



SECOND SESSION OF THE THIRTY-SIXTH PARLIAMENT

**REPORT OF THE
STANDING COMMITTEE ON LEGISLATION
IN RELATION TO THE
ENVIRONMENTAL PROTECTION
AMENDMENT BILL 2002**

Presented by Hon Jon Ford MLC (Chairman)

Report 19
May 2003

STANDING COMMITTEE ON LEGISLATION

Date first appointed:

May 24 2001

Terms of Reference:

The following is an extract from Schedule 1 of the Legislative Council Standing Orders:

“1. Legislation Committee

- 1.1 *A Legislation Committee* is established.
- 1.2 The Committee consists of 5 members.
- 1.3 The functions of the Committee are to consider and report on any bill or other matter referred by the House.
- 1.4 Unless otherwise ordered, the policy of a bill referred under subclause 1.3(a) at the second reading or any subsequent stage is excluded from the Committee’s consideration.”

Members as at the time of this inquiry:

Hon Jon Ford MLC (Chairman)

Hon Peter Foss MLC

Hon Giz Watson MLC (Deputy Chair)

Hon Bill Stretch MLC

Hon Kate Doust MLC

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ISBN 0 7307 6490 7

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CHAPTER 1

REFERENCE AND PROCEDURE

REFERENCE AND PROCEDURE

- 1.1 On April 9 2003 the Environmental Protection Amendment Bill 2002 (**Bill**) was discharged and referred to the Standing Committee on Legislation (**Committee**), for the Committee to examine the Bill, including the impact on the Bill of any proposed amendments to the Bill, and to report back to the Legislative Council by not later than May 16 2003.
- 1.2 On May 13 2003 the Legislative Council granted an extension of the reporting date to **May 23 2003**.¹
- 1.3 The Bill contains proposals to amend various provisions of the *Environmental Protection Act 1986 (Act)*. A number of minor, mostly consequential, amendments are made to other Acts.
- 1.4 At the point of its referral to the Committee, the Bill had passed the Second Reading stage and was about to enter the stage where it would be considered by a committee of the Whole House. As such, the Committee is by its terms of reference restricted from inquiring into the broad scope and purpose of the Bill and its policy implications.
- 1.5 There were 135 proposed amendments to the Bill listed on Supplementary Notice Paper No. 131, Issue No. 5 (**SNP**), as at Friday April 11 2003 (**Appendix 3**). A further three proposed amendments were provided to the Committee over the course of its inquiry by Hon Murray Criddle.
- 1.6 The Committee resolved not to advertise for public submissions or hold hearings in relation to its examination of the Bill, despite a number of requests for the Committee to do so being received from various individuals and organisations.
- 1.7 The Committee has approached its task as a purely technical exercise of attempting to provide the House, and in particular the committee of the Whole, with a practical working document to assist members to understand the aim and effect of the numerous proposed amendments to the Bill currently before the House. The Committee has thus considered only the current proposed amendments to the Bill, and has not considered the substantive provisions or merits of the Bill other than in the narrow context of the proposed amendments.

¹ *Hansard*, Legislative Council, dated Tuesday, May 13 2003.

1.8 The report adopts a narrative approach with no recommendations being made by the Committee to the House. Therefore the Committee's intention is that there will be no restriction on debate on any clause by SO 234A(2)(b).

1.9 The Committee has obtained, for the benefit of those members who wish to have access to these documents, a number of versions of the Bill which have been amended and marked up by the State Law Publisher to show the effect of each party's, or group of parties', proposed amendments if implemented. The following versions were obtained, and as many copies of each as may be required can be requested by the lead speakers on the Bill of each of the political parties in the House from Chamber staff during the committee stage of consideration of the Bill:

- Draft Bill showing proposed Government amendments (amendments and changes tracked);
- Draft Bill showing proposed Government amendments (amendments incorporated as if passed);
- Draft Bill showing proposed Liberal and National Party amendments (amendments and changes tracked);
- Draft Bill showing proposed Liberal and National Party amendments (amendments incorporated as if passed);
- Draft Bill showing proposed Greens (WA) amendments (amendments and changes tracked); and
- Draft Bill showing proposed Greens (WA) amendments (amendments incorporated as if passed).

(It would assist the staff in deciding the size of the print run if the lead speakers would advise the Clerks of their requirements as soon as possible)

1.10 On April 14 2003, the Committee sent a memorandum to all Members of the Legislative Council requesting that the following information be provided to the Committee by no later than 5:00pm on Friday, May 2 2003:

- a) any Member of the Legislative Council who presently has proposed amendments to the Bill set out in the SNP, and who has not already done so, to provide the Committee with a brief explanatory memorandum setting out the intended purpose of such amendments; and
- b) any Member of the Legislative Council who intends to put forward additional proposed amendments to the Bill, apart from those already set out in the SNP, to provide the Committee with a copy of such proposed amendments, along

with a brief explanatory memorandum setting out the intended purpose of such amendments.

- 1.11 It was stated clearly in the memorandum that the Committee's request for the above information was in no way intended to restrict or discourage Members from putting forward further proposed amendments to the Bill upon its return to the Legislative Council.
- 1.12 An explanatory memorandum in relation to proposed amendments to the Bill was received from each of the following Members:
- Hon Murray Criddle (x2) (whose explanatory memoranda included references to a further three proposed amendments in addition to those of Hon Murray Criddle contained in the SNP);
 - Hon Robin Chapple;
 - Hon Peter Foss;
 - Hon Christine Sharp; and
 - Minister for Housing and Works.
- 1.13 It is clear from the complexity of the proposed amendments that an order of dealing with the clauses and proposed amendments should be established by the Committee of the Whole before commencement of consideration of the Bill in detail (a suggested order of dealing with the proposed amendments to the Bill has been prepared by Mr Nigel Pratt, Clerk Assistant, and is contained in **Appendix 2**).

CHAPTER 2

PURPOSE OF THE BILL AND THE PROPOSED AMENDMENTS

THE ADMINISTRATION AND OBJECTIVES OF THE ACT

2.1 The Act is administered by the Department of Environment (**DoE**). The primary objectives of the Act are:

- to ensure the environment is managed so that it is conserved and enhanced; and
- to ensure that development in Western Australia is environmentally acceptable.²

OBJECTIVES OF THE BILL

2.2 In his Second Reading Speech on the Bill, the Leader of the House, Hon Kim Chance MLC, on behalf of the Minister for Housing and Works (representing the Minister for the Environment and Heritage), stated:

“[T]he Bill before the House represents a major reform of the State's principal environmental legislation.

The Bill corrects the identified problems and makes the suggested improvements. It makes the Act's processes more flexible, efficient and effective and, together with the forthcoming Contaminated Sites Bill and Waste Management Bill, provides a complete suite of tools to ensure the environment is protected. The Bill represents a key part of the Government's commitment to ecologically sustainable development and delivers on commitments for -

ensuring the independence of the EPA;

effective protection of native vegetation and clearing controls;

open decision making and the public's right to know;

² Department of Environmental Protection Annual Report 2001-2002, November 2002, at Internet site: http://www.environ.wa.gov.au/downloads/1715_DEPAR0102.pdf , p. 9.

a level playing field where everyone is treated the same - government and private, city and country, small business and big business;

incorporating sustainability principles into the Environmental Protection Act;

making the Act's assessment processes better able to address cumulative and regional impacts; and

providing more effective post-approval monitoring of major projects.”³

DETAILED CONSIDERATION OF THOSE PROVISIONS OF THE BILL TO WHICH AMENDMENTS HAVE BEEN PROPOSED ON SUPPLEMENTARY NOTICE PAPER NO. 131, ISSUE NO. 5

2.3 Due to time constraints arising from the reporting date established by the House, the Committee has decided to approach its inquiry into the Bill by only considering in detail those provisions of the Bill that are proposed to be amended in the committee of the Whole. Each of the following chapters of the report deal with a separate Part of the Bill that is sought to be amended.

2.4 A schedule has been prepared by the Committee (at **Appendix 1**) which briefly sets out the nature of each of the current proposed amendments (being those contained in the SNP, and those additional proposed amendments that were provided separately to the Committee), including the following information:

- The member moving the proposed amendment and the amendment's number on the SNP (if any).
- The clause of the Bill sought to be amended.
- The section of the Act to be either amended or inserted by the proposed amendment, if relevant.
- Information as to whether the proposed amendment is substantive, consequential, or administrative.
- General observations as to any unusual or interesting aspects of the proposed amendment, such as any financial or administrative implications.
- References to related proposed amendments.

³

Hansard, Legislative Council, Wednesday, November 6 2002, p. 2637.

- A cross-reference to those paragraphs of the narrative report discussing the proposed amendment.

2.5 None of the proposed amendments appear to be unauthorised by the enabling Act.

CHAPTER 3

PART 1 OF THE BILL: “PRELIMINARY”

CLAUSE 2

- 3.1 Clause 2 of the Bill establishes the commencement date for the enacted Bill which, for the most part, is to be determined by proclamation. Different commencement dates may be established for different provisions of the Bill by proclamation, particularly where regulations are required to be prepared in support of the provisions.

Proposed Amendments to Clause 2 of the Bill

Commencement date to be tied to the establishment of the “Codes of Practice”

- 3.2 There is one proposed amendment to clause 2 of the Bill, being proposed amendment 15/2 on the SNP, of Hon Murray Criddle. This proposed amendment seeks to establish a requirement that no provisions of the Bill may come into effect until the “Codes of Practice” referred to in new s.122A, as proposed to be introduced by clause 65 of the Bill (see para 5.34 below), have been developed.

- 3.3 The Committee was advised by Hon Murray Criddle that:

“National Party members wish to ensure that this legislation does not impact adversely on day-to-day sustainable business practices. One way of addressing this concern is to ensure that suitable “defences” are established before the legislation takes effect.”⁴

- 3.4 The National Party seeks to ensure that the Bill will not come into effect until after the Codes of Practice have been finalised and tabled in Parliament as subsidiary legislation.⁵
- 3.5 This proposed amendment is substantive, but is dependent upon clause 65 of the Bill being passed.

⁴ *National Party Amendments & Notes for the Environmental Protection Amendment Bill 2002*, Hon Murray Criddle, dated April 30 2003, p. 1.

⁵ Ibid.

CHAPTER 4

PART 2 OF THE BILL: “ASSESSMENT AND IMPLEMENTATION OF PROPOSALS”

CLAUSE 6

- 4.1 Clause 6 of the Bill proposes amendments to s.38 of the Act, which is a key provision relating to the requirement to refer to the Environmental Protection Authority (EPA) certain proposals that may significantly effect the environment. Most of the amendments contained in clause 6 are designed to clarify or reword various existing provisions of s.38 of the Act.

Proposed Amendments to Clause 6 of the Bill

- 4.2 There are two proposed amendments to clause 6 of the Bill, both of which are from Greens (WA) party members.

Public referral of proposals to EPA

- 4.3 Proposed amendment 80/6 from Hon Christine Sharp is a substantive amendment that seeks to remove the proposed restriction in clause 6 that, in the case of a proposal under an assessed scheme, only the proponent can refer a significant proposal to the EPA. If this proposed amendment succeeds, any person is entitled to refer any significant proposal, subject to the proposal not having been previously dealt with, to the EPA.
- 4.4 In her explanatory memorandum on her proposed amendments, Hon Christine Sharp notes that this proposed amendment is in response to the exemption from the requirement to obtain a land clearing permit provided for in proposed Schedule 6 in clause 116 of the Bill for subdivision approvals under the *Town Planning and Development Act 1928*.⁶ Section 38 of the Act is therefore proposed to be amended as above so as to “balance out” the situation. As Hon Christine Sharp goes on to note:

“There is no reason for planning instruments to enjoy special protections from normal impact assessment in addition to the exemption from clearing permits under the Schedule. If the Act, as amended, is to constrain the unnecessary clearing of native vegetation, it needs to ensure the accountability of the planning

⁶ *Submission on Christine Sharp MLC’s Proposed Amendments to the Environmental Protection Amendment Bill 2002*, Hon Christine Sharp, dated May 1 2003, p. 1.

system. Clearing for urban development is now the largest single cause of land clearance in WA.”⁷

Public referral of strategic proposals to EPA

- 4.5 Proposed amendment 133/6 from Hon Robin Chapple is a substantive amendment that seeks to delete from clause 6 proposed subsection 38(3) which provides that a proponent of a “strategic proposal” **may** refer the proposal to the EPA.
- 4.6 This proposed amendment is designed to allow the public to refer strategic proposals to the EPA under s.38 of the Act, as amended by the Bill. In his explanatory memorandum for this proposed amendment, Hon Robin Chapple notes that “*a significant proposal covers strategic proposals as it is covered by the new [section] 37B*”, and so the proposed amendment will, by deleting the qualification that proponents **may** refer a strategic proposal to the EPA, restore the public process that existed with respect to planning and strategic assessments prior to March 23 1995.⁸
- 4.7 In his explanatory memorandum, Hon Robin Chapple provides, by way of background, a discussion of the decision of the Supreme Court of Western Australia in the case of *Robin Chapple v the Environmental Protection Authority, Steedman and the State of Western Australia* (April 27 1995), in which the Court held that the Burrup Peninsula Draft Land Use and Management Plan (1994) was not a proposal that was required to be referred to the EPA.⁹ Hon Robin Chapple notes in relation to the Court’s decision:

“This is an important determination in relation to how agencies may deal with the current Bill, where the proponent ‘may’ refer strategic proposals. On the basis of the Chapple decision, until a land use is determined (i.e. changed from Crown land to some form of zoning) then the proponent /Department can rightfully say that it is merely an early planning stage, and they have no reason to refer.”¹⁰

CLAUSE 7

- 4.8 Clause 7 of the Bill proposes to insert new sections 38A and 38B into the Act.

⁷ *Submission on Christine Sharp MLC’s Proposed Amendments to the Environmental Protection Amendment Bill 2002*, Hon Christine Sharp, dated May 1 2003, p. 1.

⁸ *Proposed Amendment to the Environmental Protection Amendment Bill 2002* [131-2], Hon Robin Chapple, dated April 30 2003, p. 1.

⁹ *Ibid*, p. 4.

¹⁰ *Ibid*, pp. 4-5.

- 4.9 Proposed s.38A establishes the circumstances as to when the referral of a proposal is to be refused by the EPA, and those circumstances in which the EPA has a discretion to refuse the referral of a proposal.
- 4.10 Proposed s.38B provides that the EPA may seek additional information from any person about a proposal referred to it in order to assist the EPA to make various decisions relating to the acceptance or assessment level of the proposal. The relevant 28 day statutory time period for making such decisions does not commence until either the information requested has been provided or the time period in which the information was requested to be provided within has expired, depending upon whom the information was sought from.

Proposed Amendments to Clause 7 of the Bill

- 4.11 There are two proposed amendments to clause 7 of the Bill, both from Hon Christine Sharp.

EPA's power to refuse to accept the referral of a proposal

- 4.12 Proposed amendment 81/7 from Hon Christine Sharp is a substantive amendment that seeks the deletion in its entirety of proposed new s.38A.
- 4.13 Proposed amendment 82/7 from Hon Christine Sharp is a consequential amendment following on from proposed amendment 81/7, in that it deletes the reference to decisions of the EPA as to "whether or not to accept the referral" of a proposal pursuant to proposed new s.38A.
- 4.14 In her explanatory memorandum in relation to her proposed amendments to the Bill, Hon Christine Sharp has identified the following issues arising from proposed new s.38A that have prompted her to seek the deletion of that proposed section:
- The EPA will be compelled to undertake a far greater level of "pre-assessment" of the impacts of a proposal.
 - The breadth of the power given to the EPA to refuse to assess a proposal will make it difficult for review by the courts.
 - The EPA will be able to refuse to assess a proposal even if the proposal is referred by the Minister as a matter of public concern under s.38(4).
 - Dispute could arise as to whether a proposal is "new" or simply an amended version of a previously referred proposal.¹¹

¹¹ *Submission on Christine Sharp MLC's Proposed Amendments to the Environmental Protection Amendment Bill 2002*, Hon Christine Sharp, dated May 1 2003, pp. 1-2.

CLAUSE 9

4.15 Clause 9 of the Bill proposes to amend s.40 of the Act so as to “*clarify the intent of the existing provisions*”.¹² The Bill also makes a consequential amendment to s.40 to include a reference to proposed s.40A of the Act, to be introduced by clause 10 of the Bill.

Proposed Amendments to Clause 9 of the Bill

4.16 There are two proposed amendments to clause 9 of the Bill on the SNP, being:

- 134/9, Hon Christine Sharp; and
- 16/9, Hon Murray Criddle.

EPA’s power to suspend an environmental review

4.17 Proposed amendment 134/9 of Hon Christine Sharp is a substantive amendment that seeks to grant a power to the EPA to suspend for a reasonable period **any** requirement for a proponent to undertake an environmental review on their proposal and report back to the EPA in certain circumstances.

4.18 If proposed amendment 134/9 is passed, and the Bill is also passed, subclauses (1) to (4) of s.40 of the Act would appear as follows (with the amendments made by proposed amendment 134/9 underlined):

“40. Assessment of proposals referred

- (1) This section and section 40A apply if the Authority assesses a proposal.
- (2) The Authority may, for the purposes of assessing a proposal —
 - (a) require any person to provide it with such information as is specified in that requirement;
 - (b) require the proponent to undertake an environmental review and to report thereon to the Authority; or
 - (c) with the approval of the Minister and subject to section 42, conduct a public inquiry in such manner as it sees fit or appoint a committee consisting of —
 - (i) Authority members;
 - (ii) Authority members and persons other than Authority members; or
 - (iii) persons other than Authority members,
 to conduct a public inquiry and report to the Authority on its findings on the public inquiry.

¹² *Environmental Protection Amendment Bill 2002 Explanatory Memorandum*, undated, p. 4.

(2a)	As well as taking one or more of the courses of action set out in subsection (2)(a) to (c), the Authority may make such other investigations and inquiries as it thinks fit.
(3)	Subject to any direction made under section 43, the Authority shall determine the form, content, timing and procedure of any environmental review required to be undertaken under subsection (2)(b).
(3a)	<u>Subject to any direction made under section 43, and without limiting the generality of subsection (3), the Authority may suspend for a reasonable period any environmental review required to be undertaken under subsection (2)(b) (in this subsection called “the particular review”) if —</u>
(a)	<u>the proponent involved with the particular review agrees with the suspension;</u>
(b)	<u>the Authority, or a decision-making authority, is in the process of developing a policy that may be relevant to the particular review;</u>
(c)	<u>the assessment of a strategic proposal which relates to the same land or waters as the particular review has not yet been completed, and the outcome of that assessment may be relevant to the particular review; or</u>
(d)	<u>the assessment of any other proposal (which may, if implemented together with the proposal the subject of the particular review, have a significant cumulative impact on the environment) has not yet been completed, and the particular review would be more effectively undertaken after that other proposal has been assessed.</u>
(4)	Subject to any direction made under section 43 and to subsection (5), the Authority may cause —
(a)	any information provided in compliance with a requirement made under subsection (2)(a); or
(b)	any report made in compliance with a requirement made under subsection (2)(b),
	to be made available for public review and shall, if it does so, determine the period within which, the extent to which and the manner in which public authorities or persons may make submissions to the Authority in respect of that information or report.
...	”

4.19 This proposed amendment has arisen as a result of the perceived limited grounds contained within the Bill on which the EPA could either terminate or suspend the assessment of a proposal. Hon Christine Sharp suggests that there are many more situations in which the EPA should have the power to terminate, or at least suspend, an assessment of a proposal:

“For example, assessment of [a] coastal land-use proposal should arguably be terminated while the EPA develops a coastal zone Environmental Protection Policy, or at least while the government’s various inquiries into this area are underway. The EPA should

therefore be provided with a broad power to suspend the assessment of proposals."¹³

- 4.20 It should be noted that this proposed amendment is inconsistent with proposed Government amendment 30/10 below (see para 4.27).

Introduction of a time limit on EPA's assessment of a proposal

- 4.21 Proposed amendment 16/9 from Hon Murray Criddle is a substantive amendment which seeks to establish a 120 day time limit, subject to a Ministerial direction, in which the EPA must complete its assessment of a proposal following the date that the EPA gives notice of its decision to assess the proposal.

- 4.22 The proposed amendment of Hon Murray Criddle was put forward due to a concern over the absence in the Bill of any timeframes imposed upon the EPA with respect to its assessment of proposals. It was noted by Hon Murray Criddle that the absence of a timeframe for the assessment of proposals is in contrast to statutory timeframes established elsewhere in the Bill. For instance:

- a) a 28 day maximum period is stipulated under s.39A(3) (proposed to be inserted into the Act by clause 8 of the Bill) in which the EPA must make a decision with respect to accepting a referred proposal for assessment; and
- b) a six week maximum period, unless otherwise directed by the Minister, is stipulated under s.44(2b) (proposed to be inserted into the Act by clause 15 of the Bill) in which the EPA is to provide a report to the Minister following the completion of an assessment.¹⁴

- 4.23 The National party submitted that it is of the view that:

*"...[a]pplications should be dealt with as quickly as is practical. The imposition of time frames will aid all parties in managing their business and give goals to work towards."*¹⁵

CLAUSE 10

- 4.24 Clause 10 of the Bill proposes to insert new sections 40A and 40B into the Act. Proposed new s.40A provides for the suspension or termination of an assessment of a proposal in certain circumstances. Proposed new s.40B specifies those provisions of the Act which do not apply when "strategic proposals" are being assessed - that is,

¹³ *Submission on Christine Sharp MLC's Proposed Amendments to the Environmental Protection Amendment Bill 2002*, Hon Christine Sharp, dated May 1 2003, p. 2.

¹⁴ *National Party Amendments & Notes for the Environmental Protection Amendment Bill 2002*, dated April 30 2003, p. 2.

¹⁵ *Ibid.*

those provisions that relate to the actual "implementation" of a proposal that impacts on the environment.

Proposed Amendments to Clause 10 of the Bill

4.25 There are three proposed amendments to clause 10 of the Bill on the SNP, all from the Government, and being:

- 30/10, Minister for Housing and Works;
- 31/10, Minister for Housing and Works; and
- 32/10, Minister for Housing and Works.

EPA's power to suspend the assessment of a proposal

4.26 The combined effect of the Government's three proposed amendments to clause 10 is to delete from proposed new s.40A an express reference to the power of the EPA to suspend the assessment of a proposal. Accordingly, the EPA will only have the express power to terminate the assessment of a proposal under proposed new s.40A of the Act.

4.27 Proposed amendment 30/10 is substantive. Proposed amendments 31/10 and 32/10 (and 33/12 below at para 4.30) are consequential amendments following on from proposed amendment 30/10.

4.28 In its explanatory memorandum in relation to its proposed amendments, the Government has noted that the express references to the power to "suspend" in the Bill are not essential, and that:

*"They are problematic since they cast doubt on the EPA's ability to control the assessment process, for instance by deferring the finalization of an assessment while awaiting relevant information or the development of a relevant policy. If the reference to a specific power to suspend were to be retained other amendments would likely also be required to protect the EPA's more general powers to control the assessment process."*¹⁶

CLAUSE 12

4.29 Clause 12 of the Bill proposes to insert a new s.41A into the Act establishing the offence of implementing, without authorisation, a proposal that is subject to an assessment.

¹⁶ Government Amendments With Explanatory Notes to the Environmental Protection Amendment Bill 2002 [131-2], Minister for Housing and Works, May 12 2003, p. 3.

Proposed Amendments to Clause 12 of the Bill*Consequential amendment to proposed amendment 30/10*

- 4.30 There is only one proposed amendment to clause 12 of the Bill on the SNP. That is proposed amendment 33/12 from the Minister for Housing and Works. This proposed amendment is consequential as it gives further effect to proposed amendment 30/10 above (see para 4.25) in deleting references to the EPA “suspending” the assessment of a proposal.

CLAUSE 15

- 4.31 Clause 15 of the Bill clarifies the wording of s.44 of the Act and removes “*unintended constraints on the content*” of EPA assessment reports.¹⁷

Proposed Amendments to Clause 15 of the Bill

- 4.32 There is only one proposed amendment to clause 15 of the Bill on the SNP. That is proposed amendment 84/15 of Hon Christine Sharp.

Consideration of proposals by decision-making authorities on the recommendation of the EPA

- 4.33 Proposed amendment 84/15 is a substantive amendment that deletes proposed s.44(2)(b)(ii), so as to remove the requirement for the EPA to set out in its assessment report, in the event that it recommends that implementation of a proposal be allowed, the EPA’s recommendations as to the decision-making authorities, if any, to whose requirements implementation of the proposal should be subject.
- 4.34 In her explanatory memorandum in relation to her proposed amendments to the Bill, Hon Christine Sharp advises that her reason for proposing the deletion of proposed s.44(2)(b)(ii) was that, as most other decision-makers’ processes are not open to public scrutiny, giving the EPA the power to defer consideration of some matters arising from a proposal to other decision-makers is inconsistent with the regime of environmental impact assessment set out in the Act.¹⁸

CLAUSE 20

- 4.35 Clause 20 of the Bill proposes to amend s.48 of the Act. That section deals with monitoring of the implementation of proposals to ensure that any conditions are complied with, and the Bill proposes to provide the Chief Executive Officer of the DoE (CEO) with greater powers in this regard.

¹⁷ *Environmental Protection Amendment Bill 2002 Explanatory Memorandum*, undated, p. 6.

¹⁸ *Submission on Christine Sharp MLC’s Proposed Amendments to the Environmental Protection Amendment Bill 2002*, Hon Christine Sharp, dated May 1 2003, p. 3.

Proposed Amendments to Clause 20 of the Bill

4.36 There are two proposed amendments to clause 20 of the Bill on the SNP, both from Hon Christine Sharp, being:

- 85/20; and
- 86/20.

Publication of breaches of implementation conditions

4.37 Proposed amendment 85/20 is a substantive amendment that seeks to insert an additional paragraph in proposed subsection 48(1a), requiring the publication of breaches of implementation conditions. If proposed amendment 85/20 is passed, along with the Bill, then, subject to a few minor clerk’s amendments, subsections (1) and (1a) of s.48 will read as follows in the Act (with the proposed amendment underlined):

- (1) The CEO may monitor the implementation of a proposal, or cause it to be monitored, for the purpose of determining whether the implementation conditions relating to the proposal are being complied with.
- (1a) If the CEO finds that any of the implementation conditions is not being complied with, the CEO —
- (a) may exercise any power in respect of the non-compliance that is exercisable by the CEO under a written law;
 - (b) is to advertise that non-compliance in the prescribed manner; and
 - (c) in any event, is to report the non-compliance to the Minister.

4.38 If passed, proposed amendment 85/20 would necessitate accompanying changes to the *Environmental Protection Regulations 1987* to prescribe a form of advertisement for the identified non-compliance with conditions of implementation.

4.39 In her explanatory memorandum of her proposed amendments, Hon Christine Sharp states that this proposed amendment will “*ensure that the community will be able to then hold the Department to account*” for any action taken as a result of a proponent’s non-compliance with Ministerial conditions.¹⁹ Hon Christine Sharp notes that it is envisaged that regulations will prescribe appropriate disclaimers where natural justice requires providing proponents with an opportunity to respond to alleged breaches of conditions.²⁰ Hon Christine Sharp also suggests that regulations may also be able to

¹⁹ *Submission on Christine Sharp MLC’s Proposed Amendments to the Environmental Protection Amendment Bill 2002*, Hon Christine Sharp, dated May 1 2003, p. 3.

²⁰ *Ibid.*

provide for minor alleged breaches of conditions to be advertised on the DoE's website.²¹

- 4.40 Proposed amendment 86/20 is consequential upon proposed amendment 85/20 in that it reflects the change in numbering (that is, of the existing proposed 48(1a)(b) to 48(1a)(c)) that would be brought about if proposed amendment 85/20 is passed.

CLAUSE 21

- 4.41 Clause 21 proposes to amend s.48F of the Act.

Proposed Amendments to Clause 21 of the Bill

Amendment of incorrect paragraph reference consequent to clause 23 of the Bill

- 4.42 There is only one proposed amendment to clause 21 of the Bill on the SNP, being 34/21 from the Minister for Housing and Works, which is consequential to clause 23 of the Bill and corrects an error in the identification of a relevant paragraph in proposed new s.100 of the Act (as proposed to be inserted by clause 23 of the Bill) that is to be inserted in s.48F of the Act by clause 21 of the Bill.
- 4.43 The proposed amendment is in the nature of a correcting, administrative, amendment.

CLAUSE 23

- 4.44 Clause 23 amends s.100 of the Act. Section 100 presently deals with the procedures for appealing against specified decisions, actions or reports of the EPA, including decisions not to assess a proposal. Clause 23 clarifies the wording of several clauses in s.100, including the commencement date of the various appeal periods. The amendment is also consequential on other amendments introduced in the Bill as it provides additional appeal processes for the following circumstances:
- 4.44.1 A decision of the EPA not to accept a referral (proposed new s.38A).
- 4.44.2 A declaration of the EPA that a proposal is a derived proposal.
- 4.44.3 A decision of the EPA that a proposal is not a derived proposal.
- 4.45 Clause 23 also removes a right of appeal which, in practice, had proven illusory. Pursuant to s.48(4) of the Act, the Minister has the power in the event of a proponent breaching a condition or procedure relating to a proposal, amongst other things, to place a "stop order" on the proposal for a period not exceeding 24 hours. Section 100(4) currently provides the proponent with a right of appeal to such a stop order, to be lodged within 14 days of the order being served on the proponent. Given the 24

²¹ Ibid.

hour maximum duration of the stop order, the right of appeal is, for all practical purposes, useless and is now proposed to be removed.

Proposed Amendments to Clause 23 of the Bill

Consequential amendment to proposed amendment 81/7 and 82/7

- 4.46 There is one proposed amendment to clause 23 of the Bill, being amendment 87/23 on the SNP, of Hon Christine Sharp MLC. This is a consequential amendment that is dependent upon the passing of proposed amendments 81/7 and 82/7 above (see para 4.11). The effect of this amendment is to delete reference to any right of a person who refers a proposal to the EPA to lodge an appeal against a subsequent decision of the EPA not to accept the referral of the proposal.

CHAPTER 5

PART 3 OF THE BILL: “ENVIRONMENTAL REGULATION”

CLAUSE 28

5.1 Clause 28 of the Bill seeks to insert new definitions into s.3 of the Act.

Proposed Amendments to Clause 28 of the Bill

5.2 There is only one proposed amendment to clause 28 of the Bill, being proposed Government amendment 35/29. It should be noted that this proposed amendment has been incorrectly numbered in the SNP as referring to clause 29 of the Bill.

Inclusion of dead vegetation within the definition of “native vegetation”

5.3 The Government’s proposed amendment 35/29 is a substantive amendment that seeks to expand the definition of “native vegetation” in the Act to also include dead indigenous aquatic or terrestrial vegetation unless the dead vegetation is of a class excluded from the definition by way of regulations.

5.4 The Government’s explanatory memorandum for its proposed amendments notes the following in relation to proposed amendment 35/29:

“Dead vegetation has an important ecological and soil conservation function through the provision of fauna habitat, seed source, nutrients and soil stabilisation. Dead vegetation is a natural part of any remnant native vegetation and should not be excluded from clearing controls to facilitate a ‘partially cleared’ and hence considerably altered ecosystem which may then be subject to weed invasions and introduced predator access.

...

Regulations will ensure that clearing of dead vegetation is only controlled where it needs to be controlled. It is intended that the regulations will specify that dead vegetation is only included within the definition of native vegetation where it is within an area of native vegetation, or it constitutes a standing dead tree in specific, highly cleared areas – for instance, the Wheatbelt. In these areas, standing dead trees provide important habitat.”²²

²² Government Amendments With Explanatory Notes to the Environmental Protection Amendment Bill 2002 [131-2], Minister for Housing and Works, May 12 2003, p. 4.

- 5.5 This proposed amendment seeks to establish a “Henry VIII” clause whereby a section of the Act may be amended by way of regulations. One of the appendices to the recent report of the Standing Committee on Public Administration and Finance in relation to the *Planning Appeals Amendment Bill 2001* was a memorandum of advice to the Joint Standing Committee on Delegated Legislation which relevantly noted the following on the subject of Henry VIII clauses:

““Henry VIII clause” is a generic term for a section in an Act of Parliament that enables the Act or another Act to be amended by subordinate legislation made by the Executive. It is the power given to the Executive to override the intention of Parliament expressed in an Act that causes consternation over the use of Henry VIII clauses.

The objection to such clauses is that by delegating to the Executive the power to amend Acts of Parliament, they have insufficient regard to the principle of separation of powers and ultimately the institution of Parliament in its role as supreme legislature. Henry VIII clauses in all but limited circumstances erode the sovereign function of Parliament to legislate.

The Donoughmore Committee on Ministers’ Powers recommended in 1932 that the use of Henry VIII clauses should be discontinued in all but the most exceptional cases and then only for the purpose of bringing an Act into operation with a finite life of one year after the passing of the Act. The Donoughmore Committee based its findings on the potential for abuse such a provision allowed rather than on actual evidence of abuse of the power.

In relation to Henry VIII clauses, Professor Dennis Pearce in his authoritative text on Delegated Legislation in Australia and New Zealand states:-

“This is an approach to legislating that should be resisted. Parliamentarians pay too little heed to the regulation-making sections of Acts. If “Henry VIII” clauses are allowed to pass by default, the parliamentary institution is placed in jeopardy.”

The Delegated Legislation Committee is relatively powerless in its opposition to the use of Henry VIII clauses because they appear in principal legislation, and only have effect via subordinate legislation. In scrutinising regulations made under Henry VIII powers the Committee is attempting to “shut the gate after the horse has bolted.” This referral enables it to consider Henry VIII clauses at their origin –in primary legislation and once again make comment on the use of

these clauses which in most cases undermine the role of Parliament as legislature.

The Committee is of the view that Henry VIII clauses should not be used as "insurance" against unforeseen consequences or as a substitute for careful drafting or for mere administrative convenience. As the Queensland Scrutiny of Legislation Committee commented in its 1997 report on Henry VIII clauses:

"'Henry VIII' clauses should not be inserted into hastily drafted legislation to be introduced in a restrictive timetable as a substitute for careful well developed drafting."

...

The Committee has previously stated:

"A common reason given for use of the "Henry VIII" clause is the shorter length of time taken to promulgate delegated legislation compared to the parliamentary procedure required to amend an Act. There are longstanding and traditional reasons why the procedures for enactment of legislation is structured in the way that it is, not least of which is the fact that the monarch after whom the circumvention of this process has been named "is regarded popularly as the impersonation of executive autocracy".

*The Committee remains of the view that Henry VIII clauses should only be used in limited circumstances such as proclaiming an Act, amending a State Agreement Act, to assist with reprinting or consolidation of Acts or matters of a purely administrative nature."*²³

CLAUSE 29

- 5.6 Clause 29 inserts an additional interpretation section (s.3A) immediately after the existing interpretation section of the Act (s.3). In the event that the Bill is passed, and this clause is not amended, s.3A of the subsequently amended Act will appear as follows:

²³

Memorandum of Advice to the Joint Standing Committee on Delegated Legislation, dated November 21 2001, Appendix 4, pp. 49-60, *Report of the Standing Committee on Public Administration and Finance in relation to the Planning Appeals Amendment Bill 2001*, Legislative Council Standing Committee on Public Administration and Finance, Report 1, March 2002, at Internet site: [http://intranet/parliament/commit.nsf/\(Report+Lookup+by+Com+ID\)/DD3E209EA8B9A7F848256B9000305CB4/\\$file/pf.paa.020327.rpf.001.xx.d.pdf](http://intranet/parliament/commit.nsf/(Report+Lookup+by+Com+ID)/DD3E209EA8B9A7F848256B9000305CB4/$file/pf.paa.020327.rpf.001.xx.d.pdf), pp. 50-52.

3A. *Pollution and environmental harm*

(1) In this Act —

“pollution” means direct or indirect alteration of the environment —

- (a) to its detriment or degradation;
 - (b) to the detriment of an environmental value; or
 - (c) of a prescribed kind,
- that involves an emission.

(2) In this Act —

“environmental harm” means direct or indirect —

- (a) harm to the environment involving removal or destruction of, or damage to —
 - (i) native vegetation; or
 - (ii) the habitat of native vegetation or indigenous aquatic or terrestrial animals;
- (b) alteration of the environment to its detriment or degradation or potential detriment or degradation;
- (c) alteration of the environment to the detriment or potential detriment of an environmental value; or
- (d) alteration of the environment of a prescribed kind;

“material environmental harm” means environmental harm that —

- (a) is neither trivial nor negligible; or
- (b) results in actual or potential loss, property damage or damage costs of an amount, or amounts in aggregate, exceeding the threshold amount;

“serious environmental harm” means environmental harm that —

- (a) is irreversible, of a high impact or on a wide scale;
- (b) is significant or in an area of high conservation value or special significance; or
- (c) results in actual or potential loss, property damage or damage costs of an amount, or amounts in aggregate, exceeding 5 times the threshold amount.

(3) For the purposes of subsection (2) —

“damage costs” means the reasonable costs and expenses that are or would be incurred in taking all reasonable and practicable measures to prevent, control or abate the environmental harm and to make good resulting environmental damage;

“threshold amount” means \$20 000, or if a greater amount is prescribed by regulation, that amount.

- 5.7 The existing definition of pollution is proposed to be amended by the addition of the qualification that the pollution “involves an emission”, to ensure consistency with the Supreme Court’s decision in the *Palo Verdes* case.²⁴
- 5.8 The definition of environmental harm as proposed contains a number of examples of such harm, including the removal of native vegetation, and provides for further types of “alteration to the environment” to be prescribed as environmental harm by way of regulations. Environmental harm in itself is not proposed to be treated as an offence under the Act.
- 5.9 Material environmental harm is proposed to be the lower level environmental harm offence, relating to harm beyond the mere trivial, **or** involving a loss, damage or costs of prevention or making good of more than \$20,000 (or other greater amount as prescribed by regulations).
- 5.10 Serious environmental harm is proposed to be the higher level environmental harm offence, involving harm that is irreversible, of a high impact or on a wide scale, **or** harm that is significant or to areas of special significance or high conservation value, **or** harm resulting in loss, damage or prevention or remediation costs of more than \$100,000.

Proposed Amendments to Clause 29 of the Bill

- 5.11 There are seven proposed amendments to clause 29 of the Bill, which appear in the following order on the SNP:
- 17/29, Hon Murray Criddle MLC;
 - 18/29, Hon Murray Criddle MLC;
 - 1/29, Hon Peter Foss MLC;
 - 19/29, Hon Murray Criddle MLC;
 - 20/29, Hon Murray Criddle MLC;
 - 21/29, Hon Murray Criddle MLC; and
 - 2/29, Hon Peter Foss MLC.

Definition of “environmental harm” to include actual harm only

- 5.12 The first two proposed amendments to clause 29 of Hon Murray Criddle (that is, 17/29 and 18/29) seek to remove from the proposed new definition of “environmental

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Palos Verdes Estates Pty Ltd v Carbon (1992) 6 WAR, at p. 223.

harm” those activities that alter the environment in such a way as to merely have the “potential” to cause detriment or degradation to the environment. The third and fourth proposed amendments to clause 29 of Hon Murray Criddle (that is, 19/29 and 20/29) seek to remove from the ambit of the definitions of the proposed offences of “material environmental harm” and “serious environmental harm” respectively, those activities that may merely lead to **potential** loss, property damage or damage costs rather than actual damage. These proposed amendments are closely connected, but they may each stand alone and are not necessarily dependent or consequential upon the passing of each other. These amendments are substantive.

- 5.13 Hon Murray Criddle has advised the Committee that he is of the view that the “trigger” of potential environmental harm is unreasonable as it may, in conjunction with an expanded use of the precautionary principle as defined in the Bill, be used to block new developments on the basis of “notional impacts to future environmental values”.²⁵ Hon Murray Criddle argues that:

*“A more acceptable outcome would be for controls to apply only to those activities that are “actually” or “likely” to cause environmental harm.”*²⁶

Burden of proof in legal proceedings

- 5.14 The two proposed amendments to clause 29 of Hon Peter Foss are interconnected with proposed amendments 3/55, 4/55, 5/55 and 6/55 (see para 5.21 below) and together seek to “*restrict the requirement for proof of the negative by a defendant to criminal proceedings*”.²⁷
- 5.15 The first proposed amendment to clause 29 of Hon Peter Foss MLC (that is, 1/29) is a substantive amendment that seeks to insert an express exception within the definition of “environmental harm” for those activities which impact adversely on the environment that occur pursuant to lawful authority.
- 5.16 The second proposed amendment of Hon Peter Foss MLC (that is, 2/29) is consequential to his first proposed amendment to clause 29 (that is, 1/29 above) in that it seeks to add a definition of “pursuant to lawful authority” to the proposed new s.3A. The proposed amendment clearly sets out the various types of authorisations that would satisfy this definition. It is noted that the contents of these two proposed amendments essentially reflect the existing proposed defences to the offence of

²⁵ *National Party Amendments & Notes for the Environmental Protection Amendment Bill 2002*, Hon Murray Criddle, dated April 30 2003, p. 3.

²⁶ Ibid.

²⁷ *Explanatory Memorandum for Hon Peter Foss Amendments*, Hon Peter Foss, undated, p. 1.

“environmental harm” as sought to be established under clause 55 of the Bill in proposed new s.74A of the Act (see para 5.18 below).

Calculating the “damage costs” of environmental harm

- 5.17 The fifth proposed amendment of Hon Murray Criddle MLC (that is, 21/29) seeks to delete from the proposed definition of “damage costs” (that is, the amount which is to be used to distinguish between the proposed low level offence of “material environmental harm” and the proposed high level offence of “serious environmental harm”), those reasonable costs and expenses associated with preventing, controlling or abating the environmental harm. The National Party has submitted that the threshold amounts of \$20,000 in the case of “material environmental harm” and \$100,000 in the case of “serious environmental harm” are too low when the reasonable costs of prevention, controlling or abating environmental harm are included in the calculation.²⁸ The practical effect of this proposed amendment to the Bill would be to limit the assessment of damage costs to only those costs associated with repairs following the incurring of actual environmental damage. This is a substantive amendment.

CLAUSE 55

- 5.18 Clause 55 of the Bill proposes the insertion of two new sections into the Act, being proposed sections 74A and 74B. These two proposed new sections provide defences to proceedings undertaken in relation to the offences of pollution or the various types of new offences relating to “environmental harm”, proposed to be introduced by this Bill.
- 5.19 In the event that the Bill is passed, and this clause is not amended, sections 74A and 74B of the subsequently amended Act will appear as follows:

74A.	<p><i>Defences to proceedings for pollution or environmental harm: authority of this Act</i></p> <p>It is a defence to proceedings under this Part for causing pollution, in respect of an emission, or for causing serious environmental harm or material environmental harm, if the person charged with that offence proves that the pollution, emission or environmental harm occurred —</p> <ul style="list-style-type: none"> (a) in the implementation of a proposal in accordance with an implementation agreement or decision; (b) in accordance with — <ul style="list-style-type: none"> (i) a prescribed standard; (ii) a clearing permit; (iii) a works approval;
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²⁸ *National Party Amendments & Notes for the Environmental Protection Amendment Bill 2002*, Hon Murray Criddle, dated April 30 2003, p. 4.

- (iv) a licence;
 - (v) a requirement contained in a closure notice, an environmental protection notice, a vegetation conservation notice or a prevention notice;
 - (vi) an approved policy;
 - (vii) a declaration under section 6;
 - (viii) an exemption under section 75; or
 - (ix) a licence, permit, approval or exemption granted, issued or given under the regulations;
- or
- (c) in the exercise of any power conferred under this Act.

74B. Other defences to environmental harm offences

- (1) It is a defence to proceedings under this Part for causing serious environmental harm or material environmental harm if the person charged with that offence proves that the environmental harm was, or resulted from, an authorised act which did not contravene any other written law.
- (2) For the purposes of subsection (1) an act was authorised if it was —
 - (a) done in accordance with an authorisation, approval, requirement or exemption given in the exercise of a power under another written law;
 - (b) done in the exercise by a public authority, or a member, officer or employee of a public authority, of a function conferred under another written law;
 - (c) done as an agricultural practice within the meaning of the *Agricultural Practices (Disputes) Act 1995* in respect of which an order has been made under section 12 of that Act and —
 - (i) in accordance with the order as to the carrying out or management of that agricultural practice; or
 - (ii) in the carrying out or management of a normal farm practice, as specified in the order;
 - (d) done —
 - (i) as an agricultural practice within the meaning of the *Agricultural Practices (Disputes) Act 1995*; or
 - (ii) in the management or harvesting of a plantation, and in compliance with a code of practice relating to an act of that kind issued under section 122A or made or approved under any other written law;
 - (e) an act —
 - (i) in respect of which notice of intention was given under the *Soil and Land Conservation Regulations 1992* at least 90 days before the act was carried out;
 - (ii) which is carried out not more than 2 years after the giving of the notice of intention;

	<p>(iii) which was not referred to the Authority as a proposal under Part IV, or was so referred and not accepted by the Authority; and</p> <p>(iv) in respect of which a soil conservation notice, within the meaning of section 31 of the <i>Soil and Land Conservation Act 1945</i>, has not been served,</p> <p>and done in the absence of a soil conservation notice;</p> <p>(f) without limiting section 74A and paragraphs (a) to (e) of this subsection, an act of a kind set out in Schedule 6; or</p> <p>(g) an act of a kind prescribed for the purposes of section 51C that was not done in an environmentally sensitive area within the meaning of section 51A.</p>
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Proposed Amendments to Clause 55 of the Bill

5.20 There are eight proposed amendments to clause 55 of the Bill, which appear in the following order on the SNP:

- 3/55, Hon Peter Foss MLC;
- 4/55, Hon Peter Foss MLC;
- 5/55, Hon Peter Foss MLC;
- 88/55, Hon Christine Sharp MLC;
- 6/55, Hon Peter Foss MLC;
- 36/55, Minister for Housing and Works;
- 37/55, Minister for Housing and Works; and
- 38/55, Minister for Housing and Works.

Burden of proof in legal proceedings

5.21 Proposed amendments 3/55, 4/55, 5/55 and 6/55 of Hon Peter Foss are all interconnected with each other and also proposed amendments 1/29 and 2/29 above (see para 5.15). All of these proposed amendments relate to an attempt to restrict the requirement for a defendant to establish proof of the negative in proceedings relating to the proposed offences of causing serious or material environmental harm or pollution.

5.22 Proposed amendment 3/55 seeks to introduce a new subsection (1) at the commencement of proposed new s.74A. This proposed amendment is consequential upon the passing of earlier proposed amendments 1/29 and 2/29 - see paras 5.14 and 5.16 above). This proposed amendment sets out the procedural aspects of raising such

a defence in legal proceedings arising from a charge of causing serious environmental harm or material environmental harm.

- 5.23 Proposed amendment 4/55 is consequential and is dependent upon the passing of proposed amendments 1/29, 2/29 and 3/55. It seeks to delete in large part proposed new s.74A and replace it with a simple reference to the “pursuant to lawful authority” defence (with the exception of an event occurring “as a result of an authorised act which did not contravene any other written law”) proposed to be inserted in new s.3A (see the discussion of clause 29 from para 5.6) by proposed amendment 1/29.
- 5.24 Proposed amendment 5/55 is a consequential amendment. It seeks to introduce a new subsection (1) at the commencement of proposed new s.74B. This proposed amendment is consequential upon the passing of earlier proposed amendments 1/29 and 2/29 (see paras 5.14 and 5.16). This proposed amendment sets out the procedural aspects of raising a defence in legal proceedings arising from a charge of causing serious environmental harm or material environmental harm.
- 5.25 Proposed amendment 6/55 deletes a large portion of proposed new s.74B. This is a consequential amendment relating to the proposed defence of “pursuant to lawful authority”, and is therefore dependent on the passing of proposed amendment 5/55 and upon proposed amendments 1/29 and 2/29 above (see paras 5.14 and 5.16). This proposed amendment conflicts with proposed amendment 88/55 below (see para 5.27).
- 5.26 In his explanatory memorandum in relation to his above proposed amendments, Hon Peter Foss has raised concerns that the increasing trend in legislation to cast part of the burden of proof in prosecutions in order to relieve the prosecutor of the burden of having to negative any exceptions to an offence in order to establish the defendant’s guilt beyond reasonable doubt, can have implications in civil cases where the rules for the conduct of the case are totally different. He claims that the necessity created by the rules applying in criminal cases for the prosecution to be assisted by shifting the evidentiary burden does not arise in civil cases. He is concerned that this legislation will cast the same burden on civil defendants. Hon Peter Foss notes in regard to his proposed amendments:

“These proposed amendments have two effects:

- in criminal cases:

- 1. it requires the defence to raise with particularity any exception it relies on, 30 days before the case and to admit that all others do not apply, whereupon the golden rule applies to that defence only.*

2. *if no particulars are given, then the averment that there is no lawful authority is sufficient to require the defendant to have to prove that lawful authority*

- *in civil cases, there is no such presumption of lack of authority and the ordinary civil rules of evidence apply.*²⁹

Environmental harm as an unavoidable consequences of an authorised act

5.27 Proposed amendment 88/55 of Hon Christine Sharp seeks to amend proposed new s.74B by restricting the availability of the defence in proposed s.74B(1) in proceedings for causing either serious or material environmental harm to only those "unavoidable" consequences of an authorised act which did not contravene any other written law. The Bill as currently worded would provide a defence for all consequences of authorised acts as defined in s.74B, not just the unavoidable consequences. This is a substantive amendment.

5.28 In her explanatory memorandum on her proposed amendments to the Bill, Hon Christine Sharp states that she is particularly concerned at the broad defence provided to government agencies under proposed s.74B where they are acting pursuant to another written law. She notes:

"Statutory authorities will have a defence to causing environmental harm if they can show that the harm was done in the exercise of a function conferred on them by another law. For example, local governments will have a defence to any activity which they carry out which provides for the good government of persons in their district. This will provide a very broad defence to many activities carried out by many government agencies.

*It is considered appropriate to narrow this statutory defence to only encompass actions that are not just authorised, but also an unavoidable consequence of that authorisation.*³⁰

5.29 It is noted that proposed amendment 88/55 seeks to delete proposed s.74B(1) in its entirety and then insert in its place a new subsection which is worded in identical terms except for the words "an unavoidable consequence of". Accordingly, proposed amendment 88/55, in its current form, may possibly be ruled out of order as being contrary to Standing Order 237(b), which states:

²⁹ *Explanatory Memorandum for Hon Peter Foss Amendments*, Hon Peter Foss, undated, p. 1.

³⁰ *Submission on Christine Sharp MLC's Proposed Amendments to the Environmental Protection Amendment Bill 2002*, Hon Christine Sharp, dated May 1 2003, p. 4.

“[N]o new clause or other amendment shall be proposed that is substantially the same as one already negatived or that is inconsistent with a previous decision of the same Committee.”

Transitional arrangements for authorised land clearing under the Soil and Land Conservation Act 1945

- 5.30 Government proposed amendment 36/55 seeks to delete paragraph (2)(e) of proposed new s.74B. This paragraph defines as an authorised act, for the purposes of a defence to a charge of committing serious or material environmental harm, land clearing undertaken pursuant to the *Soil and Land Conservation Act 1945* and the *Soil and Land Conservation Regulations 1992* where such clearing is not subject to either an ongoing EPA assessment or a soil conservation notice.
- 5.31 As one of the purposes of the Bill is to transfer responsibility for the regulation of land clearing from the *Soil and Land Conservation Act 1945* and the *Soil and Land Conservation Regulations 1992* to the Act, paragraph 74B(2)(e) is effectively a transitional arrangement. Proposed Government amendment 74/119 (see para 8.82 below) is a related amendment which is intended to replace this paragraph with a proper transitional provision in clause 119 of the Bill.³¹
- 5.32 Government proposed amendment 38/55 is consequential to proposed amendment 36/55 and deletes subsections (3) and (4) (which are currently incorrectly numbered in the Bill as subsections (2) and (3)) of proposed new s.74B. The deleted provisions are proposed to be consolidated within the transitional provisions of clause 119 of the Bill.

Clarification of defence of authorised land clearing

- 5.33 Government proposed amendment 37/55 seeks to delete the words “an act” from s.74B(2)(f) and replace them with the word “clearing” so that that paragraph now refers to “clearing of a kind set out in Schedule 6”. The stated intent of this proposed amendment is to ensure that the defence available pursuant to proposed new s.74B(2)(f) and proposed new Schedule 6 (see clause 116 of the Bill) of the Act applies only to authorised land clearing activities and is not interpreted broadly so as to encompass other acts unconnected to land clearing.³²

³¹ *Government Amendments With Explanatory Notes to the Environmental Protection Amendment Bill 2002 [131-2]*, Minister for Housing and Works, May 12 2003, p. 6.

³² Ibid.

CLAUSE 65

- 5.34 Clause 65 proposes to insert new s.122A into the Act, which provides for the issuing of "Codes of Practice" by the CEO in relation to activities that involve an emission or environmental harm.

Proposed amendments to Clause 65 of the Bill

- 5.35 There is only one proposed amendment to clause 65 of the Bill on the SNP, being Government proposed amendment 39/65.

Issuing of "Codes of Practice" only on the recommendation of the EPA

- 5.36 The effect of proposed amendment 39/65 is to amend s.122A(1) to ensure that the CEO may only issue Codes of Practice "on the recommendation" of the EPA. This proposed amendment is a substantive amendment. In its explanatory memorandum in relation to its proposed amendments, the Government noted the following with respect to this particular proposed amendment:

"Codes of Practice issued under section 122A can provide part of a defence to environmental harm for farmers and plantation managers – see clause 55(1) of the Bill, proposed section 74B(2)(d). The Environmental Protection Authority should have a role in advising about the development of codes of practice. The effect of this amendment is that the CEO will only be able to issue Codes of Practice on the recommendation of the Authority

In the absence of a Code of Practice issued under s 122A, farmers and plantation managers will still have a defence to environmental harm, provided they are acting in accordance with a Code of Practice made or approved under any other written law – see clause 55(1) of the Bill, proposed section 74B(2)(d). In addition, proposed section 74B(2)(c) provides another defence for farmers via the Agricultural Practices (Disputes) Act 1995 for "normal farming practice"."³³

- 5.37 It should be noted that there is a proposed amendment to clause 2 of the Bill which is consequential to clause 65 in relation to the commencement date (see proposed amendment 15/2 of Hon Murray Criddle at para 3.2 above).

³³ Government Amendments With Explanatory Notes to the Environmental Protection Amendment Bill 2002 [131-2], Minister for Housing and Works, May 12 2003, p. 7.

CHAPTER 6

PART 4 OF THE BILL: “LICENSING AND WORKS APPROVALS”

CLAUSE 72

- 6.1 Clause 72 amends s.54 of the Act, which currently provides for the issuing of works approvals.

Proposed amendments to Clause 72 of the Bill

- 6.2 There are two proposed amendments to clause 72 of the Bill on the SNP, both being Government proposed amendments.

Advertising of applications for works approvals

- 6.3 Proposed amendment 40/72 seeks to insert a new subsection (2a) into s.54 of the Act. The proposed new subsection provides that applications for works approvals are to be advertised for public comment. The Government notes in its explanatory memorandum in relation to this proposed amendment that this amendment arose from recommendations arising from a recent review of the licensing process. It is intended that such an advertisement and call for public submissions in relation to an application for works approval will ensure:

“... that the public are aware of new and changing licensed premises and can be informed about any possible impacts and have their say. Similar changes are made for licence applications (see amendment 135/75) and clearing permit applications (see amendment 46/110).”³⁴

- 6.4 Regulations will need to be prepared to prescribe the manner of advertisement. This proposed amendment is a substantive amendment.
- 6.5 Proposed amendment 41/72 is consequential in that it seeks to amend the Bill to provide for the amendment of s.54(3) of the Act to ensure that the CEO also takes into account any comments received from the public concerning works approval applications as a result of advertisements placed pursuant to proposed new s54(2a) as proposed to be inserted by proposed amendment 40/72.

CLAUSE 73

- 6.6 Clause 73 of the Bill amends s.55 of the Act.

³⁴ *Government Amendments With Explanatory Notes to the Environmental Protection Amendment Bill 2002 [131-2]*, Minister for Housing and Works, May 12 2003, p. 7.

Proposed amendments to Clause 73 of the Bill*Advertising of breaches of works approval conditions*

6.7 There is one proposed amendment to clause 73 of the Bill on the SNP, being proposed amendment 89/73 from Hon Christine Sharp. This proposed amendment seeks to insert a new s.55(4) into the Act and thereby introduce a requirement for the CEO to advertise any suspected offences relating to the breach of works approval conditions. There are natural justice implications arising from this proposed amendment, such as providing the alleged offender with an opportunity to rebut the allegation and put together a defence prior to the CEO's suspicions being publicly advertised. If passed, this proposed amendment will require the drafting of regulations prescribing the method of advertisement. This proposed amendment is substantive.

6.8 In her explanatory memorandum for her proposed amendments, Hon Christine Sharp states that this proposed amendment will “*ensure that the community will be able to then hold the Department to account*” for any action taken as a result of a proponent's non-compliance with works approval conditions.³⁵ Hon Christine Sharp notes that it is envisaged that regulations will prescribe appropriate disclaimers where natural justice requires providing proponents with an opportunity to respond to alleged breaches of conditions.³⁶ Hon Christine Sharp also suggests that regulations may also be able to provide for minor alleged breaches of conditions to be advertised on the DoE's website.³⁷

CLAUSE 75

6.9 Clause 75 amends s.57 of the Act, which deals with applications for licences.

Proposed amendments to Clause 75 of the Bill*Advertising of applications for licences*

6.10 There is one proposed amendment to clause 75 of the Bill on the SNP, being Government proposed amendment 135/75. This proposed amendment seeks to introduce a requirement for the CEO to advertise applications for licences for public comment. This proposed amendment is similar to the proposed amendment with respect to works approval applications in clause 72 (see para 6.3 above). If passed, this proposed amendment will require regulations to be drafted to prescribe the manner of advertisement. This proposed amendment is substantive.

³⁵ *Submission on Christine Sharp MLC's Proposed Amendments to the Environmental Protection Amendment Bill 2002*, Hon Christine Sharp, dated May 1 2003, p. 4.

³⁶ Ibid.

³⁷ Ibid.

CLAUSE 76

- 6.11 Clause 76 amends s.58 of the Act, which relates to the contravention of licence conditions.

Proposed amendments to Clause 76 of the Bill*Advertising of contraventions of licence conditions*

- 6.12 There is one proposed amendments to clause 76 of the Bill on the SNP, being proposed amendment 136/76 from Hon Christine Sharp. This proposed amendment seeks to insert a new subsection 58(5) into the Act which would require the CEO to publicly advertise suspected offences relating to the contravention of licence conditions. This proposed amendment raises natural justice issues with respect to the right of alleged offenders to be heard prior to having allegations against them publicly advertised. If passed, regulations will need to be drafted to prescribe the manner of advertisement. This proposed amendment is substantive.
- 6.13 In her explanatory memorandum for her proposed amendments, Hon Christine Sharp states that this proposed amendment will "*ensure that the community will be able to then hold the Department to account*" for any action taken as a result of a proponent's non-compliance with licence conditions.³⁸ Hon Christine Sharp notes that it is envisaged that regulations will prescribe appropriate disclaimers, where natural justice requires, providing proponents with an opportunity to respond to alleged breaches of licence conditions.³⁹ Hon Christine Sharp further suggests that regulations may also be able to provide for minor alleged breaches of licence conditions to be advertised on the DoE's website.⁴⁰

³⁸ *Submission on Christine Sharp MLC's Proposed Amendments to the Environmental Protection Amendment Bill 2002*, Hon Christine Sharp, dated May 1 2003, p. 4.

³⁹ Ibid.

⁴⁰ Ibid.

CHAPTER 7

PART 7 OF THE BILL: “APPEALS”

CLAUSE 100

7.1 Clause 100 repeals and replaces s.106 of the Act, which deals with appeals.

Proposed Amendments to Clause 100 of the Bill

Time limits for the determination of appeals

7.2 There is one proposed amendment to clause 100 of the Bill on the SNP, being proposed amendment 22/100 from Hon Murray Criddle. This proposed amendment seeks to add a new subsection (5) to the proposed new s.106 of the Act. The proposed new subsection seeks to establish a 60 day time limit for the determination of appeals lodged under Part VII of the Act, subject to the direction of the Minister. This proposed amendment is substantive.

7.3 As with his proposed amendment seeking to introduce a maximum statutory timeframe in relation to the assessment of proposals by the EPA (see para 4.21 above), Hon Murray Criddle has put forward the argument that there should be express legislative encouragement for appeals to be dealt with as quickly as is practical:

“The imposition of time frames will aid all parties in managing their business and give goals to work towards.”⁴¹

⁴¹ National Party Amendments & Notes for the Environmental Protection Amendment Bill 2002, dated April 30 2003, p. 5.

CHAPTER 8

PART 9 OF THE BILL: “CLEARING PERMITS”

Clause 110

- 8.1 Clause 110 proposes to insert into Part V of the Act a new Division 2, which establishes the offence of clearing native vegetation without a permit and provides for the exemption of a number of activities from this offence provision.
- 8.2 The proposed new Division 2, Part V, of the Act comprises ss.51A to 51T.

Proposed amendments to Clause 110 of the Bill

- 8.3 There are 48 proposed amendments to clause 110 of the Bill, which appear in the following order on the SNP:
- 91/110, Hon Christine Sharp;
 - 92/110, Hon Christine Sharp;
 - 93/110, Hon Christine Sharp;
 - 94/110, Hon Christine Sharp;
 - 95/110, Hon Christine Sharp;
 - 97/110, Hon Christine Sharp;
 - 98/110, Hon Christine Sharp;
 - 43/110, Minister for Housing and Works;
 - 99/110, Hon Christine Sharp;
 - 7/110, Hon Robyn McSweeney;
 - 44/110, Minister for Housing and Works;
 - 137/110, Minister for Housing and Works;
 - 45A/110, Minister for Housing and Works;
 - 23/110, Hon Murray Criddle;

- 46/110, Minister for Housing and Works;
- 47/110, Minister for Housing and Works;
- 100/110, Hon Christine Sharp;
- 101/110, Hon Christine Sharp;
- 102/110, Hon Christine Sharp;
- 103/110, Hon Christine Sharp;
- 8/110, Hon Robyn McSweeney;
- 48/110, Minister for Housing and Works;
- 104/110, Hon Christine Sharp;
- 105/110, Hon Christine Sharp;
- 106/110, Hon Christine Sharp;
- 107/110, Hon Christine Sharp;
- 108/110, Hon Christine Sharp;
- 109/110, Hon Christine Sharp;
- 110/110, Hon Christine Sharp;
- 111/110, Hon Christine Sharp;
- 112/110, Hon Christine Sharp;
- 113/110, Hon Christine Sharp;
- 9/110, Hon Robyn McSweeney;
- 114/110, Hon Christine Sharp;
- 49/110, Minister for Housing and Works;
- 10/110, Hon Robyn McSweeney;
- 50/110, Minister for Housing and Works;
- 115/110, Hon Christine Sharp;

- 116/110, Hon Christine Sharp;
- 51/110, Minister for Housing and Works;
- 52/110, Minister for Housing and Works;
- 53/110, Minister for Housing and Works;
- 54/110, Minister for Housing and Works;
- 55/110, Minister for Housing and Works;
- 56/110, Minister for Housing and Works;
- 57/110, Minister for Housing and Works;
- 117/110, Hon Christine Sharp; and
- 58/110, Minister for Housing and Works.

Removal of ambiguity over small-scale land clearing

- 8.4 Proposed amendments 92/110 and 93/110 of Hon Christine Sharp seek to rephrase the definition of clearing into simpler wording by the deletion of the words “some or all of the” before the words “native vegetation in an area” in the definition of “clearing” in proposed new s.51A. If these proposed amendments are passed, the definition of clearing in proposed new s.51A would appear as follows (with the deleted words struck through):

<p>clearing” means —</p> <ul style="list-style-type: none"> (a) the killing or destruction of; (b) the removal of; (c) the severing or ringbarking of trunks or stems of; or (d) the doing of any other substantial damage to, <p>some or all of the native vegetation in an area, and includes the draining or flooding of land, the burning of vegetation, the grazing of stock, or any other act or activity, that causes —</p> <ul style="list-style-type: none"> (e) the killing or destruction of; (f) the severing of trunks or stems of; or (g) any other substantial damage to, <p>some or all of the native vegetation in an area;</p>
--

- 8.5 In her explanatory memorandum for her proposed amendments, Hon Christine Sharp states that the aim of this proposed amendment is to remove any ambiguity that may

arise in the courts as to whether small-scale or incremental clearing amounts to the clearing of “some native vegetation” for the purposes of the Act. She notes:

“Some legal opinions on the phrase “some or all of the native vegetation in an area” suggest that a court may only find that ‘clearing’ has taken place when, say, a minimum of 10 or 20% of the native vegetation in an area has been destroyed. Such an interpretation would allow for incremental clearing without environmental approval, and is contrary to the stated objects of the new clearing provisions in the Bill.

In other words, it is submitted that the reference to “some” vegetation in “an area” re-enshrines the problem we have with the 1 ha rule in the Soil and Land Conservation Regulations – if you clear 0.7 ha one week, and then 0.7ha the next week, is that one lot of clearing or two? The issue comes down to “intent”, placing the onus on the Crown to prove beyond reasonable doubt, which is a significant and unnecessary hurdle.”⁴²

- 8.6 Accordingly, Hon Christine Sharp seeks to ensure that the clearing of vegetation on any scale, either “one specimen or 100 specimens”, is equally subject to the Act.⁴³

Declaration of an environmentally sensitive area

- 8.7 Proposed amendment 97/110 of Hon Christine Sharp is a substantive amendment that seeks to amend proposed new s.51B by expanding the matters upon which the Minister may make declarations with respect to from the existing proposed “environmentally sensitive areas” to also an “ecologically significant community” or “ecologically significant flora”. If proposed amendment 97/110 is passed, proposed new s.51B would appear as follows (with the amendment underlined):

51B. Declaration of environmentally sensitive areas

- (1) The Minister may, by notice, declare —
- (a) an area of the State specified in the notice; or
 - (b) an area of the State of a class specified in the notice, to be an environmentally sensitive area for the purposes of this Division.
 - (c) an ecological community specified in the notice; or
 - (d) an ecological community of a class specified in the notice,
to be an ecologically significant community for the purposes of Schedule 5; or
 - (e) flora specified in the notice; or
 - (f) flora of a class specified in the notice.

⁴² Submission on Christine Sharp MLC’s Proposed Amendments to the Environmental Protection Amendment Bill 2002, Hon Christine Sharp, dated May 1 2003, pp. 4-5.

⁴³ Ibid, p. 5.

	to be ecologically significant flora for the purposes of Schedule 5.
(2)	A notice under this section is subsidiary legislation for the purposes of the <i>Interpretation Act 1984</i> .
(3)	Subsections (1), (2), (3), (5), (6) and (8)(a) of section 42 of the <i>Interpretation Act 1984</i> apply to a notice under this section as if it were regulations within the meaning of that section.
(4)	Before a notice is published under this section the Minister shall —
	(a) seek comments on it from the Authority and from any public authority or person which or who has, in the opinion of the Minister, an interest in its subject matter; and
	(b) take into account any comments received from the Authority or such a public authority or person.

8.8 In her explanatory memorandum for her proposed amendments, Hon Christine Sharp states that these proposed amendments to proposed s.51B are designed to “dovetail” the Bill with proposed biodiversity conservation legislation.⁴⁴

8.9 Hon Christine Sharp expanded upon what the terms “ecologically significant communities” and “ecologically significant flora” meant in her explanatory memorandum as follows:

“So what is ‘ecologically significant communities’ intended to encompass? It should be noted that only an ‘ecological community’ can be the subject of such a declaration – not just some random assemblage of organisms. Ecological communities can be made the subject of a declaration under the proposed section 51B if they are not (yet) threatened on a state wide basis, but, say;

- *The postponing of protection of a particular ecological community until it is “threatened” may delay important management responses to halt an extinction process.*
- *Ecological communities that have been isolated (by human activity or otherwise) from other similar ecological communities;*
- *That are at the limit of the natural ecological range for such ecological communities; or*
- *Provide habitat for listed biota.*

...

⁴⁴

Submission on Christine Sharp MLC’s Proposed Amendments to the Environmental Protection Amendment Bill 2002, Hon Christine Sharp, dated May 1 2003, p. 6.

‘Ecologically significant flora’ is an analogous concept to the above. Flora could be made the subject of a declaration under section 51B if it was not (yet) rare on a state wide basis, but, say:

- *has been isolated (by human activity or otherwise) from other populations of that species;*
- *is at the limit of its natural ecological range; or*
- *provides habitat for listed biota.”⁴⁵*

8.10 Proposed amendment 94/110 of Hon Christine Sharp seeks to amend proposed new s.51A as a consequential administrative amendment arising from proposed amendment 97/110 to proposed new s.51B.

Advertising alleged instances of unauthorised clearing of native vegetation

8.11 Proposed amendment 98/110 of Hon Christine Sharp is a substantive amendment that seeks to amend proposed new s.51C to require the CEO to advertise instances of suspected unauthorised clearing of native vegetation. If this proposed amendment is passed, regulations will need to be drafted to prescribe the method of advertisement. This proposed amendment raises issues of natural justice in relation to the publicising of the identities of persons merely suspected of having committed an offence. If proposed amendment 98/110 is passed, proposed new s.51C will read as follows (with the inserted amendment underlined):

51C. Unauthorised clearing of native vegetation

- (1) A Person who causes or allows clearing commits an offence unless the clearing -
- (a) is done in accordance with a clearing permit;
 - (b) is of a kind set out in Schedule 6; or
 - (c) is of a kind prescribed for the purposes of this section and is not done in an environmentally sensitive area.
- (2) If the CEO is of the opinion that an offence has been committed under subsection (1), the CEO must advertise that alleged offence in the prescribed manner.

8.12 In her explanatory memorandum of her proposed amendments, Hon Christine Sharp states that this proposed amendment will “*ensure that the community will be able to then hold the Department to account*” for any action taken as a result of unauthorised

⁴⁵ Submission on Christine Sharp MLC’s Proposed Amendments to the Environmental Protection Amendment Bill 2002, Hon Christine Sharp, dated May 1 2003, pp. 6-7.

clearing.⁴⁶ Hon Christine Sharp notes that it is envisaged that regulations will prescribe appropriate disclaimers where natural justice requires providing alleged offenders with an opportunity to respond to alleged instances of unauthorised clearing.⁴⁷ Hon Christine Sharp also suggests that regulations may also be able to provide for minor alleged breaches to be advertised on the DoE's website.⁴⁸

Removal of redundant definition

- 8.13 Proposed Government amendment 43/110 is a simple administrative amendment which removes the definition of "commencement day" from proposed s.51D, as that term is not used in the section.

Area clearing permits

- 8.14 Proposed amendment 99/110 of Hon Christine Sharp seeks to replace the first two subsections of proposed new s.51E. Proposed new s.51E as it stands relates to applications for clearing permits for either:

- a) the clearing of a particular area specified in the application; or
- b) the clearing of different areas from time to time for a particular purpose specified in the application.

- 8.15 The primary effect of the proposed amendment 99/110 is to seek to restrict the application of proposed new s.51E to applications for clearing permits relating to a particular specified area only. When read in conjunction with proposed amendment 104/110 below, the proposed amendments split the existing proposed s.51E into two new sections, being s.51E and s.51EA, the former dealing with "area permits" and the latter with "purpose permits".

- 8.16 The proposed amendment makes no substantive amendment to proposed s.51E other than to remove references to purpose permits, and so is dependent and consequential upon proposed amendment 104/110 below. Proposed amendments 91/110 and proposed amendments 100/110 to 103/110 below also relate to this proposed amendment. Proposed amendments 100/110 to 103/110 also seek to effectively limit the application of proposed s.51E to area permits.⁴⁹

⁴⁶ *Submission on Christine Sharp MLC's Proposed Amendments to the Environmental Protection Amendment Bill 2002*, Hon Christine Sharp, dated May 1 2003, p. 7.

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ Ibid.

- 8.17 Proposed amendment 91/110 of Hon Christine Sharp to proposed new s.51A is of a minor administrative nature and is consequential to later proposed amendment 99/110 to proposed new s.51E.
- 8.18 Proposed amendments 100/110, 101/110, 102/110 and 103/110 of Hon Christine Sharp are consequential amendments to give full effect to proposed amendment 99/110 above. These proposed amendments amend subsections (5) to (8) of proposed new s.51E.

Provision of documentation in support of a clearing permit application

- 8.19 Proposed amendment 7/110 of Hon Robyn McSweeney seeks to amend proposed new s.51E by limiting the requirement for an applicant for a land clearing permit to provide supporting management plans, maps and other documents and information unless such documentation is **reasonably** required by the CEO. This proposed amendment conflicts with proposed amendment 99/110 above in that they both seek to amend subsection (1) of proposed new s.51E. This proposed amendment is substantive.

Applications for clearing permits from prospective owners of land

- 8.20 Proposed Government amendments 137/110 and 45A/110 together seek to amend paragraph (a) in proposed new s.51E(2) to provide that prospective owners of land may apply for a clearing permit if they can satisfy the CEO that they are likely to become the owner of the land on which the clearing is proposed to be done. According to the Government, this proposed amendment seeks to recognise the realities of farming and the fact that a prospective purchaser of land may wish to ascertain whether or not they will be permitted to clear the land they wish to purchase before finalising that purchase. If the CEO approves of the proposed clearing, the CEO will issue a binding undertaking that the permit will be issued (subject to any specified conditions to be imposed on the permit) when the ownership of the land is transferred.⁵⁰ Proposed amendment 137/110 is consequential on the passing of the substantive amendment 45A/110. These proposed amendments are related to proposed Government amendment 48/110 below.
- 8.21 Proposed Government amendment 48/110 is consequential and is required to give full effect to the Government's proposed amendment 45A/110 above. This proposed amendment seeks to insert subsections (9) to (12) into proposed new s.51E so as to enable the CEO to provide undertakings to prospective owners of land that those persons will be granted a permit to clear the land upon their becoming the owner of the land. The Government's explanatory memorandum advises, in relation to proposed amendment 48/110, that:

⁵⁰ *Government Amendments With Explanatory Notes to the Environmental Protection Amendment Bill 2002 [131-2]*, Minister for Housing and Works, May 12 2003, p. 9.

*"The proposed new subsections relate to the issuing of an undertaking. (9) empowers the CEO to issue the undertaking, (10) lists the conditions under which the permit is to be issued, (11) ensures that the issuing of undertakings is treated like that of permits, and (12) ensures that there are the same appeal rights."*⁵¹

- 8.22 Proposed Government amendment 56/110 is consequential to proposed amendment 48/110 in that it seeks to include a reference within proposed new s.51Q to the requirement for the CEO to keep a record of undertakings made to prospective purchasers of land as to the granting of a clearing permit in accordance with proposed new s.51E as amended by proposed amendment 48/110.

Time limits for assessing clearing permit applications

- 8.23 Proposed amendment 23/110 of Hon Murray Criddle seeks to insert a paragraph (c) into proposed new s.51E(4) which will impose a 90 day time limit, unless another period is otherwise agreed to between the applicant for a clearing permit and the CEO, for the CEO to give an indication to the proponent as to the CEO's intended decision on the application. As indicated by Hon Murray Criddle's proposed amendment 16/9 (see para 4.21 above), he is concerned at the lack of statutory time limits imposed by the Bill on the assessment by the EPA of various proposals. The 90 day period is consistent with the current land clearing application regime under the *Soil and Land Conservation Act 1945*. Although this proposed amendment is a substantive stand alone amendment, it should be considered in light of proposed amendment 16/9 which seeks to establish a maximum time limit for the conclusion of the assessment of proposals referred to the EPA within 120 days.

Advertising of applications for clearing permits

- 8.24 Proposed Government amendments 46/110 and 47/110 seek to amend subsections (4) and (5) of proposed new s.51E so as to require the CEO to publicly advertise applications for clearing permits inviting public comment on those applications. The CEO shall be required to take into account any comments received when determining each application. In its explanatory memorandum in relation to these proposed amendments, the Government advised the Committee that:

"One of the criticisms of the existing clearing approvals process under the Soil and Land Conservation Act is its lack of transparency. It has always been intended that clearing permit applications would be publicly advertised. This was discussed when the legislation was drafted by all parties involved, including representatives from the Department of Agriculture."

⁵¹ Government Amendments With Explanatory Notes to the Environmental Protection Amendment Bill 2002 [131-2], Minister for Housing and Works, May 12 2003, p. 11.

Advertising of a clearing application ensures that neighbours and other are aware of proposals to clear and can be informed about any possible impacts and provide information relevant to the assessment of the application. This transparency is an important part of the Government's commitments to the principle of the 'Community Right to Know'."⁵²

- 8.25 Proposed amendment 46/110 will require the drafting of regulations to prescribe the means of advertising clearing permit applications for public comment. Proposed amendment 46/110 is substantive, whilst proposed amendment 47/110 is consequential on the passing of 46/110 and is required to give appropriate effect to that proposed amendment.

Refusal to grant a clearing permit to be treated as a compulsory acquisition of land

- 8.26 Proposed amendment 8/110 of Hon Robyn McSweeney seeks to insert a subsection (9) into proposed new s.51E. The first line of this proposed amendment needs to be redrafted for clarity. The effect of this proposed amendment, which is substantive, will be to provide applicants for land clearing permits who have had their application refused with access to those compensation provisions of the *Land Administration Act 1997* relating to the resumption of privately-held land by the State. The land that is the subject of the refused application would then be taken by the State as a nature reserve under the *Conservation and Land Management Act 1984*.

Purpose clearing permits

- 8.27 Proposed amendments 104/110 to 112/110 of Hon Christine Sharp relate to "purpose permits" arising from the insertion of a proposed new s.51EA into the Bill. Proposed amendment 104/110 is substantive, whilst the other eight proposed amendments are consequential. All of these proposed amendments are closely related to proposed amendment 99/110 of Hon Christine Sharp (see para 8.14) in that, together, they separate the existing subparagraphs (i) and (ii) of s.51E(1)(b) into different sections in the Bill. Proposed amendment 104/110 establishes the proposed new s.51EA as a provision dealing entirely with applications for clearing permits for a particular purpose (that is, the current s.51E(1)(b) (ii) of the Bill).
- 8.28 The proposed new s.51EA as inserted by proposed amendment 104/110 would appear as follows in the Act, if passed:

51EA. Applications for clearing permits for a particular purpose

- (1) An application for a clearing permit for a particular purpose or particular purposes, and relating to different areas, which is referred to in this Division as a **"purpose permit"**, shall —

⁵² *Government Amendments With Explanatory Notes to the Environmental Protection Amendment Bill 2002 [131-2]*, Minister for Housing and Works, May 12 2003, p. 10.

- (a) be made in the form and in the manner approved by the CEO;
 - (b) specify the particular purpose or particular purposes for which the permit is sought;
 - (c) be accompanied by the fee prescribed by or determined under the regulations;
 - (d) be accompanied by an appropriately detailed vegetation management plan;
 - (e) be accompanied by appropriately detailed strategies and procedures designed to identify and protect —
 - (i) areas of conservation or scenic value;
 - (ii) flora the subject of a declaration under section 51B; or
 - (iii) ecological communities the subject of a declaration under section 51B; and
 - (f) be supported by any other documents and information required by the CEO and include a summary of that supporting documentation and information.
- (2) An application for a purpose permit, or the transfer of a purpose permit, can only be made by the person by or on whose behalf the clearing is proposed to be done.
- (3) If an application made under subsection (1) does not comply with subsections (1) and (2), the CEO shall decline to deal with the application and advise the applicant accordingly.
- (4) If the application complies with subsections (1) and (2), the CEO shall —
- (a) advise the applicant that the application has been received;
 - (b) invite any public authority or person which or who has, in the opinion of the CEO, a direct interest in the subject matter of the application, to comment on it within 28 days or such period as the CEO specifies; and
 - (c) advertise the application in the prescribed manner, inviting any person who wishes to comment on it to do so within the prescribed period.
- (5) The CEO shall, after having taken into account any comments received within the specified period from any public authority or person from which or whom comments were invited under subsection (4)(b) or (4)(c), and subject to sections 51O and 51P —
- (a) grant a purpose permit subject to such of the conditions referred to in section 51H as the CEO specifies in the permit; or
 - (b) refuse to grant a purpose permit
- (6) The CEO is to give the applicant written notice of the refusal to grant a purpose permit.
- (7) A purpose permit is to —
- (a) specify the particular purpose or particular purposes for which the permit is sought.

- (b) specify the period for which the permit is to operate;
- (c) specify the total area of land within which clearing the subject of the permit is allowable;
- (d) specify the maximum amount of native vegetation that may be cleared under the permit;
- (e) describe the principles and criteria that are to be applied in relation to the clearing; and
- (f) describe the strategies and procedures that are to be followed in relation to the clearing including the application of the principle of waste minimisation where appropriate.

8.29 In her explanatory memorandum, Hon Christine Sharp notes that proposed new s.51EA was designed to address concerns about the possible breadth and abuse of purpose permits. She advised the Committee that:

“The current provisions of the Bill fail to discriminate between area and purpose permits, although the latter are likely to be broader in scale and scope. Effectively without this amendment the Bill provides a loophole for government instrumentalities to avoid effective supervision of their clearing activities. Instrumentalities such as Shire Councils, Main Roads WA and Western Power can be notoriously cavalier towards remnant vegetation. The amendment establishes a more thorough permit system for purpose permits, commensurate with their scope and scale.”⁵³

8.30 Proposed amendment 95/110 of Hon Christine Sharp is a consequential amendment arising from the insertion of proposed new s.51EA into the Act by proposed amendment 104/110. **NOTE: this proposed amendment contains a typographical error in the SNP where it is expressed as “51E(1)” instead of “51EA(1)”.**⁵⁴

Duration of a purpose clearing permit

8.31 Proposed amendment 113/110 of Hon Christine Sharp seeks to amend proposed new s.51G by reducing the standard maximum duration of a purpose clearing permit (that is the period that applies when no other period has been specified in the permit) from five years to one year. This is a substantive amendment.

⁵³ Submission on Christine Sharp MLC’s Proposed Amendments to the Environmental Protection Amendment Bill 2002, Hon Christine Sharp, dated May 1 2003, p. 8.

⁵⁴ Ibid, p. 5.

Permit conditions relating to the control or abatement of environmental harm

- 8.32 Proposed amendment 9/110 of Hon Robyn McSweeney seeks to amend proposed new s.51I by ensuring that those conditions imposed on a clearing permit relating to the permit-holder's requirement to take specified measures for the purpose of controlling or abating environmental harm may only be either of a general nature or in accordance with specified criteria agreed between the permit-holder and the CEO. This is a substantive amendment.

Advertising contraventions of clearing permit conditions

- 8.33 Proposed amendment 114/110 of Hon Christine Sharp seeks to insert a subsection (3) into proposed new s.51J. The effect of the proposed amendment is to require the CEO to publicly advertise suspected contraventions of clearing permit conditions. This proposed amendment will require regulations specifying the manner of advertisement. This proposed amendment raises issues of natural justice arising from the publication of details of a suspected offence without giving the suspected offender an opportunity to disprove the allegation. This proposed amendment is substantive.
- 8.34 In her explanatory memorandum in relation to her proposed amendments, Hon Christine Sharp states that this proposed amendment will "*ensure that the community will be able to then hold the Department to account*" for any action taken as a result of the breaching of the conditions of a clearing permit.⁵⁵ Hon Christine Sharp notes that it is envisaged that regulations will prescribe appropriate disclaimers where natural justice requires providing permit-holders with an opportunity to respond to alleged breaches of the conditions of a clearing permit.⁵⁶ Hon Christine Sharp also suggests that regulations may also be able to provide for minor alleged breaches to be advertised on the DoE's website.⁵⁷

Transfers of ownership of land and associated clearing permits

- 8.35 Proposed Government amendment 49/110 seeks to amend proposed new s.51L make it a ground for the revocation or suspension of a clearing permit by the CEO where the CEO is satisfied that a transferee of a clearing permit is unwilling or unable to comply with the conditions attached to the permit. This proposed amendment is closely related, although not consequential, on proposed amendment 50/110 below (see para 8.36) which seeks to replace proposed new s.51N. This proposed amendment is substantive.

⁵⁵ *Submission on Christine Sharp MLC's Proposed Amendments to the Environmental Protection Amendment Bill 2002*, Hon Christine Sharp, dated May 1 2003, p. 7.

⁵⁶ *Ibid.*

⁵⁷ *Ibid*, p. 8.

- 8.36 Proposed Government amendment 50/110 seeks to delete, and substitute with a new section, proposed new s.51N. The purpose of the proposed amendment is to simplify the process for the transfer of a clearing permit, and to provide that only those permits relating to a specified area (as opposed to permits for a particular purpose) will be allowed to be transferred with the land upon notice being given to the CEO. The CEO is also unable to refuse the transfer of the permit, so long as the notice requirement is complied with, although the CEO may (if proposed Government amendment 49/110 above is passed) revoke or suspend the clearing permit if the CEO is satisfied that the transferee is unwilling or unable to comply with the conditions attached to the permit pursuant to proposed new s.51L. This proposed amendment is substantive. Proposed amendment 44/110 is consequential to this amendment.
- 8.37 Proposed Government amendment 44/110 is a consequential amendment which seeks to remove a reference to the procedure for applying for the transfer of a clearing permit from proposed new s.51E, which otherwise deals solely with applications for clearing permits. If proposed amendment 50/110 is passed, the transfer of a clearing permit would become automatic upon notification of a change of ownership of the subject land.
- 8.38 Proposed Government amendment 51/110 is consequential to proposed amendment 50/110 above in that it deletes a reference to an “application for the transfer of a clearing permit” from proposed new s.51O.
- 8.39 Proposed Government amendment 53/110 is consequential to proposed amendment 50/110 in that it deletes a reference to an “application for the transfer of a clearing permit” from proposed new s.51P.
- 8.40 Proposed Government amendments 54/110 and 55/110 are consequential to proposed amendment 50/110 in that they delete references to the CEO transferring, or refusing to transfer a clearing permit, from proposed new s.51P.
- 8.41 Proposed Government amendment 57/110 is consequential to proposed amendment 50/110 in that it seeks to amend proposed new s.51Q by deleting reference to the CEO recording “transfers of clearing permits” and replacing that reference with a requirement for the CEO to record notifications of change of ownership of land affected by a clearing permit in accordance with proposed new s.51N as amended by proposed amendment 50/110.
- 8.42 Proposed amendments 115/110 and 116/110 of Hon Christine Sharp seek to amend proposed new s.51N and are consequential to proposed amendment 104/110 above inserting proposed new s.51EA (see para 8.27 above). In the event that proposed Government amendment 50/110 is passed, proposed new s.51N will not contain any reference to “purpose permits” for clearing and so these two proposed amendments will not be required.

Extension of period in which representations may be made to the CEO following certain decisions

- 8.43 Proposed amendment 10/110 of Hon Robyn McSweeney seeks to amend paragraph (c) of proposed new s.51M(3) so as to extend the period in which a permit-holder may make representations to the CEO following receipt of a notice of amendment or surrender of a clearing permit from 21 days to 28 days. This proposed amendment is substantive.

Matters that the CEO may have regard to when making decisions relating to clearing permits

- 8.44 Proposed Government amendment 52/110 is a substantive amendment that seeks to amend subsection (4) of proposed new s.51O so as to both significantly expand upon the matters to which the CEO may have regard when making decisions relating to clearing permits, and to limit any obligation on the CEO to undertake an extensive examination of all possibly relevant planning instruments. If passed, the CEO would be entitled to base a decision on a clearing matter upon any "matter that the CEO considers relevant". The Government's explanatory memorandum in relation to this proposed amendment states:

*"As currently worded, proposed section 51O makes it clear that the CEO is to have regard to the clearing principles and to relevant planning instruments. It is perhaps not clear that the CEO may have regard to other matters. In addition, as there is a vast array of planning instruments, it is unreasonable to expect the CEO to know of the existence of them all. The means by which he would come to know of them would be from invited comments from the relevant local authority under proposed section 51E(4)(b). This amendment addresses both these problems."*⁵⁸

Applications for an injunction against land clearing

- 8.45 Proposed amendment 117/110 of Hon Christine Sharp is a substantive amendment that seeks to amend subsection (3) of proposed new s.51S so as to allow "any person" to apply for a clearing injunction, and not just the CEO as the Bill currently provides. This proposed amendment may have administrative and financial implications for the DoE as a result of possibly becoming involved, both as a party and indirectly, in a greater number of legal proceedings. In her explanatory memorandum, Hon Christine Sharp states:

"It is essential that the [Environmental Protection] Act provide for any person to have the right to apply for an injunction to restrain acts

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Government Amendments With Explanatory Notes to the Environmental Protection Amendment Bill 2002 [131-2], Minister for Housing and Works, May 12 2003, p. 13.

that will or may result in unlawful clearing. The prospect of community enforcement should be no more concerning to industry groups than the prospect of enforcement by the CEO: community groups must reach the same standards of proof and are subject to the same court processes for filtering out groundless claims as other litigants.”⁵⁹

Governor empowered to make interim regulations

- 8.46 Proposed Government amendment 58/110 is a substantive amendment that seeks to amend proposed new s.51T by providing for transitional provisions whereby, despite the provisions of proposed new s.51B, the Governor may make regulations declaring environmentally sensitive areas for a period of up to three months after the commencement of s.110 of the Bill. Any such regulations made will expire nine months after s.110 of the Bill comes into operation.
- 8.47 This proposed amendment is designed to protect environmentally sensitive areas from certain small-scale, otherwise permissible, land clearing activities during the transitional period after the commencement of the provisions of Part 9 of the Bill. The Government’s explanatory memorandum for its proposed amendments advised the Committee of the following reasons for this proposed amendment:

“Under clause 2(3) as inserted in the other place, Part 9 of the Act, with the requirements for clearing permits, comes into effect on the day regulations are tabled in the Parliament. These regulations provide exemptions from the requirement for a clearing permit for making access tracks, clearing fire breaks and so on. However, the exemptions contained in the regulations do not apply in ‘environmentally sensitive areas’ – see proposed section 51C, clause 110 of the Bill. Environmentally sensitive areas can be declared by the Minister under proposed section 51B (see clause 110 of the Bill). The provisions for declaring an area to be an environmentally sensitive area can only be initiated when Part 9 comes into effect, and they require public consultation. This means there would be a period of some weeks, or even months, when people could clear tracks and firebreaks in an area that would later be declared to be an environmentally sensitive area (in which the regulation exemptions do not apply). The intent of the Act in protecting such areas could thus be circumvented.

This is a transitional provision. The same regulations that provide the exemptions can list prospective environmentally sensitive areas, and

⁵⁹ Submission on Christine Sharp MLC’s Proposed Amendments to the Environmental Protection Amendment Bill 2002, Hon Christine Sharp, dated May 1 2003, p. 9.

these are provided with interim protection while they are assessed and the affected land owners consulted."⁶⁰

CLAUSE 112

- 8.48 Clause 112 of the Bill proposes to insert a new s.101A into the Act to provide mechanisms of appeal for permit holders against various administrative decisions relating to clearing permits.

Proposed Amendments to Clause 112 of the Bill

- 8.49 There are fourteen proposed amendments to clause 112 of the Bill, which appear in the following order on the SNP:

- 118/112, Hon Christine Sharp;
- 119/112, Hon Christine Sharp;
- 120/112, Hon Christine Sharp;
- 121/112, Hon Christine Sharp;
- 59/112, Minister for Housing and Works;
- 60/112, Minister for Housing and Works;
- 122/112, Hon Christine Sharp;
- 123/112, Hon Christine Sharp;
- 11/112, Hon Robyn McSweeney;
- 12/112, Hon Robyn McSweeney;
- 124/112, Hon Christine Sharp;
- 125/112, Hon Christine Sharp;
- 61/112, Minister for Housing and Works; and
- 24/112, Hon Murray Criddle.

⁶⁰ *Government Amendments With Explanatory Notes to the Environmental Protection Amendment Bill 2002 [131-2]*, Minister for Housing and Works, May 12 2003, p. 14.

Consequential amendments to proposed amendment 104/110

8.50 Proposed amendments 118/112 to 121/112 of Hon Christine Sharp are all consequential to proposed amendment 104/110 above that proposes the insertion of a new s.51EA into the Act (see para 8.27). Proposed amendments 122/112 and 123/112 of Hon Christine Sharp seek to amend proposed new s.101A and are also both consequential to proposed amendment 104/110.

8.51 Proposed amendments 124/112 and 125/112 of Hon Christine Sharp seek to amend subsection (4) of proposed new s.101A and are both consequential to proposed amendment 104/110.

Consequential amendments to proposed amendment 50/110

8.52 Proposed Government amendments 59/112 and 60/112 are consequential to proposed amendment 50/110 above (see para 8.36) in that they seek to delete references to decisions relating to the transfer of a clearing permit from proposed new s.101A.

Period for lodging appeals in relation to decisions affecting clearing permits

8.53 Proposed amendments 11/112 and 12/112 of Hon Robyn McSweeney seek to amend subsections (1) and (2) of proposed new s.101A to provide for the period for lodgement of appeals by clearing permit holders against various administrative decisions affecting their permits to be increased from 21 days to 28 days. Both of these proposed amendments are substantive.

Abolition of “second” appeals in relation to undertakings for the issue of a clearing permit

8.54 Proposed Government amendment 61/112 seeks to insert an additional subsection in proposed new s.101A. This proposed amendment is consequential to proposed amendment 48/110 above (see para 8.21) in that it limits the application of the appeal provisions in the case of undertakings made to prospective purchasers of land pursuant to proposed new s.51E as amended by proposed amendment 48/110. The Government’s explanatory memorandum in relation to its proposed amendments advises the following concerning this proposed amendment:

“This new provision ensures that, since there are already comprehensive appeal rights against the issue and provisions of an undertaking to issue a clearing permit, there is no second appeal when the permit is issued.”⁶¹

⁶¹ Government Amendments With Explanatory Notes to the Environmental Protection Amendment Bill 2002 [131-2], Minister for Housing and Works, May 12 2003, p. 15.

Time limit for resolution of appeals relating to clearing permits

- 8.55 Proposed amendment 24/112 of Hon Murray Criddle seeks to insert an additional subsection into proposed new s.101A which would impose a 60 day maximum time limit for the resolution of appeals against administrative decisions relating to clearing permits unless an alternative timeframe is specified by the Minister. This proposed amendment is substantive, and is consistent with proposed amendment 22/100 of Hon Murray Criddle (see para 7.2 above) in relation to 60 day time limits for the determination of other types of appeals.

CLAUSE 116

- 8.56 Clause 116 of the Bill proposes the insertion of new Schedules 5 and 6 into the Act.
- 8.57 Schedule 5 sets out the principles for clearing native vegetation to which the CEO is to have regard when making decisions relating to clearing permits pursuant to proposed new s.51O.
- 8.58 Schedule 6 lists those land clearing activities which are exempted from the requirement to obtain a clearing permit.

Proposed Amendments to Clause 116 of the Bill

- 8.59 There are fifteen proposed amendments to clause 116 of the Bill, which appear in the following order on the SNP:
- 62/116, Minister for Housing and Works;
 - 63/116, Minister for Housing and Works;
 - 126/116, Hon Christine Sharp;
 - 127/116, Hon Christine Sharp;
 - 64/116, Minister for Housing and Works;
 - 138/116, Hon Christine Sharp;
 - 129/116, Hon Christine Sharp;
 - 129A/116, Hon Christine Sharp;
 - 139/116, Hon Christine Sharp;
 - 129C/116, Hon Christine Sharp;
 - 65/116, Minister for Housing and Works;

- 66/116, Minister for Housing and Works;
- 67/116, Minister for Housing and Works;
- 68/116, Minister for Housing and Works; and
- 69/116, Minister for Housing and Works.

Biodiversity

- 8.60 Proposed Government amendments 62/116 and 63/116 seek to amend item 1(a) of proposed new Schedule 5 so as to replace a reference to “diversity of plant species” with a much broader reference to “biological diversity”. These proposed amendments are interdependent, and together constitute a substantive amendment. The Government notes in its explanatory memorandum in relation to its proposed amendments that:

“This amendment relates to proposed Schedule 5, which contains principles that the CEO must have regard to, so far as they are relevant, in considering matters relating to clearing permits (see proposed section 510, clause 110 of the Bill). Proposed clause (1)(a) of Schedule 5 establishes the principle that vegetation should not be cleared if it constitutes a “high level of diversity of plant species”. This is not broad enough to cover the range of diversity that will need to be considered in relation to clearing, such as a diversity of fauna. This change amends the clause so that it refers to a “high level of biological diversity”. ”⁶²

Ecologically significant communities or flora

- 8.61 Proposed amendment 126/116 of Hon Christine Sharp seeks to amend item 1(c) of proposed new Schedule 5 to replace the reference to “rare” flora with a reference to “ecologically significant” flora. Proposed amendment 127/116 of Hon Christine Sharp seeks to amend item 1(d) of proposed new Schedule 5 to replace the reference to a “threatened” ecological community with a reference to an “ecologically significant” ecological community. These proposed amendments are substantive, and are inter-related with proposed amendment 97/110 above (see para 8.7).

Impact of clearing on nearby conservation areas

- 8.62 Proposed Government amendment 64/116 is a substantive amendment that seeks to amend item 1(h) of proposed new Schedule 5 in order to limit the reference to impacts on the environmental values of “any conservation area” to only those conservation areas which are “adjacent or nearby” to the area being cleared of vegetation. The

⁶² *Government Amendments With Explanatory Notes to the Environmental Protection Amendment Bill 2002 [131-2]*, Minister for Housing and Works, May 12 2003, p. 15.

Government's explanatory memorandum for its proposed amendments notes the following with respect to proposed amendment 64/116:

*"This amendment relates to proposed Schedule 5, which contains principles that the CEO must have regard to, so far as they are relevant, in considering matters relating to clearing permits (see proposed section 51O, clause 110 of the Bill). Principle (h) relates to clearing that may impact on a conservation area. The present wording does not make it clear that this is intended to refer to possible impacts on any conservation area adjacent or near to the clearing in question. The addition of these words clarifies the intent."*⁶³

Definition of "conservation area"

- 8.63 Proposed amendment 138/116 of Hon Christine Sharp is a substantive amendment that seeks to significantly expand the definition of "conservation area" within proposed new Schedule 5. Hon Christine Sharp advised the Committee that the intention of this proposed amendment was to expand the definition of "conservation area" to include any future categories of conservation-related reserve and areas that are currently managed or protected for conservation purposes, but which are not yet vested as such.⁶⁴

Consequential amendments to proposed amendment 97/110

- 8.64 Proposed amendments 129/116, 129A/116, 139/116 and 129C/116 of Hon Christine Sharp are all consequential amendments dependent upon the passing of proposed amendment 97/110 (see para 8.7 above) and related proposed amendments.
- 8.65 Proposed amendment 129/116 of Hon Christine Sharp is a consequential amendment in that it seeks to amend a reference to a "threatened ecological community" in the definition section of proposed new Schedule 5 so that it reads as an "ecologically significant community" in accordance with proposed amendment 127/116 above (see para 8.61). It should be noted that proposed amendments 127/116 and 129/116 do not exactly correspond as the first establishes a reference to an "ecologically significant ecological community", whilst the second establishes a definition for an "ecologically significant community".
- 8.66 Proposed amendments 129A/116 and 139/116 of Hon Christine Sharp are consequential amendments that seek to expand the definition of "ecologically

⁶³ Government Amendments With Explanatory Notes to the Environmental Protection Amendment Bill 2002 [131-2], Minister for Housing and Works, May 12 2003, p. 16.

⁶⁴ Submission on Christine Sharp MLC's Proposed Amendments to the Environmental Protection Amendment Bill 2002, Hon Christine Sharp, dated May 1 2003, p. 9.

significant community” (a term established by proposed amendments 127/116 and 129/116) to also include declarations of environmentally sensitive areas under proposed new s.51B(1)(b).

- 8.67 Proposed amendment 129C/116 of Hon Christine Sharp is consequential in that it seeks to insert a new definition within proposed new Schedule 5 for the term “ecologically significant flora”. The term “ecologically significant flora” is sought to be established by proposed amendment 126/116 above (see para 8.61). The definition includes a reference to, and definition of, rare flora (which is currently defined earlier in Schedule 5, but that earlier definition may be deleted if this proposed amendment is passed), and a reference to proposed s.51B(1)(c) which is sought to be inserted into the existing proposed s.51B by proposed amendment 97/110 above (see para 8.7).

Definitions of “watercourse” and “wetland”

- 8.68 Proposed Government amendments 65/116 and 66/116 are related substantive amendments that seek to split the current combined definition for “watercourse” and “wetland” in Schedule 5 into two separate definitions. It is proposed that the definition for “watercourse” remains tied to the definition of that term in the *Rights in Water and Irrigation Act 1914*. The definition for “wetland”, however, is proposed to no longer be tied to the *Rights in Water and Irrigation Act 1914*, but is instead to be given its own substantive definition for Schedule 5.
- 8.69 The definitions of “wetland” and “watercourse” in the *Rights in Water and Irrigation Act 1914* are as follows:

“*wetland*” means a natural collection of water, whether permanent or temporary, on the surface of any land and includes —

(a) any lake, lagoon, swamp or marsh; and

(b) a natural collection of water that has been artificially altered,

but does not include a watercourse.”⁶⁵

“3. Meaning of *“watercourse”*”

(1) In this Act, unless the contrary intention appears —

“*watercourse*” means —

(a) any river, creek, stream or brook in which water flows;

⁶⁵ Section 2, *Rights in Water and Irrigation Act 1914*.

(b) any collection of water (including a reservoir) into, through or out of which any thing coming within paragraph (a) flows;

(c) any place where water flows that is prescribed by local by-laws to be a watercourse,

and includes the bed and banks of any thing referred to in paragraph (a), (b) or (c).

(2) For the purposes of the definition in subsection (1) —

(a) a flow or collection of water comes within that definition even though it is only intermittent or occasional;

(b) a river, creek, stream or brook includes a conduit that wholly or partially diverts it from its natural course and forms part of the river, creek, stream or brook; and

(c) it is immaterial that a river, creek, stream or brook or a natural collection of water may have been artificially improved or altered.”⁶⁶

8.70 The proposed new definition for “wetland” in the Act appears in proposed new Schedule 5 as follows:

*““**wetland**” means an area of seasonally, intermittently or permanently waterlogged or inundated land, whether natural or otherwise, and includes a lake, swamp, marsh, spring, dampland, impoundment, tidal flat or estuary.”*

8.71 In its explanatory memorandum in relation to its proposed amendments to the Bill, the Government advised the following in relation to these two proposed amendments:

“These amendments relate to the definition of ‘wetland’ in proposed Schedule 5, which contains principles that the CEO must have regard to, so far as they are relevant, in considering matters relating to clearing permits (see proposed section 510, clause 110 of the Bill). Principle 1(f) provides that vegetation should not be cleared if it is growing in, or in association with, an environment associated with a watercourse or wetland. The amendments change the definition of wetland from the one in the Rights in Water and Irrigation Act 1914 to a broader definition. The amended definition is based on that

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Section 3, Rights in Water and Irrigation Act 1914.

adopted by the 1977 Wetland Advisory Committee, amended slightly to delete the word 'bog' and to include, springs, damplands and impoundments. This will ensure that the definition uses up-to-date terminology and covers all water bodies that may be impacted by clearing."⁶⁷

Transitional provisions relating to land clearing permits issued under the Soil and Land Conservation Act 1945

8.72 Proposed Government amendment 67/116 is a substantive amendment which seeks to delete item 10 from proposed new Schedule 6. The effect of the proposed amendment will be to remove from the list of land clearing activities for which a clearing permit is not required, clearing undertaken pursuant to the *Soil and Land Conservation Act 1945* and the *Soil and Land Conservation Regulations 1992* that is not subject to a current EPA assessment. However, when considered as a set of amendments with proposed amendments 72/119, 73/119 and 74/119 below (see para 8.82) it can be seen that item 10 of Schedule 6 is simply being relocated to the transitional provisions of the Bill (clause 119) with a deeming provision effectively retaining the essential terms of item 10 within Schedule 6 for the purposes of proposed new ss.51C (offences) and 74B (defences) of the Act.

8.73 Proposed Government amendment 69/116 is a consequential amendment (dependent upon the passing of proposed amendment 67/116 above) which seeks to delete subclauses (2) and (3) of clause 116. These subclauses relate to item 10 of proposed new Schedule 6, which is subject to proposed deletion pursuant to proposed Government amendment 67/116 above. These provisions are intended to be replaced by a consolidated transitional provision which is sought to be inserted in the Bill by proposed amendment 74/119 below (see para 8.82).

Bush Fires Act 1954

8.74 Proposed Government amendment 68/116 is a substantive amendment which seeks to delete reference to ss.24 and 24A of the *Bush Fires Act 1954* from item 11 of proposed new Schedule 6. The effect of the proposed amendment will be to remove from the list of "exempt" clearing activities for which a clearing permit is not required, burning for the purposes of either:

- a) collecting clover burr; or
- b) germinating clover in irrigation areas.

⁶⁷ *Government Amendments With Explanatory Notes to the Environmental Protection Amendment Bill 2002 [131-2]*, Minister for Housing and Works, May 12 2003, p. 16.

- 8.75 In its explanatory memorandum for its proposed amendments to the Bill, the Government has advised that the references to the *Bush Fires Act 1954* were included in the Bill in error:

*"These sections of the Bush Fires Act were included in error. They relate to burning bush to promote clover growth. Consultation with Harvey Irrigation District and Fire and Emergency Services has confirmed that they should not be exempted from the requirement for a clearing permit, as they in no way constitute emergency fire management. Indeed, it appears the practice is now quite rare, so few, if any, people will be affected by the change."*⁶⁸

CLAUSE 118

- 8.76 Clause 118 of the Bill relates to consequential amendments to the *Soil and Land Conservation Regulations 1992*.

Proposed Amendments to Clause 118 of the Bill

- 8.77 There are two proposed amendments to clause 118 of the Bill, both of which have been put forward by the Government, and which are described by the Government as being "*additional amendments consequential upon the existing Bill and previously overlooked*".⁶⁹

Amendment of Soil and Land Conservation Regulations 1992

- 8.78 Proposed Government amendment 70/118 is consequential to the scheme proposed to be established under clause 110 of the Bill. This proposed amendment seeks to delete the definition of "clearing" from the interpretation provision (regulation 2) of the *Soil and Land Conservation Regulations 1992*. This proposed amendment avoids any conflict between the *Soil and Land Conservation Regulations 1992* and the definition of clearing that the Bill proposes to insert into the Act in proposed new s.51A.
- 8.79 Proposed Government amendment 71/118 is consequential to the scheme established by clause 110 of the Bill. The proposed amendment seeks to delete from the *Soil and Land Conservation Regulations 1992* Form 1 in Schedule 2, which is the *Notice of Intent to Clear Land* form that is currently required to be lodged by land clearing proponents pursuant to regulation 4. As noted above, regulation 4 itself is proposed to be deleted by subclause (2) of clause 118. This proposed amendment also seeks to delete Schedule 3 of the *Soil and Land Conservation Regulations 1992*, which lists

⁶⁸ *Government Amendments With Explanatory Notes to the Environmental Protection Amendment Bill 2002 [131-2]*, Minister for Housing and Works, May 12 2003, p. 17.

⁶⁹ Ibid.

“controlled land” under the *Country Areas Water Supply Act 1947* (also for the purposes of regulation 4).

CLAUSE 119

8.80 Clause 119 of the Bill deals with transitional provisions relating to the repeal of regulation 4 of the *Soil and Land Conservation Regulations 1992* and the treatment of *Notices of Intent to Clear Land* pursuant to regulation 4 which are current as at the date of commencement of clause 110 of the Bill.

Proposed Amendments to Clause 119 of the Bill

8.81 There are five proposed amendments to clause 119 of the Bill, which appear in the following order on the SNP:

- 72/119, Minister for Housing and Works;
- 73/119, Minister for Housing and Works;
- 74/119, Minister for Housing and Works;
- 130/119, Hon Christine Sharp; and
- 131/119, Hon Christine Sharp.

Transitional provisions relating to clearing permits issued under the Soil and Land Conservation Act 1945

8.82 Proposed Government amendments 72/119, 73/119 and 74/119 are related proposed amendments and are consequential to proposed amendment 67/116 above (see para 8.72). The combined effect of these proposed amendments is to reinstate within the transitional provisions of the Bill the contents of item 10 of proposed new Schedule 6 (which is proposed to be deleted from Schedule 6 by proposed amendment 67/116 (see para 8.72)), in addition to those provisions proposed to be deleted by proposed amendment 36/55 (see para 5.30). Proposed amendment 74/119 reintroduces the bulk of item 10 and includes a deeming provision that provides that, for the purposes of the proposed new s.51C offence provisions and the proposed new s.74B defence provisions, the proposed transitional provisions are to be regarded as falling within proposed new Schedule 6. If passed, the transitional provisions will appear in the Bill as follows:

119. Transitional provisions

(1) In this section —

“**Authority**” has the same meaning as it has in the EP Act;

"commencement day" means the day on which section 110 comes into operation;
"EP Act" means the *Environmental Protection Act 1986* as amended by this Act;
"regulation 4 notice" means a notice of intention under regulation 4 of the *Soil and Land Conservation Regulations 1992*.

- (2) This subsection applies to clearing if —
- (a) a regulation 4 notice relating to the clearing was given not less than 90 days before the commencement day;
 - (b) the clearing was or is commenced not more than 2 years after the giving of the notice and is completed not more than 2 years after the commencement day;
 - (c) the clearing was not referred to the Authority as a proposal under Part IV of the EP Act, or was so referred and not accepted by the Authority; and
 - (d) a soil conservation notice, within the meaning of section 31 of the *Soil and Land Conservation Act 1945*, has not been served in respect of the clearing.
- (3) For the purposes of sections 51C and 74B of the EP Act, clearing to which subsection (2) applies is to be regarded as being clearing of a kind set out in Schedule 6 to the EP Act.
- (4) Subject to subsection (5), a regulation 4 notice given less than 90 days before the commencement day is to be regarded as being an application for a clearing permit made in accordance with section 51E(1) and (2) of the EP Act.
- (5) Subsection (4) does not apply to a regulation 4 notice unless the fee prescribed under the EP Act for the purposes of this subsection is paid.

Consequential and administrative amendments to proposed amendments 99/110 and 104/110

- 8.83 Proposed amendments 130/119 and 131/119 of Hon Christine Sharp are consequential and of an administrative nature. They are dependent upon the passing of proposed amendments 99/110 and 104/110 above which propose to split proposed new s.51E into two new sections (that is, s.51E and s.51EA).

CHAPTER 9

PART 10 OF THE BILL: “MISCELLANEOUS”

CLAUSE 121

- 9.1 Clause 121 of the Bill proposes to insert a new s.4A into the Act setting out the objects and principles of the Act. The first four of the five stated principles are from the *InterGovernmental Agreement on the Environment* and appear in s.3 of Schedule 1 of the *National Environment Protection Council (Western Australia) Act 1966*.

Proposed Amendments to Clause 121 of the Bill

Object and principles of the Act

- 9.2 There is one proposed amendment to clause 121 on the SNP, being proposed amendment 13/121 of Hon Robyn McSweeney. This proposed amendment is a substantive amendment which seeks to delete in its entirety clause 121, thereby deleting the proposed new object and principles provision of the Act.

CLAUSE 122

- 9.3 Clause 122 of the Bill amends the Act, together with clause 133, so as to provide that the EPA has the function of advising the Minister on the making or amendment of regulations. The effect of these two clauses is to no longer make the obtaining of a recommendation of the EPA a prerequisite for the making of regulations (as it is under the existing s.123 of the Act).

Proposed Amendments to Clause 122 of the Bill

EPA recommendations as to the making of regulations

- 9.4 There is one proposed amendment to clause 122 on the SNP, being proposed Government amendment 75/122. This is a substantive amendment which seeks to clarify that the EPA’s advice will not be automatically sought in relation to the making of regulations, although the EPA may provide such advice on its own initiative without receiving a request from the Minister. The Government’s explanatory memorandum in relation to its proposed amendments advised the following with respect to this proposed amendment:

“The EP Amendment Bill currently removes the requirement for the EPA to give advice on every regulation and, in clause 122, provides an additional function for the EPA to advise the Minister generally on regulations. It fails to make clear when or how this new function is to

be performed and there has been concern that the EPA may be excluded from the regulation-making process. This amendment makes it clear that the Minister may ask for the EPA's advice on regulations, and the EPA may choose to provide advice if there is no specific request."⁷⁰

CLAUSE 130

9.5 Clause 130 of the Bill proposes the insertion of a new s.114A into the Act to deal with matters relating to limitation periods for offences under the Act.

Proposed Amendments to Clause 130 of the Bill

9.6 There are three proposed amendments to clause 130 of the Bill on the SNP, and a further proposed amendment from Hon Murray Criddle which has been received by the Committee but that is not on the SNP. The proposed amendments are in the following order:

- Hon Murray Criddle (if placed on subsequent supplementary notice paper);
- 14/130, Hon Robyn McSweeney;
- 25/130 Hon Murray Criddle; and
- 76/130 Minister for Housing and Works.

Limitation periods for prosecutions under the Act

9.7 The first proposed amendment of Hon Murray Criddle, which was provided to the Committee subsequent to the referral of the Bill and the publishing of the SNP, is a substantive amendment which seeks to delete in its entirety subsection (1) of proposed new s.114A.

9.8 As the Act presently stands, no prosecution may be commenced in relation to an offence under the Act once a period of two years has expired after the date of the alleged commission of the offence: s.114(2). Section 114(2) of the Act is proposed to be deleted by clause 129(3). Proposed new s.114A(1) proposes to ensure that no limitation period shall apply at all to the laying of complaints in relation to those more serious offences that are classified under the Act as "Tier 1" offences. Hon Murray Criddle has advised the Committee of his opposition to this proposed amendment to the Act as:

⁷⁰ *Government Amendments With Explanatory Notes to the Environmental Protection Amendment Bill 2002 [131-2]*, Minister for Housing and Works, May 12 2003, p. 18.

*"Some cut off period for the bringing of an offence should be established to protect the integrity of evidence relating to the case. Memories and perceptions of issues change, people involved move on or even pass away and evidence is lost over time. There may be a case for extending the limitations period but not for no limitation period."*⁷¹

- 9.9 If proposed new s.114A(1) is deleted in its entirety, a clarifying consequential amendment will need to be made to bring Tier 1 offences within the two year limitation period of proposed new s.114A(2) (which applies to all other offences under the Act). If no consequential amendment is made, some confusion may arise and Tier 1 offences may become subject to the provisions of s.51 of the *Justices 1902*, which provides:

"51. Limitation of proceedings

In any case of a simple offence or other matter, unless some other time is limited for making complaint by the law relating to the particular case, complaint must be made within 12 months from the time when the matter of complaint arose."

- 9.10 As such, Hon Murray Criddle's second proposed amendment 25/130 is a consequential amendment that seeks to bring Tier 1 offences into line with all other offences within proposed new s.114A(2), so that all offences under the Act will be subject a two year limitation period commencing from either the date of commission of the alleged offence or the date that the evidence of the alleged offence first came to the attention of the authorities.
- 9.11 Proposed amendment 14/130 of Hon Robyn McSweeney is a substantive amendment which also seeks to amend the proposed unlimited period in which a complaint may be made in relation to a Tier 1 offence. The proposed amendment, if passed, would instead fix a five year limitation period within which complaints of a Tier 1 offence must be lodged. The proposed amendment would not be able to be passed if the two proposed amendments of Hon Murray Criddle above are passed.
- 9.12 Proposed Government amendment 76/130 is in the manner of an administrative redraft in that it seeks to consolidate and clarify the wording of subsections (2)(b) and (3) of proposed new s.114A within a single subsection. If this proposed amendment and the Bill are both passed, s.114A will appear in the Act as follows:

⁷¹ *National Party Amendments & Notes for the Environmental Protection Amendment Bill 2002*, dated April 30 2003, p. 8.

114A. Limitation periods

- (1) Despite section 51 of the *Justices Act 1902*, a complaint of a Tier 1 offence may be made at any time.
- (2) Despite section 51 of the *Justices Act 1902*, a complaint of any other offence under this Act may be made within 24 months of the time when the matter of complaint arose.
- (3) Despite section 51 of the *Justices Act 1902* and subsection (2), if a complaint of an offence to which subsection (2) applies specifies the day on which evidence of the alleged offence first came to the attention of a person authorised to institute the prosecution under section 114 the complaint -
 - (a) may be made within 24 months after that day; and
 - (b) need not contain particulars of the day on which the offence is alleged to have been committed.
- (4) The day on which evidence first came to the attention of a person authorised to institute a prosecution under section 114 is the day specified in the complaint, unless the contrary is shown.

9.13 The Government advises in its explanatory memorandum on its proposed amendments that:

“From the present wording of the proposed section 114A it is not absolutely clear that where both (2)(a) and (b) might be relevant, it is the later date that should apply. This amendment removes any doubt and clarifies the process.”⁷²

CLAUSE 131

9.14 Clause 118 of the Bill seeks to repeal and replace s.118 of the Act, which relates to the liability of directors. The proposed new s.118 imposes stricter obligations on company directors in terms of liability for offences committed against the Act by a body corporate, in line with the practice in other Australian jurisdictions, and also provides for new defences to such liability.

Proposed Amendments to Clause 131 of the Bill*Directors’ liability*

9.15 There is one proposed amendment to clause 131 of the Bill, being proposed amendment 140/131 of Hon Murray Criddle, which is a substantive amendment that

⁷² *Government Amendments With Explanatory Notes to the Environmental Protection Amendment Bill 2002 [131-2]*, Minister for Housing and Works, May 12 2003, p. 19.

seeks to delete clause 131 in its entirety. As Hon Murray Criddle advised the Committee:

"This part of the Bill reverses the onus of proof with regard to company Directors. If a company is found guilty of an offence under the Act, then so too are the Directors, unless they can prove otherwise.

*It is the National Party preference that existing provisions in the Act remain unchanged."*⁷³

CLAUSE 133

- 9.16 Clause 133 of the Bill proposes to amend s.123 of the Act, and is linked with the amendments contained in clause 122 of the Bill (see para 9.3 above) to remove the current requirement in the Act for all new regulations or amendments to the existing regulations to be recommended by the EPA.

Proposed Amendments to Clause 133 of the Bill

Requirement for EPA to recommend new regulations or amendments to regulations

- 9.17 There is one proposed amendment to clause 133 of the Bill, being proposed amendment 27/133 of Hon Murray Criddle, which is a substantive amendment that seeks to delete clause 133 in its entirety. The effect of the proposed amendment would be to continue with the requirement for the EPA's recommendation to be obtained for any new regulations or amendments to existing regulations. Hon Murray Criddle advised the Committee that it was the preference of the National Party that the "overseeing role" of the EPA should remain in place.⁷⁴

⁷³ National Party Amendments & Notes for the Environmental Protection Amendment Bill 2002, dated April 30 2003, p. 9.

⁷⁴ Ibid, p. 10.

CHAPTER 10

PROPOSED NEW CLAUSES FOR THE BILL

PROPOSED NEW CLAUSES

10.1 The following proposed new clauses to the Bill have been put forward:

Proposed New Clause 120

Consistency with the Wildlife Conservation Act 1950

10.2 There is one proposal to introduce a new clause 120 into the Bill, being proposed Government amendment 77/NC120, which is a consequential amendment to sections 16 and 23D of the *Wildlife Conservation Act 1950* arising from proposed new Part V Division 2 (clause 110) and Schedule 5 (clause 116). This proposed amendment relates to the incidental taking of protected fauna by way of land clearing pursuant to the Act as amended by the Bill, and the requirement for the Minister to have regard to the principles established by Schedule 5 of the Act when issuing licences related to the taking and selling of flora. The Government notes the following in its explanatory memorandum in relation to its proposed amendments:

“Under the Wildlife Conservation Act it would be an offence if someone, in the act of clearing, as approved under a clearing permit, killed any wildlife. Given the wide definition of wildlife it is impossible to clear without killing something (insects, reptiles).

If no special exemption is made for clearing permits, a person would be required to apply for both a clearing permit and a licence for the taking of the fauna that may be killed – a duplication of process contrary to the intent of the improved processes the Bill seeks to establish. Since DCLM is consulted on clearing permit applications, this duplication can be avoided.

The amendment provides an exemption, applying to all clearing that is authorised or exempt under proposed s.51C of the EP Act. This would include clearing that is of a kind set out in Schedule 6 (e.g. clearing in accordance with a works approval, licence or Ministerial decision following EIA) and clearing of a prescribed kind (e.g. building envelope for a house).

Under item 6 of Schedule 6 the holder of a licence for the taking of protected flora under s23D of the Wildlife Conservation Act is exempt from the requirement for a clearing permit. The proposed s23D(7)

ensures that, in issuing those licences, the Minister can have regard to the clearing principles, so that the two processes are consistent.”⁷⁵

Proposed New Clause 121A

Recognition of Property Right and Compensation

- 10.3 There is one proposed amendment to introduce a new clause 121A into the Bill. This proposed amendment of Hon Murray Criddle was provided to the Committee subsequent to the referral of the Bill and the publishing of the SNP. The proposed new clause seeks to insert an additional paragraph in the table in the proposed new s.4A “Object and principles of the Act” provision (see para 9.1 above). The proposed amendment reads as follows:

“Page 153, following the table - To insert the following new Clause -

Recognition of Property Right and Compensation

If, under this Act, an accepted land use activity is prevented by a State Government agency in order to deliver a public good or service, and particularly if the State is subsequently to derive revenue from that good or service, then the landholder should be eligible for compensation.”⁷⁶

- 10.4 Hon Murray Criddle advised the Committee that he is seeking to include consideration of issues of property rights and compensation within the administrative decision-making process under the Act. He further notes that:

“The intent is also to encourage decision-makers under this Act to take into account economic and social considerations when assessing applications, in addition to solely environmental ones.”⁷⁷

The Government’s proposed New Clauses 122 and 123

- 10.5 Proposed Government amendment 78/NC122 seeks to introduce new clauses 122 and 123 into the Bill. It thereby proposes to make significant changes to sections 5 and 12 of the Act. This proposed amendment is a substantive amendment, and each proposed new clause within the proposed amendment deals with a discrete section of the Act and issue.

⁷⁵ *Government Amendments With Explanatory Notes to the Environmental Protection Amendment Bill 2002 [131-2]*, Minister for Housing and Works, May 12 2003, p. 20.

⁷⁶ *Amendments for the Environmental Protection Amendment Bill 2002*, Hon Murray Criddle, dated May 14 2003, p. 1.

⁷⁷ *Amendments for the Environmental Protection Amendment Bill 2002*, Hon Murray Criddle, dated May 14 2003, p. 1.

Application of the Act to other laws and State Agreement Acts

- 10.6 If this proposed Government amendment is passed, along with clause 90 of the Bill, upon the passing of the Bill section 5 of the Act will appear as follows (**with amendments shown**):

5. Inconsistent laws

- (1) ~~Subject to subsection (2), whenever~~ Whenever a provision of this Act or of an approved policy is inconsistent with a provision contained in, or ratified or approved by, any other written law, the provision of this Act or the approved policy, as the case requires, prevails.
- (2) ~~This section does not apply to or in relation to any Act —~~
~~(a) which ratifies or approves a State agreement; and~~
~~(b) which received the Royal Assent before 1 January 1972.~~
- (3) ~~In subsection (2)(a), “a State agreement” means an agreement —~~
~~(a) to which the State is a party; and~~
~~(b) which does not contain a provision to the effect that the party or parties to that agreement other than the State is or are not exempt from compliance with any requirement made by or under this Act or the repealed Act.~~

- 10.7 The Government has provided the following advice to the Committee on the intention behind this proposed amendment to s.5 of the Act:

“Section 5 ensures the primacy of the EP Act over other legislation in the event of an inconsistency. However, under subsection 2 a number of developments subject to Agreement Acts assented to before 1 January 1972 are exempted from this provision. It is not clear that the normal provisions of the Act (assessment by the EPA and licensing of activities capable of causing pollution) apply to these developments. With the agreement of the affected industries it is proposed to remove the exemption from the Act by deleting s5(2) and (3), and subsequently inserting into the various Agreement Acts a provision clarifying that the requirements of the EP Act do apply. One of the affected companies, Alcoa, asked that the present arrangement, under which its clearing of State forest at Huntley and Willowdale, is overseen by a Mining and Management Plan Liaison Group, established under the Agreement Act, should continue. It is proposed to do this by exempting that particular arrangement from the requirement for a clearing permit, via the proposed regulations. With

this exception of how the vegetation impacts of mining are managed, all Alcoa's operations would be subject to the EP Act."⁷⁸

Disclosure of interests by EPA members

- 10.8 The second part of proposed Government amendment 78/NC122 relates to the duty of disclosure of interests by members of the EPA. The Government has advised the Committee that it considers that the present conflict of interest provisions of the Act, whereby a member of the EPA with a declared interest may continue to participate in the consideration of a matter but not vote on it, are inadequate.⁷⁹ The Government notes that:

*"With the proposed amendment, once a member has declared a pecuniary conflict of interest they are excluded from consideration or discussion of the matter as well as voting on the matter."*⁸⁰

- 10.9 If this proposed amendment is passed, s.12 of the Act will appear as follows upon the passing of the Bill (**with amendments shown**):

12. Disclosure of interests by Authority members

- (1) An Authority member who has a direct or indirect pecuniary interest in a matter that is before a meeting of the Authority shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest to Authority members who are at that meeting, and that disclosure shall be recorded in the minutes of the proceedings of that meeting.
- ~~(2) An Authority member who has disclosed under subsection (1) his interest in a matter may take part in the consideration or discussion of the matter, but shall not vote thereon.~~
- ~~(3)~~(2) If an Authority member has, in the opinion of the person presiding at a meeting of the Authority, a direct or indirect pecuniary interest in a matter before that meeting, the person so presiding may call on the Authority member to disclose the nature of that interest and, in default of any such disclosure, may determine that ~~that interest exists~~ the Authority member has that interest.
- ~~(4)~~(3) A determination under subsection (3) that an Authority member is interested in a matter shall be recorded in the minutes of the proceedings of the meeting concerned ~~and the Authority member may take part in the consideration or discussion of the matter, but shall not vote thereon.~~

⁷⁸ Government Amendments With Explanatory Notes to the Environmental Protection Amendment Bill 2002 [131-2], Minister for Housing and Works, May 12 2003, p. 21.

⁷⁹ Ibid.

⁸⁰ Ibid.

- (4) If an Authority member discloses an interest in a matter under subsection (1) or is determined under subsection (3) to have an interest in a matter, the Authority member shall not —
- (a) take part, as an Authority member, in the consideration or discussion of the matter; or
 - (b) vote on the matter.

Hon Christine Sharp's proposed New Clauses 122 and 123

Ownership of environmental data provided pursuant to Act

- 10.10 The first part of proposed amendment 132/NC122 of Hon Christine Sharp is a substantive amendment that seeks to insert a new s.120A into the Act. The proposed new s.120A asserts Crown Ownership over certain environmental data or information provided in accordance with the requirements of the Act.
- 10.11 Regulations will be required to be drafted to prescribe the manner and form of compilation of the data and information. In her explanatory memorandum, Hon Christine Sharp states that the reason for this proposed new section is to ensure that, subject to limited exceptions, all information collected for the purposes of the Act is available to the public. She states further that:

“There is no reason why monitoring data privately obtained but for the purposes of satisfying the requirements of the Act should be withheld by polluters. This new clause will greatly assist the compilation of environmental performance indicators for State of Environment reporting.”⁸¹

Advertising failures to comply with implementation conditions on assessed schemes

- 10.12 The second part of proposed amendment 132/NC122 of Hon Christine Sharp is a substantive amendment which seeks to insert a new paragraph into the Act after s.48H(2)(a) to require a responsible authority to publicly advertise any finding that there has been a failure to comply with a condition that has been imposed on the implementation of an assessed scheme pursuant to either s.48F or s.48J of the Act. There may be natural justice implications in this proposed amendment if persons suspected of having committed an offence are not given an opportunity to respond to the charges prior to the details of the suspected offence being advertised. Regulations will be required to be drafted to prescribe the manner of advertisement.
- 10.13 In her explanatory memorandum for her proposed amendments, Hon Christine Sharp states that this proposed amendment will “*ensure that the community will be able to then hold the Department to account*” for any action taken as a result of a finding by a

⁸¹ *Submission on Christine Sharp MLC's Proposed Amendments to the Environmental Protection Amendment Bill 2002*, Hon Christine Sharp, dated May 1 2003, p. 10.

responsible authority that there has been a failure to comply with a condition imposed on the implementation of an assessed scheme.⁸² Hon Christine Sharp notes that it is envisaged that regulations will prescribe appropriate disclaimers where natural justice requires providing suspected offenders with an opportunity to respond to the allegation of a breach of a condition.⁸³ Hon Christine Sharp also suggests that regulations may also be able to provide for minor alleged breaches of conditions to be advertised on the DoE's website.⁸⁴

Proposed New Clause 126

Minister's consent for the commencement of prosecutions

- 10.14 Proposed Government amendment 79/NC126 corrects "*a minor oversight in the Bill*",⁸⁵ and is a consequential amendment which is dependent on the passing of clause 129. Clause 129 proposes to remove the requirement to obtain the Minister's consent to institute certain prosecutions under the Act, and provide only for the CEO's consent to be obtained. The practical effect of proposed clause 126 is to delete a reference in s.99A to the obtaining of the Minister's consent for the institution of a prosecution.

Proposed New Clause 133

Ministerial guidelines

- 10.15 Proposed amendment 28/NC133A of Hon Murray Criddle is a substantive amendment that seeks to insert a new s.122AA into the Act. Proposed s.122AA provides for the Minister to publish, amend or revoke guidelines that the CEO is to have regard to when exercising the CEO's functions under the Act. Hon Murray Criddle has raised a concern with the Committee that:

*"The Bill in general provides for a widening of CEO discretion. A view is held that the CEO should operate under published decision making guidelines approved by the Minister. The application of the Guidelines to a particular section of the Act could be stated in the guidelines when made and published in the Gazette."*⁸⁶

⁸² Submission on Christine Sharp MLC's Proposed Amendments to the Environmental Protection Amendment Bill 2002, Hon Christine Sharp, dated May 1 2003, p. 10.

⁸³ Ibid.

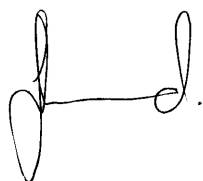
⁸⁴ Ibid.

⁸⁵ Government Amendments With Explanatory Notes to the Environmental Protection Amendment Bill 2002 [131-2], Minister for Housing and Works, May 12 2003, p. 22.

⁸⁶ National Party Amendments & Notes for the Environmental Protection Amendment Bill 2002, dated April 30 2003, p. 11.

Proposed New Clause 139*Penalty provisions*

- 10.16 Hon Murray Criddle has provided to the Committee, subsequent to the referral of the Bill and the publishing of the SNP, a proposed amendment to insert a new clause 139 into the Bill. This proposed amendment seeks to repeal Schedule 1 of the Act, which contains the penalty provisions for offences under the Act.
- 10.17 In his explanatory memorandum, Hon Murray Criddle notes that the National Party is not opposed to the contents of Schedule 1 of the Act, but is of the view that for practical reasons the penalty provisions should be contained in regulations.⁸⁷ It is felt that the use of regulations would enable greater responsiveness and flexibility in the event that the amendment of a particular penalty provision is required as a matter of urgency.



Hon Jon Ford MLC

Chairman

Date: May 23 2003

⁸⁷ *National Party Amendments & Notes For the Environmental Protection Amendment Bill 2002*, dated April 30 2003, p. 12.

APPENDIX 1
SUMMARY SCHEDULE OF PROPOSED AMENDMENTS TO THE BILL

APPENDIX 1

SUMMARY SCHEDULE OF PROPOSED AMENDMENTS TO THE BILL

Clause No.	Section of Act Affected	Supplementary Notice Paper Amendment No. and Mover	Comments	Report para ref.
cl.2	N/A Relates to commencement date of the enacted Bill	15/2 Hon Murray Criddle	Substantive - ties commencement date to new s.122A as inserted by clause 65.	3.2
cl.6	s.38	80/6 Hon Christine Sharp	Substantive - deletes proposed new s.38(2)	4.3
		133/6 Hon Robin Chapple	Substantive - deletes proposed new s.38(3).	4.5
cl.7	New s.38A and s.38B	81/7 Hon Christine Sharp	Substantive - deletes proposed new s.38A.	4.12
		82/7 Hon Christine Sharp	Consequential - dependent upon deletion of proposed new s.38A by 81/7 above.	4.13
cl.9	s.40	134/9 Hon Christine Sharp	Substantive - introduces new subsection (3a). Inconsistent with 30/10 below.	4.17
		16/9 Hon Murray Criddle	Substantive - introduces new subsection (10).	4.21

Clause No.	Section of Act Affected	Supplementary Notice Paper Amendment No. and Mover	Comments	Report para ref.
cl.10	New s.40A and s.40B	30/10 Minister for Housing and Works	Substantive - deletes reference to EPA “suspending” the assessment of a proposal in proposed new s.40A. Related to consequential amendments 31/10, 32/10 and 33/12 below.	4.25
		31/10 Minister for Housing and Works	Consequential - gives further effect to 30/10 above.	4.25
		32/10 Minister for Housing and Works	Consequential - gives further effect to 30/10 above.	4.25
cl.12	New s.41A	33/12 Minister for Housing and Works	Consequential - gives further effect to 30/10 above.	4.30
cl.15	s.44	84/15 Hon Christine Sharp	Substantive - deletes proposed s.44(2)(b)(ii).	4.32
cl.20	s.48	85/20 Hon Christine Sharp	Substantive - inserts a new paragraph at s.48(1a)(b). Natural justice implications. Will require accompanying changes to regulations.	4.37
		86/20 Hon Christine Sharp	Consequential adjustment of paragraph cross-reference in later section - dependent upon passing of 85/20 above.	4.40
cl.21	s.48F	34/21 Minister for Housing and Works	Corrects an error in paragraph identification. Consequential to clause 23 of the Bill.	4.42
cl.23	s.100	87/23 Hon Christine Sharp	Consequential - deletes proposed s.100(1). Dependent upon the passing of 81/7 and 82/7 above.	4.46

Clause No.	Section of Act Affected	Supplementary Notice Paper Amendment No. and Mover	Comments	Report para ref.
cl.28	s.3	35/29 Minister for Housing and Works (Note: this proposed amendment is incorrectly numbered as referring to cl.29)	Substantive - expands definition of native vegetation to include dead vegetation, unless that dead vegetation is excluded by regulation. Henry VIII clause.	5.3
cl.29	New s.3A	17/29 Hon Murray Criddle	Substantive - limits the definition of environmental harm. Connected to, but not necessarily dependent or consequential upon, 18/29 below.	5.12
		18/29 Hon Murray Criddle	Substantive - limits the definition of environmental harm. Connected to, but not necessarily dependent or consequential upon, 17/29 above.	5.12
		1/29 Hon Peter Foss	Substantive - inserts express exceptions within the definition of offence of environmental harm. Inter-dependent with 2/29 , 3/55 , 4/55 5/55 , and 6/55 below.	5.14
		19/29 Hon Murray Criddle	Substantive - limits the definition of “material environmental harm”. Connected to, but not necessarily dependent or consequential upon, 20/29 below.	5.12
		20/29 Hon Murray Criddle	Substantive - limits the definition of “serious environmental harm”. Connected to, but not necessarily dependent or consequential upon, 19/29 above.	5.12
		21/29 Hon Murray Criddle	Substantive - limits types of damage costs used to assess level of environmental harm.	5.17

Clause No.	Section of Act Affected	Supplementary Notice Paper Amendment No. and Mover	Comments	Report para ref.
		2/29 Hon Peter Foss	Consequential - provides for a separate definition for “lawful authority” as established by 1/29 above. Inter-dependent with 1/29 , 3/55 , 4/55 , 5/55 , and 6/55 .	5.16
cl.55	New s.74A and s.74B	3/55 Hon Peter Foss	Consequential - amends s.74A and sets out procedure for raising defence of acting pursuant to lawful authority. Inter-dependent with 1/29 , 2/29 , 4/55 , 5/55 , and 6/55 .	5.21
		4/55 Hon Peter Foss	Consequential - deletes a large portion of proposed new s.74A and replaces it with a reference to proposed new s.3A (see clause 29) as amended by 1/29 above. Inter-dependent with 1/29 , 2/29 , 3/55 , 5/55 , and 6/55 .	5.23
		5/55 Hon Peter Foss	Consequential - amends s.74B and sets out procedure for raising defence of acting pursuant to lawful authority. Inter-dependent with 1/29 , 2/29 , 3/55 , 4/55 , and 6/55 .	5.24
		88/55 Hon Christine Sharp	Substantive - restricts the application of the defence in s.74B. May be contrary to SO 237(b) .	5.27
		6/55 Hon Peter Foss	Consequential - Inter-dependent with 1/29 , 2/29 , 3/55 , 4/55 , and 5/55 . Conflicts with 88/55 above.	5.21

Clause No.	Section of Act Affected	Supplementary Notice Paper Amendment No. and Mover	Comments	Report para ref.
		36/55 Minister for Housing and Works	Substantive - deletes proposed new s.74B(2)(e). 38/55 is consequential to this amendment. Related to 67/116 and 74/119 below, which replaces this paragraph with a proper transitional provision.	5.30
		37/55 Minister for Housing and Works	Substantive - amends the wording of s.74B(2)(f).	5.33
		38/55 Minister for Housing and Works	Consequential - deletes last two subsections of s.74B. Related to the deletion of s.74B(2)(e) by 36/55 above. Also related to 72/119, 73/119 and 74/119.	5.32
cl.65	New s.122A	39/65 Minister for Housing and Works	Substantive - amends s.122A(1).	5.35
cl.72	s.54	40/72 Minister for Housing and Works	Substantive - inserts new s.54(2a). Will require regulations to be prepared.	6.3
		41/72 Minister for Housing and Works	Consequential - amends s.54(3). Dependent upon 40/72 above being passed.	6.5
cl.73	s.55	89/73 Hon Christine Sharp	Substantive - inserts new s.55(4) into Act. Will require regulations to be drafted prescribing method of advertisement. Has natural justice implications.	6.7
cl.75	s.57	135/75 Minister for Housing and Works	Substantive - inserts new s.57(2a), and amends s.57(3) to provide for public advertisement of licence applications. Regulations will need to be drafted to prescribe manner of advertisement.	6.10

Clause No.	Section of Act Affected	Supplementary Notice Paper Amendment No. and Mover	Comments	Report para ref.
cl.76	s.58	136/76 Hon Christine Sharp	Substantive - inserts new s.58(5) into Act. Has natural justice implications. Regulations will need to be drafted to prescribe manner of advertisement.	6.12
cl.100	Replacement s.106	22/100 Hon Murray Criddle	Substantive - inserts a new s.106(5) imposing a time limit on the determination of appeals.	7.2
cl.110	New Division 2, Part V (ss.51A - 51T)	91/110 Hon Christine Sharp	Consequential - amends proposed new s.51A and is dependent upon the passing of 99/110 below which proposes to amend proposed new s.51E.	8.17
		92/110 Hon Christine Sharp	Substantive - rephrases wording in stricter terms in proposed new s.51A. To be read with proposed amendment 93/110 below.	8.4
		93/110 Hon Christine Sharp	Substantive - rephrases wording in stricter terms in proposed new s.51A. To be read with proposed amendment 92/110 above.	8.4
		94/110 Hon Christine Sharp	Consequential - administrative amendment to s.51A which is dependent upon the passing of proposed amendment 97/110 below to proposed new s.51B.	8.5
		95/110 Hon Christine Sharp	Consequential - arising from the insertion of a proposed new s.51EA into the Act as set out below in proposed amendment 104/110 . NOTE: this proposed amendment contains a typographical error in SNP where it is expressed as “51E(1)” instead of “51EA(1)”	8.30

Clause No.	Section of Act Affected	Supplementary Notice Paper Amendment No. and Mover	Comments	Report para ref.
		97/110 Hon Christine Sharp	Substantive - amends proposed new s.51B. Related consequential amendment is proposed amendment 94/110 above. Related also to 126/116, 127/116, 129/116, 129A/116, 139/116 and 129C/116 below.	8.7
		98/110 Hon Christine Sharp	Substantive - amends proposed new s.51C. Natural justice implications. Will require regulations to be drafted.	8.8
		43/110 Minister for Housing and Works	Administrative - deletes a definition no longer required from proposed new s.51D.	8.13
		99/110 Hon Christine Sharp	Consequential - amends proposed new s.51E to facilitate it being split into two new sections, being s.51E and s.51EA pursuant to 104/110 below. Consequential and dependent upon 104/110 . Also related to 91/110 and 100/110 to 103/110 . Conflicts with Government's 44/110, 137/110 and 45A/110 , and Hon Robyn McSweeney's 7/110 below.	8.14
		7/110 Hon Robyn McSweeney	Substantive - amends proposed new s.51E(1). Conflicts with 99/110 above.	8.19
		44/110 Minister for Housing and Works	Consequential to 50/110 below - amends proposed new s.51E(2). Conflicts with 99/110 above.	8.37
		137/110 Minister for Housing and Works	Consequential - amends proposed new s.51E(2)(a). Depends on the passing of 45A/110 below. Related to 48/110 below.	8.20
		45A/110 Minister for Housing and Works	Substantive - amends proposed new s.51E(2)(a). 137/110 above is consequential to this. Related to 48/110 below.	8.20

Clause No.	Section of Act Affected	Supplementary Notice Paper Amendment No. and Mover	Comments	Report para ref.
		23/110 Hon Murray Criddle	Substantive - amends proposed new s.51E(4). Stand alone amendment, but should be read with 16/9 above in relation to timeframes for assessment of proposals by EPA.	8.23
		46/110 Minister for Housing and Works	Substantive - amends proposed new s.51E(4). Will require regulations. Requires consequential amendment 47/110 below to be passed to give it full effect.	8.24
		47/110 Minister for Housing and Works	Consequential - amends proposed new s.51E(5). Is required to give effect to 46/110 above.	8.24
		100/110 Hon Christine Sharp	Consequential - amends proposed new s.51E(5). Is required to give full effect to 99/110 above.	8.18
		101/110 Hon Christine Sharp	Consequential - amends proposed new s.51E(5). Is required to give full effect to 99/110 above.	8.18
		102/110 Hon Christine Sharp	Consequential - amends proposed new s.51E(6). Is required to give full effect to 99/110 above.	8.18
		103/110 Hon Christine Sharp	Consequential - deletes subsections (7) and (8) of proposed new s.51E and replaces them with a new subsection (7). Is required to give full effect to 99/110 above.	8.18
		8/110 Hon Robyn McSweeney	Substantive - inserts a new subsection (9) in proposed new s.51E. First line requires re-wording.	8.26
		48/110 Minister for Housing and Works	Consequential - required to give full effect to 45A/110 above. Inserts subsections (9) to (12) into proposed new s.51E.	8.21

Clause No.	Section of Act Affected	Supplementary Notice Paper Amendment No. and Mover	Comments	Report para ref.
		104/110 Hon Christine Sharp	Substantive - inserts new s.51EA. Closely related to 99/110 above. 130/119 and 131/119 below are consequential amendments.	8.27
		105/110 Hon Christine Sharp	Consequential - arising from 99/110 and 104/110 above. Amends proposed new s.51F(1).	8.27
		106/110 Hon Christine Sharp	Consequential - arising from 99/110 and 104/110 above. Amends proposed new s.51F(1).	8.27
		107/110 Hon Christine Sharp	Consequential - arising from 99/110 and 104/110 above. Amends proposed new s.51F(1).	8.27
		108/110 Hon Christine Sharp	Consequential - arising from 99/110 and 104/110 above. Amends proposed new s.51F(1).	8.27
		109/110 Hon Christine Sharp	Consequential - arising from 99/110 and 104/110 above. Amends proposed new s.51F(2).	8.27
		110/110 Hon Christine Sharp	Consequential - arising from 99/110 and 104/110 above. Amends proposed new s.51F(2).	8.27
		111/110 Hon Christine Sharp	Consequential - arising from 99/110 and 104/110 above. Amends proposed new s.51F(2).	8.27
		112/110 Hon Christine Sharp	Consequential - arising from 99/110 and 104/110 above. Amends proposed new s.51F(2).	8.27
		113/110 Hon Christine Sharp	Substantive - amends s.51G(b). Reduces the standard duration of a purpose clearing permit from 5 years to one.	8.29
		9/110 Hon Robyn McSweeney	Substantive - amends proposed new s.51I.	8.32

Clause No.	Section of Act Affected	Supplementary Notice Paper Amendment No. and Mover	Comments	Report para ref.
		114/110 Hon Christine Sharp	Substantive - amends proposed new s.51J. Regulations will be required. Raises natural justice implications.	8.33
		49/110 Minister for Housing and Works	Substantive - proposed new s.51L(2). Related to 50/110 below.	8.35
		10/110 Hon Robyn McSweeney	Substantive - amends proposed new s.51M(3)(c) to extend the time for making representations on a notice to amend or surrender a clearing permit from a minimum of 21 days to 28 days.	8.43
		50/110 Minister for Housing and Works	Substantive - deletes and substitutes a new section for proposed new s.51N. Related to 49/110 above. 44/110 is consequential to this amendment.	8.36
		115/110 Hon Christine Sharp	Consequential - amends proposed new s.51N and is dependent upon the passing of 104/110 above. Will not be necessary if 50/110 is passed.	8.42
		116/110 Hon Christine Sharp	Consequential - amends proposed new s.51N and is dependent upon the passing of 104/110 above. Will not be necessary if 50/110 is passed.	8.42
		51/110 Minister for Housing and Works	Consequential - amends proposed new s.51O and is dependent upon the passing of 50/110 above.	8.38
		52/110 Minister for Housing and Works	Substantive - amends proposed new s.51O(4) to expand upon matters that CEO may have regard when making decisions as to clearing permits.	8.44
		53/110 Minister for Housing and Works	Consequential - amends proposed new s.51P and is dependent upon the passing of 50/110 above.	8.39

Clause No.	Section of Act Affected	Supplementary Notice Paper Amendment No. and Mover	Comments	Report para ref.
		54/110 Minister for Housing and Works	Consequential - amends proposed new s.51P and is dependent upon the passing of 50/110 above.	8.40
		55/110 Minister for Housing and Works	Consequential - amends proposed new s.51P and is dependent upon the passing of 50/110 above.	8.40
		56/110 Minister for Housing and Works	Consequential - seeks to amend proposed new s.51Q and is dependent upon the passing of 48/110 above.	8.22
		57/110 Minister for Housing and Works	Consequential - amends proposed new s.51Q and is dependent upon the passing of 50/110 above.	8.41
		117/110 Hon Christine Sharp	Substantive - amends proposed new s.51S to extend the power to obtain clearing injunctions from CEO to any person. May have administrative and financial implications.	8.45
		58/110 Minister for Housing and Works	Substantive - amends proposed new s.51T. Interim power of Governor to issue transitional regulations for environmentally sensitive areas.	8.46
cl.112	Inserts new s.101A	118/112 Hon Christine Sharp	Consequential - amends s.101A and is dependent upon 104/110 above being passed.	8.50
		119/112 Hon Christine Sharp	Consequential - amends s.101A and is dependent upon 104/110 above being passed.	8.50
		120/112 Hon Christine Sharp	Consequential - amends s.101A and is dependent upon 104/110 above being passed.	8.50
		121/112 Hon Christine Sharp	Consequential - amends s.101A and is dependent upon 104/110 above being passed.	8.50

Clause No.	Section of Act Affected	Supplementary Notice Paper Amendment No. and Mover	Comments	Report para ref.
		59/112 Minister for Housing and Works	Consequential - amends s.101A and is dependent upon 50/110 above being passed.	8.52
		60/112 Minister for Housing and Works	Consequential - amends s.101A and is dependent upon 50/110 above being passed.	8.52
		122/112 Hon Christine Sharp	Consequential - amends s.101A and is dependent upon 104/110 above being passed.	8.50
		123/112 Hon Christine Sharp	Consequential - amends s.101A and is dependent upon 104/110 above being passed.	8.50
		11/112 Hon Robyn McSweeney	Substantive - amends s.101A(1) to increase certain appeal lodgement periods from 21 days to 28 days.	8.53
		12/112 Hon Robyn McSweeney	Substantive - amends s.101A(2) to increase certain appeal lodgement periods from 21 days to 28 days.	8.53
		124/112 Hon Christine Sharp	Consequential - amends s.101A(4) and is dependent upon 104/110 above being passed.	8.51
		125/112 Hon Christine Sharp	Consequential - amends s.101A(4) and is dependent upon 104/110 above being passed.	8.51
		61/112 Minister for Housing and Works	Consequential - amends s.101A by inserting an additional subsection and is dependent upon 48/110 above being passed. Limits appeal rights in the case of undertakings made pursuant to s.51E as amended by 48/110 .	8.54

Clause No.	Section of Act Affected	Supplementary Notice Paper Amendment No. and Mover	Comments	Report para ref.
		24/112 Hon Murray Criddle	Substantive - amends s.101A by inserting additional subsection which sets a timeframe for resolution of appeals to within 60 days unless otherwise determined by the Minister. Consistent with 22/100 above in the case of other appeals.	8.55
cl.116	Inserts new Schedules 5 and 6	62/116 Minister for Housing and Works	Substantive - together with 63/116 below amends item 1(a) of Schedule 5 to expand a reference to plant species diversity to biodiversity.	8.60
		63/116 Minister for Housing and Works	Substantive - together with 62/116 above amends item 1(a) of Schedule 5 to expand a reference to plant species diversity to biodiversity.	8.60
		126/116 Hon Christine Sharp	Substantive - amends item 1(c) of Schedule 5 to replace a reference to “rare” flora with a reference to “ecologically significant” flora. Related to 97/110 above.	8.61
		127/116 Hon Christine Sharp	Substantive - amends item 1(d) of Schedule 5 to replace a reference to a “threatened” ecological community with a reference to an “ecologically significant” ecological community. Related to 97/110 above, and 129/116 below.	8.61
		64/116 Minister for Housing and Works	Substantive - amends item 1(h) of Schedule 5 to restrict the number of possibly affected conservation areas in any case.	8.62
		138/116 Hon Christine Sharp	Substantive - amends definition section of Schedule 5 to expand definition of conservation area.	8.63
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Clause No.	Section of Act Affected	Supplementary Notice Paper Amendment No. and Mover	Comments	Report para ref.
		129/116 Hon Christine Sharp	Consequential - amends definition of “threatened ecological community” in Schedule 5 so as to correspond with 127/116 above. NOTE: 127/116 and 129/116 differ slightly in terminology they introduce. Dependent upon the passing of 97/110 above and related proposed amendments.	8.64
		129A/116 Hon Christine Sharp	Consequential - administrative amendment to definition section of Schedule 5 dependent upon 139/116 below, and related to 127/116 and 129/116 above. Dependent upon the passing of 97/110 above and related proposed amendments.	8.66
		139/116 Hon Christine Sharp	Consequential - expands definition of term “ecologically significant community” in Schedule 5 as established by proposed amendments 127/116 and 129/116 above by including declarations made pursuant to s.51B(1)(b). Dependent upon the passing of 97/110 above and related proposed amendments.	8.66
		129C/116 Hon Christine Sharp	Consequential - inserts new definition in Schedule 5 for term “ecologically significant flora” as established by 126/116 above. Links definition to s.51B(1)(c) as amended by 97/110 above. Query whether if this proposed amendment is passes, the definition of “rare flora” in Schedule 5 is necessary. Dependent upon the passing of 97/110 above and related proposed amendments.	8.67

Clause No.	Section of Act Affected	Supplementary Notice Paper Amendment No. and Mover	Comments	Report para ref.
		65/116 Minister for Housing and Works	Substantive - together with 66/116 below, separates the definitions of “watercourse” and “wetland” in Schedule 5.	8.68
		66/116 Minister for Housing and Works	Substantive - together with 65/116 above, separates the definitions of “watercourse” and “wetland” in Schedule 5. No longer ties definition of “wetland” to <i>Rights in Water and Irrigation Act 1914</i> .	8.68
		67/116 Minister for Housing and Works	Substantive - deletes item 10 of Schedule 6.	8.72
		68/116 Minister for Housing and Works	Substantive - deletes part of item 11 of Schedule 6.	8.74
		69/116 Minister for Housing and Works	Consequential - deletes subclauses (2) and (3) of Schedule 6. Dependent upon passing of 67/116 above.	8.73
cl.118	Consequential amendments to <i>Soil and Land Conservation Regulations 1992</i>	70/118 Minister for Housing and Works	Consequential to clauses 110 and 119 of the Bill - deletes definition of “clearing” in reg. 2 of <i>Soil and Land Conservation Regulations 1992</i> .	8.78
		71/118 Minister for Housing and Works	Consequential to clauses 110 and 119 of the Bill - deletes Schedule 2 Form 1 (“notice of intent to clear”) and Schedule 3 (“controlled land”) of the <i>Soil and Land Conservation Regulations 1992</i> .	8.79
cl.119	Transitional provisions of Bill	72/119 Minister for Housing and Works	Consequential - dependent on passing of 67/116 above. Assists in re-establishing item 10 of Schedule 6 as a transitional provision.	8.82

Clause No.	Section of Act Affected	Supplementary Notice Paper Amendment No. and Mover	Comments	Report para ref.
		73/119 Minister for Housing and Works	Consequential - dependent on passing of 67/116 above. Assists in re-establishing item 10 of Schedule 6 as a transitional provision.	8.82
		74/119 Minister for Housing and Works	Consequential - dependent on passing of 67/116 and 36/55 above. Assists in re-establishing item 10 of Schedule 6 as a transitional provision.	8.82
		130/119 Hon Christine Sharp	Consequential - dependent on passing of 99/110 and 104/110 above.	8.83
		131/119 Hon Christine Sharp	Consequential - dependent on passing of 99/110 and 104/110 above.	8.83
cl.121	Inserts New s.4A	13/121 Hon Robyn McSweeney	Substantive - deletes entire clause.	9.2
cl.122	s.16	75/122 Minister for Housing and Works	Substantive - amends s.16.	9.4
cl.130	Inserts new s.114A	Hon Murray Criddle (not on the SNP)	Substantive - deletes new s.114A(1). Section 51 of <i>Justices Act 1902</i> to apply to Tier 1 offences. Dependent on the passing of consequential amendment 25/130 below to provide clarity. Conflicts with 14/130 below.	9.7
		14/130 Hon Robyn McSweeney	Substantive - amends new s.114A(1). Imposes a 5 year limitation period for complaints of Tier 1 offences. Conflicts with unnumbered amendment and 25/130 above, both of Hon Murray Criddle.	9.11

Clause No.	Section of Act Affected	Supplementary Notice Paper Amendment No. and Mover	Comments	Report para ref.
		25/130 Hon Murray Criddle	Consequential - dependent upon the passing of unnumbered amendment of Hon Murray Criddle above. Conflicts with 14/130 above.	9.10
		76/130 Minister for Housing and Works	Administrative - rewords and clarifies new s.114A(2)(b) and (3) within a single subsection.	9.12
cl.131	Repeals and replaces s.118	140/131 Hon Murray Criddle	Substantive - deletes clause.	9.15
cl.133	s.123(1)	27/133 Hon Murray Criddle	Substantive - deletes clause.	9.17
NC120	<i>Wildlife Conservation Act 1950</i> , ss. 16 and 23D	77/NC120 Minister for Housing and Works	Consequential - amendments to <i>Wildlife Conservation Act 1950</i> consequential to clauses 110 and 116.	10.2
NC121 A	New s.4A	Hon Murray Criddle (not on the SNP)	Substantive - adds an additional paragraph on property rights and compensation to the proposed new object and principles provision of the Act.	10.3
NC 122 & 123	s.5 and s.12	78/NC122 Minister for Housing and Works	Substantive - amends s.5 and s.12 of the Act.	10.5
NC 122 & 123	New s.120A, s.48H	132/NC122 Hon Christine Sharp	Substantive - new s.120A and amends s.48H of the Act.	10.10

Clause No.	Section of Act Affected	Supplementary Notice Paper Amendment No. and Mover	Comments	Report para ref.
NC 126	s.99A	79/NC126 Minister for Housing and Works	Consequential - deletes s.99A(1)(b) dependent on the passing of clause 129, which removes requirement for Minister's consent to institute prosecutions.	10.14
NC 133	New s.122AA	28/NC133A Hon Murray Criddle	Substantive - inserts a new s.122AA into the Act establishing ministerial guidelines for the guidance of the CEO.	10.15
NC 139	Schedule 1	Hon Murray Criddle (not on the SNP)	Substantive - repeals Schedule 1 penalties. Will require penalty provisions to be reinserted in Act elsewhere or in the regulations.	10.16

APPENDIX 2

ENVIRONMENTAL PROTECTION AMENDMENT BILL 2002

NOTES TO ASSIST TO DETERMINE ORDER FOR DEALING WITH PROPOSED AMENDMENTS IN COMMITTEE OF THE WHOLE

APPENDIX 2

ENVIRONMENTAL PROTECTION AMENDMENT BILL 2002

NOTES TO ASSIST TO DETERMINE ORDER FOR DEALING WITH PROPOSED AMENDMENTS IN COMMITTEE OF THE WHOLE

Clause	Mover	SNP Ref.	Section of Act Affected	Notes for Committee
2	MC	15/2	N/A	
6	CS	80/6	s.38	Dependent upon Cl 5 being agreed to (introduces the definition of “significant proposal”).
6	RC	82/7	s.38	Dependent upon Cl 5 being agreed to (introduces the definition of “significant proposal”).
7	CS	81/7	New s.38A & s.38B	
7	CS	82/7	New s.38A & s.38B	Consequential. Dependent upon 81/7 being agreed to.
9	CS	134/9	New s.38A & s.38B	If agree to then Min cannot move amendments 30/10, 31/10 and 32/10 as inconsistent with amendment to retain capacity to suspend. If negated Min amendments may be moved to Cl. 10.
9	MC	16/9	s.40	
10	Minister (Min)	30/10	New 40A & 40B	Cannot be moved if 134/9 agreed to.
10	Min	31/10	New 40A & 40B	Consequential. Dependent upon 30/10 being agreed to.
10	Min	32/10	New 40A & 40B	Consequential. Dependent upon 30/10 being agreed to.
12	Min	33/12	New 41A	Consequential. Dependent upon 30/10 being agreed to.
15	CS	84/15	s.44	
20	CS	85/20	s.48	
20	CS	86/20	s.48	Consequential. Dependent upon 85/20 being agreed to.
21	Min	34/21	s.48F	Consequential. Dependent upon Cl. 23 being agreed to (inserts new s.100(3a)).
23	CS	87/23	s.100	Consequential. Dependent upon 81/7 being agreed to.
28	Min	35/29	New s.3A	
29	MC	17/29	New s.3A	
29	MC	18/29	New s.3A	
29	PF	1/29	New s.3A	Postpone until consideration of 2/29 inserting definition of “pursuant to

				lawful authority". If 2/29 not agreed to then amendment cannot be moved. Will also prevent 3/55, 4/55, 5/55 and 6/55 being moved in current form. This assumes that 1/29 is wholly dependent upon 2/29 being agreed to. Pursuant to lawful authority may be capable of a meaning in absence of a definition being inserted.
29	MC	19/29	New s.3A	
29	MC	20/29	New s.3A	
29	MC	21/29	New s.3A	
29	PF	2/29	New s.3A	If agreed to then consider postponed amendment 1/29. If negated then 1/29 cannot be moved as dependent upon insertion of definition of "pursuant to lawful authority". Hon Peter Foss must consider whether wishes to proceed with 1/29 if the definition of pursuant to lawful authority negated.
55	PF	3/55	New s.74A & s.74B	Dependent upon 2/29 being agreed to. If 2/29 negated then amendment cannot be moved in current form.
55	PF	4/55	New s.74A & s.74B	Dependent upon 2/29 being agreed to and related 3/55 and 4/55. If 2/29 negated then amendment cannot be moved in current form.
55	PF	5/55	New s.74A & s.74B	Dependent upon 2/29 being agreed to. If 2/29 negated then amendment cannot be moved in current form.
55	CS	88/55	New s.74A & s.74B	This amendment cannot be moved if 5/55 or 6/55 agreed to. The above amendments have priority as they are first in time (<i>SNP 131 Issue 1, 13/11/02</i>). If 5/55 and 6/55 negated or not moved then this amendment must be moved in different form. In current form it seeks to delete words and then re-insert the same words. Can be easily rectified.
55	PF	6/55	New s.74A & s.74B	Dependent upon 2/29 being agreed to. If 2/29 negated then cannot be moved. If 2/29 agreed to then can be moved in priority to Min amendments 36/55, 37/55 and 38/55 because this amendment first in time (<i>SNP 131 Issue 1, 13/11/02</i>).
55	Min	36/55	New s.74A & s.74B	If 2/29 negated then can be moved. If 6/55 agreed to then will be redundant as 6/55 also deletes these words.

55	Min	37/55	New s.74A & s.74B	If 6/55 agreed to then cannot be moved because seeks to insert words into words already deleted.
55	Min	38/55	New s.74A & s.74B	Consequential. Dependent upon 36/55 being agreed to.
65	Min	39/65	New 122A	
72	Min	40/72	s.54	
72	Min	41/72	s.54	Consequential. Dependent upon 40/72 being agreed to.
73	CS	89/73	s.55	
75	Min	135/75	s.57	
76	CS	136/76	s.58	
100	MC	22/100	s.106	
110	CS	91/110	New Div. 2, Part V (ss 51A-51T)	Consequential. Dependent upon 99/110 being agreed to. Postpone until deal with 99/110.
110	CS	92/110	New Div. 2, Part V (ss 51A-51T)	
110	CS	93/110	New Div. 2, Part V (ss 51A-51T)	
110	CS	94/110	New Div. 2, Part V (ss 51A-51T)	Appears to conflict with 51B, even if amended by 97/110. Out of order unless seek to amend to delete para (b) from 51B(1).
110	CS	95/110	New Div. 2, Part V (ss 51A-51T)	Consequential. Dependent upon 104/110 being agreed to. Postpone until deal with 104/110. If 104/110 negated then cannot be moved.
110	CS	97/110	New Div. 2, Part V (ss 51A-51T)	Dependent upon proposed amendments, 129/116, 129A/116, 139/116 and 129C/116 (which define “ecologically significant community” and “ecologically significant flora”) being agreed to. Postpone until deal with 129/116, 129A/116, 139/116 and 129C/116 (related 126/116, 127/116 also dependent upon proposed amendments 129/116, 129A/116, 139/116 and 129C/116 being agreed to). If these not agreed to then this amendment (and 126/116, 127/116) cannot be moved. Alternatively, if do not postpone and proceed with consideration of this amendment first and is negated then amendments 126/116, 127/116, 129/116, 129A/116, 139/116 and 129C/116 cannot be moved as are redundant.
110	CS	98/110	New Div. 2,	

			Part V (ss 51A-51T)	
110	Min	43/110	New Div. 2, Part V (ss 51A-51T)	
110	CS	99/110	New Div. 2, Part V (ss 51A-51T)	99/110 later in time to Min amendments 44/110, 137/110 and 45A/110 which delete words and insert words to existing s.51B(2) which CS seeks to delete. Min amendments must be dealt with first because first in time. If Min amendments agreed to then CS amendment cannot be moved because seek to delete words agreed to be inserted. If 99/110 cannot be moved then dependent amendment 91/110 cannot be moved. Also, related amendments which facilitate the two part regime proposed by CS for clearing permits (area permits in 51E – 99/110, 91/110, 100/110, 101/110, 102/110 and 103/110 and purpose permits in 51EA – 104/110, 95/110, 105/110, 106/110, 107/110, 108/110, 109/110, 110/110, 111/110, 112/110, 115/110, 116/110, 118/112, 119/112, 120/112, 121/112, 122/112, 123/112, 124/112, 125/112, 130/119 and 131/119) cannot be moved if proposed s.51E agreed to with Min amendments. This is because proposed 51EA would be inconsistent with the single regime for clearing permits proposed in existing s.51E as amended by the Min. Will require recommittal of Cl. 110 if CS amendments are to be considered.
110	RMc	7/110	New Div. 2, Part V (ss 51A-51T)	
110	Min	44/110	New Div. 2, Part V (ss 51A-51T)	To be dealt with prior to CS amendments 99/110 and consequential amendments to 99/110.
110	Min	137/110	New Div. 2, Part V (ss 51A-51T)	Has priority to CS amendment 99/110 because first in time.
110	Min	45A/110	New Div. 2, Part V (ss 51A-51T)	Has priority to CS amendment 99/110 because first in time. Proposed s.51E as amended by Min is directly inconsistent with CS amendment to restrict applicants for clearing permits in s.51E to area permits only (and is also inconsistent to the two part

				clearing permit regime proposed by CS by new s.51E – 99/110 and s.51EA – 104/110).
110	MC	23/110	New Div. 2, Part V (ss 51A-51T)	
110	Min	46/110	New Div. 2, Part V (ss 51A-51T)	
110	Min	47/110	New Div. 2, Part V (ss 51A-51T)	Consequential. Dependent upon 46/110 being agreed to.
110	CS	100/110	New Div. 2, Part V (ss 51A-51T)	Consequential. Dependent upon 99/110 being agreed to.
110	CS	101/110	New Div. 2, Part V (ss 51A-51T)	Consequential. Dependent upon 99/110 being agreed to.
110	CS	102/110	New Div. 2, Part V (ss 51A-51T)	Consequential. Dependent upon 99/110 being agreed to.
110	CS	103/110	New Div. 2, Part V (ss 51A-51T)	Consequential. Dependent upon 99/110 being agreed to.
110	RMc	8/110	New Div. 2, Part V (ss 51A-51T)	Cannot be moved. Beyond the scope and purpose of the Bill in that the Bill does not deal with matters of compensation for refusal to clear. Is also out of order because would require an appropriation (see s.42(3) CAAA - would require an appropriation to fund compensation.
110	Min	48/110	New Div. 2, Part V (ss 51A-51T)	Consequential. Dependent upon 44/110, 45A/110 and 137/110 being agreed to.
110	CS	104/110	New Div. 2, Part V (ss 51A-51T)	Substantive. Dependent upon whether 99/110 (new 51E) agreed to.
110	CS	105/110	New Div. 2, Part V (ss 51A-51T)	Consequential. Dependent upon 99/110 and 104/110 being agreed to.
110	CS	106/110	New Div. 2, Part V (ss 51A-51T)	Consequential. Dependent upon 99/110 and 104/110 being agreed to.
110	CS	107/110	New Div. 2, Part V (ss 51A-51T)	Consequential. Dependent upon 99/110 and 104/110 being agreed to.
110	CS	108/110	New Div. 2, Part V (ss 51A-51T)	Consequential. Dependent upon 99/110 and 104/110 being agreed to.
110	CS	109/110	New Div. 2,	Consequential. Dependent upon

			Part V (ss 51A-51T)	99/110 and 104/110 being agreed to.
110	CS	110/110	New Div. 2, Part V (ss 51A-51T)	Consequential. Dependent upon 99/110 and 104/110 being agreed to.
110	CS	111/110	New Div. 2, Part V (ss 51A-51T)	Consequential. Dependent upon 99/110 and 104/110 being agreed to.
110	CS	112/110	New Div. 2, Part V (ss 51A-51T)	Consequential. Dependent upon 99/110 and 104/110 being agreed to.
110	CS	113/110	New Div. 2, Part V (ss 51A-51T)	
110	RMc	9/110	New Div. 2, Part V (ss 51A-51T)	
110	CS	114/110	New Div. 2, Part V (ss 51A-51T)	
110	Min	49/110	New Div. 2, Part V (ss 51A-51T)	Dependent upon 50/110 (new 51N). Postpone until deal with 50/110 to replace existing 51N).
110	RMc	10/110	New Div. 2, Part V (ss 51A-51T)	
110	Min	50/110	New Div. 2, Part V (ss 51A-51T)	If agreed to deal with postponed s51L (49/110).
110	CS	115/110	New Div. 2, Part V (ss 51A-51T)	Consequential. Dependent upon 104/110 being agreed to. Also cannot be moved if Committee agrees to Min amendment 50/110 because seeks to add words to words that have agreed to be deleted. Recommittal required.
110	CS	116/110	New Div. 2, Part V (ss 51A-51T)	Consequential. Dependent upon 104/110 being agreed to. Also cannot be moved if Committee agrees to Min amendment 50/110 because seeks to add words to words that have been agreed to be deleted. Recommittal required.
110	Min	51/110	New Div. 2, Part V (ss 51A-51T)	Consequential. Dependent upon Min amendment 50/110 and related amendments 44/110, 137/110, 45A/110 being agreed to which delete the capacity to transfer a clearing permit from s.51E.
110	Min	52/110	New Div. 2, Part V (ss 51A-51T)	Needs to be moved in different form because seeks to delete words and then re-insert the same words.
110	Min	53/110	New Div. 2,	Consequential. Dependent upon

			Part V (ss 51A-51T)	50/110 and related amendments 44/110, 137/110, 45A/110 being agreed to.
110	Min	54/110	New Div. 2, Part V (ss 51A-51T)	Consequential. Dependent upon 50/110 and related amendments 44/110, 137/110, 45A/110 being agreed to.
110	Min	55/110	New Div. 2, Part V (ss 51A-51T)	Consequential. Dependent upon 50/110 and related amendments 44/110, 137/110, 45A/110 being agreed to.
110	Min	56/110	New Div. 2, Part V (ss 51A-51T)	Consequential. Dependent upon 48/110 (new para (9) - (12) to s.51E) being agreed to.
110	Min	57/110	New Div. 2, Part V (ss 51A-51T)	Consequential. Dependent upon 50/110 and related amendments 44/110, 137/110, 45A/110 being agreed to.
110	CS	117/110	New Div. 2, Part V (ss 51A-51T)	
110	Min	58/110	New Div. 2, Part V (ss 51A-51T)	
112	CS	118/112	New s.101A	Consequential. Dependent upon amendment 104/110 (s.51EA) being agreed to. If not cannot be moved.
112	CS	119/112	New s.101A	Consequential. Dependent upon 104/110 (s.51EA) being agreed to. If not cannot be moved.
112	CS	120/112	New s.101A	Consequential. Dependent upon amendment 104/110 (s.51EA) being agreed to. If not cannot be moved.
112	CS	121/112	New s.101A	Consequential. Dependent upon amendment 104/110 (s.51EA) being agreed to. If not cannot be moved.
112	Min	59/112	New s.101A	Consequential. Dependent upon 50/110 and related amendments 44/110, 137/110, 45A/110 being agreed to.
112	Min	60/112	New s.101A	Consequential. Dependent upon 50/110 and related amendments 44/110, 137/110, 45A/110 being agreed to.
112	CS	122/112	New s.101A	Consequential. Dependent upon amendment 104/110 (s.51EA) being agreed to. If not cannot be moved.
112	CS	123/112	New s.101A	Consequential. Dependent upon 104/110 (s.51EA) being agreed to.
112	RMc	11/112	New s.101A	
112	RMc	12/112	New s.101A	

112	CS	124/112	New s.101A	Consequential. Dependent upon 104/110 (s.51EA) being agreed to.
112	CS	125/112	New s.101A	Consequential. Dependent upon 104/110 (s.51EA) being agreed to.
112	Min	61/112	New s.101A	Consequential. Dependent upon 48/110 being agreed to (inserts new s.51E(9) to (12)).
112	MC	24/112	New s.101A	
116	Min	62/116	New Schedule 5 & 6	
116	Min	63/116	New Schedule 5 & 6	
116	CS	126/116	New Schedule 5 & 6	If 97/110 negated then redundant. Otherwise, postpone until deal with 129C/116. If 129C/116 negated then this amendment and 97/110 cannot be moved.
116	CS	127/116	New Schedule 5 & 6	If 97/110 negated then redundant. Otherwise, postpone until deal with 129/116. If 129/116 negated then this amendment and 97/110 cannot be moved.
116	Min	64/116	New Schedule 5 & 6	
116	CS	138/116	New Schedule 5 & 6	
116	CS	129/116	New Schedule 5 & 6	If 97/110 negated then redundant. If 97/110 postponed then if negated cannot move 127/116 or 97/110.
116	CS	129A/116	New Schedule 5 & 6	Formatting. Dependent upon 129/116 being agreed to.
116	CS	139/116	New Schedule 5 & 6	If 97/110 negated then redundant. If 97/110 postponed then if negated cannot move 126/116 or 97/110. The section referred to in the proposed amendment should be s.51B(1) only and not s.51(1)(b). Para (b) does not refer to ecologically significant communities. This is para (c) and (d).
116	CS	129C/116	New Schedule 5 & 6	If 97/110 negated then redundant. If 97/110 postponed then if negated cannot move 129C/116 or 97/110.
116	Min	65/116	New Schedule 5 & 6	
116	Min	66/116	New Schedule 5 & 6	
116	Min	67/116	New Schedule 5 & 6	
116	Min	68/116	New Schedule 5 & 6	
116	Min	69/116	New Schedule 5 & 6	Consequential. Dependent upon 67/110 being agreed to (deleting item

				10 of Schedule 6).
118	Min	70/118	Amendments to <i>Soil and Land Conservation Regulations 1992</i>	Consequential. Dependent upon transitional provisions in Cl. 119 being agreed to (and the removal from Schedule 6 – item 10 of the exception granted to notices of intention to clear – 67/116). Postpone to deal with Cl. 119 assuming 67/116 agreed to.
118	Min	71/118	Amendments to <i>Soil and Land Conservation Regulations 1992</i>	Consequential. Dependent upon transitional provisions in Cl. 119 being agreed to (and the removal from Schedule 6 – item 10 of the exception granted to notices of intention to clear – 67/116). Postpone consideration to deal with Cl. 119 assuming 67/116 agreed to.
119	Min	72/119	Transitional Provisions of Bill	Consequential. Dependent upon 67/116 being agreed to.
119	Min	73/119	Transitional Provisions of Bill	Consequential. Dependent upon 67/116 being agreed to.
119	Min	74/119	Transitional Provisions of Bill	Consequential. Dependent upon 67/116 being agreed to.
119	CS	130/119	Transitional Provisions of Bill	Consequential. Dependent upon 104/110 (s.51EA) and 99/110 (new 51E) being agreed to.
119	CS	131/119	Transitional Provisions of Bill	Consequential. Dependent upon 104/110 (s.51EA) and 99/110 (new 51E) being agreed to.
121	RMc	13/121	New s.4A	
122	Min	75/122	s.16	
130	RMc	14/130	s.114A	
130	MC	25/130	s.114A	Consequential. Dependent upon MC (No Ref(1)) being agreed to. Cannot be moved if 14/130 agreed to.
130	Min	25/130	s.114A	
130	MC	No Ref(1)	s.114A	Cannot be moved as 14/130 (earlier in time) takes priority. If 14/130 negatived then still cannot be moved because seeking to delete words that would have already been agreed to. Will require recommitment.
131	MC	140/131	s.118	
133	MC	27/133	s.123(1)	
New Clauses				
120	Min	77/NC120	Wildlife and Conservation Act 1950, ss.	

			16 & 23D	
122/123	Min	78/NC122	s.5 & s.12	
122/123	CS	132/NC122	New s.120A & s.48H	
126	Min	79/NC126	s.99A	
133	MC	28/NC133	New s.122AA	
Schedule				
Schedule 1	MC	No Ref(2)	Schedule 1	

APPENDIX 3
SUPPLEMENTARY NOTICE PAPER No. 131, ISSUE No. 5

APPENDIX 3

SUPPLEMENTARY NOTICE PAPER NO. 131, ISSUE NO. 5

Supplementary Notice Paper No. 131, Issue No. 5

NOTE: AMENDMENT REFERENCE NUMBERS IN SUPPLEMENTARY NOTICE PAPERS

The numbers shown in the left hand side of the margin in a Supplementary Notice Paper indicate the amendment number and the subject clause number.

ie. 4/2. The '4' indicates it was the fourth amendment received and the '2' indicates the clause of the Bill that it seeks to amend - in this case Clause 2.

Other information

- Amendments are placed on the Supplementary Notice Paper in order of receipt of signed amendments.
- If an amendment, on an already published Supplementary Notice Paper is altered, it will receive a new number to indicate that it is a new/revised amendment.

WESTERN AUSTRALIA

LEGISLATIVE COUNCIL

AMENDMENTS AND SCHEDULES

Supplementary Notice Paper No. 131
Issue No. 5

FRIDAY, APRIL 11 2003

ENVIRONMENTAL PROTECTION AMENDMENT BILL 2002 [131-2]

When in committee on the *Environmental Protection Amendment Bill 2002*:

Clause 2

Hon Murray Criddle: To move -

15/2 Page 2, after line 15 - To insert -

“

- (4) No days may be fixed under subsection (1) or (2) for the Act or any provision in this Act until Codes of Practice as referred to in section 122A have been developed.

”

Clause 6

Hon Christine Sharp: To move -

80/6 Page 5, lines 7 to 9 - To delete the lines.

Hon Robin Chapple: To move -

133/6 Page 5, lines 10 and 11 - To delete the lines.

Clause 7

Hon Christine Sharp: To move -

81/7 Page 8, lines 4 to 28 - To delete the lines.

Hon Christine Sharp: To move -

82/7 Page 9, line 5 - To delete the line.

Clause 9**Hon Christine Sharp:** To move -**134/9** Page 13, after line 6 - To insert -

“

(3) After section 40(3) the following subsection is inserted —

“

- (3a) Subject to any direction made under section 43, and without limiting the generality of subsection (3), the Authority may suspend for a reasonable period any environmental review required to be undertaken under subsection (2)(b) (in this subsection called “the particular review”) if —
 - (a) the proponent involved with the particular review agrees with the suspension;
 - (b) the Authority, or a decision-making authority, is in the process of developing a policy that may be relevant to the particular review;
 - (c) the assessment of a strategic proposal which relates to the same land or waters as the particular review has not yet been completed, and the outcome of that assessment may be relevant to the particular review; or
 - (d) the assessment of any other proposal (which may, if implemented together with the proposal the subject of the particular review, have a significant cumulative impact on the environment) has not yet been completed, and the particular review would be more effectively undertaken after that other proposal has been assessed.

”.

”.

Hon Murray Criddle: To move -**16/9** Page 14, after line 5 - To insert -

“

- (10) Subject to any direction made under section 43, the Authority will complete its assessment of a proposal as soon as is practicable, but not later than 120 days after the notices are given under section 39A(3).

”.

Clause 10**The Minister for Housing and Works:** To move -**30/10** Page 14, line 11 - To delete “suspend or”.**The Minister for Housing and Works:** To move -**31/10** Page 14, line 13 - To delete “suspension or”.**The Minister for Housing and Works:** To move -**32/10** Page 14, lines 25 to 27 - To delete the lines.

Clause 12

The Minister for Housing and Works: To move -

33/12 Page 16, lines 28 and 29 - To delete the lines.

Clause 15

Hon Christine Sharp: To move -

84/15 Page 18, lines 25 to 27 - To delete the lines.

Clause 20

Hon Christine Sharp: To move -

85/20 Page 28, after line 13 - To insert -

“

(b) is to advertise that non-compliance in the prescribed manner; and

”.

Hon Christine Sharp: To move -

86/20 Page 29, line 5 - To delete “(1a)(b)” and insert instead -

“ (1a)(c) ”.

Clause 21

The Minister for Housing and Works: To move -

34/21 Page 29, line 13 - To delete “(2c)” and insert instead -

“ (3a) ”.

Clause 23

Hon Christine Sharp: To move -

87/23 Page 29, lines 25 to 28 - To delete the lines.

Clause 29

The Minister for Housing and Works: To move -

35/29 Page 36, line 11 - To insert before “but” -

“

and includes dead vegetation unless that dead vegetation is of a class
declared by regulation to be excluded from this definition

”.

Hon Murray Criddle: To move -

17/29 Page 38, lines 2 and 3 - To delete “or potential detriment or degradation”.

Hon Murray Criddle: To move -

18/29 Page 38, lines 5 and 6 - To delete “or potential detriment of an environmental value”.

Hon Peter Foss: To move -

1/29 Page 38, after line 8 - To insert -

“ except where it occurs pursuant to lawful authority ”.

Hon Murray Criddle: To move -

19/29 Page 38, line 12 - To delete “or potential”.

Hon Murray Criddle: To move -

20/29 Page 38, line 22 - To delete “or potential”.

Hon Murray Criddle: To move -

21/29 Page 38, lines 29 and 30 - To delete “to prevent, control or abate the environmental harm and”.

Hon Peter Foss: To move -

2/29 Page 39, after line 2 - To insert -

“

an event occurs “**pursuant to lawful authority**” where it occurs —

- (a) in the implementation of a proposal in accordance with an implementation agreement or decision;
- (b) in accordance with —
 - (i) a prescribed standard;
 - (ii) a clearing permit;
 - (iii) a works approval;
 - (iv) a licence;
 - (v) a requirement contained in a closure notice, an environmental protection notice, a vegetation conservation notice or a prevention notice;
 - (vi) an approved policy;
 - (vii) a declaration under section 6;
 - (viii) an exemption under section 75; or
 - (ix) a licence, permit, approval or exemption granted, issued or given under the regulations; or
- (c) in the exercise of any power conferred under this Act;
- (d) as a result of an authorised act which did not contravene any other written law;

“**authorised act**” for the purpose of paragraph (d) of the definition of “**pursuant to lawful authority**” means —

- (a) done in accordance with an authorisation, approval, requirement or exemption given in the exercise of a power under another written law;
- (b) done in the exercise by a public authority, or a member, officer or employee of a public authority, of a function conferred under another written law;
- (c) done as an agricultural practice within the meaning of the *Agricultural Practices (Disputes) Act 1995* in respect of which an order has been made under section 12 of that Act and —

- (i) in accordance with the order as to the carrying out or management of that agricultural practice; or
 - (ii) in the carrying out or management of a normal farm practice, as specified in the order;
 - (d) done —
 - (i) as an agricultural practice within the meaning of the *Agricultural Practices (Disputes) Act 1995*; or
 - (ii) in the management or harvesting of a plantation, and in compliance with a code of practice relating to an act of that kind issued under section 122A or made or approved under any other written law;
 - (e) an act —
 - (i) in respect of which notice of intention was given under the *Soil and Land Conservation Regulations 1992* at least 90 days before the act was carried out;
 - (ii) which is carried out not more than 2 years after the giving of the notice of intention;
 - (iii) which was not referred to the Authority as a proposal under Part IV, or was so referred and not accepted by the Authority; and
 - (iv) in respect of which a soil conservation notice, within the meaning of section 31 of the *Soil and Land Conservation Act 1945*, has not been served,
 and done in the absence of a soil conservation notice;
 - (f) without limiting section 74A and paragraphs (a) to (e) of this subsection, an act of a kind set out in Schedule 6; or
 - (g) an act of a kind prescribed for the purposes of section 51C that was not done in an environmentally sensitive area within the meaning of section 51A.
- (4) In subsection (5) —
- “commencement day”** means the day on which section 110 comes into operation;
- “regulation 4 notice”** means a notice of intention under regulation 4 of the *Soil and Land Conservation Regulations 1992*.
- (5) For the purpose of subsection (2) the definition of **“authorised act”** does not apply to a regulation 4 notice given less than 90 days before the commencement day.

Clause 55

Hon Peter Foss: To move -

3/55 Page 59, line 11 - To insert before “It” -

“

- (1) Despite the exception of an act being pursuant to lawful authority provided in the definition of **“environmental harm”** in Section 3A, in any prosecution for causing serious environmental harm or material environmental harm, it shall be sufficient for the prosecution to aver in the complaint that the environmental harm occurred without lawful authority for the lack of lawful authority, in the absence of evidence to the contrary, to be proved; unless at least 30 days before the day set for

the hearing of the prosecution the defendant gives notice to the prosecution in writing giving full particulars of the lawful authority upon which the defendant intends to rely. In such case, all other forms of lawful authority are deemed to have been admitted by the defendant not to apply and the proof of lack of the particular lawful authority of which notice has been given shall lie on the prosecution.

- (2) Without limiting the effect of subsection (1)

”.

Hon Peter Foss: To move -

4/55 Page 59, line 17 to page 60, line 7 - To delete the lines and insert instead -

“

pursuant to lawful authority other than as described in paragraph (d) of the definition of “**pursuant to lawful authority**”

”.

Hon Peter Foss: To move -

5/55 Page 60, line 9 - To insert before “It” -

“

- (1) Despite the exception of the act being pursuant to lawful authority provided in the definition of “**environmental harm**” in Section 3A, in any prosecution for causing serious environmental harm or material environmental harm, it shall be sufficient for the prosecution to aver in the complaint that the environmental harm occurred without lawful authority for the lack of lawful authority, in the absence of evidence to the contrary, to be proved; unless at least 30 days before the day set for the hearing of the prosecution the defendant gives notice to the prosecution in writing giving full particulars of the lawful authority upon which the defendant intends to rely. In such case, all other forms of lawful authority are deemed to have been admitted by the defendant not to apply and the proof of lack of the particular lawful authority of which notice has been given shall lie on the prosecution.

- (2) Without limiting the effect of subsection (1)

”.

Hon Christine Sharp: To move -

88/55 Page 60, lines 9 to 14 - To delete the lines and insert instead -

“

- (1) It is a defence to proceedings under this Part for causing serious environmental harm or material environmental harm if the person charged with that offence proves that the environmental harm was an unavoidable consequence of an authorised act which did not contravene any other written law.

”.

Hon Peter Foss: To move -

6/55 Page 60, line 12 to page 62, line 16 - To delete all words after “harm” and insert instead -

“

was pursuant to lawful authority or resulted from an act carried out pursuant to lawful authority

”.

The Minister for Housing and Works: To move -

36/55 Page 61, lines 13 to 30 - To delete the lines.

The Minister for Housing and Works: To move -

37/55 Page 61, line 32 - To delete “an act” and insert instead -
“ clearing ”.

The Minister for Housing and Works: To move -

38/55 Page 62, lines 6 to 16 - To delete the lines.

Clause 65

The Minister for Housing and Works: To move -

39/65 Page 66, line 8 - To insert after “CEO” -

“ , on the recommendation of the Authority, ”

Clause 72

The Minister for Housing and Works: To move -

40/72 Page 73, after line 8 - To insert -

“
(2) After section 54(2) the following subsection is inserted —

“
(2a) As well as seeking comments under subsection (2)(b) the CEO is to
advertise the application in the prescribed manner, inviting any person
who wishes to comment on it to do so within such period as is specified
in the advertisement.

”
”.

The Minister for Housing and Works: To move -

41/72 Page 73, after line 11 - To insert -

“
(3) Section 54(3) is amended by inserting after “(2)(b)” —
“ or (2a) ”.

”.

Clause 73

Hon Christine Sharp: To move -

89/73 Page 74, after line 8 - To insert -

“
(2) After section 55(3) the following subsection is inserted —

“

- (4) If the CEO is of the opinion that an offence has been committed under subsection (1), the CEO must advertise that alleged offence in the prescribed manner.

”

”

Clause 75

The Minister for Housing and Works: To move -

135/75 Page 74, after line 29 - To insert -

“

- (3) After section 57(2) the following subsection is inserted —

“

- (2a) As well as seeking comments under subsection (2)(b) the CEO is to advertise the application in the prescribed manner, inviting any person who wishes to comment on it to do so within such period as is specified in the advertisement.

”

- (4) Section 57(3) is amended by inserting after “(2)(b)” —

“ or (2a) ”.

”

Clause 76

Hon Christine Sharp: To move -

136/76 Page 75, after line 27 - To insert -

“

- (2) After section 58(4) the following subsection is inserted —

“

- (5) If the CEO is of the opinion that an offence has been committed under subsections (1) or (2), the CEO must advertise that alleged offence in the prescribed manner.

”

”

Clause 100

Hon Murray Criddle: To move -

22/100 Page 107, after line 22 - To insert -

“

- (5) Appeals lodged under this Part shall be determined within a period of 60 days of lodgement, or as specified by the Minister.

”

Clause 110

Hon Christine Sharp: To move -

91/110 Page 116, line 27 - To delete “51E(7)” and insert instead -
“ 51E(1) ”.

Hon Christine Sharp: To move -

92/110 Page 117, line 7 - To delete “some or all of the”.

Hon Christine Sharp: To move -

93/110 Page 117, line 14 - To delete “some or all of the”.

Hon Christine Sharp: To move -

94/110 Page 117, line 19 - To insert after “51B” -
“ (1)(a) ”.

Hon Christine Sharp: To move -

95/110 Page 117, line 21 - To delete “51E(8)” and insert instead -
“ 51E(1) ”.

Hon Christine Sharp: To move -

97/110 Page 118, after line 23 - To insert -

- “
- (c) an ecological community specified in the notice; or
 - (d) an ecological community of a class specified in the notice,
to be an ecologically significant community for the purposes of Schedule 5; or
 - (e) flora specified in the notice; or
 - (f) flora of a class specified in the notice,
to be ecologically significant flora for the purposes of Schedule 5.
- ”.

Hon Christine Sharp: To move -

98/110 Page 119, after line 17 - To insert -

- “
- (2) If the CEO is of the opinion that an offence has been committed under subsection (1), the CEO must advertise that alleged offence in the prescribed manner.
- ”.

The Minister for Housing and Works: To move -

43/110 Page 119, lines 24 to 26 - To delete the lines.

Hon Christine Sharp: To move -

99/110 Page 120, line 19 to page 121, line 15 - To delete the lines and insert instead -

“

51E. Applications for clearing permits relating to a particular area

- (1) An application for a clearing permit relating to a particular area, which is referred to in this Division as an **“area permit”**, shall —
 - (a) be made in the form and in the manner approved by the CEO;
 - (b) indicate the particular area to which the application relates;
 - (c) be accompanied by the fee prescribed by or determined under the regulations; and
 - (d) be supported by any management plans, maps, and other documents and information required by the CEO and include a summary of that supporting documentation and information.
- (2) An application for an area permit, or the transfer of an area permit, can only be made by the owner of the land on which the clearing is proposed to be done or a person acting on the owner’s behalf.

”.

Hon Robyn McSweeney: To move -

7/110 Page 121, line 4 - To insert after “information” -

“ reasonably ”.

The Minister for Housing and Works: To move -

44/110 Page 121, lines 7 and 8 - To delete “, or for the transfer of a clearing permit,”

The Minister for Housing and Works: To move -

137/110 Page 121, line 10 - To insert after “(1)(b)(i)” -

“ (i) ”.

The Minister for Housing and Works: To move -

45A/110 Page 121, after line 12 - To insert -

“

- (ii) by a person who satisfies the CEO that the person is likely to become the owner of the land on which the clearing is proposed to be done;

or

”.

Hon Murray Criddle: To move -

23/110 Page 121, after line 28 - To insert -

“

- (c) undertake an assessment of the application and advise the proponent of his intended decision within 90 days of having received the application, or if the assessment is likely to take

longer than 90 days, another such timeframe as agreed by the proponent and the CEO.

”.

The Minister for Housing and Works: To move -

46/110 Page 121, after line 28 - To insert -

“

- (c) advertise the application in the prescribed manner, inviting any person who wishes to comment on it to do so within such period as is specified in the advertisement.

”.

The Minister for Housing and Works: To move -

47/110 Page 122, line 1 - To insert after “(4)(b)” -

“ or (c) ”.

Hon Christine Sharp: To move -

100/110 Page 122, line 3 - To delete “a clearing” and insert instead -

“ an area ”.

Hon Christine Sharp: To move -

101/110 Page 122, line 6 - To delete “a clearing” and insert instead -

“ an area ”.

Hon Christine Sharp: To move -

102/110 Page 122, line 8 - To delete “a clearing” and insert instead -

“ an area ”.

Hon Christine Sharp: To move -

103/110 Page 122, lines 9 to 26 - To delete the lines and insert instead -

“

- (7) An area permit may be granted under subsection (5) for all or some of the clearing applied for, and must describe the boundaries of the area that may be cleared.

”.

Hon Robyn McSweeney: To move -

8/110 Page 122, after line 26 - To insert -

“

- (9) Where an application made under section 51E pursuant to subsection 5(b), the land to which the refusal applies shall be taken as for a public work under Part 9 of the *Land Administration Act 1997*, and the provisions of that Act shall apply accordingly, and the land so taken shall be a nature reserve under the *Conservation and Land Management Act 1984*.

”.

The Minister for Housing and Works: To move -

48/110 Page 122, after line 26 - To insert -

- “
- (9) In the case of an application made under subsection (2)(a)(ii), the CEO may, under subsection (5)(a), give the applicant a written undertaking that if the person becomes the owner of the land on which the clearing is proposed to be done, the CEO will, subject to subsection (10), grant a clearing permit to the applicant subject to such of the conditions referred to in section 51H as the CEO specifies in the undertaking.
 - (10) A clearing permit cannot be granted pursuant to an undertaking mentioned in subsection (9) unless —
 - (a) the applicant becomes the owner of the land on or before such day as is specified in the undertaking; and
 - (b) the CEO has been notified in writing that the applicant has become the owner of the land.
 - (11) A reference in subsection (5)(b), (6) or (7)(a) or in section 51P(2) or 101A to granting or refusing to grant a clearing permit includes a reference to giving or refusing to give an undertaking mentioned in subsection (9).
 - (12) A reference in section 101A to the specification of a condition in a clearing permit includes a reference to the specification of a condition in an undertaking mentioned in subsection (9).
- ”.

Hon Christine Sharp: To move -

104/110 Page 122, after line 26 - To insert -

“

51EA. Applications for clearing permits for a particular purpose

- (1) An application for a clearing permit for a particular purpose or particular purposes, and relating to different areas, which is referred to in this Division as a “**purpose permit**”, shall —
 - (a) be made in the form and in the manner approved by the CEO;
 - (b) specify the particular purpose or particular purposes for which the permit is sought;
 - (c) be accompanied by the fee prescribed by or determined under the regulations;
 - (d) be accompanied by an appropriately detailed vegetation management plan;
 - (e) be accompanied by appropriately detailed strategies and procedures designed to identify and protect —
 - (i) areas of conservation or scenic value;
 - (ii) flora the subject of a declaration under section 51B; or
 - (iii) ecological communities the subject of a declaration under section 51B; and
 - (f) be supported by any other documents and information required by the CEO and include a summary of that supporting documentation and information.

- (2) An application for a purpose permit, or the transfer of a purpose permit, can only be made by the person by or on whose behalf the clearing is proposed to be done.
- (3) If an application made under subsection (1) does not comply with subsections (1) and (2), the CEO shall decline to deal with the application and advise the applicant accordingly.
- (4) If the application complies with subsections (1) and (2), the CEO shall —
 - (a) advise the applicant that the application has been received;
 - (b) invite any public authority or person which or who has, in the opinion of the CEO, a direct interest in the subject matter of the application, to comment on it within 28 days or such period as the CEO specifies; and
 - (c) advertise the application in the prescribed manner, inviting any person who wishes to comment on it to do so within the prescribed period.
- (5) The CEO shall, after having taken into account any comments received within the specified period from any public authority or person from which or whom comments were invited under subsection (4)(b) or (4)(c), and subject to sections 51O and 51P
 - (a) grant a purpose permit subject to such of the conditions referred to in section 51H as the CEO specifies in the permit; or
 - (b) refuse to grant a purpose permit.
- (6) The CEO is to give the applicant written notice of the refusal to grant a purpose permit.
- (7) A purpose permit is to —
 - (a) specify the particular purpose or particular purposes for which the permit is sought;
 - (b) specify the period for which the permit is to operate;
 - (c) specify the total area of land within which clearing the subject of the permit is allowable;
 - (d) specify the maximum amount of native vegetation that may be cleared under the permit;
 - (e) describe the principles and criteria that are to be applied in relation to the clearing; and
 - (f) describe the strategies and procedures that are to be followed in relation to the clearing including the application of the principle of waste minimisation where appropriate.

”.

Hon Christine Sharp: To move -

105/110 Page 122, line 28 - To insert after “under” -

“ either ”.

Hon Christine Sharp: To move -

106/110 Page 122, line 29 - To insert after “51E(1)” -

“ or section 51EA(1) ”

Hon Christine Sharp: To move -

107/110 Page 123, line 1 - To insert after “by” -

“ either ”.

Hon Christine Sharp: To move -

108/110 Page 123, line 2 - To insert after “51E(5)” -

“ or section 51EA(5) ”

109/110 Page 123, line 12 - To insert after “under” -

“ either ”.

Hon Christine Sharp: To move -

110/110 Page 123, line 12 - To insert after “51E(1)” -

“ or section 51EA(1) ”

111/110 Page 123, line 13 - To insert after “under” -

“ either ”.

Hon Christine Sharp: To move -

112/110 Page 123, line 14 - To insert after “51E(5)” -

“ or section 51EA(5) ”

Hon Christine Sharp: To move -

113/110 Page 123, line 19 - To delete “5 years” and insert instead -

“ one year ”.

Hon Robyn McSweeney: To move -

9/110 Page 124, line 22 - To insert after “or” -

“ by mutual agreement between the CEO and the holder of a clearing permit ”.

Hon Christine Sharp: To move -

114/110 Page 126, after line 13 - To insert -

“

- (3) If the CEO is of the opinion that an offence has been committed under subsection (1), the CEO must advertise that alleged offence in the prescribed manner.

”.

The Minister for Housing and Works: To move -

49/110 Page 127, after line 23 - To insert -

“

- (b) where a person has become the holder of the clearing permit by operation of section 51N, the CEO is satisfied that the person is unwilling or unable to comply with the conditions to which the permit is subject;

”.

Hon Robyn McSweeney: To move -

10/110 Page 128, line 20 - To delete “21” and insert instead -

“ 28 ”.

The Minister for Housing and Works: To move -

50/110 Page 130, lines 10 to 31 - To delete the lines and insert instead -

“

51N. Continuation of area permit on change of ownership

- (1) If an area permit is held by the owner of the land to which the permit relates and the interest by reason of which that person is the owner (the “**interest**”) is or is to be transferred, or passes or is to pass, to another person (the “**new owner**”), the new owner may, in the form and in the manner approved by the CEO, notify the CEO —

- (a) that the transfer or passing of the interest has occurred or is to occur; and
- (b) that the new owner wishes to become the holder of the permit.

- (2) If notification is given to the CEO under subsection (1) then —

- (a) on the transfer or passing of the interest; or
- (b) on the receipt of the notification by the CEO,

whichever is later, the new owner becomes the holder of the area permit by operation of this section on the conditions to which the permit is subject.

- (3) If when the interest is transferred or passes the CEO has not received notification under subsection (1), the area permit has no further effect unless and until such notification is received.

”.

Hon Christine Sharp: To move -

115/110 Page 130, line 24 - To insert after “and” -

“ either ”.

Hon Christine Sharp: To move -

116/110 Page 130, line 24 - To insert after “51E(2)” -

“ or 51EA(2) ”.

The Minister for Housing and Works: To move -

51/110 Page 131, lines 7 and 8 - To delete the lines.

The Minister for Housing and Works: To move -

52/110 Page 131, line 27 - To delete “relevant planning instrument” and insert instead -

“ planning instrument, or other matter, that the CEO considers relevant ”.

The Minister for Housing and Works: To move -

53/110 Page 132, lines 6 and 7 - To delete the lines.

The Minister for Housing and Works: To move -

54/110 Page 132, line 9 - To delete “or transfer”.

The Minister for Housing and Works: To move -

55/110 Page 132, lines 11 and 12 - To delete “or transfer”.

The Minister for Housing and Works: To move -

56/110 Page 133, line 6 - To insert after “permits” -

“ and undertakings mentioned in section 51E(9) ”.

The Minister for Housing and Works: To move -

57/110 Page 133, line 7 - To delete “transfers of clearing permits” and insert instead -

“ notifications received under section 51N(1) ”.

Hon Christine Sharp: To move -

117/110 Page 136, line 1 - To delete the line and insert instead -

“
(3) Any person may apply for a clearing injunction.

”.

The Minister for Housing and Works: To move -

58/110 Page 137, after line 4 - To insert -

“
(2) In subsections (3) and (4) —
“**commencement day**” means the day on which section 110 comes into operation;
“**EP Act**” means the *Environmental Protection Act 1986* as amended by this Act.
(3) Despite section 51B of the EP Act, the Governor may make regulations declaring —
(a) an area of the State specified in the notice; or
(b) an area of the State of a class specified in the notice,
to be an environmentally sensitive area for the purposes of Part V Division 2 of the EP Act.
(4) Regulations under subsection (2) —
(a) cannot be made after the expiration of the period of 3 months after the commencement day; and
(b) expire on the expiration of the period of 9 months after the commencement day.

”.

Clause 112

Hon Christine Sharp: To move -

118/112 Page 141, line 22 - To insert after “under” -

“ either ”.

Hon Christine Sharp: To move -

119/112 Page 141, line 23 - To insert after “51E(5)” -
“ or section 51EA(5) ”.

Hon Christine Sharp: To move -

120/112 Page 141, line 24 - To insert after “under” -
“ either ”.

Hon Christine Sharp: To move -

121/112 Page 141, line 24 - To insert after “51E(5)” -
“ or section 51EA(5) ”.

The Minister for Housing and Works: To move -

59/112 Page 141, lines 26 to 28 - To delete the lines.

The Minister for Housing and Works: To move -

60/112 Page 141, line 29 - To delete “or transfer of a clearing permit”.

Hon Christine Sharp: To move -

122/112 Page 142, line 1 - To insert after “under” -
“ either ”.

Hon Christine Sharp: To move -

123/112 Page 142, line 2 - To insert after “51E(5)” -
“ or section 51EA(5) ”.

Hon Robyn McSweeney: To move -

11/112 Page 142, line 3 - To delete “21” and insert instead -
“ 28 ”.

Hon Robyn McSweeney: To move -

12/112 Page 142, line 10 - To delete “21” and insert instead -
“ 28 ”.

Hon Christine Sharp: To move -

124/112 Page 142, line 27 - To insert after “under” -
“ either ”.

Hon Christine Sharp: To move -

125/112 Page 142, line 27 - To insert after “51E(5)” -
“ or section 51EA(5) ”.

The Minister for Housing and Works: To move -

61/112 Page 142, after line 29 - To insert -

- “
- (5) Subsections (1)(a)(ii) and (b), (3)(a) and (4) do not apply in relation to the grant of a permit pursuant to an undertaking mentioned in section 51E(9).

”.

Hon Murray Criddle: To move -

24/112 Page 143, after line 14 - To insert -

- “
- (9) Appeals lodged under section 101A(1), (2), (3) and (4) will be determined within a maximum time frame of 60 days, or as specified by the Minister.

”.

Clause 116

The Minister for Housing and Works: To move -

62/116 Page 145, line 9 - To insert before “diversity” -

“ biological ”.

The Minister for Housing and Works: To move -

63/116 Page 145, lines 9 and 10 - To delete “of plant species”.

Hon Christine Sharp: To move -

126/116 Page 145, line 15 - To delete “rare” and insert instead -

“ ecologically significant ”.

Hon Christine Sharp: To move -

127/116 Page 145, line 17 - To delete “threatened” and insert instead -

“ ecologically significant ”.

The Minister for Housing and Works: To move -

64/116 Page 145, line 28 - To insert before “conservation” -

“ adjacent or nearby ”.

Hon Christine Sharp: To move -

138/116 Page 146, line 8 - To insert after “1984” -

“

or any other land or waters reserved, protected or managed for the purpose of, or purposes including, nature conservation

”.

Hon Christine Sharp: To move -

129/116 Page 146, line 11 - To delete “threatened ecological” and insert instead -

“ ecologically significant ”.

Hon Christine Sharp: To move -

129A/116 Page 146, line 11 - To insert after “means” -

“

(a)

”.

Hon Christine Sharp: To move -

139/116 Page 146, after line 14 - To insert -

“

or

(b) an ecological community that is the subject of a declaration that is in force under section 51B(1)(b);

”.

Hon Christine Sharp: To move -

129C/116 Page 146, after line 14 - To insert -

“

“ecologically significant flora” means —

- (a) rare flora as defined in section 23F of the *Wildlife Conservation Act 1950*;
- or
- (b) flora that is the subject of a declaration that is in force under section 51B(1)(c);

”.

The Minister for Housing and Works: To move -

65/116 Page 146, line 15 - To delete “and “wetland” have the same meanings as they have” and insert instead -

“ has the same meaning as it has ”.

The Minister for Housing and Works: To move -

66/116 Page 146, after line 17 - To insert -

“

“wetland” means an area of seasonally, intermittently or permanently waterlogged or inundated land, whether natural or otherwise, and includes a lake, swamp, marsh, spring, dampland, impoundment, tidal flat or estuary.

”.

The Minister for Housing and Works: To move -

67/116 Page 148, lines 21 to 33 - To delete the lines.

The Minister for Housing and Works: To move -

68/116 Page 149, line 7 - To delete “24, 24A”.

The Minister for Housing and Works: To move -

69/116 Page 149, line 31 to page 150, line 8 - To delete the lines.

Clause 118**The Minister for Housing and Works:** To move -

70/118 Page 150, after line 20 - To insert -

- “
- (2) Regulation 2 is amended by deleting the definition of “to clear”.
- ”.

The Minister for Housing and Works: To move -

71/118 Page 150, after line 21 - To insert -

- “
- (4) Schedule 2 Form 1 is deleted.
- (5) Schedule 3 is deleted.
- ”.

Clause 119**The Minister for Housing and Works:** To move -

72/119 Page 150, line 23 - To delete “subsections (2) and (3)” and insert instead -

“ this section ”.

The Minister for Housing and Works: To move -

73/119 Page 150, after line 23 - To insert -

- “
- “Authority” has the same meaning as it has in the EP Act;
- ”.

The Minister for Housing and Works: To move -

74/119 Page 151, after line 3 - To insert -

- “
- (2) This subsection applies to clearing if —
- (a) a regulation 4 notice relating to the clearing was given not less than 90 days before the commencement day;
- (b) the clearing was or is commenced not more than 2 years after the giving of the notice and is completed not more than 2 years after the commencement day;
- (c) the clearing was not referred to the Authority as a proposal under Part IV of the EP Act, or was so referred and not accepted by the Authority; and
- (d) a soil conservation notice, within the meaning of section 31 of the *Soil and Land Conservation Act 1945*, has not been served in respect of the clearing.
- (3) For the purposes of sections 51C and 74B of the EP Act, clearing to which subsection (2) applies is to be regarded as being clearing of a kind set out in Schedule 6 to the EP Act.
- ”.

Hon Christine Sharp: To move -

130/119 Page 151, line 7 - To delete “section” and insert instead -

“ either sections ”.

Hon Christine Sharp: To move -

131/119 Page 151, line 7 - To insert after “51E(1) and (2)” -

“ or sections 51EA(1) and (2) ”.

Clause 121

Hon Robyn McSweeney: To move -

13/121 Page 152, lines 11 to 17 - To delete the clause.

Clause 122

The Minister for Housing and Works: To move -

75/122 Page 154, line 5 - To insert after “regulations” -

“ when requested by the Minister to do so or on its own initiative ”.

Clause 130

Hon Robyn McSweeney: To move -

14/130 Page 158, line 25 - To delete “at any time” and insert instead -

“ within 5 years of the time when the matter of complaint arose ”.

Hon Murray Criddle: To move -

25/130 Page 158, line 27 - To delete “other”.

The Minister for Housing and Works: To move -

76/130 Page 159, lines 1 to 9 - To delete the lines and insert instead -

“

- (3) Despite section 51 of the *Justices Act 1902* and subsection (2), if a complaint of an offence to which subsection (2) applies specifies the day on which evidence of the alleged offence first came to the attention of a person authorised to institute the prosecution under section 114 the complaint —

- (a) may be made within 24 months after that day; and
- (b) need not contain particulars of the day on which the offence is alleged to have been committed.

”.

Clause 131

Hon Murray Criddle: To move -

140/131 Page 159, line 15 to page 160, line 23 - To delete the clause.

Clause 133**Hon Murray Criddle:** To move -

27/133 Page 161, lines 11 to 13 - To delete the clause.

New Clause 120**The Minister for Housing and Works:** To move -

77/NC120 Page 151, after line 10 - To insert the following new Clause -

“

120. Wildlife Conservation Act 1950 sections 16 and 23D amended

- (1) The amendments in this section are to the *Wildlife Conservation Act 1950*.

[* Reprinted as at 20 November 1998.

For subsequent amendments see Act No. 6 of 2002.]

- (2) After section 16(1) the following subsection is inserted —

“

- (1a) In the case of fauna other than fauna in respect of which a declaration under section 14(2)(ba) is in operation, subsection (1) does not apply to the taking of fauna incidental to clearing referred to in section 51C(a), (b) or (c) of the *Environmental Protection Act 1986*.

”

- (3) Section 23D(5) is amended by deleting “subsection (6)” and inserting instead —

“ subsections (6) and (7) ”.

- (4) After section 23D(6) the following subsections are inserted —

“

- (7) In considering an application under subsection (3) the Minister shall have regard to the principles set out in Schedule 5 to the *Environmental Protection Act 1986* and shall not issue a licence if the taking of the protected flora to which the licence would relate would be seriously at variance with those principles.
- (8) Subsection (7) does not apply if the taking of the protected flora to which the licence would relate is authorised by a clearing permit granted and in force under Part V Division 2 of the *Environmental Protection Act 1986*.

”

”

New Clauses 122 and 123**The Minister for Housing and Works:** To move -

78/NC122 Page 153, after the Table - To insert the following new Clauses -

“

122. Section 5 amended

- (1) Section 5(1) is amended by deleting “(1) Subject to subsection (2), whenever” and inserting instead —

“ Whenever ”.

- (2) Section 5(2) and (3) are repealed.

123. Section 12 amended

- (1) Section 12(2) is repealed.
- (2) Section 12(3) is amended by deleting “that interest exists.” and inserting instead —
“ the Authority member has that interest. ”.
- (3) Section 12(4) is amended by deleting “and the Authority member may take part in the consideration or discussion of the matter, but shall not vote thereon”.
- (4) After section 12(4) the following subsection is inserted —
“
(5) If an Authority member discloses an interest in a matter under subsection (1) or is determined under subsection (3) to have an interest in a matter, the Authority member shall not —
(a) take part, as an Authority member, in the consideration or discussion of the matter; or
(b) vote on the matter.
”.

New Clauses 122 and 123

Hon Christine Sharp: To move -

132/NC122 Page 153, after the Table - To insert the following new Clauses -

“

122. Section 120A inserted

After section 120 the following section is inserted —

“

120A. Supply and ownership of environmental data or information

- (1) Subject to sections 39(3), 39(4) and 40(5), any environmental data or information submitted to the Authority, the Department or the CEO in relation to the requirements of this Act becomes the property of the Crown at the time it is so submitted.
- (2) The data or information referred to in subsection (1) shall be supplied to the Authority, the Department or the CEO in the prescribed form.
- (3) The data or information referred to in subsection (1) shall be collected and compiled by the proponent in the prescribed manner.

”.

123. Section 48H amended

After section 48H(2)(a) the following paragraph is inserted —

“

(b) is to advertise that non-compliance in the prescribed manner; and

”

”

New Clause 126

The Minister for Housing and Works: To move -

79/NC126 Page 155, after line 12 - To insert the following new Clause -

“

126. Section 99A amended

Section 99A(1)(b) is deleted.

”

New Clause 133

Hon Murray Criddle: To move -

28/NC133 Page 161, after line 10 - To insert the following new Clause -

“

133. Section 122AA inserted

After section 122A the following section is inserted —

“

122AA. Ministerial Guidelines

- (1) The Minister will by notice published in the *Gazette* make, amend, or revoke guidelines relating to the manner in which the CEO is to perform the CEO's functions under this Act.
- (2) The CEO is to have regard to the guidelines in the exercise of his or her functions under this Act.

”

”