

ENVIRONMENTAL PROTECTION AMENDMENT BILL 2002

Third Reading

DR J.M. EDWARDS (Maylands - Minister for the Environment and Heritage) [9.29 pm]: I move -

That the Bill be now read a third time.

MR B.K. MASTERS (Vasse) [9.30 pm]: I am pleased to advise that, as was said earlier when discussing this Bill, the Liberal Opposition will support the legislation. Many important changes will be made to the Environmental Protection Act as a result of this Bill, many of which had their gestation period during the term of the previous Government. In fact, some of them go back to the previous Labor Administration of 1991-93. Although the Opposition has some concerns, which I will mention briefly this evening, the reality is that the Liberal Opposition will support the legislation.

I thank the minister for the way in which the Legislation Committee conducted its affairs for some 21 or 22 hours in the previous two or three weeks of Parliament. Throughout the entire process everyone's contribution, almost without exception, was positive and cooperative. I thank the minister for setting the standard and for following on with that positive and cooperative attitude. I am also pleased to say that the minister saw some merit in accepting several of the amendments that I put forward. She may not have liked the actual wording of them, but the spirit of some of my amendments was very much taken on board and several amendments made by the minister clearly reflected some of the concerns that I had.

There was one problem associated with the Legislation Committee, which, in all other respects, worked well. On the Wednesday, we finished about 8.00 pm after this House had risen at about 7.00 pm. I was not in the House when it rose and the next morning there were three pieces of legislation - the Carbon Rights Bill and a couple of others related to that - on the program. They happened to have their third reading while I was in my office, unaware of the fact that that was happening. Therefore, there was no third reading speeches to those Bills. From the Opposition's point of view there may be a need for a little more organisation when the House is split into two separate bodies.

This legislation tries to resolve some major problems. For example, there is a modified definition of pollution, a new definition of environmental harm and two new definitions of serious and major environmental harm. Those changes were needed. However, I tried to present one of Hon Peter Foss's concerns to the minister during the Legislation Committee hearings. He had pointed out that in the legislation the defence to a charge of illegal activity - in particular, environmental harm - is found in a separate section of the legislation to that which defines environmental harm. Hon Peter Foss was concerned that by separating the two and not making it absolutely clear within the definition of environmental harm that legal defences were written into the legislation and could be used in vexatious or frivolous attempts by third parties to try to delay or defer certain activities. I raised the concern that an unscrupulous competitor might try to use the definition of environmental harm as it currently stands within the legislation to frustrate a potential competitor. Nonetheless, the minister provided advice that the concerns of Hon Peter Foss could be adequately met by the wording of the legislation. I have not spoken to Hon Peter Foss since, but I suspect that his concerns remain and that we will have to see what the passage of time brings.

Most of the concerns raised in the Legislation Committee relate to the proposed new part 9, which deals with clearing permits. Part 9 brings in what is effectively a ban on the clearing of native vegetation in rural Western Australia. I know the minister is uncomfortable with me saying that because, in reality, some clearing will still be carried out. However, many hurdles will be placed in the way of a farmer or landowner who wishes to clear more than just a few hectares in an agricultural area; for example, cost, work, time, red tape, paperwork -

Mr J.L. Bradshaw: And frustration.

Mr B.K. MASTERS: Yes. The member for Murray-Wellington may not know Craig Underwood, but he springs to mind as soon as the word "frustration" is mentioned. Mr Underwood spent five years waiting to get clearing permission for his property. When he finally got it he was told by the Water Corporation that it thought his property was now a water supply area for the expanded townsite of Jurien Bay and that he might not be able to do anything with his property for another two to four years, as was previously intended. However, that is another issue of which the minister is aware, as Mr Underwood has met with her.

This part of the legislation deals with what is effectively a ban on clearing. I have previously made the point that it will have a major and significant financial impact on a relatively small number of farmers. The best estimate is between 100 and 200 farmers - it is probably closer to the lower figure. Those farmers will have bought properties and paid for them with their own money or, in many cases, the bank's money. However, they are still responsible for paying back the principal and the interest on the loan. This legislation will make it difficult for those landowners to get an economic return from that land. Some farmers may become involved in the

wildflower picking business and others may work in the ecotourism area. However, the vast majority of them will be farmers who, for better or for worse, will know nothing more than their agricultural trade. I do not mean that in a demeaning way, because they are very knowledgeable people. After having spent tens or hundreds of thousands of dollars purchasing land and, some years ago, having had the ability to use that land almost unfettered but within reasonable constraints to make an economic return, these landowners will now find that it will be very difficult, if not impossible, to gain clearing approval.

During the Legislation Committee stage I put to the minister the need for this Government to accept the principle of paying compensation to landowners who have had a legal right removed from their property. However, this Government has chosen not to accept that point even though incentives may be proposed.

In her third reading response the minister will discuss a number of issues on which there was general agreement by the committee that certain other things needed to be done. I thank the minister for making commitments to further examine those issues. For example, the transfer of clearing permits was something that I thought should be automatic. The minister put a point of view along the lines that a clearing permit for a property that was about to be subdivided might not be appropriate. In that case, there is some merit in the minister's concerns. Nonetheless, when land is transferred because of a death in a family or when property is sold by one agricultural landowner to another, because of the need for absolute certainty in that sale of the clearing permit being transferred, the minister must investigate that matter further.

When reading the *Hansard* report of the Legislation Committee, it can be seen that a couple of other issues were raised, which I will briefly outline. The new legislation requires that in disputes involving agricultural land use the Agricultural Practices (Disputes) Act 1995 will be referred to. I am concerned that the Agricultural Practices Disputes Board has made only two decisions in the seven or eight years it has been in operation. I am concerned that too much credence has been given to the board although it has not deliberated on many cases. I am also concerned that landowners may be required to go before the board with an issue raised by the Government, and it may take a long time for the area of dispute to be resolved. We discussed the process that applies when the Department of Environmental Protection sends a "show cause" letter to a farmer or landowner. If the landowner believes that he is carrying out normal farm practice or activity and that activity is not considered to be normal by the department, the Agricultural Practices (Disputes) Act can be brought to bear and the board can be brought into the process to deliberate on whether the agricultural practice is normal.

I also raised the issue of legal representation before the disputes board, because I am concerned that, for the most part, farmers will not want to spend a great deal of time and money on legal representation and will prefer to represent themselves. However, if the Department of Environmental Protection had three or four lawyers or crown solicitors representing it, that would certainly be daunting for the farmers. I am happy that the minister provided some consolation when she said that, almost certainly, legal representation would not be a requirement unless it was agreed to by both parties.

The Leader of the National Party raised concerns about the codes of practice. I am pleased that the minister has pointed out beyond any reasonable doubt that codes of practice are subsidiary legislation, and, on that basis, will come before the House and be treated in the same way as regulations. Further, it will be possible to refer them to the Joint Standing Committee on Delegated Legislation, which is a good thing. I was concerned that the chief executive officer did not have to seek advice from any other party in the preparation of a code of practice. However, the minister has reassured the House that it is intended that most codes of practice will be prepared in a consultative manner, and that all codes of practice will be reported upon in the department's annual report. In that way members of Parliament and the parliamentary process will be made aware of the codes of practice that have been prepared, which ones involved detailed consultation and which others did not involve detailed consultation in order to meet urgency requirements or a high-priority situation.

The issue of financial assurances for those involved in the clearing of native vegetation was also raised. I repeat that financial assurances are a burden on those who must provide them. Almost certainly there will be a cost - it may be small or large - for any financial assurance provided by way of condition on a clearing permit. Given the cost component, it is very important that financial assurances be the exception rather than the rule.

If my memory serves me correctly, the Leader of the National Party and I voted against schedule 5 of part 9, which relates to principles for clearing native vegetation. We were both concerned that the principles were reasonably vague and non-specific, and that they could be interpreted in any way that an officer of the Department of Environmental Protection sees fit. We were also concerned with the objects and principles of the Bill, as defined under part 10. There are five principles, but the one that caused most concern is the precautionary principle because it could be applied in an unfair or overbearing manner by a government bureaucrat who decided, for all sorts of reasons, that he or she did not want a project or proposal to proceed. Obviously, because the Leader of the National Party and I are not government members, we did not succeed in our opposition to the objects and principles of the Bill. Nonetheless, the minister is well aware of our concerns.

Once again, the proof of the pudding will be in the eating, and it remains to be seen how fairly, or otherwise, the department applies the various objects and principles of the Bill as enshrined in part 10.

I conclude on a positive note by saying that, as a general rule, the legislation is good, and the Opposition is happy to support it, even though it does have some concerns. The Legislation Committee progressed very well, and I can do no more than thank the minister for her constructive and positive input to that committee.

MR P.D. OMODEI (Warren-Blackwood) [9.47 pm]: Although I did not take a significant part in the consideration in detail of the Bill, I reaffirm my concerns about the legislation. The regulations will obviously be promulgated once the legislation is passed through the Parliament. I am particularly concerned about clearing issues and the lack of compensation provided in the Bill, which has been provided for in previous legislation. The penalties are draconian and well and truly go beyond what is reasonable. I understand the need for severe penalties for environmental pollution, as a result of negligence. We all know of the many toxic waste sites created in the metropolitan area in the past, and toxic spills have occurred in recent times which are of great concern.

However, the legislation goes too far in relation to unlawful clearing in farming areas. There is protection for whistleblowers and for people who are threatened. However, there is no protection in the legislation for farmers who are pursued beyond the law. The Bill is bureaucratic legislation. Indeed, in the second reading debate I described it as a sledge-hammer-to-crack-a-nut legislation, and I still believe that to be the case. On that basis I oppose the legislation. These matters are of real concern. In situations in which there is illegal clearing, there are other ways of addressing and redressing the issues by compulsory replanting. I am not convinced that there is a proliferation of clearing. Only last night I was talking to an elderly gentleman in Bridgetown who has a significant amount of jarrah on his land. He asked me whether the legislation would require him to obtain a permit to cut down one tree for posts, and the like. Those issues are not clear from the legislation.

There has been no discussion about compensation. To my knowledge there has been no discussion about the regulations for soil and land and for clearing. I understand that those issues will now be controlled from Perth by the Environmental Protection Authority and that all the soil and land conservation officers have been given the sack. That is a retrograde step. In my lifetime I have never known local issues to be properly dealt with at a grassroots level by a bureaucracy that is more than 300 kilometres away, which is the case in my electorate. I remind members that in most shires in the south west, only 10 per cent of the shires have been cleared. During the second reading debate, I gave the example of the shire of Manjimup, in which only 14.6 per cent of the total area is alienated and only 10 per cent of it is totally cleared. There is still a significant amount of bush on that 10 per cent. Some of that bush is in areas that are salt prone, and certainly it is in high rainfall areas. These laws will cover all areas, so there will be a significant impact on those farmers who still have vegetation on their properties. Because the legislation does not include a compensation clause similar to that in the Rights in Water and Irrigation Act and the Land Administration Act, I have great fears for those people. I have no doubt that somebody will take an action against the Government at some time in the future.

The Government needs to do a lot more about the serious environmental harm that is taking place on government property. I am talking about state forests, crown land, reserves and national parks where noxious weeds and feral animals are virtually rampant. Nobody is taking any significant action to address those issues. As a community we should be concerned about that. Apart from addressing the issue of environmental damage caused by toxic spills, this legislation focuses on the issue of land clearing; yet we are losing tens of thousands of acres of land in our state forests to noxious weeds. That is all I need to say. I will oppose the legislation until we get some commonsense in this debate.

DR J.M. EDWARDS (Maylands - Minister for the Environment and Heritage) [9.52 pm]: I thank the members who participated in the Legislation Committee stage of this Bill. It was a very useful process. We went through the Bill in considerable depth. For example, we looked at the regulations and answered a lot of the questions in great detail. I will answer some of the questions that were raised that I did not get a chance to answer when the committee's report was tabled.

During the committee hearing, a lot of time was spent discussing transparency and timeliness. It is worthwhile saying that a number of procedures are in place whereby the EPA and the department consider timeliness and transparency. The proposals that the EPA is assessing run according to time lines agreed by each proponent and the EPA on a case-by-case basis. This is a current requirement of the EPA and has been in operation since 1999. It is explicitly included in the EPA administrative procedures, which were published in February 2002. Clearly not all projects fit within a standard time frame, which is why there needs to be negotiation about which parts of which projects are likely to occur at what time.

It also needs to be pointed out that during the past 10 days we have learnt that quite often the delays are due to the length of time the proponent takes to provide further information. Nevertheless, I have asked my department to follow that up and to be more flexible. I will go through some of the things it is doing. The administration of

environmental assessment, licensing works approval and permit processes under the Bill are currently being looked at in some detail. The assessment, the approval steps and the ordinary time lines will be more comprehensively defined. They will be published so that people understand what is required when they take any particular step and how long that is likely to take. This work will expand on administrative procedures that are already in place in different parts of the department. These projects are currently tracked, but we will make them more available on the Internet so that people can see what stage any one project has reached at the time. I have also instructed my staff to publish on the Internet the progress of matters under consideration. This will ensure that that information is available to all interested people. Clearly the department will take great care with any information that is confidential or sensitive. It is useful to members of the community who know that a project is under consideration to know exactly what stage the assessment process has reached.

I will now comment on the liability of directors for the actions of a company. Again, there was considerable discussion of this clause during the committee hearing. Clause 131 of the Environmental Protection Amendment Bill 2002 deems that persons concerned with the management of companies will be liable for offences committed by the companies they manage unless they can establish one of the defences provided. In response to members' concerns about this issue, I indicated that I would look at it further. In the 10 days since then, staff have made contact with both the Chamber of Minerals and Energy of Western Australia and the Western Australian Chamber of Commerce and Industry. These organisations have put to us a series of arguments against director liability. In thinking them through and in looking at what occurs in other States and at provisions in other Western Australian Acts, we have decided that we will keep with the current provisions in the Act, so that clause will not be amended. I reassure members that directors who discharge their duties in a responsible manner will have a defence under the provision.

I will now comment on the transfer of a clearing permit. Again, there was considerable discussion about these clauses. In fact, the member for Vasse proposed amendments to make the transfer of a permit more certain. I am pleased to advise the member that we have carefully reconsidered both the provisions in the Bill and what he said and we are sympathetic to his request. Amendments to the Bill will be introduced in the Legislative Council to provide for the automatic transfer of a permit under specific circumstances. The amendments will provide that when the interest in the land covered by a permit is transferred to another person, the second person will be the holder of the permit. The new holder of the permit need only notify the director general, and no application will be necessary. The new arrangement will allow a person buying the land with a permit to operate under the permit as though he or she were the original permit holder. In some circumstances, however, the new permit holder may not be willing or able to comply with the requirements of the permit, so another amendment will allow the director general to cancel the permit if the holder proves to be unwilling or unable to comply with the permit conditions. We have gone a long way towards answering the concern raised by the member. Upon any cancellation, the person will be able to appeal to the minister.

I am pleased to say that a related amendment is being prepared to allow people intending to buy land to apply for a permit to clear that land if and when they become the owners. Again, that answers some of the concerns raised by the member for Vasse. This will help people buying land for a particular purpose, particularly those who are in need of an assurance that they will be allowed to do this once the purchase goes through. The amendment will allow the director general to consider the application and provide an undertaking that a permit will be issued when the land is transferred to the applicant. The conditions that will apply to the permit will be set out in the undertaking. The applicant can appeal against a refusal by the director general to grant an undertaking or against any of the conditions so set out.

I will now make some comments on the involvement of the EPA in making regulations. Again, there was considerable discussion on this issue. The member for Vasse said that he had received strong representations from people who believe that the EPA's involvement is essential. We have looked at this issue in more detail and we have discussed it with parliamentary counsel. It has been decided that the best course is to explicitly allow the EPA discretion to initiate advice to the minister on any regulation. That is preferred over reinstating the requirement for the EPA to recommend each and every regulation or to try to set out in the Act the regulations that should be subject to EPA consideration. The Government thinks that is the most sensible way to take into account the suggestions made by the member for Vasse and others regarding the EPA's regulation-making role.

We also had some discussions about publishing reasons for directions. I reaffirm that ministerial directions are already published on the appeals convenor web site and the information is available in the Department of Environmental Protection library, so we see no further need to publish that information anywhere else.

I again thank all members who participated in this debate. A number of issues were raised in this third reading debate that were more adequately covered during the debate on the committee's report and by the committee itself. The overall message about this Bill is that people contributed. They did a lot of work and the process in the committee room was very constructive. I thank all members of Parliament who were involved. I thank the

staff from departmental offices who put in many hours to ensure it flowed smoothly and I thank the members who spoke and the parliamentary staff who ensured that the process worked well.

Question put and passed.

Bill read a third time and transmitted to the Council.

House adjourned at 10.01 pm
