**NATIVE VEGETATION (MISCELLANEOUS) AMENDMENT BILL 2002**

**Legislative Assembly, 30 May 2020, pages 402-4**

Second reading

**The Hon. I.F. EVANS (Davenport**) obtained leave and introduced a bill for an act to amend the Native Vegetation Act 1991 and to make a related amendment to the Development (System Improvement Program) Amendment Act 2000. Read a first time.

The Hon. I.F. EVANS: I move: That this bill be now read a second time.

Out of courtesy to other members I will be fairly brief, because there are a number of other items to be dealt with today, this being the first day for private members’ business. For the benefit of the new members, a form of this bill was introduced during the last parliament. It was the subject of extensive debate just prior to the last state election, and I refer members who are interested in following the debate and the issues to refer to the relevant Hansard, rather than tie up the time of the house with me repeating all those arguments here today.

This bill reflects the successful bill that was passed through the lower house during the last parliament. It adopts all the amendments that were successfully debated during that time and places them into the one consolidated bill. So, it reflects the position of the lower house during the last parliament with respect to the native vegetation issue.

The bill on which this bill was based and which was previously amended by the parliament went through some extensive consultation. I know that the Hon. John Hill (then in opposition) undertook extensive consultation with respect to a whole range of amendments that he moved. This bill is the finished product of that debate. Again, I refer those members who wish to follow the issues regarding this bill to the relevant Hansard, and they will get a very good understanding of the arguments for and against the various issues raised in the bill. I have no doubt that the government will have other amendments, because amendments moved by the then opposition were soundly defeated on the floor of the house. I assume that the government may well want to reintroduce some of those amendments during the debate on this bill, and we look forward to debating those matters in due course.

The main feature of the bill is the clarification that the act will limit broadacre clearance. While that has been the practice of the Native Vegetation Council for some time, the bill now certainly locks that in and clarifies it.

The bill contains a number of measures that seek significant biodiversity gain in return for clearance approval, and there are some improvements there that have been met with very good acceptance by the various community groups that were involved in the initial consultation.

The bill also encourages and provides voluntary protection for revegetation. This is particularly the case where landholders have revegetated land of their own choice and then seek to put that under the auspices of the Native Vegetation Act. They could not do that previously, and this allows them, by a voluntary decision of the land-holder, to place areas of revegetation under the auspices of the act. The bill also looks at cost recovery for data collection.

It also looks at introducing an appeals process for landowners with respect to administrative procedures. It does not involve a third party appeal—and I know that that will be of some interest to some members in the environment movement who seek to have third party appeals. That issue was fully debated in the last parliament. For those members who wish to follow that debate and gain a good understanding of the intricacies involved, I again refer them specifically to the previous Hansard, because I have no doubt that the government will move to allow a third party appeal mechanism when the bill is debated. It also improves enforcement capability and looks at the powers of the officers in trying to get the right balance. Importantly, it also introduces, in an Australian first, a system of environmental credits and there is a good explanation of the environmental credit system, which provides an incentive for land-holders to revegetate land with local indigenous plant species. To be entitled to an environmental credit the landholder must enter into a heritage agreement with the minister and, to ensure that revegetation is appropriate, the minister must have regard to the regional biodiversity plan or plans and any associated pre-European mapping, if any, that applied in the vicinity of the relevant land.

Money gained by the land-holder when selling a credit is paid into the fund and the Native Vegetation Council will retain a portion of the payment required to manage the heritage agreement land for a period of 20 years. Any surplus is returned to the heritage agreement owner. In this way the heritage agreement owner will be ensured of funds to manage the heritage agreement area and may also gain an additional payment to use as he or she likes. In any event, we think it is a positive incentive to revegetate land with the appropriate species. That is a new concept that was introduced in the last bill, which did not get through both houses because of the intervention of the state election and we now reintroduce it here.

For the interest of the member for Fisher, the native vegetation bill we are introducing today still holds true to the agreement we as the previous government made with him in relation to his previous amendments; so that might save him having to do any detailed reading on the matter. I guarantee to the member for Fisher that the agreement made when debating this bill prior to the election in regard to the amendments he wanted are in the bill as agreed at that time, indeed as are all the agreements we made with the then opposition and now government. It truly reflects the position as agreed by all parties in the lead up to the last state election.

I look forward to debate on the bill, which is an important piece of legislation. We would like the bill to be given some priority, if possible, through the private members’ time business because we think it is such an important piece of legislation and because so much work and debate has already been done on it. There would not seem to be a lot of new work that the new government would have to do, given that there was such an extensive debate last time. The now minister, John Hill, spent some considerable time preparing himself for the debate and consulting on the then opposition’s own ideas in regard to the bill. With those comments I seek leave to insert the explanation of the clauses into Hansard without my reading it. Leave granted.

Explanation of Clauses

*Clause 1: Short title*

This clause is formal.

*Clause 2: Commencement*

The measure will be brought into operation by proclamation.

*Clause 3: Amendment of s. 3-Interpretation*

This clause relates to the definitions that are relevant to the operation of the Act. ‘Land’ is to include land submerged by water. Various consequential changes are also made to the section.

*Clause 4: Insertion of s. 3A*

For the purposes of the Act, a stratum of native vegetation is to be taken to be substantially intact if, in the opinion of the Council, the stratum has not been seriously degraded by human activity during the preceding 20 years, disregarding human activity that has resulted in a fire. Clause 5: Amendment of s. 4-Application of Act It is necessary to revise the provisions relating to the area of the application of the Act, particularly in view of changes to councils, and changes to terminology under the Development Act 1993.

*Clause 6: Amendment of s. 6-Objects*

The objects are to be revised to an extent. Reference is to be made to the commonly held desire of landowners to preserve, enhance and manage native vegetation on their land, and to the need to prevent additional loss of the quality and quantity of native vegetation in the State.

*Clause 7: Amendment of s. 8-Membership of the Council*

The Council includes a person nominated by the LGA, who will be selected by the Minister from a panel of three persons who have been so nominated.

*Clause 8: Amendment of s. 14-Functions of the Council*

This clause makes an amendment to include reference to degraded vegetation.

*Clause 9: Amendment of s. 15-Delegation of powers and functions*

These amendments relate to delegations to a local council or council officers.

*Clause 10: Repeal of Division 2 of Part 3*

The provisions relating to conciliations under the Act are to be repealed.

*Clause 11: Amendment of s. 21-The Fund*

Exemplary damages awarded under other provisions of the Act are to be paid into the Fund. Money paid as a penalty or by way of exemplary damages under the Act is to be used (as far as practicable) to establish native vegetation on land within the vicinity of the relevant land, and to maintain that vegetation once it is established.

*Clause 12: Substitution of heading*

This amendment is consequential.

*Clause 13: Amendment of s. 23-Heritage agreements*

This amendment makes express provision as to the purposes for which a heritage agreement will be entered into.

*Clause 14: Repeal of s. 23C*

This is a consequential amendment.

*Clause 15: Insertion of Division 2 of Part 4*

Certain revegetation arrangements are to be recognised.

Clause 16: Insertion of heading

This amendment is consequential.

*Clause 17: Amendment of s. 24-Assistance to landowners*

An owner of land who proposes to undertake revegetation in accordance with an arrangement approved under new Division 2 of Part 4 will be able to apply to the Council for financial assistance.

*Clause 18: Amendment of s. 25-Guidelines for the application of assistance and the management of native vegetation*

Draft guidelines that relate to land within the catchment area of a catchment management board will be submitted to that board for comment. Specific power to vary or replace guidelines is to be vested in the Council.

*Clause 19: Insertion of Part 4A*

This clause establishes a scheme for environmental credits.

*Clause 20: Amendment of s. 26-Offence of clearing native vegetation contrary to this Part Penalty provisions under section 26 are to be revised so that the specific monetary penalty is $50 000.*

Civil proceedings will also follow if a conviction for an offence occurs (unless such proceedings have already been commenced).

*Clause 21: Amendment of s. 27-Clearance of native vegetation*

It will now be generally the case that the Council may not consent to the clearance of vegetation that comprises or forms part of a stratum of native vegetation that is substantially intact.

*Clause 22: Amendment of s. 28-Application for consent*

An application for consent under the Act will now need to include information that establishes that proposed planting will result in a significant environmental benefit, or information that establishes that it is not possible to achieve such a benefit (which may then be accompanied by a proposal to apply environmental credits). It will also be necessary to provide a report relating to the proposed clearance that has been prepared by a recognised body.

*Clause 23: Amendment of s. 29-Provisions relating to consent*

The scheme under section 29 must be revised.

*Clause 24: Substitution of s. 30*

Separate provision is to be made for conditions of consent. Various kinds of conditions may be considered.

*Clause 25: Substitution of s. 31*

The civil enforcement proceedings are to be revised. An application will now be made to the Environment, Resources and Development Court. Specific provision is made for certain orders and notices to be made or issued by the Court.

*Clause 26: Amendment of s. 32-Appeals*

These are consequential amendments.

*Clause 27: Amendment of s. 33-Commencement of proceedings*

The period for commencing enforcement proceedings is to be changed from 3 years to 4 years.

*Clause 28: Insertion of Division 3 of Part 5*

This clause makes specific provision for the appointment and powers of authorised officers.

*Clause 29: Insertion of Parts 5A and 5B*

Certain matters will be the subject of appeal rights to the Administrative and Disciplinary Division of the District Court. The appeal will be in the nature of a judicial review of an administrative decision.

*Clause 30: Insertion of s. 33J*

This provision is associated with the vesting of jurisdiction in the ERD Court.

*Clause 31: Amendment of s. 34-Evidentiary provisions etc.*

Certain facts determined by the use of devices are to be accepted as proved in the absence of proof to the contrary.

*Clause 32: Substitution of s. 36*

The repeal of section 36 is consequential. Costs and expenses incurred by the Council in taking action under the Act are to be assessed by reference to the reasonable costs and expenses of an independent contractor.

*Clause 33: Repeal of s. 37*

This is a consequential amendment.

*Clause 34: Amendment of s. 41-*

Regulations Certain fees may need to be prescribed by reference to the Minister’s estimate of the cost of the service that is provided.

*Clause 35: Amendment of Development (System Improvement Program) Amendment Act 2000*

The Development (System Improvement Program) Amendment Act 2000 contains provisions relating to the areas of the State to which the Native Vegetation Act 1991 applies. These provisions have now been superseded by amendments made by this Act. Schedule These are technical amendments.

Mrs GERAGHTY secured the adjournment of the debate.