorous airing of any notion of a species being listed as, or determined to be, potentially up for extinction. The minister said that that was unnecessary, and he defended clause 42 when we last considered this bill only a matter of weeks ago. The minister said of this clause that it was perfectly reasonable for the Governor to be signing off on an eventual extinction. It is important that it is on the *Hansard* record that the debate since then in the upper house has helped the minister see that he was wrong previously, and that clause 42 was badly written, badly conceived, dangerous and a threat to biodiversity in Western Australia. Now we see the minister agree with us, to some extent, that the clause needs deleting. We will be looking in a moment at what is to replace the clause, and I will be outlining why it does not go anywhere near far enough. It is important that I give the minister the opportunity to explain why he has had this sudden change of heart. He has gone from being a strident defender of the current clause 42 to now proposing its deletion. I suppose that we can say that, on the one hand, that shows the parliamentary process is working well, but, on the other hand, the minister is on the record as being previously strident in his defence of this clause. He needs to fully explain to us why this clause is no longer of any utility and why he wants to delete it. He is proposing to replace it with something else. Why does he see the process outlined in the clause 42 that is about to be deleted as deficient? It is important that the minister explain that to us, because then perhaps he will move along on the journey towards seeing why the amendment we previously put forward was superior to what we have ended up with. I look forward to the minister's explanation of why he has been converted to the view that the current clause 42 needs to be deleted.

Mr A.P. JACOB: In responding to that question, I will first of all say that some gross misinformation has gone around about this clause. This clause does not enable the minister to approve a species being taken to extinction over and above what currently exists. That power exists right now for a Minister for Environment. The concept of this clause was always about putting parameters and constraints around ministerial power, and levels of accountability that do not currently exist. I still think that the level to which it was drafted in the original bill was a fair enough approach. It provided that, rather than the decision being at the discretion of the minister, which is how it currently stands, we would allow for the decision to be made by the Governor. We would elevate it beyond just the power of a minister; we would have that level of accountability, and the cabinet process would come into that.

I would also take exception to the member's comment that it is a badly written, badly conceived and dangerous clause. Is the member aware of where we got the idea for the clause from? Does he know where the concept of that clause came from? It came from the earlier round of public consultation that the previous Labor government carried out on a biodiversity conservation bill. Is the member aware that that clause, as it was drafted, was proposed under the Gallop Labor government when it did its round of consultation on a biodiversity conservation bill? If the member is describing this clause as badly written, badly conceived and dangerous, either he was not doing his job then as director of the Conservation Council or he was happy with it then and he has changed his mind 10 years later. That is essentially where we got the concept for this clause.

I recognise that there was a level of community angst about the clause as it was written. It went much further than the existing legislative parameters allowed for and put in a new range of ministerial accountabilities. The member proposed an amendment in this place, but that amendment was incredibly convoluted, and allowed only for the tabling in this Parliament of a decision that may or may not be debated. I note that, in the member's interview on RTRFM the other day, he was referring more to his own amendments than to the government's amendments.

Mr C.J. Tallentire: I'm glad you're an RTR listener, minister.

Mr A.P. JACOB: I quite enjoy my interviews with them from time to time as well.

The clause that the government originally proposed also required tabling, so essentially the member's proposed amendment just put some statutory authority in the middle, and a whole churn of community consultation, but the trigger mechanism was pretty much exactly the same as the trigger mechanism we had applied, and indeed the trigger mechanism that the former government had wanted to apply, when it proposed exactly the same clause when Labor was last in government, and the member was the director of the Conservation Council at that time. I do not remember the outcry coming at that particular time. However, we have listened. We have taken on board in particular the arguments that were put in the upper house. We have noted the community angst, and this amendment, which was put forward by the Greens, goes even further than those previously proposed. I am comfortable to accept it because I believe that this bill is so significant that I want to see it continue to move forward.

The act is 66 years old. Members opposite have promised and promised and promised, and they never even got a draft into this place. Please, member for Gosnells, do not be so petty about whether the number 2 or the number 3 was written down on the notice paper to delay something like this, and do not be petty about clauses like this and about whose amendment got up. Who cares? The amendment that did get up is actually the highest order amendment that has ever been proposed for this clause. This will now take it entirely out of the hands of the minister. It will be a decision of Parliament, and we cannot go higher than that. Any decision to allow a species to be taken to extinction under this legislation will have to be not just tabled, but decided upon by substantive motion in both houses of Parliament. We simply cannot get higher than that provision. That is the provision before us, and any attempt to oppose it will show that there is, I suspect, quite a level of jealousy about the fact that a Liberal–National government has managed to get it to this point, listened to some of the concerns and agreed to subsequent amendments, albeit that we were happy with the original provisions.

Mr C.J. TALLENTIRE: What the minister says is very interesting, and I think he is actually misleading Parliament. He tried to paint a picture of the previous Labor government. I was not a part of it; like the minister, I was elected in 2008. I have been handed some of the records from those previous rounds of public consultation. I have in front of me a document titled "Public Submissions on the Consultation Paper for the Proposed Biodiversity Conservation Act". This was forwarded to me anonymously, but I know it would be in the minister's office. I think it dates from 2003. The minister is referring extensively to documents and consultations that were done during the time of the Gallop government and perhaps the Carpenter government as well. He is saying that, during that time, there was a preparedness to include clauses in this legislation that would allow a species to become extinct. The minister is going to have to back that up with a bit of fact, I am afraid, because this summary of submissions that I have here states —

> On 21 December 2003 the State Government released a consultation paper for the development of a proposed Biodiversity Conservation Act for Western Australia. The consultation paper was released for a twelve-week period, with public submissions closing on 5 March 2003. The Department of Conservation and Land Management received requests for extensions to the closing date for submissions. The Department declined to extend the formal closing date for submissions, but did accept late submissions.

The minister was attacking me, suggesting that in my role I did not enter into this process in any great way. That is very odd, because page 4 of this document, under the heading "Topics Requiring Further Discussion", states —

> Many submitters expressed strong opposition to the provision in the Act for the Minister to make a decision that could reasonably be expected to result in the extinction or total destruction of a species or ecological community.

Either the minister is not doing his homework or he is misleading the house. Which is it?

Mr A.P. JACOB: The member for Gosnells just confirmed what I said—that that clause was contained in the public consultation draft that went around at that time. In accepting this amendment, we are going to a higher level again than his own side had proposed. What is his point?

Mr C.J. TALLENTIRE: The minister was trying to say that this was not something that the previous government was contemplating responding to. He is trying to suggest that, is he not?

Mr A.P. Jacob: When did I say that?

Mr C.J. TALLENTIRE: Let us go on a bit further.

Mr J.H.D. Day: Why don't you just support the thing and get on with it?

Mr C.J. TALLENTIRE: I thank the Leader of the House. I can understand that, as a person keen to see legislation move through this place, he is keen for things to go through, but the problem we have before us now is of the government's own making. The government failed on two counts. It failed to consult with the community on this legislation and it has created a shambles; it has created a mess that is of its own making. If the Leader of the House needs any further proof of that, he should look at the fact that we have amendments from the other house.

Sitting suspended from 6.00 to 7.00 pm

Mr C.J. TALLENTIRE: Before the break I mentioned why we needed to go into this level of scrutiny of the bill and suggested that if we had done this initially, we might not have had to face this situation of a series of amendments coming back from the other place and us now debating those amendments. I noticed over the course of the dinner break that the conservation movement had made another statement on this legislation. It is particularly relevant to this clause, because clause 42 is, of course, the so-called "God clause". The statement is headed "WA 'God Clause' extinction laws should not be passed" and reads —

> Conservation groups today called on the state Opposition to vote against the WA Government's controversial Biodiversity Conservation Bill which includes a "God Clause" to allow the extinction of native wildlife.

That is exactly where we are at in this legislation. The government has taken our advice, to some extent, in that it will delete clause 42, which is a point we argued for when the bill was last in this place, but it has actually replaced it with something else. We are about to get to that replacement, and perhaps that is where we should move now. However, before doing so, I want to pick up on a point that the minister has raised on numerous occasions—that is, how this bill compares with the legislation that the Carpenter government had prepared. I have had the opportunity to view some of the drafts of that previous legislation, because that was the way of the previous government—it consulted with stakeholders, reviewed things and asked for opinions. My observation—the minister will be able to confirm this—is that the legislation the minister has brought to this place has something like 100 clauses fewer than the legislation that the Carpenter government was about to bring here. The minister gutted that bill by 25 per cent. I looked at the pages; I reckon it is about 80 pages thinner. Can the minister confirm that the legislation he has brought in here has been reduced by something like 100 clauses from what was previously presented?

Mr A.P. JACOB: What a pointless exercise to theoretically discuss what a Labor government might have done! Labor has never brought in a biodiversity conservation bill. It has promised a biodiversity conservation bill since the 1980s and is yet to achieve it. This government has finally delivered an update to this legislation.

Mr C.J. Tallentire: Answer the question; you've made that point before.

Mr A.P. JACOB: It is an absurd question, member for Gosnells. I cannot answer a question about a theoretical piece of legislation that the Labor Party never managed to bring in. I note that the member is seeking to drag out this debate for as long as possible, because it must stick with him that it is a Liberal–National government that has this bill in here. It must really stick with him that a Liberal–National government has agreed to the amendments from the Greens, which places the decision on allowing a threatened species to be taken to extinction with the highest decision-making body of this state, which is the Parliament. We cannot go higher than that, because Parliament can always change the legislation as well. What we have said is that for any decision to allow a species to be taken to extinction, it has to come to the Parliament. That is quite simply —

Mr C.J. Tallentire: That is the next clause, minister. We are on amendment 5.

Mr A.P. JACOB: That is quite simply the highest level of decision-making that can be achieved. I am happy to move to the next amendment. I take the member for Gosnells' point. It is a good point. We are just discussing deleting —

Mr C.J. Tallentire: You didn't want to answer my question.

Mr A.P. JACOB: No, I take the member's point. It is a good point. We are just discussing deleting clause 42.

Mr C.J. TALLENTIRE: I will give the minister one further opportunity to answer the question. Can he tell me how many clauses he has reduced the legislation by compared with the biodiversity conservation bill that was being prepared by the Carpenter government and on which there was a consultation process, which he keeps referring to? How many clauses fewer does this legislation have compared with the Carpenter government's legislation?

Question put and passed; the Council's amendment agreed to.

Mr A.P. JACOB: I move —

> That amendment 6 made by the Council be agreed to.

Mr C.J. TALLENTIRE: I want to look at this clause in some detail, because this is the one that has caused the most amount of public outcry. It was very interesting that when this clause was first devised in the upper house, *The West Australian* newspaper ran an article that said —

> A controversial aspect of new wildlife laws has been binned after State Environment Minister Albert Jacob and the WA Greens formed an unusual alliance to change it.
>
> In a move hailed by green groups as a big victory, Mr Jacob said yesterday that he would accept key amendments to the Government's Biodiversity Conservation Bill.
>
> Central to the deal was a change that will remove the so-called God clause from the Bill allowing the minister to "take" a species even if it became endangered or extinct. Under the change, any decision by the minister that could lead to a species dying out will need to be scrutinised by both houses of State Parliament.

That article was initially exactly the same in the online version, but then, throughout the course of Thursday, 25 August, the online version was changed. The text of what appeared in people's morning edition of *The West Australian* could not be changed, but the online version could be changed. It was changed quite dramatically. The various "green groups" referred to in the article are, I suppose, my friends in The Wilderness Society, the Conservation Council of Western Australia, the WWF, the Leeuwin Group and elsewhere. Those groups all contacted the newspaper and said, "That's not true; the God clause is still there." I do not know why *The West Australian* got this idea and whether it was from the Greens or the Liberals, but whichever way, it needs to be a bit more careful when they are working in alliance because, clearly, the tip-off to the media was completely wrong and they managed to mislead the journalist, but that is their fault, I suppose. It was very interesting that that sort of error could occur. The reality is that a media statement has been put out today by those so-called green groups headed, "WA 'God Clause' extinction laws should not be passed". They have been consistent all along. We have been listening to them. We have been saying that they are absolutely right. In biodiversity conservation legislation, the objects of the act have to be very clear. It is all about the conservation of species; it is not about allowing for extinctions. That is why this clause and the one that it replaces are so wrong—they are not what one would expect to see in biodiversity conservation legislation.

If we look at what is being proposed, the detail of this amendment is about bringing such decisions to this Parliament. Instead of giving careful consideration to issues well upfront, before we even get to the Parliament—a careful airing of all the scientific issues, the very best scientific advice, the canvassing of public opinion through a recognised process—we have this at the final stage of things, this almost rubberstamp approach to the way in which an extinction would be treated. That is a very flippant way of dealing with the extinction of life on earth. It is a rubberstamp approach because the government of the day that brings such a proposal will always have the numbers in the Assembly. This bill provides that it has to be approved by a resolution passed by both houses of Parliament. The Assembly would be the government of the day, so it would not be a subject of debate in the Assembly, and we know that conservatives have dominated the upper house for, I think, the last 50 or 60 years and probably longer, which means that it would not be debated in the upper house either. The mechanism being proposed here is not an effective mechanism and would lead to species being allowed to become extinct without any detailed scrutiny. The proposal before us is grossly deficient and the minister needs to bring to this place an explanation for why he is backing this Greens amendment.

Mr A.P. JACOB: That is quite simply wrong. The clause, as amended, provides that such an authorisation must be approved by a resolution of both houses of Parliament, so it is not the situation that the member has just

outlined in which it is simply tabled; that was actually the member for Gosnells' amendment—that it would simply be tabled. Maybe he should re-read his own amendment.

Mr C.J. Tallentire: I'll read it, yes.

Mr A.P. JACOB: Under our amendment, we say that it actually has to be done by substantive resolution. It is irrelevant, anyway, because that amendment is not before us now—this one is. That is actually fundamentally incorrect. We cannot get a higher level of accountability than that. The key point—I ask the member for Gosnells to please listen to this, and I hope he genuinely understands it, because I understand that some will debate —

Mrs M.H. Roberts interjected.

The ACTING SPEAKER (Mr N.W. Morton): Member!

Mr A.P. JACOB: I really hope he genuinely gets this point: this clause is not about allowing species to be taken to extinction. That is inferred in the power to take, and that power exists now for a Minister for Environment. The whole reason that this clause is in the legislation—Governor's approval required in certain cases, or under this amendment, Parliament's approval required for certain proposals—is to say that if the taking of a species, which the Minister for Environment currently has the power to approve, were to result in the likely extinction of that species, for the first time ever that decision is removed from ministerial discretion and is placed under a higher authority. These proposed clauses do not provide a new power to allow the taking to extinction of a species; that power has existed since at least 1950 under the existing Wildlife Conservation Act. To imply that these clauses give that power is quite simply false—categorically false. These clauses are about putting a level of accountability around that ministerial discretion. That is why it was proposed under the previous Gallop government, after consultation, that it should go to the Governor; that is why my original proposal was for it to go to the Governor. I have actually listened to groups; I have met with those groups and I have said that I would listen to them on the way through the parliamentary process. That is why I agreed to the Greens' amendment to place that discretion, that accountability, that authority at the highest decision-making authority level in this state—the Parliament. There is no more that we can do on that, other than to place it with the Parliament for it to be the final decision. If the member for Gosnells persists in trying to make out that this clause is somehow the mechanism that gives the power to take, it is simply false.

Mr C.J. TALLENTIRE: The minister does not need to take my word on this; I will continue reading a little bit of the joint media statement that has just been issued by the environment groups. It states —

> The Bill was pushed through the Legislative Council on Thursday by the Government, and will now return to the Legislative Assembly for final consideration.
>
> Environment and Conservation Groups, as well as the Leeuwin Group of scientists, have raised the alarm about the passing of environmentally destructive legislation. The Bill includes the so-called "God Clause" which allows the state Government to approve activities that would cause wildlife extinction.
>
> Rather than passing the Bill into law, all parties should commit to working with scientists, environmental policy experts and the conservation movement, to develop and deliver effective 21st century biodiversity laws for WA's environment.

The minister suggested that my amendment, which was also presented by Hon Adele Farina in the other place, was somehow a disallowance motion–type amendment. It was an amendment designed to elicit extensive community input—the very best of a scientific advisory committee, a statutory body. It was designed to make sure that there was a wide public airing of the issue and publication in the *Government Gazette*, that there was an opportunity for people to make submissions, and that there was a requirement for the minister to check that the proposal would conform with Australia's obligations under international agreements, such as our commitment under the international Convention on Biological Diversity. It was also designed to make sure that there was full consideration of environmental protection policies and their impact. It outlined an extensive process. I heard one member in the other place describe it as a "bureaucratic" process; that is a comment that the minister would probably agree with, but I find that extraordinary when, at its heart, the process was about bringing out the very best of science.

This is a theme we keep seeing: the Liberal Party does not like scientific advice if it is transparently presented to the public. The Liberal Party only accepts science that it can filter and fudge a little bit and hide away in the back room of an agency through some sort of arrangement between the minister and whoever he chooses to consider his scientific expert. That is not acceptable. We had everything set out with the utmost transparency and that would have been the way to proceed here. That is what people expect nowadays—that we have strong transparency provisions.

Eventually perhaps things would have made it through to the Parliament and there would have been some discussion here, but not at the very final stage; not at the very end of things, when decisions have already been made and after time lines might have already blown out such that a proposal might already have been implemented. There is no appeal process and no public hearing process. Yes, there would perhaps be the opportunity to rely on parliamentarians to debate a matter of complex science, but I do not know that these parliamentary chambers have a strong record when it comes to debating matters of great scientific import; I do not know that it is something that we are best able to deliver, but I do know that a decent scientific process, in which we get the best of advice coming forward early on in the decision-making scenario, is the way to proceed.

The minister is trying to suggest that the Labor Party has some sort of jealousy about this. Of course, we would have loved to have seen this legislation come in much sooner, but not legislation that is missing more than 100 clauses, and not amendments that, as Jenita Enevoldsen from the Wilderness Society has said, are amendments that just embrace ministerial discretion.

Division

Question put and a division taken, the Acting Speaker (Mr N.W. Morton) casting his vote with the ayes, with the following result —

Ayes (30)

Mr P. Abetz	Mr J.M. Francis	Mr S.K. L'Estrange	Mr D.C. Nalder
Mr F.A. Alban	Mrs G.J. Godfrey	Mr R.S. Love	Mr J. Norberger
Mr C.J. Barnett	Mr B.J. Grylls	Mr W.R. Marmion	Mr D.T. Redman
Mr I.M. Britza	Dr K.D. Hames	Mr J.E. McGrath	Mr A.J. Simpson
Mr G.M. Castrilli	Mrs L.M. Harvey	Mr P.T. Miles	Mr T.K. Waldron
Ms M.J. Davies	Mr C.D. Hatton	Ms A.R. Mitchell	Mr A. Krsticevic *(Teller)*
Mr J.H.D. Day	Mr A.P. Jacob	Mr N.W. Morton	
Ms W.M. Duncan	Dr G.G. Jacobs	Dr M.D. Nahan	

Noes (14)

Ms L.L. Baker	Ms J.M. Freeman	Mr M.P. Murray	Mr P.C. Tinley
Dr A.D. Buti	Mr F.M. Logan	Ms M.M. Quirk	Mr D.A. Templeman *(Teller)*
Mr R.H. Cook	Mr M. McGowan	Mrs M.H. Roberts	
Ms J. Farrer	Ms S.F. McGurk	Mr C.J. Tallentire	

Pairs

Ms L. Mettam	Mr P. Papalia
Mr V.A. Catania	Mr W.J. Johnston
Mr M.J. Cowper	Mr J.R. Quigley
Mr M.H. Taylor	Mr D.J. Kelly
Mr I.C. Blayney	Ms R. Saffioti
Ms E. Evangel	Mr P.B. Watson

Question thus passed; the Council's amendment agreed to.

Mr A.P. JACOB: I move —

That amendment 7 made by the Council be agreed to.

Mr C.J. TALLENTIRE: Amendment 7 shows the minister's desire to delete another clause that we also wanted to delete when it was last here, but at the time the minister defended the clause and said that it was essential and well-written legislation. I am pleased to say that during the course of debate in the other place, he has realised that we were right and he was wrong. The only problem is that when we get to the next amendment, he will seek to replace the deleted clause with a new clause that does not measure up to the amendment we put forward.

I am glad that yet again the minister has seen the flimsiness of what he was originally proposing—in this case in clause 47 on page 40 of the bill that provided for the Governor's approval for threatened ecological communities. The minister could not see that flimsiness when we were last looking at this provision. He thought it was robust legislation and said it was the very best of biodiversity conservation law. This evening, the minister has not said how this bill measures up compared with biodiversity conservation laws elsewhere in Australia. I would be interested if the minister could point to other contemporary legislation around the country that has the same level of flimsiness as proposed here. Can the minister point to legislation in Australia that does not use scientific advisory committees? Can the minister point to legislation anywhere else in Australia—I am talking

about recently revised legislation and not old legislation—that does not provide for a thorough submission process and proper consideration and transparency? Can the minister point to that in legislation anywhere else in the country?

Mr A.P. JACOB: I note the member for Gosnells' earlier interjection. I think that is better debated at the next amendment, which inserts the suggested clause from the upper house.

Mr C.J. TALLENTIRE: Yes, I will repeat that if the minister likes and if that is necessary. I say again that clearly the minister is not prepared to explain why he has had this change of heart. Previously, the minister defended this clause and now he seeks to delete it. Can the minister give us an explanation?

Mr A.P. JACOB: The explanation is the same as the explanation for the earlier clause. For the member's benefit, in the earlier clause we discussed an accountability mechanism whereby an approval to take could result in the extinction of a species. Here we are debating an entirely new concept for biodiversity conservation in Western Australia. In the first instance, we are speaking about listed threatened ecological communities. There has been no recognition under the Wildlife Conservation Act for listed threatened ecological communities. This bill establishes that in the first instance, and that is one of the reasons that this is a milestone bill. It is disappointing that even though the member for Gosnells may have some objections, he voted against it at the third reading stage. Picking up on the member's question on threatened ecological communities and comparisons with other acts around Australia, I am not aware of a single piece of biodiversity legislation in Australia that applies as high a threshold to an approval for extinction as the requirement of approval from both houses of Parliament. Quite simply, that is the highest level of protection.

Mr C.J. Tallentire: I asked the minister about other legislation that has scientific processes involved. I am not interested in that.

Mr A.P. JACOB: That is the clause and, quite simply, that is the highest level. That is the answer.

Mr C.J. TALLENTIRE: Does the minister seriously imagine that there would be detailed scientific debate in this chamber or the other chamber? The answer is no.

Question put and passed; the Council's amendment agreed to.

Mr A.P. JACOB: I move —

That amendment 8 made by the Council be agreed to.

Mr C.J. TALLENTIRE: On the previous amendment the minister asked me to lead him to respond once we reached this amendment and explain why he does not like clause 47 as it stands. I look forward to the minister's explanation. Why has he had this change of heart? Previously, he wanted to retain clause 47. He just said to me that he wanted to put off providing his explanation until we reached this part of the debate, so I look forward to it.

Mr A.P. JACOB: This clause applies to threatened ecological communities, which is a new legislative concept in biodiversity conservation legislation in this state. It applies to them the same standards that the earlier amendment from the Legislative Council applied to threatened species: if an approval to take a threatened ecological community is likely to result in the collapse of that threatened ecological community, it will not be a decision at the sole discretion of the minister, but it will be a decision that contains a level of accountability. The original proposal was that that go to the Governor. I made the point that that was the original proposal in the earlier rounds of consultation more than 10 years ago. Picking up on concern from others, we have agreed to an amendment from the Greens to have that decision go beyond not only the minister to the Governor, but beyond the minister to Parliament and to be by substantive motion in Parliament . Could the member for Gosnells outline what he divided on in the last clause, because he agreed to remove the clause that had accountability for me over threatened species but then he voted against a clause that provided any accountability? The member for Gosnells voted to have completely unencumbered ministerial discretion to allow the taking to extinction.

Mr C.J. Tallentire: Rubbish.

Mr A.P. JACOB: That is what the member just did. That would be a God clause. That is what the member for Gosnells just voted for; we voted the other way. I really encourage the member for Gosnells not to do that again for threatened ecological communities. That is what his colleagues did in the upper house; they removed all the infrastructure and all those accountability mechanisms and voted against the clause. These clauses are accountability mechanisms. If these clauses are removed, I will still be able to approve to take but I will not have to tell anyone about it, and I certainly will not need Parliament's approval. The opposition is trying to give me far more power than I want. That is what it just voted for in the last clause.

Mr C.J. TALLENTIRE: The minister might not understand it, but we are voicing our opposition to poorly drafted legislation. That is what we have done consistently all along. That is why, when this legislation was first

in this place only a matter of weeks ago, we told the minister that some clauses were seriously deficient and we opposed them then. We are continuing to do that with the minister's amendments, which also are seriously deficient. We are opposing these clauses because that is our way of telling the minister that they are badly designed. They are wrong. We have presented our amendments to this and the other place so that what Labor stands for on this is perfectly well understood by the general population. Our amendments are clearly on the record. The minister has to answer the question to people here: why he did not talk to them before bringing the legislation to Parliament is a mystery. Why, as I understand, did he cancel a meeting with the World Wide Fund for Nature. The WWF wanted to talk to the minister about the legislation but he cancelled that meeting so it could not explain to him its concerns about the legislation. Yes, minister; we will vote against clauses because that is our way of showing the people of Western Australia who keep faith with the environmental movement what they have asked us to do; that is, object to clauses that give the minister unfettered powers or powers by which he can manipulate Parliament's operations to glide through some sort of extinction. We are making our views very clear and that is exactly what I see is being raised in the media releases put out by the Conservation Council of Western Australia, the Wilderness Society of WA, WWF and the Western Australian Forest Alliance. They all say the same thing—unfortunately, although the legislation has been amended, it does not go anywhere near far enough. It brings into play some weird reliance on Parliament to get into very detailed scientific matters. It does not provide for a good process to debate and receive public submissions and have full transparency about any decisions that might be the eventual consequence of a proposal that could lead to extinction of a species. I do not think the minister should treat flippantly the issue of extinctions. Really, they should receive the very gravest of consideration. That is why we wanted to go through these amendments with the minister when they were last in this place. The minister did not come up with any argument when my amendments were presented to him when the bill was last in here. He wanted to rush it through and I heard the Leader of the House objecting to this bill taking so long. It is because the minister has handled it badly. He did not consult up-front with community groups and he did not allow for proper, careful debate when the bill was last here and this is the consequence. The bill is back in this place now and the minister is trying to do some sort of patch-up job. Yes, it looks like we will oppose this clause again, unless the minister can explain to us how he imagines a very detailed, scientific debate could be had in either this chamber or the other chamber.

Mr A.P. JACOB: Hopefully, for the last time, I will again explain this to the member for Gosnells because we went through the cycle in debate on the earlier clause. We have already voted to remove that fettering of ministerial discretion. What sits before us now is unfettered ministerial discretion. It is this side proposing an earlier clause to fetter it, and the Council has proposed fettering it further by making a decision on extinction one of Parliament, not the minister. If the member for Gosnells votes against this clause, he will make a decision on extinction to be at the sole discretion of a minister.

Mr C.J. Tallentire: We put our amendments up.

Mr A.P. JACOB: The opposition's amendments are not here. They have been debated in both houses and they are not before us now. If the opposition votes against this clause, as it voted against the earlier clause we just divided on, the Labor Party in Western Australia will have voted to remove any fettering of ministerial discretion on extinctions. The Liberal–National government will have voted to have a fettering and accountability level on ministerial discretion by taking it to Parliament. If the opposition votes against this clause, it will again be voting to remove any level of accountability on the minister and will make it solely ministerial discretion, but we will not do that.

Mr C.J. Tallentire interjected.

The ACTING SPEAKER: Member for Gosnells!

Mr A.P. JACOB: No; I am sorry if the member does not follow what is happening here, but we will not do that.

Mr C.J. Tallentire interjected.

The ACTING SPEAKER: Member, you can seek the call alternately with the minister for as many five-minute turns as you like. I will not have this descend into a shouting contest between the two of you. You can seek the call; I will allow that—that is not a problem—but I want to hear whoever has the call in silence, please.

Mr A.P. JACOB: That is all this clause does. This bill allows for the approval to take both a threatened species, as we have discussed, and a threatened ecological community and, by implication, it allows for the taking —

Ms S.F. McGurk interjected.

The ACTING SPEAKER: Member for Fremantle!

Mr A.P. JACOB: By implication, it will therefore allow the taking to collapse. We are seeking to insert in this clause a level of accountability. The Legislative Council has said that it believes both houses of this Parliament should be the final decision-makers for whether a threatened ecological community is taken to collapse. We as a government have accepted that and that is what we intend to vote on. If the Labor Party chooses to vote against that, so be it, but that is all this clause does.

Mr C.J. TALLENTIRE: Will the minister please explain how he thinks a complex scientific debate can be had in this place and in the Legislative Council?

Mr R.S. LOVE: I want to voice my disappointment in the member for Gosnells that, in his view, Parliament is not the best place to have the ultimate arbitration —

Point of Order

Dr A.D. BUTI: I do not think that in consideration in detail a member can express his disappointment with a member of Parliament.

The ACTING SPEAKER (Mr N.W. Morton): Member, I listened to what you had to say. I will not allow this to turn into a general shouting contest. Member for Moore, you are more than allowed to make comment on the amendment before the house, which is what we are dealing with. If your comments pertain to that, I will allow it, but they have to pertain specifically to the amendment before the house.

Consideration in Detail Resumed

Mr R.S. LOVE: Thank you for that direction. I will keep it positive then, and that will be something nice in this debate. This is a very good way to make sure that the people of Western Australia are very well assured that the taking of an ecological community will be applied only after it has been given due consideration by both houses of Parliament.

Point of Order

Dr A.D. BUTI: If the member for Moore has a question, that is what should happen in consideration in detail. If he wants to make a third reading speech, he may do so at the third reading. This is questions to the minister.

Mr P. Abetz interjected.

The ACTING SPEAKER: I make the ruling, member for Southern River, thank you. Member for Armadale, he is quite within the standing orders to do what he is doing.

Consideration in Detail Resumed

Mr R.S. LOVE: That is fine; I will withdraw from any further comment at this point.

Mr C.J. TALLENTIRE: I really think the minister is so keen to advocate for this clause that he owes it to Parliament to explain how he sees this will work. He is saying he thinks it is a great way to proceed, that it is a check on the system. How does he imagine Parliament could debate—whether it is a decision to send a stygofauna or a mammal into extinction, or perhaps a decision on the demise of the last piece of mainland quokka habitat—any of the sorts of decisions about species that, unfortunately, might come up? How does he imagine this Parliament could debate those sorts of often very complex scientific things?

Mr A.P. Jacob: That is up to the Parliament; it's not up to me.

Mr C.J. TALLENTIRE: Can the minister outline how that process would work?

Mr A.P. JACOB: That is up to the Parliament; that is not up to me. Parliament is not subject to ministerial direction.

Mr C.J. TALLENTIRE: The minister is putting to us that this is some sort of check in the system, but the minister is not prepared to explain how it could possibly work. Why would we support something when the minister cannot even explain how it would work?

Division

Question put and a division taken, the Acting Speaker (Mr N.W. Morton) casting his vote with the ayes, with the following result —

Ayes (29)

Mr P. Abetz	Mr J.M. Francis	Mr S.K. L'Estrange	Mr J. Norberger
Mr F.A. Alban	Mrs G.J. Godfrey	Mr R.S. Love	Mr D.T. Redman
Mr C.J. Barnett	Mr B.J. Grylls	Mr W.R. Marmion	Mr A.J. Simpson
Mr I.M. Britza	Dr K.D. Hames	Mr P.T. Miles	Mr T.K. Waldron
Mr G.M. Castrilli	Mrs L.M. Harvey	Ms A.R. Mitchell	Mr A. Krsticevic *(Teller)*
Ms M.J. Davies	Mr C.D. Hatton	Mr N.W. Morton	
Mr J.H.D. Day	Mr A.P. Jacob	Dr M.D. Nahan	
Ms W.M. Duncan	Dr G.G. Jacobs	Mr D.C. Nalder	

Noes (14)

Ms L.L. Baker	Ms J.M. Freeman	Mr M.P. Murray	Mr P.C. Tinley
Dr A.D. Buti	Mr F.M. Logan	Ms M.M. Quirk	Mr D.A. Templeman *(Teller)*
Mr R.H. Cook	Mr M. McGowan	Mrs M.H. Roberts	
Ms J. Farrer	Ms S.F. McGurk	Mr C.J. Tallentire	

Pairs

Ms L. Mettam	Mr P. Papalia
Mr V.A. Catania	Mr W.J. Johnston
Mr M.J. Cowper	Mr J.R. Quigley
Mr M.H. Taylor	Mr D.J. Kelly
Ms E. Evangel	Mr P.B. Watson
Mr I.C. Blayney	Ms R. Saffioti
Mr J.E. McGrath	Mr B.S. Wyatt

Question put and passed; the Council's amendment agreed to.

Mr A.P. JACOB: I move —

That amendment 9 made by the Council be agreed to.

Mr C.J. TALLENTIRE: Given that we have had problems with the notice paper already once in this day's sitting, I wanted to check this. I heard the minister say that he thought there were four more amendments to go through. I think the minister is forgetting that we have to return to amendment 3, so, in fact, there are five more amendments to go.

Mr A.P. Jacob: Correct.

Mr C.J. TALLENTIRE: I am looking at page 95, where there is an amendment to clause 151, "Defences to charges under s. 149 and 150". We had some discussion about this when we were last looking at the legislation, and the minister was again dismissive of the concern raised that it does seem, although there are defences to certain charges, that the actual term "fauna" is being expanded to "other than fish or pearl oyster". Line 26 states that if something occurred —

… in the course of a lawful activity the sole or dominant purpose of which was not to take fauna;

The minister wants to add "other than fish or pearl oyster". That raises this question: what, then, would lead to a charge of, say, the illegal taking of a critically endangered sawfish?

Mr A.P. JACOB: Clause 151(1) states "other than an offence involving specially protected fauna". Again, as we discussed when dealing with the first amendments, it does not apply to specially protected fauna.

Mr C.J. TALLENTIRE: What about species that may not be specially protected—say, baldchin groper or something like that if they are not a specially protected listed species? Is that what the minister is suggesting—a species that is not listed? Perhaps it is a species that could be taken in an unlawful manner. Why are we opening up this defence to people who might be taking species in such a way?

Mr A.P. JACOB: It would still have to be taken lawfully; however, whether a fish or pearl oyster is or is not taken lawfully is largely governed by the Fish Resources Management Act.

Question put and passed; the Council's amendment agreed to.

Mr A.P. JACOB: I move —

That amendment 10 made by the Council be agreed to.

Question put and passed; the Council's amendment agreed to.

Mr A.P. JACOB: I move —

That amendment 11 made by the Council be agreed to.

Mr C.J. TALLENTIRE: I am again checking the amendment to clause 153, which is a change of definition. How does this relate to the Aquatic Resources Management Bill that is going through Parliament at the moment? Does that not provide the necessary protections? Why has this change come about? When this legislation was first presented to Parliament, there was no Aquatic Resources Management Bill before Parliament, and these amendments have been raised as the Aquatic Resources Management Bill has progressed through Parliament. That bill is not yet through this place, but we are still seeing these amendments. I am keen to hear an explanation of the relationship between these amendments and the Aquatic Resources Management Bill.

Mr A.P. JACOB: Again, these amendments are, I guess, seeking to ensure that there is no unnecessary overlap between the current Fish Resources Management Act and the Aquatic Resources Management Bill, should it pass through this house. As I have answered earlier queries on that, this bill had to be drafted in such a way as to deal with the legislation as it currently stands, not what the Aquatic Resources Management Act may ultimately look like. The purpose of these amendments is largely to recognise that there is that capacity, and there will be that capacity—if not a greater capacity—under the Aquatic Resources Management Bill to manage both the disturbing and taking of fish and pearl oysters.

Mr C.J. TALLENTIRE: Is the minister happy, as environment minister, that he would have no role in bringing charges to bear on someone responsible for disturbing fish or pearl oysters?

Mr A.P. JACOB: Again, providing they are not specially protected, I am comfortable with the will of this Parliament that they are managed under different pieces of legislation.

Mr C.J. TALLENTIRE: The Minister for Environment keeps making this point that he is not really responsible and that it is all about the will of the Parliament, but as environment minister he is leading the charge for the environment in this Parliament, so this is his opportunity to show the way. In this case, and perhaps right through the debate on this legislation, the minister is just handing over responsibilities. The minister does not want to take responsibility for the protection of any fish species that could possibly be covered by other legislation. Why would the minister, as environment minister, not want to have full control of marine biodiversity?

Question put and passed; the Council's amendment agreed to.

Mr A.P. JACOB: I move —

That amendment 12 made by the Council be agreed to.

Mr C.J. TALLENTIRE: It is worth us just checking the clarity of this, given the mistakes we have seen.

Mr P.T. Miles interjected.

The ACTING SPEAKER: Member for Wanneroo.

Mr C.J. TALLENTIRE: Does the member for Wanneroo not believing in checking that —

Mr P.T. Miles interjected.

The ACTING SPEAKER: Can I just remind the member for Wanneroo that he is on two calls. That commentary is not necessary.

Mr C.J. TALLENTIRE: I will just check line 24 of clause 153(4) in question, which states —

> (4) It is a defence to a charge of an offence under subsection (1) involving a specially protected species or a threatened species to prove that —
>
> (a) the disturbance —
>
> (i) occurred in the course of a lawful activity the sole or dominant purpose of which was not to disturb fauna …

Again, the minister wants to absolve himself from any responsibility for marine biodiversity in general and I do not understand why he would want to do that, so I give him another opportunity to explain why he is prepared to do so.

Mr A.P. JACOB: It has been the practice for many years in Western Australia that there is a Department of Fisheries and legislation that sits under that department. This provision simply seeks to ensure that there is not unnecessary overlap between the Biodiversity Conservation Bill and the work that would be undertaken by the agency empowered under the Biodiversity Conservation Bill, and the work undertaken by the Department of Fisheries and its legislation.

Mr C.J. TALLENTIRE: Is the minister suggesting that when it comes to the marine environment his agency should not be involved unless a threatened species is concerned? The minister is really suggesting that he is prepared to leave it all to the Department of Fisheries. Is that right? Is that how the minister sees marine biodiversity conservation in Western Australia?

Mr A.P. JACOB: The principle of ecologically sustainable fishing is enshrined in the Department of Fisheries' legislation. One of the activities of the Department of Fisheries is to manage these resources in an ecologically sustainable manner, and we recognise that that is its remit and responsibility under its legislation, which has already gone through this place, and indeed under its new bill, which has also gone through this place, but has not yet passed through the upper house. We seek to recognise that in those areas of biodiversity conservation that relate to species that are not listed species, specifically fish and pearl oysters. The activities of the Department of Fisheries are quite different from ours in that a lot of its activity is the regulation of a sustainable catch.

Mr C.J. TALLENTIRE: Given the interest that the minister has expressed in the past about conservation of the marine environment and recognising the absolute importance of fish stocks in that environment, is he admitting tonight that he is just relinquishing all responsibility for fish and oyster species in the marine environment and just handing it over to a department and a minister whose primary objective is about the extraction of those fish resources from the marine environment?

Ms S.F. McGURK: Could the minister tell us what occurs now under the Wildlife Conservation Act in regard to fish and pearl oysters? The minister may have answered this before, but I did not hear. Are fish and pearl oysters now exempt from consideration under the Wildlife Conservation Act 1950?

Mr A.P. JACOB: My understanding is that the practice as it currently stands is that they are all recognised as fauna, but they are managed entirely through the Department of Fisheries under the Fish Resources Management Act as it currently stands. What is proposed with this provision is not a change to practice or how the departments operate; it simply recognises that those structures and operational responsibilities have been enshrined for many, many years and will continue in that vein for the foreseeable future under this legislation.

Ms S.F. McGURK: Can the minister clarify that he has not sought any exemptions under the current Wildlife Conservation Act in the last couple of amendments and amendment 12 in regard to fish and pearl oysters? I am not asking about the practice or the department; I am asking about what the 1950 act provides for.

Mr A.P. JACOB: I do not think there are exemptions in the existing Wildlife Conservation Act. There is an extensive level of overlap and that is what we seek to clearly define through these changes—to make it clear that what has been Fisheries practice to manage remains so and what is the responsibility of the Department of Parks and Wildlife under the Biodiversity Conservation Bill remains so.

Mr C.J. TALLENTIRE: I want to check with the minister—I seem to recall reading this elsewhere—whether the Minister for Fisheries has veto rights over the listing of a species or a habitat in the marine environment.

Mr A.P. JACOB: This does not really relate to the clause before us, but yes there is a power of concurrence relating to the listing of a threatened ecological community within the marine environment.

Mr C.J. TALLENTIRE: Does that not demonstrate that the minister is just making himself completely subservient to the Minister for Fisheries? Where does that leave the minister's structuring of his agency in terms of marine conservation? Is there even any point in pursuing a marine conservation branch in the Department of Parks and Wildlife, given that the minister does not want to have any enforcement power and wants to leave it all to the Minister for Fisheries and the Department of Fisheries unless we are talking about a listed species or a listed critical habitat?

Mr A.P. JACOB: There is far more to the marine environment than just fish and pearl oysters. There is the work this government is doing on marine parks through the Conservation and Land Management Act. There are penalties for disturbance of cetaceans—again one of the highlights of this bill that the Labor Party voted against. That also applies to a range of tortoise and other species, which would not be considered fish or pearl oysters. There are a range of mechanisms and responsibilities that the Department of Parks and Wildlife and the Biodiversity Conservation Bill will still have within the marine environment, but we exclude the area of fish and pearl oysters.

Mr C.J. TALLENTIRE: Is it the minister's understanding then that animals like whales and dolphins can live without adequate fish stocks? As the Minister for Environment, would the minister not be concerned about the feed for those animals he has mentioned and that he has expressed some interest in? Why would the minister not seek to protect that feed from an ecological point of view and from a food chain point of view? If the minister leaves that to another agency, what controls does he have?

Mr A.P. JACOB: That would be considered, by definition, to be an ecologically sustainable fishery. That is in the "Objects of Act" of those bills. I simply recognise that it is better managed and regulated under our existing structures through the Department of Fisheries.

Mr C.J. TALLENTIRE: So the Minister for Environment has no interest in making sure that there are adequate fish stocks for various whale species to eat? Is that the case, minister?

Question put and passed; the Council's amendment agreed to.

Postponed amendment 3 —

Resumed from an earlier stage of the sitting.

The ACTING SPEAKER (Mr N.W. Morton): When the minister previously moved this amendment, there was some conjecture about it, hence its deferral. I have a statement from the Speaker to provide some clarity around that, which I will read.

In relation to amendment 3 in Legislative Council message 146, the Clerk of the Legislative Council has confirmed that the message received from the Legislative Council refers to an incorrect line number. It should read —

No. 3

Clause 37, page 32, line 17 to 22 — To delete the clause.

It is clear that the Legislative Council voted to delete clause 37 from the bill. I note there is no line 32 on that page of the bill and each amendment must be self-contained. *Hansard* confirms that the Legislative Council voted against clause 37 standing as part of the bill in order to insert a new clause 37. I am satisfied that this is a typographical error and that amendment 3 before the house is as follows —

No. 3

Clause 37, page 32, line 17 to 22 — To delete the clause.

That is the amendment before the house, so the question is that amendment 3 be agreed to.

Question put and passed; the Council's amendment agreed to.

The Council acquainted accordingly.