



PARLIAMENT OF WESTERN AUSTRALIA

TWENTY- EIGHTH REPORT
OF THE
STANDING COMMITTEE ON
LEGISLATION
IN RELATION TO THE
CONSERVATION AND LAND
MANAGEMENT AMENDMENT ACT 1993

Presented by the Hon Derrick Tomlinson (Chairman)

28
SEPTEMBER 1994

Members of the Committee

Hon Derrick Tomlinson, MLC (Chairman)

Hon Bill Stretch, MLC

Hon Ross Lightfoot, MLC

Hon Cheryl Davenport, MLC

Hon John Cowdell, MLC

Staff of the Committee

Ms Jan Paniperis (Committee Clerk)

Address

Parliament House, Perth, WA 6000 Telephone 222 7222

**REPORT OF THE
STANDING COMMITTEE ON LEGISLATION
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CONSERVATION AND LAND MANAGEMENT AMENDMENT ACT 1993**

1. Introduction

The Conservation and Land Management Amendment Bill was introduced in the Legislative Assembly on October 21 1993, received by the Legislative Council on November 25, and referred to the Standing Committee on Legislation on December 8 1993.

The Report of the Committee (Number 23, December 1992) tabled on December 15 1993 recommended as follows -

- "1. That following a report from the National Taskforce on Biodiversity, Part 3 of the Conservation and Land Management Bill 1993 be reviewed.*
- 2. That the Bill be adopted as printed, but that its interpretation be guided strictly by the Minister's Second Reading Speech.*
- 3. That a Select Committee on Biological Diversity be appointed."*

After the Bill was read a third time on December 16 1993, it was referred again to the Standing Committee on Legislation on the motion of Hon Norman Moore MLC.

The Committee was unable to consider the Act before Parliament was prorogued on May 3 1994. The reference to the Standing Committee lapsed.

On the motion of the Leader of the House, Hon George Cash MLC, the referral to the Standing Committee on Legislation was reinstated on May 12 1994.

2. Recommendation

That Part IV, Division 1, of the Conservation and Land Management Act 1984, as amended by the Conservation and Land Management Amendment Act 1993, be reviewed by a Select Committee of the Legislative Council.

3. Committee Meetings

The Standing Committee on Legislation met on the following occasion to examine the *Conservation and Land Management Amendment Act 1993* -

Thursday September 15, 1994 from 10.10 am to 11.28 am

Thursday September 29, 1994 from 10.04 am to 11.20 am

4. Discussion

Amendments to the Conservation and Land Management Act agreed to by the passage of the 1993 Bill had the following principal effects -

- s.33(i)(ca) Made clear that a function of the statutory authority is to promote and encourage the use of flora for therapeutic, scientific or horticultural purposes for the benefit of the State. Before this clause was inserted it was unclear whether such provisions were within the bounds of the Act.
- s.33(1)(e)(IV) Provided the Executive Director with the authority to undertake research into the area of using flora for therapeutic, scientific or horticultural purposes.
- s.33(6) Allowed the Minister and Executive Director to enter into agreements with third parties under which the Minister and the Executive Director may grant licences such that the third party may have an exclusive or preferential right to remove forest product or flora stated in the agreement.
- s.34A(1) Activities relating to the use of flora for therapeutic, scientific or horticultural purpose may be treated as a commercial activity as is the case for timber sharefarming activities undertaken by the Executive Director.
- s.34A(2) Made clear that the Treasurer's approval is not required for every sharefarming agreement entered into.
- s.34B(2)(a) Provided that the Executive Director has the right to establish, maintain and harvest tree crops, or combinations thereof, through sharefarming agreements.
- s.34B(2a)(2b) Produce from sharefarming may include other products from trees, such as leaf oils and chemicals, not just timber. Before this amendment it was unclear whether sharefarming agreements could include other produces from trees.
- s.34B(4)(4a) A sharefarming agreement is a *profit a prendre*.
- s.34B(4b) Made clear that if the Executive Director assigns his interest in the *profit a prendre* he and the State are not responsible for the obligations contained in the *profit a prendre*.

s.34B(7a) Made clear that the Executive Director has the right to harvest and dispose of timbers grown under sharefarming agreements.

The sum total of these amendments gave to the Executive Director considerable powers to enter into commercial arrangements for the exploitation of timber and flora produce grown and harvested on public land. Those arrangements previously were confined to the harvesting and/or cultivation of timber products, but did not extend to the whole range of naturally occurring and cultivated tree and flora produce.

Concern exists among some members of the community that these entrepreneurial powers of the Executive Director may be in direct conflict with other responsibilities for land management and the conservation of flora and fauna. Particular concern has been expressed about the authority given to the Executive Director to enter into sharefarming agreements without the Treasurer's approval (s.34A(2)).

Other concerns about biodiversity and tension between the exploitation of flora for therapeutic, scientific or horticultural purposes and national and international obligations to protect biodiversity were discussed in the Committee's earlier report (Number 23).

It is important that these concerns be resolved. The Standing Committee on Legislation is not an appropriate body to deliberate on such matters, however. Its functions relate to law-making processes of the Legislative Council. Bills may be referred to the Committee at any of the First, Second or Third Readings and, depending on the stage at which a Bill stands referred, the Committee may deliberate and recommend on any aspect of policy or detail of the legislation. When a Bill passes into law, it is no longer within the province of the Standing Committee on Legislation, except when it may be subject to amendment through proper parliamentary process.

The Committee recommends, therefore, that relevant sections of the Conservation and Land Management Act 1984 be the subject of review by a Select Committee of the Legislative Council.

Recommendation

That Part IV, Division 1, of the Conservation and Land Management Act 1984, as amended by the Conservation and Land Management Amendment Act 1993, be reviewed by a Select Committee of the Legislative Council.