BIODIVERSITY CONSERVATION BILL 2015

Consideration in Detail

Resumed from an earlier stage of the sitting.

Clause 5: Terms used —

Debate was interrupted after the clause had been partly considered.

Mr C.J. TALLENTIRE: We were talking about the definition of "fauna", and it had come to our attention that this morning the minister had put on the notice paper an amendment that would effectively remove "fish" from this definition of "fauna". I express serious concern about that. I understand that the minister might be having second thoughts about that amendment, and I seek the minister's clarification. It is true that the implementation of this change in the definition will come about when we look at clause 151, but I need to know now whether the minister will hold true to this definition of "fauna" in clause 5.

Mr A.P. JACOB: My intention has always been to hold true to this definition, but that is correct—I am happy to leave out those amendments, other than the amendment to clause 39, which is just to insert the word "section" where it has been missed out.

Mr C.J. TALLENTIRE: On that basis, I accept what the minister is saying, and look forward to having time to properly consider any amendments that the minister might put forward in the future. I therefore note that in the definition as it stands, referring to all of the state's fauna, fish will not be exempted. I note an interesting piece in clause 12, but I am happy to explain why I support that clause when we get to it. It is quite clever, and it reflects how the act should work. We can say that a subset of species will be covered. Their management as recognised fisheries will be done through the Fish Resources Management Act, and eventually the Aquatic Resource Management Act, but we will not be making any total exemptions from the provisions in clause 151 for fish. That is something we have to examine very carefully, and it certainly would not have been acceptable to pass that today.

I can now turn to other definitions that I think need clarification. I am curious to know why the definition of "native species" is as it stands. I note that it refers to definitions contained in clause 8(2). The way in which the legislation has an emphasis on the coastal sea and the continental shelf seems a little curious, and then it refers to other geographic areas. Perhaps the minister can give some explanation of the rationale behind this definition of native species.

Mr A.P. JACOB: My understanding is that this definition picks up on the commonwealth definitions. It is really more contained in clause 8. The member might also ask about clause 8(2)(f), which reads —

> that was present in Australia or an external Territory before 1400.

That is better discussed at clause 8.

Mr C.J. TALLENTIRE: I am happy to oblige the minister there. I move on to the definition of "take". I understand that the idea of "take" is a fairly old term, but it is one that we use very widely. It can include things such as killing an animal, capturing an animal, through to plucking flora or destroying plants. Is there a danger in having some activities that may be authorised—someone might have an authorisation to take X number of kangaroos each year—described with the same term that would apply to illegal activities? I am wondering whether it really is a good way to cover legal and illegal activities by describing them all as forms of taking.

Mr A.P. JACOB: The definition of "take", as a broad definition, serves the bill well. As the member noted, it can mean to kill, injure, harvest or capture fauna, and similarly with plants it could mean to gather, cut or take cuttings off a plant. Further on in the bill, we go through how that would be regulated and how people would be potentially authorised to take. There are many examples that I can think of when an authorisation to take would be justified, but taking without authorisation would generally be an offence under the bill.

Mr C.J. TALLENTIRE: I guess that is my point, though; we are using the same term to describe legal and illegal activities. Yes, that has been done in the Wildlife Conservation Act, but this bill is all about updating the legislation. Why are we sticking with this notion of take that can be applied to both legal and illegal activities?

Mr A.P. JACOB: The action is the action, and then the bill sets a range of parameters for whether that action is properly authorised or not. The definition of "take" is simply defining an action. Somebody can take legally or illegally.

Clause put and passed.

Clause 6 put and passed.

Clause 7: Lawful authority —

Mr C.J. TALLENTIRE: I am happy for the minister to move his amendment first of all. Just examining his amendment, because it is something that has come to the notice of the opposition just today, on page 18, he intends to insert a definition of "biodiversity conservation conditions" that reads —

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

I am happy to receive some explanation of that from the minister.

Mr A.P. JACOB: Thank you, member for Gosnells. I do not intend to move that amendment at this time. I am happy for it to be considered at another time.

Mr C.J. TALLENTIRE: I take it, then, that the minister's further amendment on page 18 is also withdrawn.

Mr A.P. JACOB: Yes; correct.

Clause put and passed.

Clause 8: Native species —

Mr C.J. TALLENTIRE: I seek clarification from the minister about why a standalone definition applies to native species. I see that it refers to where a native species might occur geographically, but it does not look like a particularly exhaustive coverage of the state, especially on the terrestrial side, but I seek the minister's clarification.

Mr A.P. JACOB: My reading of this definition is that it is fairly exhaustive in that it refers to a species that is indigenous to Australia or an external territory of Australia. This includes the seabed, the continental shelf and the exclusive economic zone. It also allows for species, members of which periodically or occasionally visit. We could be talking about migratory species that might travel up to Russia, for example, as some of our migratory birds do. However, they are considered to be native species if they periodically or even occasionally visit Australia as a part of their natural migration. The definition also includes any species that was present in Australia or an external territory before 1400, which picks up species such as dingoes and boabs.

Mr C.J. TALLENTIRE: I am glad the minister mentioned dingoes, because I want his clarification. Are dingoes considered a native species? How are dingoes and what some people describe as wild dogs distinguished?

Mr A.P. JACOB: My understanding is that it is genetic and there is a scientific decision around that. I am not going to pretend to know at what point it is known. The minister may also determine that an animal other than one that belongs to a native species is fauna for the purposes of this legislation.

Mr C.J. TALLENTIRE: I realise it might be a complex issue, but as the minister can imagine, there is all sorts of potential for people to make mistakes. There is great enthusiasm in some parts of the state for the shooting of dogs. How can people be sure that they are shooting a wild dog and not a dingo? The minister says it is all about the genetics, and obviously crossbreeding goes on, but at what point does a dingo that has mated with a Canis familiaris become a wild dog? Is it at 50–50 or is it a quarter? What is the percentage? How can someone determine that when it happens? I wait for the minister's answer.

Mr A.P. JACOB: My understanding is that although dingoes are considered to be fauna at this point, because of the issue that people cannot tell the difference, they are not protected fauna.

Mr C.J. TALLENTIRE: If somebody says they shot an animal and it turns out it was a purebred dingo but they thought it some sort of a cross with a dog, is the minister saying their ignorance of what species it was is a defence?

Several members interjected.

The ACTING SPEAKER: Thank you, members.

Mr A.P. JACOB: Again, there is a range of other legislation that would sit around that. If it was CALM act land, for example, only particular people would have an authorisation to undertake that. As a dingo is not currently a protected species, landowners are permitted to do that.

Several members interjected.

The ACTING SPEAKER: Thank you, members.

Mr C.J. TALLENTIRE: The interjections coming from around the chamber are interesting.

Several members interjected.

The ACTING SPEAKER: Excuse me, member for Gosnells. Members, please.

Mr C.J. TALLENTIRE: We are trying to establish laws —

Several members interjected.

The ACTING SPEAKER: Member for Eyre and member for Warnbro, I am on my feet. I think the member for Gosnells can carry this argument on your behalf both ways.

Mr C.J. TALLENTIRE: I think it is important that we have clarity about the level of protection that is given to all of our native species. I am thankful for the clarification from the minister that a dingo is considered a native species and therefore receives the same protection as all other native species. I do not think there will be discrimination here that if an animal is deemed to be a dingo, it is a native species and it receives all the protection. But where we have problem is when somebody abuses the definitions and says it is not a dingo but a wild dog and kills it on that basis. The minister is suggesting that somehow based on this definition—I cannot see it written in the legislation—those people are protected; they would not be prosecuted for killing a native animal if they were simply to claim that they thought it was a wild dog. Is that the case, minister?

Mr A.P. JACOB: As it currently stands, they are not protected in any event.

Dr G.G. Jacobs interjected.

The ACTING SPEAKER: Member for Eyre.

Mr A.P. JACOB: I mean, member for Eyre, that they are not considered a protected species for the purposes of this bill.

Dr G.G. Jacobs interjected.

The ACTING SPEAKER: Member for Eyre, I am trying to get this conversation between the minister and the member for Gosnells.

Mr C.J. TALLENTIRE: I think there is a broader discussion that could be had, member for Eyre, and it would be useful. The issue is important that we do not want people shooting native species of any description—dingoes or any others—on the basis that they think they might be something else, because I could see that this approach could extend to other animals as well. For example, we have a magnificent creature with a common name of water rat—I believe rakali is the name given to it these days—that is quite a rare animal. In my view, it does not look anything like rat; it is a very important species. If somebody was to kill a rakali and say they thought it was a common rat, would they have the same defence?

Mr A.P. JACOB: I do not believe that they would, no, but, again, these issues are raised extensively throughout the bill. There are penalties where management of species apply. As it stands for a definition of native species, I think this definition picks up the broad intent of what we are trying to do with this bill.

Clause put and passed.

Clause 9: Determination as to fauna, flora or species —

Mr D.J. KELLY: Maybe this question is due to my ignorance, and the minister will be able to give me a concise answer. Clause 9(2) states —

> The Minister may, by order, determine that an animal that belongs to a native species is not fauna for the purposes of this Act.

Under what circumstances might the minister make such an order to determine that an animal that is a native species is not fauna? Why would that be done?

Mr A.P. JACOB: That provision would be used in the instance, for example, of a pest species—a species that could reach plague proportions. A great example of that is a crown-of-thorns starfish, which comes to mind for me. It occurs naturally on our reefs. It has not been a problem on our reefs so much, but I believe it has caused significant ecological problems on the Great Barrier Reef, for example. That might be an example when that clause may be used.

Mr D.J. KELLY: I can see that there might be a native species whose population exploded because of some circumstance so something would need to be done, but clause 9(2) does not appear to have too many limitations around it. Are there any constraints under the legislation or could the minister simply for his or her own reasons make such a determination?

Mr A.P. JACOB: The minister's powers to make determinations have been discussed at length in the second reading speech. They are fairly well outlined in other parts of the bill. There may also be circumstances in which something defined as a native species is not necessarily native to Western Australia. There is a range of areas whereby this could well come into use. It is one potential mechanism. It is not something that I have ever encountered in my time as the Minister for Environment, but I can certainly see that it is a useful provision to have.

Mr D.J. KELLY: The minister could determine that crocodiles or great white sharks are not fauna. It seems a bit peculiar that the minister could decree something that is clearly a native species not to be fauna. I can see a circumstance in which the minister might want to do that, but it seems to be a very general power without any limitations on it.

Mr A.P. JACOB: The use of any such powers would still need to be consistent with the objects of the legislation as well as the principles of ecologically sustainable development. It is an administrative power, but I do not think anyone would realistically try to say that an estuarine crocodile is not fauna. There is a range of other accountability mechanisms that ministers and governments sit over and sit under. Any minister who attempts something like that would probably be in breach of the objects of the legislation in any event and so could be taken to task for that, and they would be held to account in this place.

Clause put and passed.

Clauses 10 and 11 put and passed.

Clause 12: Application of Act in relation to aquatic matters —

Mr C.J. TALLENTIRE: Clause 12 as it stands highlights the relationship between the Biodiversity Conservation Bill and other legislation—notably the Aquatic Resources Management Bill, when it is passed, and currently the Fish Resources Management Act—and how that interplay should work. If my understanding of this clause is correct, we are saying that this legislation does not apply to or relate to any fish or pearl oyster species that is the subject of the FRMA. In other words, we are saying that everything is biodiversity and everything has the protection of the Biodiversity Conservation Bill, but that there are some species for which there are commercial fisheries, and those ones are exempt. They then are the subject of mechanisms we debated earlier in the week—aquatic resource use plans and aquatic resource management strategies—so that there is legitimacy to the exempting of certain species for commercial and recreational purposes. That makes sense, so I would just like the minister to clarify whether my interpretation of that is correct, and then we can proceed to some amendments I wish to move.

Mr A.P. JACOB: Yes, that is correct. This bill picks up essentially everything that comes under "biodiversity", unless it is expressly provided for under another piece of legislation, such as the Fish Resources Management Act and what will soon be the Aquatic Resources Management Act; it would need to expressly apply to situations in which it is appropriately subject to those bills.

Mr C.J. TALLENTIRE: Would the minister care to explain "other than Part 9"?

Mr A.P. JACOB: Part 9 relates to environmental pests, member for Gosnells.

Mr C.J. TALLENTIRE: I am aware of that. I am asking the minister to talk me through it.

Mr A.P. JACOB: For example, a fish could be an environmental pest, and an environmental pest is provided for under this legislation and sits apart from those that are provided for under the other legislation. It is a new provision that has come into the Biodiversity Conservation Bill that the member sees before him. Under part 9, the declaration of a species as an environmental pest requires the concurrence of the minister responsible for the Biosecurity and Agriculture Management Act, the Fish Resources Management Bill and the Pearling Act. Although it applies to that exemption, if you like, in clause 12, any declaration of a species as an environmental pest would require the concurrence of the ministers responsible for the legislation referred to in clause 12.

Mr C.J. TALLENTIRE: I now turn to the amendments standing in my name.

The ACTING SPEAKER (Mr I.M. Britza): Before we do that, we actually have to pass clause 12, and then we come to your amendments as a new clause.

Mr D.J. KELLY: The minister has exempted commercial and recreational fishing—what about customary fishing?

Mr A.P. JACOB: There is a whole part further along in the bill that deals with a range of customary activities on both private property and Conservation and Land Management Act land, and they are maintained in this bill as they are under the CALM act.

Clause put and passed.

New Part 1A —

Mr C.J. TALLENTIRE: We now turn to a very important area that is unfortunately not contained within the bill before us, even though this was a major part of the discussion paper. I know the minister has referred to the consultation that the previous Labor government did; that was when the community consultation phase occurred for this legislation. One of the major parts of that discussion was around biodiversity planning and monitoring

and the creation of bioregional plans. If the minister checks back, the previous discussion paper was circulated in, I think, 2001, and it led to many submissions being gathered. There was a lot of interest in the concept of bioregional planning. This is an opportunity for us to have a statewide strategy for biodiversity conservation. I have referred already to the draft statewide strategy that was presented to the people of Western Australia by the current Leader of the Opposition when he was Minister for the Environment. Underneath that strategy we would have, if you like, sub-strategies, so we could for example have a bioregional plan for the Pilbara. We could take parts of the south west and have a bioregional plan under which we would do the essential planning for where the biodiversity assets actually occur. We could look at areas that we especially want to protect and the interface between the agricultural landscape and the conservation estate. People such as the member for Eyre often raise that issue in this place and say that they are concerned that properties that are currently managed by the Department of Parks and Wildlife are causing problems, as they see it, for people who have adjacent properties. This is exactly the sort of thing that could be addressed through bioregional planning. We could work out, for example, to what extent there is a wild dog problem in a nature reserve in a given area and work towards controlling and eliminating the problem.

If we do not have a bioregional plan, we do not have an opportunity for people to come together and work out what their priorities are—especially with regard to invasive species, but also in respect of the assets we want to protect. The minister knows that we have an enormous salinity problem in the south west of the state. It has not gone away. It is true that it is no longer covered by the media, but it is a problem that is as ever-present as it was when it was the subject of the State Salinity Council in the late 1990s. It is a very real problem and it is threatening farmlands and parts of the conservation estate. We could work out how to tackle a problem like that through the bioregional planning process. We could work out how to protect the biodiversity asset, what the priorities are, and at the same time, how we are going to ensure that productive agricultural lands are protected. There would be all sorts of mechanisms for review and there would be publication of the conservation strategy in the *Government Gazette*. It would, of course, have to meet the objects of the legislation and there would be a clear mention of various recovery and management plans for species and ecological communities that are in danger. There would be an opportunity to use that plan for good negotiations with the commonwealth government as well, recognising that there is sometimes a lot of money available from the commonwealth government to support us when we have threatened species. We could ensure that we are all coming together on, say, the numbat recovery plan or on tackling something like the rakali, which I mentioned earlier, so that we have a recovery plan that is properly funded. It could look at the rivers and creek lines that are used by that species. It is very important that we have these plans all laid out. It is something that, I suppose, the minister might argue could be done without being mentioned in the legislation. But the problem, minister, is that if it is not mentioned in the legislation, there is a risk it will not happen. All too often we see an intent or potential for a minister to direct that something occur, but we have any number of species that do not have recovery plans and are in some form of trouble. There really is a need for us to be tackling the problem and looking at it by way of habitat–landscape connectivity, and to be looking at it in the setting of a functioning landscape. That is why we have bioregional plans. That is why they are so important. It is all in the context of a statewide biodiversity strategy. These are other components to the amendments I have put before house. Of course, there would be an extensive review body.

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

The ACTING SPEAKER (Ian Britza): Just before you go further, member, as a matter of process you should move new part 1A be agreed to so that it can then be discussed. I should have done that at the beginning. Can you move that, please?

Mr C.J. TALLENTIRE: I move —

Page 21, after line 17 — To insert —

Part 1A – Biodiversity Planning and Monitoring

12A. Statewide biodiversity conservation strategy

(1) The Minister must:

(a) prepare and adopt a statewide biodiversity conservation strategy for Western Australia within two years of the date on which this Act takes effect; and

(b) monitor the implementation and effectiveness of the strategy; and

(c) review the strategy every five years; and

(d) may, when necessary, amend the strategy.

(2) The Minister must be notice in the *Gazette* publish the biodiversity conservation strategy and each amendment of the strategy.

12B. Contents of the statewide strategy

The strategy in section 12A must —

(a) provide for an integrated, co-ordinated and uniform approach to further and promote biodiversity conservation encompassing government agencies, regional and local communities, other stakeholders and citizens;

(b) be consistent with —

(i) the Act's objects and how these are to be achieved;

(ii) State environmental policies;

(iii) biodiversity recovery and management plans;

(iv) co-operative arrangements with the Australian Government, local government authorities and regional natural resource management groups; and

(v) relevant international agreements;

(c) identify priority areas for conservation action and investment, including;

(i) establishing a marine and conservation reserve system;

(ii) landscape scale approaches across tenures; and

(iii) restoration of habitats; and

(iv) landscape connectivity; and

(v) threats to biodiversity; and

(vi) impacts of climate change; and

(vii) research and monitoring requirements; and

(viii) education and raising public awareness; and

(ix) facilitating access to information.

12C. Development of statewide strategy

(1) The CEO must prepare a draft nature conservation strategy for Western Australia.

(2) In preparing the draft biodiversity conservation strategy, the CEO must consider the objects of the Act.

(3) In preparing the draft biodiversity conservation strategy, the CEO must consult with the —

(a) Scientific Advisory Committee;

(b) Biodiversity Commission;

(c) Conservation and Parks Commission; and

(d) parties affected by the implementation of the strategy.

(4) The CEO must publish a notice in the *Gazette* and on the department's website inviting comment on the draft strategy.

(5) Submissions in respect of a statewide biodiversity conservation strategy may be made by any person within 60 days of the publication of the notice referred to in subsection (4).

(6) In preparing the final draft strategy, the CEO must –

(a) consider all submissions received;

(b) obtain and consider final advice from the —

(i) Scientific Advisory Committee;

(ii) Biodiversity Commission;

(iii) Conservation and Parks Commission; and

(iv) affected government agencies.

(7) The CEO must submit the draft statewide biodiversity conservation strategy to the Minister for approval within 6 months of the closing of public consultation in subsection (5).

(8) The draft strategy must be accompanied by a report setting out the issues raised in any submissions given during the public consultation period for the draft strategy.

(9) The Minister must cause notice of publication in the *Gazette* and on the department's website —

(a) final biodiversity conservation strategy; and

(b) report on submissions in subsection (8).

12D. Implementation of strategy

The CEO must take reasonable steps to implement a statewide biodiversity conservation strategy that has been approved through provisions of this Act.

12E. Review of statewide biodiversity conservation strategy

(1) The Biodiversity Commission must under a review;

(a) undertake public consultation for a period no less than 60 days and consider submissions;

(b) obtain and consider advice from the Scientific Advisory Committee, Conservation and Parks Commission and the department administering the Act; and

(c) consult with affected government agencies and other stakeholders.

(2) The Biodiversity Commission must provide the final review with recommendations and a report on submissions received to the Minister for approval.

(3) The Minister must consider the report and may take any action considered appropriate.

(4) The Minister must —

(a) cause an order and copy of the final report of the review in subsection (1), report on submissions received in subsection (2), and report received from the Biodiversity Commission to be laid before each House of Parliament; and

(b) make the final review and report on submissions publicly available within 30 days after tabling in Parliament.

12F. Minor amendments to the statewide conservation strategy

(1) The Minister —

(a) may prepare a new biodiversity conservation strategy, incorporating the minor technical or clerical amendments into the existing strategy; and

(b) need not comply with the requirements in this Part.

(2) If a new nature conservation strategy is prepared in subsection (1), the Minister must cause an order to be laid before each House of Parliament, and make publically available within 30 days of tabling in Parliament.

12G. Bioregional planning

(1) The Minister may determine a region as a bioregion.

(2) The Minister may prepare and publish a bioregional plan for the bioregion either —

(a) on the Minister's initiative; or

(b) at the request of a regional natural resource management group or local government municipality; or

(c) at the request of any person.

(3) In preparing a bioregional plan, the Minister must carry out public consultation on a draft of the plan.

(4) The Minister may, on behalf of the State, co-operate with another jurisdiction or, an agency of a jurisdiction or any other person in the preparation of a bioregional plan for a bioregion that is not wholly within the State.

(5) Co-operation in implementation of a bioregional plan may include giving financial or other assistance.

(6) A bioregional plan may include provisions about all or any of the following —

(a) the components of biodiversity, their distribution and conservation status;

(b) priorities, strategies and actions to achieve the objectives of the bioregional plan;

(c) mechanisms for community involvement in implementing the bioregional plan;

(d) measures for monitoring and reviewing the bioregional plan.

(7) Subject to this Act, the Minister must have regard to a bioregional plan in making any decision under this Act to which the plan is relevant.

(8) The Minister must review a bioregional plan at least every five years, and assess compliance with the plan and the extent to which its objectives are being met.

(9) The Minister must publish a bioregional plan and any review in the *Gazette* and make publically available within 30 days of publication.

12H. Biodiversity monitoring, evaluation and reporting on state and condition of biodiversity

(1) The Biodiversity Commission must undertake a review and prepare a report on the state and condition of WA's biodiversity every five years from the commencement of this Act.

(2) In undertaking the review in subsection (1), the Biodiversity Commission must establish evaluation framework, mechanisms and a set of indicators to determine —

(a) trends in state and condition of biodiversity components, including:

(i) threatened species and ecological communities;

(ii) priority species and ecological communities; and

(iii) specially protected species;

(iv) Ramsar wetlands; and

(v) Nationally listed wetlands; and

(vi) native vegetation extent and condition; and

(vii) Sandalwood;

(b) trends in pressures for biodiversity components listed in paragraph (a);

(c) the effectiveness of management intervention for biodiversity components listed in paragraph (a).

(3) The Biodiversity Commission must provide a review and report with recommendations to the Minister for approval.

(4) The Minister must consider the report and may take any action considered appropriate.

(5) The Minister must —

(a) cause an order and copy of the final report of the review in subsection (1) and report received from the Biodiversity Commission to be laid before each House of Parliament; and

(b) make the final review and report on submissions publically available within 30 days after tabling in Parliament.

Division

New part put and a division taken, the Acting Speaker (Ian Britza) casting his vote with the noes, with the following result —

Ayes (17)

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

Noes (30)

Mr P. Abetz	Ms E. Evangel	Mr S.K. L'Estrange	Mr J. Norberger
Mr F.A. Alban	Mr J.M. Francis	Mr R.S. Love	Mr D.T. Redman
Mr C.J. Barnett	Mrs G.J. Godfrey	Mr W.R. Marmion	Mr A.J. Simpson
Mr I.C. Blayney	Dr K.D. Hames	Mr J.E. McGrath	Mr M.H. Taylor
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	

Pairs

Ms M.M. Quirk	Mr M.J. Cowper
Ms J. Farrer	Mr V.A. Catania
Mr P.B. Watson	Ms L. Mettam
Mr D.A. Templeman	Mr D.C. Nalder

New part thus negatived.

New Part 1B —

Mr C.J. TALLENTIRE: Unfortunately, we were unable to have something of a debate about the merits of the statewide biodiversity strategy and the bioregional planning process, because I think it is an area that the minister could well have addressed, especially given that we had such strong community endorsement for the concept when the consultation paper was circulated.

The ACTING SPEAKER: You need to move new part 1B.

Mr C.J. TALLENTIRE: I move —

Page 21, after line 17 — To insert —

Part 1B — Biodiversity Commission

12I. Establishment of the Biodiversity Commission

(1) There is to be a Biodiversity Commission, comprising 7 members.

(2) The Minister is to determine by instrument in writing the membership and the terms and conditions of appointment of members of the Biodiversity Commission, and appoint a chair and deputy chair.

(3) The members of the Biodiversity Commission are to have expertise in one or more of the following areas —

(a) biodiversity conservation, and

(b) biological science, and

(c) environmental sciences.

(4) The Minister must ensure that:

(a) members possess scientific qualifications that the Minister thinks relevant to the performance of the Biodiversity Commission's functions; and

(b) members are appointed to represent the Biodiversity Commission; and

(c) at least 5 members are not to be public servants.

(d) the Chair and deputy chair are not to be public servants.

(5) The Biodiversity Commission may establish sub-committees or seek advice on relevant matters in order to perform its functions.

12J. Functions of the Biodiversity Commission

The functions of the Biodiversity Commission are —

(1) to advise the Minister, at his or her request, on matters relating to the conservation and ecologically sustainable use of biodiversity; and

(2) to undertake periodic reviews of the statewide biodiversity conservation strategy to determine its effectiveness.

(3) to undertake periodic reviews of the assessment and report on the overall state and condition of biodiversity; and

(4) undertake periodic reviews of recovery, abatement and management plans; and

(5) to perform such other functions as are conferred on the Biodiversity Commission by this Act or the regulations.

12K. Biodiversity Commission — Annual Report

(1) The scientific committee described in Part 1C must, each financial year, give the Minister a report (an ***annual report***) about the activities of the committee during the year.

(2) The scientific committee must make the annual report publicly accessible not later than 30 days after the day the scientific committee gives the report to the Minister.

We obviously need expert groups. We find that situation in other states and territories, where there are people with responsibility for biodiversity across the state. We recently formed the Conservation and Parks Commission, and I suppose it could be argued that to some extent the role of the Conservation and Parks Commission is similar to that of the biodiversity commission, but, in effect, I think the biodiversity commission would have a much more holistic view of biodiversity across the state. There would also be a quite specific level of expertise required by members of the commission. It would not be, as we find on the Conservation and Parks Commission, that most of the positions are held by people who do not have biodiversity knowledge. They may be enthusiasts, but they do not have professional or training or qualification in the area. That would not be the case with the biodiversity conservation commission, which would have experts in it. I look forward to hearing the minister's views on that and, at the same time, I wonder whether he might refer to why he has ignored the need for bioregional and statewide strategic biodiversity planning to be done.

Mr A.P. JACOB: We do not support this amendment. The Liberal–National government has a clear policy position; in fact, we have been undertaking a program throughout our time in government to reduce the number of statutory and other authorities that have been established by previous governments to a somewhat more sensible level. I believe that the establishment of a proposed biodiversity commission would add significant costs to the administration of this bill without necessarily obtaining any gains in biodiversity conservation outcomes. As the member for Gosnells has noted, we have just merged the former Marine Parks and Reserves Authority and the Conservation Commission of Western Australia into the Conservation and Parks Commission, which is the landholder, if you like, or the vesting body for this state's conservation estate. I do not see the need for a biodiversity commission and we will not support the amendment.

On the member's question about biodiversity planning and a statewide biodiversity conservation strategy, I completely agree that strategic biodiversity conservation planning is very important. This government's actions show the value that we place on strategic biodiversity planning, in particular the Kimberley science and conservation strategy—which is worth some $103 million during this term of government and is a strategic approach to biodiversity conservation throughout the Kimberley region—and, similarly, other very large programs across the state. Western Australia is an incredibly diverse state, from Esperance to Kununurra and everywhere in between. We have approached it more on a regional basis. In any event, I do not believe that enshrining such instruments in legislation leads to any better outcome; in fact, if anything, there is a danger that they would divert precious resources towards bureaucratic or administrative outcomes, when those resources need to be going towards on-ground conservation actions in a vast state with a very small population.

On the earlier comments of the member for Gosnells, he might be a bit optimistic about the potential for federal support for what we do with Western Australian conservation. This is by no means a partisan comment, but I think there is a case for a far greater federal contribution towards Western Australian environmental outcomes, regardless of who is in Canberra, given that Western Australia comprises one-third of the continent. The reality is that that is not generally the way it works.

Mr C.J. TALLENTIRE: I wonder whether there is a risk that the minister might be being penny-wise and pound-foolish. It is true that things such as a biodiversity commission cost money, but we spend many millions of dollars on things such as recovery plans and we need some expertise to assess how those recovery plans are working. If we have a body of experts, we have some people with a statutory requirement to look at whether those recovery plans are effective. My fear is that lots of money is going towards various projects that sound very worthy, but in fact the results are very poor. We only have to look at the problems we have had getting from

the minister and the Department of Parks and Wildlife information on biodiversity audit 2. The shrouding in secrecy that goes on around the findings of biodiversity audit 2 suggests that if we were to see the results, we would see that there has not been much success, and that is unfortunate. It is not a matter of creating a statutory body that will be a bit of a drain on the state's coffers. On the contrary, such bodies can be the assessors of the effectiveness of recovery plans and the like, and they can also provide expertise so that if a project is not working, they can help re-guide it so that it can become effective.

It is all very well to have a political philosophy that is against having statutory authorities and enshrining in legislation things such as strategic plans, but it is a clever way of enshrining in law some accountability for the expenditure of public money on very important matters. It is all about making sure that that public money is put to good use.

Mr A.P. JACOB: I think there is a clear difference of opinion and policy point difference. I do not believe that the establishment of a biodiversity commission will necessarily lead to any better on-ground outcomes for biodiversity in this state. I think this government's record stands strongly on how we have prioritised and diverted our resources to those areas of greatest need as we have seen it, not only with the Kimberley science and conservation strategy, but also other plans such as the strategic approach to the Perth and Peel region to look at programs that we can do in that area. The ability to access that expertise beyond what is within the department exists through a range of mechanisms. Indeed, it even exists in the Conservation and Parks Commission if ever so required, and it certainly does not need the creation of another statutory authority.

New part put and negatived.

New Part 1C —

Mr C.J. TALLENTIRE: I move —

Page 21, after line 17 — To insert —

Part 1C — Scientific Advisory Committee

12L. Scientific Advisory Committee

(1) There is established a body to be called the Scientific Advisory Committee.

(2) The functions of the Scientific Advisory Committee are to advise the Minister on —

(a) the listing and de-listing of taxa of flora and fauna, ecological communities; and

(b) listing and de-listing of key threatening processes; and

(c) the criteria and guidelines to be followed in the determination of threatened and priority taxa and ecological communities; and

(d) the criteria and guidelines to be followed in the determination of threatened and priority taxa and ecological communities critical habitat; and

(e) other matters relating to the conservation of threatened biodiversity.

(3) Other functions of the Scientific Advisory Committee are —

(a) preparation of conservation advice upon listing for each taxa, ecological community and key threatened processes outlining objectives and immediate actions to be undertaken; and

(b) undertaken reviews of listings at least every five years.

12M. Membership

(1) The Scientific Advisory Committee is to consist of 7 members to be appointed by the Minister of whom not more than 4 are to be State Service officers or State Service employees and of whom one is to be appointed as chairperson.

(2) All members of the Scientific Advisory Committee are to have special knowledge and experience in the sciences of biodiversity or ecology.

(3) The members of the Scientific Advisory Committee must collectively have expertise in the following categories and each member must have expertise in one or more of the following categories:

(a) vertebrate fauna;

(b) invertebrate fauna;

(c) vascular flora;

(d) non-vascular flora;

(e) taxonomy;

(f) marine ecology;

(g) freshwater ecology;

(h) terrestrial ecology;

(i) population ecology.

(4) For the purposes of giving advice to the Minister and in performing its functions under this Act, the Scientific Advisory Committee may consult with members of the broader scientific community as it considers appropriate, and convene sub-committees of expertise.

This amendment relates to a scientific advisory committee and there has been much discussion about this. We know that the process for listing or delisting a species that is endangered, vulnerable or threatened should be done through a scientific body. Previously, when we have had discussions about scientific advisory committees, the government has shied away from it. In fact, we even saw the cancellation of a scientific advisory committee that was in place to help the former Marine Parks and Reserves Authority. When the minister decided to merge the MPRA with the Conservation Commission, there was a decision to discard that scientific advisory body.

Perhaps we are again getting into an area of, as the minister might like to say, political philosophy. He does not like advisory groups, but a scientific advisory group can be a very effective mechanism for determining whether a plant or animal should be on one of the lists or should be the subject of a recovery plan and, indeed, whether we should contemplate the extinction of a species. That is ultimately what this body could be tasked with. Of course, the ultimate decision would rest with the minister. However, at the moment, as this legislation stands, the minister is empowering himself to make that decision about the extinction of a species without the benefit of a statutory body's advice, and that means that we do not have a good process. If I remember the time line correctly, the minister could table the decision to let a species become extinct long after the extinction has occurred. I think the example I have used previously is that the minister could make a decision and give the go-ahead to a resources company or a resort developer for a development that would send a species into extinction and the first the public would hear about it would be on the next sitting day of the Parliament, which could be long after the development had gone ahead. That is a very dangerous situation that we face.

This is an alternative way to have scientific credibility. The scientific advice around some of the stygofauna species that could be destroyed by a dewatering plan for a mine in the Pilbara might be that, although it would be a tragedy to see the end of a species, it would not damage the wellbeing of the state as a whole. Maybe that could be the scientific advice it receives. However, under this bill, the minister is not even going to get that. The minister will be operating without the formally constituted advice of a body that would include people who have expertise. Again, we are quite prescriptive about the sort of expertise that we would expect to see, and it is important that we are. This is not to be a scientific advisory committee that includes people who are essentially from the tourism industry or the resources industry. This is to be a committee that provides the minister with real scientific advice on the biodiversity values of our natural heritage. Therefore, it makes perfect sense to have that embedded in the legislation so that all the details are there and the functions of the scientific advisory committee are properly spelt out. This amendment would actually provide a protection for this minister and for future ministers. It would also, of course, improve decision-making when it comes to things like allowing a species to become extinct.

Mr A.P. JACOB: I agree with the member for Gosnells that scientific advice is very important in this role. Indeed, when it comes to decisions around the listing status of any species, I have always relied, as has every environment minister before me, on the scientific advice that comes to me. That scientific committee exists now, and it has certainly existed for all my predecessors for as far back as I know. We have a threatened species scientific committee that provides advice to the minister of the day, and the minister of the day makes their decision on the basis of that advice. Again, I do not support the amendment. The only real point of difference here is whether that formal statutory scientific committee is required to be enshrined in legislation, or whether it is better operated in the way in which it has operated to this point, where it will be created through ministerial guidelines or even possibly through regulations. That scientific advice exists. The committee exists to provide that advice. I have always relied on that advice, and that will certainly continue for as so long as I am in this role, and I am certain also for future ministers and future governments, although nothing we can do in this place would ultimately bind them.

The bill also provides a new measure, which I think is a very good accountability measure for the minister of the day; that is, if the minister were to disagree with that scientific advice, the minister is required to advise of that fact and also give public notification and publish the reasons for doing so. Therefore, accountability measures are enshrined within this legislation on any future decision-makers around that decision-making process.

Ms S.F. McGURK: I also want to make a comment about this amendment. I have read the contributions that were made by a number of environmental groups, including the Conservation Council of Western Australia, the World Wide Fund for Nature, the Wilderness Society, the Leeuwin Group and the WA Forest Alliance, and, I think, also the Environmental Defender's Office. They all made the strong criticism that the bill before us does not contain provision for an independent scientific advisory committee or for independent scientific advice. The minister said today that he concedes that that sort of advice is important and he would rely on it. However, in this rewriting of the legislation, the minister has failed to include that as a mandated step to be taken on key elements of conservation and environmental planning and advice.

I find it fairly incredible that in the twenty-first century we are not mandating that independent and science-based advice on any of the decisions that are before us on these incredibly complex matters on which not only the management and custodianship of our natural resources, but also its survival in future years, rely. It is an incredibly heavy responsibility. If this government says that it respects independent scientific advice on these matters, it should demonstrate that by mandating it in the legislation. I think the thoroughness of this particular amendment is to be commended.

Mr A.P. JACOB: In responding to the member for Fremantle's comments, the bill actually does create provision for the minister to seek advice on the list of threatened species. It does not create a new formal statutory authority and is not intended to create a new formal statutory authority, which is clause 12—the clause we are debating.

For the first time, clause 39 of the bill also contains a provision that the minister must give a person who has created a nomination written notice of the decision; and, if the decision is that the listing amendment or repeal is not to be made, the notice must include the reasons for the decision. The bill holds the minister to account on those matters, and the threatened species scientific advisory committee will continue, as it is now created, and will be enshrined through either the guidelines or the regulations.

Mr C.J. TALLENTIRE: I fear the minister is making a big mistake here. Yes, the minister may have within the agency different committees that provide him with advice through the Department of Parks and Wildlife and through the director general. However, there is a critical difference. That scientific advisory committee should be outside the confines of the department so that it is independent. The minister is suggesting a body that will be within DPaW. That body will not have the level of independence that is needed. The minister is shaking his head. The minister does not agree that there will not be that independence. From my reading of the legislation, that advice is always going to come through the department. There is no statutory independence that would provide a process by which the scientific advisory committee could express its views, drawn from expertise that would probably be held in universities and elsewhere. That expertise would be very valuable. The minister will now be reliant on the capacity of the Department of Parks and Wildlife. The minister has to concede that much of the capacity of the Department of Parks and Wildlife in this area has been slashed. The agency does not have the skill base, or even the focus, to provide that advice. I acknowledge that the department has done some useful work in improving camping grounds around the state. That has been a big emphasis of the work of the agency lately. However, when it comes to scientific work, we have seen a net reduction around the state. I know that the minister will tell me about the Kimberley science and conservation strategy, and there are some question marks around that, but in the remainder of the state, where is the scientific advice that once resided in DPaW? That is dissipating; that is disappearing. The minister could protect himself into the future by ensuring that specialist scientific advice comes through from this committee. The minister would then have advice come to him that was independent of whatever might be the personal agendas in the Department of Parks and Wildlife. This is a very important amendment, because if the minister does not support this concept, he is not going to get independent advice.

Mr A.P. JACOB: Member for Gosnells, the committee as it stands is independent. It is not an internal committee of the Department of Parks and Wildlife. It takes expertise from universities and the Western Australian Museum. The chair is Dr Andrew Burbidge, from memory. Admittedly, many people who are eminent scientists in this area have at some point in their career gone through the department, but it is an independent committee. It is not operated with only internal staff, and it is knowledge and expertise based. It has worked well. It has served me and previous ministers and previous governments very well. By and large, ministers take the advice from the Threatened Species Scientific Committee and follow through on that.

Mr C.J. TALLENTIRE: The minister will not have a requirement. Say the minister receives some advice from the scientific advisory group that the minister is referring to that the minister does not like. He would not have to publish it —

Mr A.P. Jacob: Yes, I would.

Mr C.J. TALLENTIRE: — whereas with this arrangement the minister would be required to publish it. Nothing in this legislation requires the minister to publish advice in a timely fashion. To use that example in which the minister might want to let something go extinct, nothing in here forces the minister to publish that advice before the extinction would occur.

Mr A.P. JACOB: Again, as I said, this bill requires the minister to publish the reasons for the decision —

Mr C.J. Tallentire: After the event.

Mr A.P. JACOB: No; if the minister makes a decision on a listing process that goes against the advice of the nominator, the minister is required to publish the reasons for that decision. That is not a provision that exists in the Wildlife Conservation Act. In any event, the committee is an independent committee; it is knowledge based. Exactly the sort of people the member is talking about populate that committee and it exists very well in its current form. I do not believe it needs to be created as a formal statutory scientific advisory committee. I have given an undertaking that the committee will continue. If that gives the member any comfort, I am happy for *Hansard* to state that the Threatened Species Scientific Committee will return, but it will be created through a different instrument, be it a guideline or regulation. It will continue in much the same capacity in which it has operated to this point, because it operates very well.

Mr C.J. TALLENTIRE: I am afraid that is not a comfort. We have seen what has happened recently with the Wetlands Coordinating Committee. That is not a statutory group and it has enormous trouble even calling together a meeting. Members of the committee have been asking for a meeting since 2014 and at every turn their requests have been ignored. The minister even denied receiving letters from members asking for a meeting to be held. They made those requests and I have seen copies of those letters, yet they still cannot get a meeting. Of course, incredibly important matters concerning wetlands are in play right now, yet the most eminent body when it comes to talking about wetlands across the state is not allowed to meet. The minister's commitment that this group would continue in some way is cold comfort and is not at all reassuring. The only thing that could really reassure people would be to have it in the legislation. Why would the minister be afraid of having a scientific advisory committee referred to in the legislation? The minister is squeamish about statutory bodies, but a scientific advisory committee to make the best decisions for the protection of the state's biodiversity would surely be worth the investment. Indeed, it would repay us manyfold because the body would also have the capacity to do the evaluation of a lot of the department's expenditure. It would be able to tell us where we are getting value for money and which programs are not functioning and how to redirect some of those programs so that we get good value for taxpayers' money when it is applied to conservation.

Division

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

Ayes (15)

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

Noes (30)

Mr P. Abetz	Ms E. Evangel	Mr S.K. L'Estrange	Mr J. Norberger
Mr F.A. Alban	Mr J.M. Francis	Mr R.S. Love	Mr D.T. Redman
Mr C.J. Barnett	Mrs G.J. Godfrey	Mr W.R. Marmion	Mr A.J. Simpson
Mr I.C. Blayney	Dr K.D. Hames	Mr J.E. McGrath	Mr M.H. Taylor
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	

Pairs

Mr P.B. Watson	Mr M.J. Cowper
Mr J.R. Quigley	Mr V.A. Catania
Ms J. Farrer	Ms L. Mettam
Ms M.M. Quirk	Mr D.C. Nalder

New part thus negatived.

Clause 13: Listing of specially protected species —

Mr C.J. TALLENTIRE: Clause 13 refers to the listing process for protected species. I would like to hear from the minister just how accessible to the public that process is. Is it the case that members of the public can make a direct nomination for the listing of a species?

Mr A.P. JACOB: Yes, they can.

Clause put and passed.

Clauses 14 to 19 put and passed.

Clause 20: Criteria for categorisation as critically endangered species —

Mr C.J. TALLENTIRE: Clause 20 refers to the criteria for categorising as critically endangered a species. There is mention made here of the use of ministerial guidelines, under subclause (b) that states —

> listing in that category is otherwise in accordance with the ministerial guidelines.

How can we be sure about the nature of those ministerial guidelines? Why would the minister not use something that has the scientific and academic credibility of the International Union for Conservation of Nature and Natural Resources guidelines or its red list, the IUCN guidelines and criteria? Why would we rely on ministerial guidelines?

Mr A.P. JACOB: It will be the IUCN red list criteria. That will be laid out, however, in the guidelines, because those criteria change—they can change quite regularly and, indeed, could change in terms of name. Whatever that IUCN red list criteria equivalent is going forward, that is the intention for what will form the basis of listing. Ministerial guidelines are the better place to place it.

Mr C.J. TALLENTIRE: Where can we access these ministerial guidelines? Have they even been written yet? How will the public access them?

Mr A.P. JACOB: Clause 262 requires that they must be published in the prescribed way and they will be required to be public.

Mr C.J. TALLENTIRE: Will the public get a chance to have input into the ministerial guidelines or will it be a matter of take it or leave it and they will be published by the minister's staff? Again, centralisation of all the decision-making will be done through the agency without the benefit of the enrichment that would come from a more publicly open process. How will the guidelines be developed?

Mr A.P. JACOB: Decision-making comes through the minister, not the department, and then that may be delegated to the department. The decision-making authority ultimately rests with the minister, and I think that is appropriate. The guidelines will be public. Whether there will be a formal process of consultation on them at any given point may depend on the guideline. We will want to put out some fairly soon, such as the one that we are talking about in the clause here; we have said it will be the IUCN red list criteria. That will simply align with whatever the International Union for the Conservation of Nature and Natural Resources process has been, so I do not really foresee that a lot of public consultation will be required around a guideline that mirrors the IUCN red list.

Clause put and passed.

Clauses 21 to 22 put and passed.

Clause 23: Listing of extinct species —

Mr C.J. TALLENTIRE: Can the minister explain how this works, please? It seems that this is where the minister is able to list a species as extinct. I wonder how the minister sees that unfolding and how he would apply this. It is important that the people of Western Australia know that even though this is called biodiversity conservation legislation, the minister is putting in it a provision that will allow the minister to send a species extinct. Could the minister please outline the process that he will use to do that?

Mr A.P. JACOB: This is not the clause for the decision to allow a species to potentially go extinct. This is a clause for listing a species as extinct. If the advice I receive back from the Threatened Species Scientific Committee is that a species has gone extinct, we list that species as extinct, as I currently do. That is simply what this clause allows for.

Mr C.J. TALLENTIRE: Which is the clause then that the minister is giving himself to allow a species to go extinct, just so I can be sure that I am not missing the appropriate clause to debate with the minister?

Mr A.P. JACOB: Clause 42.

Clause put and passed.

Clauses 24 to 27 put and passed.

Clause 28: Criteria for categorisation as critically endangered ecological community —

Mr C.J. TALLENTIRE: Again the minister has reference to ministerial guidelines. I ask again why the minister would not have referred there directly to the IUCN red book or other for those. It just seems that if the minister is using the ministerial guidelines, it can be filtered by whatever the whims of the minister of the day might be.

Mr A.P. JACOB: My understanding is that for threatened ecological communities and critically endangered ecological communities, there is no international standard, nor is there a national standard. When one is developed, we will be quite keen to look to that. We have a memorandum of understanding with the federal government to move to some uniformity around the IUCN red list criteria for individual species listings, but that criteria and that standard is not currently in place for ecological communities.

Clause put and passed.

Clauses 29 to 34 put and passed.

Clause 35: Criteria for listing as key threatening process —

Mr C.J. TALLENTIRE: Key threatening processes are a very significant issue for our biodiversity. It is very important that we have clarity about the listing of what key threatening processes are. Looking at this, it seems there is no opportunity for the public to nominate what a key threatening process might be. That is a weakness. Furthermore, I do not see any mention of how abatement plans might be developed in response. Could the minister address those issues, please?

Mr A.P. JACOB: Clause 38 states —

> (1) A person may nominate to the Minister —

Paragraph (e) states —

> a threatening process for listing as a key threatening process;

That is picked up in clause 38.

Mr C.J. TALLENTIRE: To my second point about the abatement plans, why is there no mention of abatement plans here?

Mr A.P. JACOB: This is the clause that deals with the listing process. There are a lot of very important reforms in this clause, including for the first time the ability to list threatened ecological communities, and the ability to list critical habitats, which I have to note that there was a lot of scepticism within conservation groups that this government would even have such a clause. In fact, many people had started to express the view that it would not be in the bill before I had even tabled it. The ability to list critical habitat is in this bill, as is the ability to list for key threatening processes. This provision simply deals with that listing process.

Mr C.J. TALLENTIRE: Is the minister saying that nowhere in this bill do we see any measure for the creation of abatement plans? The minister is prepared to identify that there is a threatening process. Let us say it might be the biological bulldozer, dieback. That can be identified, but this legislation does not include provision for the creation of a response to that abatement plan. I am surprised by that.

Mr A.P. JACOB: This is dealt with in part 5, so it starts in clause 68. Parts 5 and 6 deal with that.

Mr C.J. TALLENTIRE: We could look at this more closely, but is there provision for public involvement in the abatement plan?

Mr A.P. JACOB: I will answer that question when we get to that clause.

Ms S.F. McGURK: I refer to clause 35(a)(iv). It states that a threatening process could be defined as significantly contributing to the continuing decline of two or more threatened species or two or more threatened

communities. Is it correct to say that, if a process significantly contributed to the decline of one species, or one threatened community, then it would not make the definition? Have I read that correctly?

Mr A.P. JACOB: The short answer is no. I draw the attention of the member to subparagraph (vii), which states that it could also be the case that it significantly contributes to the continuing decline of a critically endangered species or a critically endangered ecological community, or it could cause a native species to become eligible for listing as a threatened species. There are, if you like, three different sets of three in that clause.

Clause put and passed.

Clause 36: Terms used —

Mr C.J. TALLENTIRE: This clause outlines the circumstances in which a listing decision results from a nomination. Can the minister explain how, when a native species is listed as threatened, it would be communicated to the public that that listing change has occurred? Is it something that would be accompanied by a recovery plan, and would there be an exposure of the recovery plan at the same time?

Mr A.P. JACOB: Listing is by public notice in the *Government Gazette*. Clause 39 also deals with notification of a minister's decision. Recovery plans and management plans are dealt with in parts 5 and 6.

Clause put and passed.

Clauses 37 and 38 put and passed.

Clause 39: Notification of Minister's decision —

Mr A.P. JACOB: I move —

Page 33, line 23 — To insert after "under" —

section

Amendment put and passed.

Clause, as amended, put and passed.

Clause 40: Minister may authorise taking or disturbance of threatened species —

Mr C.J. TALLENTIRE: This is the clause under which the minister is given the power to allow a species to become extinct. It might specifically be contained in clause 42, but the whole of part 3 is problematic. The advice I received from the Environmental Defender's Office is that clauses 40 and 42 work together to allow the minister to authorise actions that would cause a species to become extinct. This is repugnant to any concept of legislation to conserve, protect and improve biodiversity in the state. We have to ask: how can we have this provision in here? The minister should be aware of other mechanisms. If he really had to allow something to become extinct, he could do that under other legislation. Why is the minister contaminating and degrading biodiversity conservation legislation by allowing it to include provisions that allow species to become extinct—that gives the minister the power to send species into extinction? Surely this is making a mockery of the whole concept of biodiversity conservation. I think we will be one of the first jurisdictions in the world to have a biodiversity conservation act that allows for a species to become extinct. I am sure that the minister has heard from the public on this, and he has seen the news reports. People have put it to the minister very clearly. I know that initially the minister's response was—I recall the ABC news bulletin—to deny that this is the case. Perhaps the minister can answer that first: does he still deny that this legislation gives him the power to send species into extinction?

Mr A.P. JACOB: I have never denied that this provision is contained in the bill. In fact, whenever we have given briefings we have always drawn people's attention to this clause, in the full knowledge that this would happen, not so much under clause 40—I think the EDO has got that a little bit wrong—as under clause 42. That is something that we have always brought to people's attention as a part of this bill. We have been very up-front about the proposed provisions to be contained within this bill to provide that mechanism. Similarly, the ability to have that mechanism is modelled on similar jurisdictions overseas that have that ability within their legislative instruments. This bill would have the highest threshold level as a trigger, and it is not something that we would see used often, if at all, perhaps, but in a state such as Western Australia, there are circumstances under which such a mechanism could well be contemplated, and that is why it is in the legislation.

Mr C.J. TALLENTIRE: Would the minister consider including in the bill a clause to provide that public notice has to be presented to Parliament before the order or the permission is given to someone who is going to send something into extinction? At the moment, the public will become aware of it only after the event. Why can the minister not turn that around and make sure that people are aware of it? Then we could use the disallowance powers of the Parliament to debate the issue, so there would be public engagement. As I have mentioned before, the current process will enable species to go into extinction before the public is even aware.

Mr A.P. JACOB: I do not think that directly deals with clause 40. I do not know whether the member wants to discuss that further when we deal with clause 42. I note the amendment that the member has standing in his name to clause 42, albeit that we are still speaking about clause 40. The member's earlier comments about the ability to take such action under the Environmental Protection Act, and the fact that the member proposes to amend the clause rather than provide a mechanism to repeal it altogether, are a recognition that this is a useful clause to have in the legislation, and there may well be cases in which it is required. It simply comes down to the instrument through which it is applied. It is not just the minister's approval. Under clause 42 it would require the Governor's approval, and it would be required to be tabled before each house of Parliament.

Mr C.J. TALLENTIRE: I just put on the record that I do not believe that biodiversity conservation legislation should ever include provision for a minister to allow a species to go into extinction; so, minister, just be clear about that. If we want to progress, I will raise further points as we go.

Clause put and passed.

Clause 41: Conditions of authorisation —

Mr C.J. TALLENTIRE: This clause relates to the conditions of authorisation. This is where we see the detail. The minister wants to push me into clause 42, which is all about the final signature from the Governor, but this clause covers the process that takes place. There are things like the power for a monetary contribution, albeit towards the purchase of land for conservation. These are the sweeteners that the government is prepared to allow as part of the authorisation for something to become extinct. It seems that the minister is really caving into those who believe it is perfectly reasonable for a species to become extinct. Could the minister explain how the clause works, particularly subclause (3)?

Mr A.P. JACOB: This clause relates to any authorisation to take, or even to disturb, a threatened species. There are many instances in which one or more of the following mechanisms apply, such as making a monetary contribution, transferring land and exchanging conservation land or land of conservation value. It is a well-established practice that monetary contributions could go towards beneficial conservation outcomes in another place. Many of these things are offsetting arrangements.

Mr D.J. KELLY: There was no power under the previous legislation for a minister to allow a species to become extinct; that is my understanding. This is a new power that will come in under this legislation. Presumably, we are amending the act because it is currently deficient. I wonder whether the minister can give us an example of a situation that occurred during the long time that the old act was in place of the minister not having the power to permit a species to become extinct—that it hindered the work of the department or somehow took biodiversity conservation backwards. That would be a very interesting point. If the minister is saying this power is necessary, in his view there must have been an occasion, or a number of occasions in the past, in which the environment minister lacked the power that is now needed. Can the minister give us a practical example of when the public good would have been advanced if this ability had been in the legislation?

Mr A.P. JACOB: There are examples of it being used. My understanding is that it has generally been done under the Environmental Protection Act. Indeed, the member for Gosnells made reference to my comments to the ABC. From memory, in that article I used the example of a stygofauna that may have been discovered as a unique species within a project of such state significance that the decision was taken, and even though the precautionary principle states that is the only place it is known that that species exists, the project can still go ahead. Gorgon is an example of a project of that significance in Western Australia, although I understand that it did not require that ruling. That would be a classic example of public opinion probably being on the side of making that decision. That power has been used under the Environmental Protection Act; so yes, it does exist currently through other legislation and not to have it in this legislation would be somewhat disingenuous. We are being very up-front about what we intend to do. Going back to the member for Gosnells' earlier question, we have been very up-front at every stage that we intended to include this clause in this bill. That practice does not happen often. It has not happened in my time as a minister of this state, but those decisions have been made in the past. They have not been made lightly, but they have been made around very significant state projects. They have not been made around species such as numbats or estuarine crocodiles; they have been made around newly discovered stygofauna, for example.

Mr D.J. KELLY: Does that not support the proposition I put to the minister that history has shown that things can be done and projects can be approved under existing arrangements without there being such a power in the Biodiversity Conservation Bill? The only project that the minister could give an example of was Gorgon, and that was built without that power in the legislation. One of the great concerns that people have is that the minister is diluting the credibility of this legislation by giving himself the power to make a species extinct when there is absolutely no need for that happen. In the extremely rare circumstance that the minister might be able to argue that it is necessary, it can already be dealt with under other legislation. There is absolutely no need for this type of power to be given to the minister under this legislation.

Mr A.P. JACOB: These powers run for a Minister for Environment under other legislation. This legislation will not operate in isolation. There are other acts such as the Environmental Protection Act that continue, and projects will be assessed under that act. The government is being very frank and honest. I do not take the argument that this is sullying a piece of legislation in any way, shape or form. This is a very honest piece of legislation and these are —

Mr D.J. Kelly: Everybody else does.

Mr A.P. JACOB: No, everybody else does not think it does, member for Bassendean. Any objective and honest analysis of this bill will recognise that it makes significant gains on the currently deficient Wildlife Conservation Act.

Mr C.J. TALLENTIRE: Can the minister clarify whereabouts in the Wildlife Conservation Act or in the Environmental Protection Act the minister is given the power to allow something to become extinct?

Mr A.P. JACOB: It is essentially a moot question. I have said that there has not been an occasion in my time as minister that I have used that trigger. I am informed there have been occasions under the Environmental Protection Act when that has occurred. We have gone down a fairly long cul-de-sac; none of this actually relates to clause 41.

Clause put and passed.

Clause 42: Governor's approval required in certain cases —

Mr C.J. TALLENTIRE: I suppose the minister has wanted to put off the discussion until clause 42. There is clearly a process outlined in this clause. It is a process that not only gives the minister the power to allow something to become extinct, but also allows the minister to hide it from the public until after the event. I wonder why the minister thinks it is a suitable thing for a minister to be able to hide behind a whole lot of exchanges of correspondence with the proponent and behind a process that involves the Governor's approval and then, after the event, note the extinction order—I think it would be called that, although it is not clear here—and table it in Parliament. That would be the first the public would hear about it. How can that be good biodiversity conservation when there is no process to discuss the possible extinction in the lead-up to the event and there is no transparency about the decision-making?

There is no canvassing of public views and there is no desire to have community input on the decision; it is just something that the community would hear about after the event. How can that be good practice?

Mr A.P. JACOB: It is a transparency mechanism, as I outlined to the member for Bassendean during his earlier comments. I find it hard to imagine a scenario in which a proposal that has this kind of impact would not be, for example, a part 4 process through the Environmental Protection Act, so those engagements in public process would have been happening every step along the way through other legislative mechanisms.

Mr C.J. TALLENTIRE: Further to that, a part 4 process, a public environmental review, and the minister's issuing of a ministerial approval statement could all happen. It states in clause 42 that the minister must cause a copy of the approval to be laid before each house of Parliament as soon as is practicable after the approval is given. Let us say that the minister hands over the ministerial approval statement on 30 November; that might also be the last sitting day, so then we would not have the chance to hear about the event until Parliament resumes in February, by which time the extinction might have already occurred. How can that be a legitimate process?

Mr A.P. JACOB: In the case of a part 4 ministerial statement, after a project is referred to the Environmental Protection Authority there is—not always, but often—a public environmental review as part of that process. There is an appeals process. The Minister for Environment does not actually issue environmental approvals in isolation; the Minister for Environment can issue environmental approvals only in consultation and agreement with other decision-making authorities—for the most part, cabinet colleagues. Similarly, any decision under clause 42 must have the approval of the Governor. It is actually the Governor's approval that is required to be laid before each house of the Parliament.

Mr C.J. TALLENTIRE: That is wrong. The minister knows very well that if we look at any of his ministerial approval statements, we see that there are two signatures at the bottom of the document: one is his and the other is that of the chief executive officer or somebody senior in the company involved. Once that ministerial approval statement is signed off, yes, it becomes public, but the content of that statement is often redesigned and re-crafted, and can bear little resemblance to what appears in the part 4 public environmental review EPA bulletin document. It is true that it is sometimes the case that it is almost a carbon copy of what appears in the EPA bulletin, but I know that there have been some significant occasions, especially during this minister's time, on which the ministerial approval statement has had some very significant differences—some subtle changes here and there that have huge ramifications. I could imagine that this would be the sort of occasion on which the

minister would do that. He probably would have the EPA making conditions to provide that something should not be allowed to become extinct, and that would be a reflection of all the community involvement in the formal review process, but then when the minister had a look at the appeals and dismissed them and eventually issued his ministerial approval statement, that is where the differences would occur. Of course, he would use that as the basis of his request to the government. Clause 42(1) reads, in part —

> The Minister must obtain the approval of the Governor before giving an authorisation under section 40 …

Is the minister suggesting that the Governor has the capacity to intervene, to refuse to sign something? How is it that there is no equivalence between the ministerial approval statement and the approval the minister seeks from the Governor? I do not understand how the minister could expect there to be a difference. I look forward to further explanation.

Mr A.P. JACOB: My earlier statement about approvals through part 4 of the Environmental Protection Act stands. For a public environmental review I need concurrence with other decision-making authorities under the legislation, and if I do not achieve that concurrence, it again, similar to this situation, goes back to the Governor and it is then the Governor's decision to break the impasse between the ministers. That is actually enshrined within that legislation, although I acknowledge that that is a different act altogether. As I have said, this is a transparency mechanism, and that is why it is included within the legislation. To not have it in there would, in my view, be disingenuous because from time to time this has occurred; there is no sense in pretending that there have not been occasions on which this has happened. It is simply included in the bill as a transparency mechanism and that is why it is required to be included within the department's annual report and to be laid before each house of the Parliament. I am not sure if the member for Gosnells wants to move his amendment to clause 42.

Mr C.J. TALLENTIRE: I thank the minister; I will come to my amendment.

How can this be a transparency measure if people get to hear about it only after the event? That is really kidding people to tell them after the damage has been done and the extinction has occurred. People want to know about these things before they happen; they want to be involved in discussing it before it happens, and I am sure they will have been involved, through the part 4 process. They will have been involved in contemplating the possibility, but then the decision goes in camera, so to speak, while the minister is doing his final negotiations around appeals and the issue of a ministerial approval statement. The public are not involved in those. The minister mentioned the need to gain concurrence. The public are not involved in that. They might get to hear about the possibility in the lead-up, through the part 4 process, but they could actually also hear through the part 4 process that the extinction is not going to happen; it then goes in camera, no-one can see anything, and it comes out at the end with the minister saying the extinction can occur, and there would be no opportunity for people to comment on that until after the event. How is that transparency?

Mr A.P. JACOB: The entire line of questioning presupposes a government that is trying to be secretive and tricky around these measures. The very fact that I have included these provisions within the bill shows that that is not what we are seeking to do. The sort of project that would trigger this kind of mechanism would be of such significance that one would struggle to find a single person in Western Australia who was not aware that it was on the horizon. The fact is that anything that reaches this trigger would not be undertaken lightly. Every measure would be taken to avoid that, wherever possible, and by the time anybody arrives at this point, there will have been a very well-understood public narrative around how we have arrived at this point. A government cannot hide things forever and under this clause, it certainly could not, so it would be accountable and there would be a reckoning for decisions made under this clause.

Mr C.J. TALLENTIRE: I move —

> Page 36, after line 17 — To insert —
>
> (2A) Before the Minister seeks approval from the Governor, the Minister must publish a notice in the *Gazette* and on the department's website seeking comment on the proposed taking or disturbance and provide reasons for such action.
>
> (2B) Submissions in respect of the proposed taking or disturbance may be made by any person that is not less than 60 days after the day on which the notice referred to in (3) is published in the *Gazette*.
>
> (2C) When preparing a final proposal to the Governor, the Minister must;
>
> (a) obtain and consider advice from the Scientific Advisory Committee and any other relevant advisory body deemed appropriate; and
>
> (b) make public, advice in paragraph (a) available via the Department's website.

(2D) The Minister must not seek approval under subsection (1) unless the Minister has had regard to —

(a) any submissions made under subsection (2B); and

(b) Australia's obligations under international agreements relevant to the threatened species or threatened ecological community to which the proposal relates; and

(c) the extent to which any environmental protection policy affects the conservation, protection and management of the threatened species or threatened ecological community to which the proposal relates; and

(d) the extent to which any recovery plan or interim recovery plan affects the conservation, protection and management of the threatened species or threatened ecological community to which the proposal relates; and

(e) the need to avoid any adverse ecological or social impacts.

(2E) Before making a final proposal to the Governor, the Minister must cause an order under section 40 to be tabled in both Houses of Parliament.

We are looking to improve bad legislation here. There are dangers in trying to do that, but the intent of what we are doing is to create some degree of transparency. We are adding a clause that provides that the minister has to seek approval from the Governor and must publish a notice in the *Government Gazette* on the department's website seeking comment on the proposed taking or disturbance and provide reasons for such action. We are allowing for a submission period of 60 days. This is about the consignment of a species to extinction, so it is very reasonable to have a 60-day submission period on it.

Then we are talking about the need for a scientific advisory committee to be involved. The minister has already refused our suggestion to create a scientific advisory committee as a statutory body, but he has referred to scientific advisory committees he has within his agency. We could accept that they could fulfil this role. We have also made provision in this amendment for the department's website to promote the possibility of the extinction being contemplated. We have said, as well, that the minister has to be mindful of our international obligations with regard to threatened species and threatened ecological communities. We have mentioned that environmental protection policy effects have to be properly considered, and that a recovery plan or interim plan has to be properly presented. All those things have to be done before making a final proposal to the Governor, such that the minister must cause an order under proposed section 40 to be tabled in both houses of Parliament. Minister, I think this is a safety valve that we could put into the legislation so that extinctions do not occur without a full canvassing of the community's concerns. Surely it is worthwhile having safety valves like this before we consign species to extinction. I commend this amendment to the house and seek the minister's support.

Mr A.P. JACOB: I acknowledge the member's amendment that, I guess, offers a pathway; however, I think the recognition of major significance that would sit around this decision would put very significant pressure on the government of the day and the proponents of any proposal to negotiate an outcome that avoids any possible future extinction. I think the safeguards that sit in place and the fact that we have, if you like, parallel legislation that would deal with any such proposal and would include a high level of public consultation and engagement mean this amendment does not need to be supported.

Amendment put and negatived.

Clause put and passed.

Clauses 43 and 44 put and passed.

Clause 45: Minister may authorise modification of occurrence of threatened ecological community —

Mr C.J. TALLENTIRE: These amendments mirror those we somehow skipped over when dealing with clause 40, but I think they are important. We are looking to delete from line 3 on page 38 the use of the term "instrument", and put in the term "order". I think it would be useful and consistent if we used the term "order" in this legislation. Also on page 38, after line 9, we are saying that proposed section 258 should apply to an order made under subsections (1) and (3). As the minister has had several months to consider these amendments, I look forward to hearing his views on them.

Mr A.P. JACOB: My apologies, member for Gosnells, I, too, missed clause 40 in the hurly-burly of it. I have marked them down in my notes here. Clauses 40 and 45 refer back to what we were debating in clause 42, and they are simply a wording tidy-up that would then further link into proposed section 259 and the table on page 163. Given that we opposed the amendments to clause 42, we do not support these amendments.

The ACTING SPEAKER (Ms J.M. Freeman): Member for Gosnells, you need to move the amendments.

Mr C.J. TALLENTIRE: Yes. I move —

Page 38, line 3 — To delete "instrument" and substitute —

order

Page 38, line 8 — To delete "instrument" and substitute —

order

Page 38, after line 9 — To insert —

(4) Section 258 applies to an order made under subsection (1) and (3)

Amendments put and negatived.

Clause put and passed.

Clause 46 put and passed.

Clause 47: Governor's approval required in certain cases —

Mr C.J. TALLENTIRE: I move —

Page 40, after line 8 — To insert —

(1A) Before the Minister seeks approval from the Governor, the Minister must publish a notice in the *Gazette* and on the department's website seeking submissions on the proposed modification and provide reasons for such action.

(1B) Submissions in respect of the proposed modification may be made by any person that is not less than 60 days after the day on which the notice referred to in subsection (1A) is published in the *Gazette*

(1C) When preparing a final proposal to the Governor, the Minister must:

(a) obtain and consider advice from the Scientific Advisory Committee and any other relevant advisory body deemed appropriate; and

(b) make public the advice referrred to in paragraph (a) available via the Department's website.

(1D) The Minister must not seek approval under subsection (1) unless the Minister has had regard to —

(a) any submissions made under subsection (1B) and

(b) any advice obtained under subsection (1C); and

(c) Australia's obligations under international agreements relevant to the threatened species or threatened ecological community to which the proposal relates; and

(d) the extent to which any environmental protection policy affects the conservation, protection and management of the threatened species or threatened ecological community to which the proposal relates; and

(e) the extent to which any recovery plan or interim recovery plans affects the conservation, protection and management of the threatened species or threatened ecological community to which the proposal relates; and

(f) the need to avoid any adverse ecological and social impacts.

(1E) Before making a final proposal to the Governor, the Minister must cause an order under section 45 to be tabled in both Houses of Parliament.

These amendments relate, again, to the issue of the Governor's approval. The amendments seek to define a process by which the Governor's approval could be sought—a process that gives the public an opportunity to know about what is proposed before the act has occurred and before the minister gives a final sign-off.

Mr A.P. JACOB: These amendments mirror the ones we have had conversations about before. This relates to ecological communities as opposed to individual species, but for the reasons previously outlined our position remains the same and I do not support the amendments.

Amendments put and negatived.

Clause put and passed.

Clauses 48 to 58 put and passed.

Clause 59: Habitat conservation notice —

Mr C.J. TALLENTIRE: Broadly speaking, a habitat conservation notice sounds like a useful instrument. My concern is that it is at the behest of the chief executive officer. All around this legislation we see that it is the department making the decisions—sometimes through the minister, but sometimes the department will be making decisions on its own. As to examples of when a habitat conservation notice may be issued, there are the very real sorts of cases that we hear members come into this place to grieve about. I have heard grievances on these sorts of topics, when someone has perhaps damaged or caused the destruction of some habitat. In the future, the CEO will have the option of issuing a habitat conservation notice. But it all gets condensed down to the views of the CEO, and that is a concern. I would like to know why the minister is not enabling some degree of public submission on habitat conservation notices. After all, the state is so big it will depend on the eyes and ears of people on the ground to do the detecting and monitoring that will probably lead to conservation notices. I suspect that the minister is really going to need some mechanism for recognising that community input, but it does not appear in this clause of the bill. Could the minister please explain how the community can be involved in this? These issues are very much of concern to people who might be on neighbouring properties; they will be very concerned about what they see when some act of environmental harm—some habitat damage—takes place. People will want to know what is going on; they will want to be involved. Instead, it looks to me that the minister has created a process here that will mean it is just the CEO who will know about it; what is more, it is dependent on the CEO doing the detecting. I think that is unrealistic, and would leave us open to missing many cases that should be the subject of a habitat conservation notice.

Mr A.P. JACOB: The decision about whether something is or is not critical habitat rests with the minister. The operational side of managing it in a habitat conservation notice is more at the operational management end. That is why the decision was made that that would sit with the CEO. With regard to the public notice of these, under clause 57, the CEO is required to establish and maintain the register and make the register available for public inspection.

Clause put and passed.

Clauses 60 to 68 put and passed.

Clause 69: Content of biodiversity management programme —

Mr C.J. TALLENTIRE: From my reading of the clause, the content of a biodiversity management program does not refer to those threatening processes that we talked about earlier. Why would the minister not ensure that a biodiversity program had some reference to the threatening processes?

Mr A.P. JACOB: Clause 69(2) states —

> (2) Without limiting subsection (1), a biodiversity management programme may deal with one or more of the following matters —
>
> (a) threats to —
>
> (i) native species …
>
> (ii) an ecological community; or
>
> (iii) a critical habitat;

That includes reference to the threatening process.

Clause put and passed.

Clause 70 put and passed.

Clause 71: Consultation on draft programme —

Mr C.J. TALLENTIRE: This clause is about consultation on draft biodiversity management programs. Paragraph (b) provides that the CEO may consult with any person or body who, to the CEO's mind, appears to be affected in a material way by the program. Why have third parties been excluded from that consultation program?

Mr A.P. JACOB: The clause could include third parties who have an interest.

Mr C.J. TALLENTIRE: Yes, but it is going to depend on the CEO seeing that they are affected in some material way. It will be very hard to define conservation groups as being affected in a material way, yet they might have a passionate interest in a matter. Why would the minister present legislation that does not require the CEO to listen to those very legitimate voices of third parties?

Mr A.P. JACOB: The clause does not state who must or must not be consulted; it just refers to any person or body who appears to be likely to be affected in a material way by the program. It is fairly open-ended and the decision will be made at the time, I am sure.

Mr C.J. TALLENTIRE: How would the minister say that a conservation group could be affected in a material way?

Mr A.P. JACOB: As I said, it is open-ended, so that would be a decision for the CEO in consultation on the preparation of a draft biodiversity management program.

Clause put and passed.

Clauses 72 to 78 put and passed.

Clause 79: Revocation of biodiversity management programme —

Mr C.J. TALLENTIRE: Clause 79(2) states that the minister must consult with the commission before revoking a biodiversity management program. I wonder why there is no requirement that the minister consult with landholders on the revocation of a biodiversity management program.

Mr A.P. JACOB: The minister's decision would need to be published in the *Government Gazette*, so there would be public notification of the decision. It would be up to the minister of the day whom they wished to consult with on any revocation of a biodiversity management plan. The clause stipulates only that the minister must consult with the Conservation and Parks Commission if the program relates to land that is vested with that body, which is recognised in the Conservation and Land Management Act.

Clause put and passed.

Clauses 80 to 144 put and passed.

Clause 145: Term used: fauna —

Mr C.J. TALLENTIRE: This clause is very relevant to much of the discussion we had earlier today and to the amendments that the minister put on the notice paper this morning. It is about the definition of the term "fauna". It is interesting that clause 145 states —

> In this Subdivision —
>
> ***fauna*** does not include fish or pearl oyster.

That is quite specific to the provisions in subdivision 1. Obviously, that was seen as being adequate in the original conception of this bill and was the area in which things needed to be exempted. I would like to know more about the rationale behind exempting fish and pearl oyster from the definition of "fauna" just in this subdivision.

Mr A.P. JACOB: As we discussed earlier, this clause outlines the clear delineation between this bill and the Aquatic Resources Management Bill. I am not sure how far I can push it to address theoretical amendments to upcoming clauses that I will no longer pursue, but those amendments simply reiterate what is in clause 145, which provides that fauna is not intended to include fish or pearl oyster, not because they are not fauna and not because they are not significant from a biodiversity conservation perspective, but because this bill recognises that they are covered under their own legislation and have environmental protection through other state legislative instruments.

Mr C.J. TALLENTIRE: The minister says that they have environmental protection under other legislation. Could he outline how that process works? Is he suggesting that all the various fisheries are fully assessed by the Environmental Protection Authority?

Mr A.P. JACOB: No, that is not what I meant. I meant that they are governed under their own pieces of legislation, such as the Fish Resources Management Act 1994 or what will soon be the Aquatic Resources Management Act, which will replace it.

Mr C.J. TALLENTIRE: Therefore, they do not get the benefit of environmental protection, EPA assessment or anything of that sort.

Mr A.P. JACOB: No, that is not what I am saying. The Environmental Protection Act processes will continue. I understand that this essentially relates to ownership of a fish when it is caught, so that we will still allow for commercial and recreational fishing and recognise that commercial and recreational fishing happens under other legislative instruments.

Clause put and passed.

Clauses 146 to 192 put and passed.

Clause 193: Regulations: nature-based tourism and recreation —

Mr C.J. TALLENTIRE: This is a very important area because, as we all know, we have a real asset in the nature-based tourism opportunities. In recent times we have seen the advent of swimming with humpback whales as a potential tourism opportunity. It is vital such things are properly regulated so that we do not have tragic mishaps and negative consequences on those species involved. We need a well-managed tourism opportunity that we can all be very proud of and see people flock to Western Australia to enjoy. I am keen to know how this regulation process works. I am especially interested, minister, in the swimming with sea lions opportunities that are proposed around Jurien Bay, because my impression is that the minister's agency is not particularly enthusiastic about supporting those operators who want to offer swimming with sea lions. Perhaps the minister could deal with that specific case and then at the same time talk more broadly about how this regulatory function will work.

Mr A.P. JACOB: This clause provides us with a head of power to make such regulations. We have regulations under the existing Wildlife Conservation Act for a range of tours—whale shark tours may be a good example—but they do not apply to nature-based tourism specifically. This is essentially giving a head of power to create those regulations. The query about the proposals for swimming with sea lions might be a better question for another day.

Mr C.J. TALLENTIRE: The minister is unable to answer my query around the sea lions. I suppose we cannot expect the minister to come in here armed with all knowledge about his bill, but I think it would be a reasonable assumption that the minister would have the backing to present a bill with the information that is required and applicable to various cases. At the moment, how many nature-based activities are regulated in some way, and is sea lion swimming one of those?

Mr A.P. JACOB: I believe the only one that we have is whale watching, which is regulated as taking whales.

Mr C.J. Tallentire: Surely whale sharks as well?

Mr A.P. JACOB: That is regulated through the Conservation and Land Management Act. That is done within a marine park, so that is on CALM act reserve. This relates to the regulation of nature-based tourism and recreation on non–CALM act land.

Mr C.J. TALLENTIRE: Might that be the case with the sea lions as well, because the Jurien Bay Marine Park is a CALM act reserve?

Mr A.P. Jacob: It is a CALM act reserve.

Mr C.J. TALLENTIRE: How will tourism operators understand the difference between a tourism operation under the CALM act—or will they be told that they are under the Biodiversity Conservation Act? It will be very confusing for people. I thought that the minister was all about making sure that regulation was as simple as possible for people.

Mr A.P. JACOB: This legislation will provide for it to overlap and be through a single instrument. In any event, it operates through the same agency anyway. The Jurien Bay proposal, for example, will still be through the Department of Parks and Wildlife. I am very happy to have a discussion around sea lions. I am familiar with that example; it just does not pertain to the clause.

Clause put and passed.

Clauses 194 to 241 put and passed.

Clause 242: Terms used —

Mr C.J. TALLENTIRE: This division is about remediation orders. A definition is provided here. Remediation orders can be issued when environmental damage has been done. I wonder what level of environmental damage. It is not clear what would constitute environmental damage that would warrant a remediation order.

Mr A.P. JACOB: That is for a court to determine.

Mr C.J. TALLENTIRE: If that is the case, why cannot we do the job for the courts? Surely it is for the Parliament to express its will and decide what would constitute environmental damage. It seems to me that we are here to help define "environmental damage" and the minister is prepared to just leave it open.

Mr A.P. JACOB: It is not really the case. We have included this new tool in this bill, a very good tool, which allows for the courts to issue a remediation order, rather than just an imprisonment order, on an individual who has done damage to flora, fauna, ecological communities or habitat. This simply creates that ability for the courts to impose a remediation order as a penalty.

Clauses 243 to 258 put and passed.

Clause 259: Certain orders subject to disallowance —

Mr C.J. TALLENTIRE: I move —

Page 163, line 1 — To insert, as new cells in the table:

s. 40(1) and (3)	s. 45(1) and (3)

These cells refer to the extinction provisions. It refers to clause 40(1) and (3) and also to clause 45(1) and (3). It seems that we have to deal with the Interpretation Act and that is always important. We want to have this capacity for disallowance motions. Indeed, the minister is suggesting that an extinction order would come to Parliament and notice of it would be required to be laid on the table of both houses of Parliament. Surely it would make sense to include it as a possible disallowance.

Mr A.P. JACOB: This one links in with the amendments that the member for Gosnells moved for clauses 40, 42 and 45. They all come as a package and change the process, if you like. Given that we did not support those earlier amendments, supporting this one in isolation would not make any difference, really, in the way that it operates anyway. Although it would certainly change how the legislation runs, given that we have not supported the previous amendments, we do not support this one.

Mr C.J. TALLENTIRE: I was mindful that the minister might not support my initial amendment when we looked at including the insertion into the table. It is about the capacity for disallowance motions to be moved. We have here a number of clauses for which a disallowance motion can be moved. I am simply adding that anything in clauses 40 and 45 should also be allowed to be the subject of a disallowance. I remind members that the content of clauses 40 and 45 was extinction. Surely if something comes before the Parliament for which a disallowance notice should be permitted, it would be extinction. I do not see a problem adding that to allow for disallowance motions to be made against potential extinctions.

Mr A.P. JACOB: This amendment cannot be done in isolation; the amendments work as a package. Changing the word "instrument" to "order" and the amendments to clause 42 the member for Gosnells proposed are simply an administrative tidying up at the back end. Given that we did not support the previous amendments, this amendment does not have any standing, and our position in any event is to not support the amendment package as it stands.

Amendment put and negatived.

Clause put and passed.

Clauses 260 to 320 put and passed.

Schedule 1 put and passed.

Title put and passed.

As to Third Reading

MR A.P. JACOB (Ocean Reef — Minister for Environment) [5.32 pm]: I move —

That the third reading of the bill be made an order of the day for the next sitting.

Division

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

Ayes (27)

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

Noes (12)

Ms L.L. Baker	Mr D.J. Kelly	Ms S.F. McGurk	Mr C.J. Tallentire
Mr R.H. Cook	Mr F.M. Logan	Mr P. Papalia	Mr B.S. Wyatt
Mr W.J. Johnston	Mr M. McGowan	Ms R. Saffioti	Mr D.A. Templeman *(Teller)*

Pairs

Mr V.A. Catania	Mr J.R. Quigley
Ms L. Mettam	Ms J. Farrer
Mr M.J. Cowper	Mr P.B. Watson
Mr D.C. Nalder	Ms M.M. Quirk
Mrs L.M. Harvey	Mr M.P. Murray
Ms W.M. Duncan	Mrs M.H. Roberts

Question thus passed.

House adjourned at 5.35 pm