Environment Protection Bill 2019

Ms LAWLER (Environment and Natural Resources): Mr Deputy Speaker, I thank each of my colleagues that have spoken today, the Leader of the Opposition and the independent members, for speaking on this bill.

It was wonderful to hear from the Member for Namatjira, who is passionate about the environment and he was out with me today when we were talking about the climate change policy. The Member for Casuarina, it was lovely to hear the history of this bill. The Member for Casuarina started this work. It was an election commitment and unlike the Member for Goyder's view, it was about people voting for great policy we had as a government and this was one of our election commitments.

The Member for Arnhem, it was lovely to hear about the ranger program and out at Limmen Bight as well. The Member for Fong Lim gave us a rundown of the industry perspective on the work we are doing and the vice president of operations from GEMCO said she welcomes the enhancement in environmental rigour applied to the review and assessment of projects in the Northern Territory.

It is in the best interests of all stakeholders, particularly industry, that community members can have a high degree of confidence that the expectations and performance of operators across the Territory meet appropriate standards. It is good to hear.

The Member for Karama provided clarity on the breaking up of the bill and I thank her for her role as chair of this scrutiny committee as well. The Member for Katherine, as she always eloquently does, reminded us about the federal Liberal National Party and their lack of commitment on climate.

Member for Nhulunbuy, I thank you for your support of this bill. It was wonderful to hear your stories about your lore and the lines that I liked was 'we do not own the earth, the earth owns us' and your stories about children chopping trees down and chopping down the spirits. It was lovely to hear your analogies as well.

I thank the members that have taken the time to speak on this bill. It is a very important bill. We are restoring trust and certainty through the implementation of a robust, clear and transparent set of rules and guidelines for how the environment must be protected through a comprehensive environmental regulatory reform program.

The purpose of this bill is to deliver a modern, environmental protection regime for the Northern Territory. The bill introduces a significantly modified and improved environmental impact assessment system and introduces an environmental approval requirement. This means that projects that may have a significant impact on the Territory's environment will be subject to rigorous environmental impact assessment informing the decision to grant, or not, an environmental approval, a necessary requirement for the project to proceed.

The bill also incorporates supporting provisions designed to ensure proponents and approval holders comply with the obligations specified under the bill; another first and a significant step to strengthening our environmental protection regime in the Territory.

I introduced this bill into the Legislative Assembly on 16 May 2019. The Assembly subsequently referred the bill to the Social Policy Scrutiny Committee for inquiry whose final report was tabled in parliament on 17 September 2019. I take the opportunity to acknowledge those members of our community who took the time to prepare submissions to the committee on the bill.

Twenty-five organisations and individuals commented on this bill while 21 individuals lodged a proforma submission reflecting that Territorians are interested in the measures being implemented to protect the environment. The comments and submissions made to the committee represented a diverse range of views and opinions on what the environmental impact assessment process should achieve and therefore, what the bill should contain.

Some submissions to the committee addressed specifics of the bill seeking elements of change to further strengthen the bill. Other submissions, specifically from the mining sector, questioned the need for regulatory reform and the impact this may have on the industry and the Territory's future development and growth. The committee heard strong opinions from industry representatives of the mining sector about the reform path being pursued by this government. The Deputy Leader of the Opposition had some of those quotes in her speech.

They argued that reform is not required and expressed the view that the legislation was not the problem; it was how it was being implemented. To demonstrate their argument, they referenced their experience with the current system and in doing so, illustrated the lack of certainty for proponents that arises from an environmental impact system that relies on discretionary decision-making.

They were critical of how long it was taking to complete an environmental impact assessment as a consequence of clear processes and a lack of statutory timeframes. They presented their difficulty in attracting investment for their projects due to the time taken to receive a project approval.

These are all matters that are directly and specifically addressed by the bill before us and in fact, demonstrate in their own words why this bill is so necessary for the future development of the Territory. Environmental impact assessment processes are not new for the Northern Territory. The bill is not introducing a type of process that has never been implemented or practiced in the Territory before.

The bill replaces legislation that is outdated, inefficient and ineffective and puts in place a system that removes the discretion, increases the certainty and ensures project planning, design and implementation are informed by key environmental considerations. Importantly, what this bill does—and I ask members to reflect on why this might be of concern to some members of industry—is to ensure greater transparency about the expectations and management of significant environmental risks of a project in the Northern Territory.

The committee's inquiry was exhaustive and its report recommends the bill be passed subject to a number of relatively minor amendments. The Member for Nelson acknowledged that those amendments were minor. I will speak to some of the key recommendations of the scrutiny committee and the resulting Assembly amendments that I intend to bring.

The first recommendation I will address speaks to impact of climate change. A number of submissions to the committee expressed concern that the bill was silent when it came to climate change and greenhouse gas emissions. The committee acknowledged that the bill did not preclude the considerations of climate change and greenhouse gas emissions. These are one of a number of matters that should be considered when delivering environmental protection and ecologically sustainable development outcomes.

However, to provide greater certainty when considering potential impacts associated with development the inclusion of 'impacts of a changing climate' was recommended as an amendment to clause 42(b) of the bill. The purpose of this change is to ensure that the environmental impact assessment system considers both how developments may on climate, for example through the release of greenhouses gases, as well as how changes in climate may impact on developments, for example through sea level rise or the southern movement of species. This is recommendation 2 of the scrutiny committee report and is included in the proposed assembly amendments.

The second committee recommendation relates to the process of declaring environmental objectives and referral triggers by gazette notice, under division 1 of part 3 of the bill. The committee has recommended amendments to the bill to require the minister to publish statements of reason for the declarations including the amendment and revocation of declarations as soon as practical after declarations are made. These are contained in recommendations 4 and 5, and I will be moving amendments to a number of the clauses in this division to give effect to these recommendations and support the principle of transparency.

The third committee recommendation relates to the process for declaring protected environmental areas and prohibited actions under division 2, part 3 of the bill. Under the bill the decision making power for these types of declarations sits with the Administrator. The committee has critically considered the role of the Administrator and ministers in our system of government and recommends these powers be replaced with the minister. Placing these responsibilities with the minister is consistent with modern approaches to declarations of this nature, as with the proposed process for declaring environmental objectives and referral triggers to support the principle of transparency.

I will propose a number of amendments to the clauses relating to the declaration under the division, including the amendment and revocation of declarations to require them to be tabled in the assembly, and for statements of reason for declarations to be published as soon as practical after declarations are made. The tabling of documents relating to declarations made under the bill will provide an additional level of oversight, scrutiny and accountability for the declaration process.

These proposed amendments are consistent with recommendation 6 and will bring greater consistency within the bill when dealing with environmental declarations. The final recommendation I refer to is recommendation 7 of the scrutiny committee report. During the course of this examination of the bill the scrutiny committee

heard varying opinions about the role of this bill in recognising the rights and interests of Aboriginal Territorians. This included whether the bill goes far enough or too far in its recognition of Aboriginal people and their deep connection with the land.

The committee has not recommended any changes to the recognition of Aboriginal people, which currently occurs through the objects of the bill and a general duty on proponents to appropriately engage with and address the values, rights and interests of Aboriginal people at clause 43. The committee did however identify that in considering whether or not the person is fit and proper to hold an environmental approval the minister may consider contraventions of laws associated with the natural environment, work health and safety and fraud or dishonesty, but not contravention of law that may relate to more social or cultural matters including Aboriginal sacred sites.

The committee has therefore recommended that the fit and proper person test established by clause 62 be amended to include consideration of contraventions of laws relating to heritage and culture, including Aboriginal sacred sites. I will be bringing this assembly amendment, which will close the loop in recognising and reflecting in this bill the importance that all Territorians place on preserving culture and heritage.

As we move to consider this bill detail I would like to point out that the assembly amendment being tabled includes only minor amendments to the bill as recommended by the scrutiny committee report. I make this point to the Assembly because it demonstrates that in an environment of strong opinion and polarised views the bill has shown itself to be a pragmatic and necessary piece of legislation.

I do, however, recognise the two dissenting reports from the Members for Araluen and Spillett who both took the opportunity to speak of their opposition to the bill when the report was tabled. The Member for Spillett paints this bill as anti-development. She stated that our children, their children and their children should all have jobs and, of course, they should. There is nothing in the proposed legislation that will prohibit this from happening.

However, to quote the Member for Spillett's dissenting report:

> *It is important to recognise that all development comes at a price to our environment. We want our children, their children and their children to have jobs, but we also do not want to deny them access to clean water, clean air or to the great Territory lifestyle.*

This is why we believe we need this legislation.

The Member for Spillett stated:

> *The CLP opposition is unashamedly pro-development and believes that the Northern Territory has limitless potential. There is nothing shameful about wanting to see the Territory develop and grow, but I believe it is shameful in the view of the limited potential.*

There is no such thing as limited potential when resources are finite. That sort of attitude leads to the death or rivers, public health warnings associated with air and water pollution and costly government investment to address land contamination and legacy pollution.

The Member for Araluen recognised that the Northern Territory currently has a slow and onerous system and expressed concern that the new legislation may add to this. The Member for Goyder also mentioned that. This concern is based on assertions made by the mining industry in their submission to the scrutiny committee.

The Member for Spillett also raised this issue. However, her assertions are based upon the number of pages within the proposed legislation, as compared with the current act, an issue also raised by the mining industry representatives at the scrutiny committee. You cannot have it both ways. You cannot complain about the uncertainty and unpredictability associated with legislation based upon discretionary decision making, but then declare that the new legislation is too long, when too long means we will have a clearly articulated process, established decision-making criteria, transparency, clear time frames, engagement with proponents, decisions that reflect risk and the integration of the environmental impact assessment and environmental approval process—all of which only serves to improve the Northern Territory as a place to invest.

On Tuesday in this House and in her dissenting report, the Member for Araluen made reference to the government's environmental regulatory reform program being conducted in two stages. The honourable

member expressed concern that the staging of reforms inhibited the scrutiny committee's ability to properly scrutinise this bill.

Pursuing environmental reforms in two stages was a pragmatic response to the scale of the reform necessary to ensure the Territory can continue to develop and grow in a manner that respects the finite nature of our resources while meeting community expectations of how our resources should be managed and protected.

I can assure the members of this House that there is nothing nefarious about the staging of this program. The reforms to the environmental impact assessment process and environmental approvals for significant projects is work that is independent of reforms to those who are required to ensure that waste, pollution and land clearing are managed appropriately in the Territory. It makes sense to undertake this work in two stages.

As I have already mentioned, the Member for Spillett is already critical of the length of this bill. The Member for Nelson has also noted the importance of this legislation and that the bill is one of the most—if not the most—substantive piece of legislation to come before this House in recent times. I can imagine the response from members opposite if, as the Member for Araluen suggested, all of the reforms required to ensure we have a fully functioning environmental regulatory system had been consolidated into a single bill before this House.

Finally, a comment on regulatory impact statements, or as they are more commonly referred to, the RIS. I have fielded questions about the RIS for this bill before in this House. It was raised again by a number of people here today and on Tuesday in their dissenting reports. As I have said before, the purpose of the RIS is to ensure that impacts of regulation are appropriately assessed and made fully transparent to government before decisions are made. They ensure that government decision making is informed. They are not a tool to justify government decision making to the public, industry or the members opposite. It is government policy not to release RIS documents and to my knowledge, no Northern Territory government RIS document for any piece of Northern Territory legislation has come before this House and has been released.

This bill is a fundamental and important component of the environmental regulatory reform program being processed by my department. It is replacing the legislation and practice that dates from the 1980s. How can it possibly be argued that this is not good for the Territory?

This is a bill that provides increased certainty, is robust and transparent with clearly articulated processes. It has been drafted to deliver a system that is outcome and risk focused. The environmental impact assessment requirements are commensurate with risk.

The bill provides an environmental impact assessment that directly informs a subsequent environmental approval, a fundamental change that will result in the Territory's important economic, social, cultural and natural environmental assets being recognised and protected.

The bill has been drafted to recognise the important role of the Territory's community. It includes provisions aimed at improving public engagement with the environmental impact assessment process, increasing understanding of decision-making and greater access to information. The bill is clear in its expectation that a proponent is to undertake consultation with potentially affected people in communities in a manner that is inclusive and culturally appropriate.

It also provides the option of an environmental impact assessment methodology that is not reliant on published written text which may not be accessible to potentially impacted Territorians.

The legislation before you today is tailored for the Territory, while reflecting national and international best practice. It is legislation that is responsible and places us in the best possible position to grow and develop without passing on the negative externalities of development to our children, their children and their children's children.

I thank everyone who has been involved in the development of this bill, from the wonderful officers in my department—the amazing chief executive and policy officers—to the individuals and organisations that took the time to participate in the scrutiny committee process, or commented when my department released a draft of this bill for consultation. The commitment and interest shown in this bill shows that this legislation will serve the Territory well into the future.

The Assembly divided.

Ayes 13 Noes 3

Ms Ah Kit	Mrs Finocchiaro
Mr Costa	Mr Mills
Mr Gunner	Ms Purick
Mr Kirby	
Ms Lawler	
Mr McCarthy	
Ms Manison	
Ms Moss	
Ms Nelson	
Mr Paech	
Mr Sievers	
Ms Wakefield	
Mrs Worden	

Motion agreed to; bill read a second time.

Consideration in detail

Clause 1 agreed to.

Clause 2:

Mrs FINOCCHIARO: When is it expected that the Act will commence?

Ms LAWLER: March, April next year.

Mrs FINOCCHIARO: I have questions around transitional arrangements for people whose applications are on foot and pre-existing approvals, but would you prefer to answer that closer to the end of the bill around 295 where it says, Transitional Provisions?

Ms LAWLER: Yes we can answer it then.

Clause 2 agreed to.

Clause 3 agreed to.

Clause 4:

Ms LAWLER: I move amendment 1 to Clause 4. Clause 4 is a definition clause. It contains a number of definitions that are made throughout the bill.

Assembly amendment 1 inserts a new definition of sacred site. Under this bill, a sacred site will have the same meaning as under the Commonwealth *Aboriginal Land Rights (Northern Territory) Act 1976*. This is consistent with the approach to defining sacred sites in other Territory legislation, most notably the *Northern Territory Aboriginal Sacred Sites Act 1989.*

The definition is required to support a proposed amendment to include considerations of a person's previous compliance with matters related to heritage and culture, including Aboriginal sacred sites, as part of the determination of whether a proponent is a fit and proper person to hold an environmental approval established by Clause 62 of the bill.

The new definition will be inserted alphabetically. This amendment is associated with recommendation 7 of the scrutiny committee's report.

Mrs FINOCCHIARO: Why are the words 'cultural, economic or social' not included as part of the definition of ecologically sustainable development?

Ms LAWLER: That is part of the definition of environment.

Amendment agreed to.

Clause 4, as amended, agreed to.

Clauses 5 to 16, by leave, taken together and agreed to.

Clause 17:

Mrs FINOCCHIARO: Why were the words economic, social and cultural not part of the principles of ecologically sustainable development in clause 17?

Ms LAWLER: As previously advised, that is part of the definition of environment.

Mrs FINOCCHIARO: Thank you, Minister. However the word 'environment' does not appear in clause 17 and so therefore economic, social and cultural are not considerations for that clause.

Ms LAWLER: Ecologically sustainable development is a development that is environmentally sound. That is ecological, so it is intrinsically in there.

Mrs FINOCCHIARO: Do you mind clarifying that last part?

Ms LAWLER: So ecologically sustainable development is referring to the environment; that is ecologically sustainable. The ecology is sustainable so ecologically sustainable development is about the environment. It uses the environment definition.

Mrs FINOCCHIARO: It does not use the environment definition. Environment includes the economic, social and cultural considerations but ecologically sustainable development does not. In many ways it is an omission from the bill.

Ms LAWLER: Another way to try and explain it is that the pillars that ecologically sustainable development is on is the environment, the social and the cultural. It is the underpinnings of that.

Mrs FINOCCHIARO: But instead of having it as implied, why did you not take the opportunity to enshrine it in those principles?

Ms LAWLER: It is not implied, it is the understanding of what it is. Ecologically sustainable development is that.

Mrs FINOCCHIARO: So you are saying that ecologically sustainable, by its intrinsic definition, includes economic, social and cultural considerations.

Ms LAWLER: It is and it is what is recognised internationally, not just what we are trying to do here.

Mrs FINOCCHIARO: In clause 17(3) a decision-maker is not required to specify how the decision-maker has considered or applied these principles. In many people's view this erodes transparency. Why was the decision made that the decision-maker is not required to specify how they considered or applied the principles?

Ms LAWLER: Yes, the principles are holistic and have to be applied holistically so it is not a matter of breaking them down into parts. It is part of that whole.

Mrs FINOCCHIARO: Given there is no definition of 'ecologically sustainable development', there is no breakdown of it, then there is no requirement for the decision-maker to publish or give reasons for decisions. What I am trying to say is, how could anyone have confidence that if you say economic, social and cultural considerations are part of the decision-making process—how could anyone have confidence in the way those four factors have been considered or weighed in forming that decision.

Ms LAWLER: The definition is in section 4.

Mrs FINOCCHIARO: What I am saying is that because the decision-maker is not required to specify how the decision-maker considered the principles, is there a weighting regime that will be in the regulations that we have not seen? How will that be applied? What if the decision-maker only considered one component or favoured one above another? Is there a weighting system?

Ms LAWLER: At all those decision-making stages I have to publish my decisions. I am not exactly sure what you are trying to get at.

Clause 17 agreed to.

Clause 18:

Mrs FINOCCHIARO: You, in your decision-making, are not explicitly required to consider the social, cultural and economic impacts, but are confined to matters listed in the objects of the bill. Is there a reason for that?

Ms LAWLER: I have to make a decision on what the environment is. I make a decision on the broad definition of 'environment'.

Mrs FINOCCHIARO: Even if social, cultural and economic does not form part of the considerations in the objects of the act, are you saying that because it falls into the definition of 'environment' that you must consider those factors?

Ms LAWLER: The very first object of this act is to protect the environment. I think that might cover what you are getting at.

Clause 18 agreed to

Clauses 19 and 20, by leave, taken together and agreed to.

Clause 21:

Mrs FINOCCHIARO: Under the principle of intergenerational and intra-generational equity, is there a reason why this does not include the right to develop to meet the needs of future generations?

Ms LAWLER: That wording is not included in any modern jurisdictions.

Clause 21 agreed to.

Clauses 22 to 25, by leave, taken together and agreed to.

Clause 26:

Ms LAWLER: I move amendment 2 to clause 26. Clause 26 identifies an environmental decision-making hierarchy. It provides a foundation for decision-making by requiring that development actions be designed firstly to avoid environmental impacts; secondly, to mitigate and manage impacts that cannot be avoided and finally, if appropriate, provide environmental offsets for residual impacts that cannot be avoided or mitigated.

Assembly amendment 2 amends the wording of this clause to make it mandatory that the hierarchy be applied by replacing the word 'should' with 'must'. This amendment is intended to give greater certainty to government decision makers, including ministers, the Northern Territory Environmental Protection Authority—NT EPA I will refer to from now on—and proponents in the community about the importance of applying this hierarchy when designing and assessing development actions. This amendment reflects Recommendation 3 of the scrutiny committee report.

Mrs FINOCCHIARO: Minister, has any modelling been done on the cost to industry of implementing an environmental decision-making hierarchy?

Ms LAWLER: Not on the hierarchy because that is part of the current process we have in place.

Mrs FINOCCHIARO: Was there any consultation with proponents, approval holders or environmental groups about changing the wording from 'should' to 'must'?

Ms LAWLER: That is the recommendation from the scrutiny committee, but there has been extensive consultation on this legislation.

Mrs FINOCCHIARO: The government did not do any additional consultation following the scrutiny committee report?

Ms LAWLER: No.

Mrs FINOCCHIARO: Will this provision increase or decrease what is commonly referred to as green tape?

Ms LAWLER: We believe this legislation will decrease green tape or red tape—or whatever tape you would like to refer to. This process is one of the key components or underlying reasons why we have done this work—to make sure that we have a more transparent, effective and efficient legislation. That is why we are here.

Amendment agreed to.

Clause 26, as amended, agreed to.

Clause 27 agreed to.

Clause 28:

Ms LAWLER: I move amendment 3 to clause 28. Clause 28 provides a mechanism for declaring environmental objectives. Environmental objectives are intended to serve as guides for decision makers and provide a public statement of those priority environmental matters to be considered in the environmental impact assessment process. Specific processes, including public consultation requirements, will be set out in regulations.

Environmental objective declarations must be accompanies by a statement of reasons. Assembly amendment 3 makes an amendment to subclause (5) by requiring that the statement of reasons be published as soon as practicable after the declaration is made. This amendment will improve certainty for the community that statements or reason will be published in a timely manner. The amendment reflects Recommendation 4 of the scrutiny committee's report.

Mrs FINOCCHIARO: You might have said that and I might have missed it, but where will these statement of reasons be published?

Ms LAWLER: It is on the Department of Environment and Natural Resources website.

Mrs FINOCCHIARO: They will not be in a *Gazette* notice?

Ms LAWLER: No.

Mrs FINOCCHIARO: Why has the government chosen not to go with a time frame, which would increase transparency, from the point after the decision is made to the point of publish?

Ms LAWLER: This wording is fairly standard in legislation but it is about making sure that it is up there and published on the web. Of course, there might be a glitch in the system for a minute or ten minutes or who knows. As soon as practical after the declaration is made is common sense. It is used in legislation to say it will be up as soon as we can.

Mrs FINOCCHIARO: Surely to improve transparency and increase confidence in the process, if there was a timeframe by which a minister must publish decisions—so for example, it might be 24 hours or 1 week, I do not know. By saying as reasonably practical there is a lot of flexibility and discretion built into that timeframe. Noting that the original legislation did not even have as soon as reasonably practical, clearly this amendment is a step in the right direction but I would argue to further increase transparency you would have a fixed timeframe by which it could be published and that way, everyone would know where to find it and how long that process has taken.

Ms LAWLER: I hear you, Deputy Opposition Leader, but it is common language in legislation and it is one where if the system went down, is it one hour, two hours or one day? As soon as practical after the declaration is made is a sensible way. It can go up straight away or if there are times when the internet goes down or there is a problem with something, as soon as practical after declaration is a timeframe that is there. I think it is a sensible way and as you say, there was none in the past so it could have been months. This is language that is used in legislation.

Mrs FINOCCHIARO: Will proponents and approval holders be sent a copy immediately directly or will it only be published?

Ms LAWLER: They get the information as soon as it has been signed off. They will receive that.

Mrs FINOCCHIARO: Just going back to the publishing time frames, a cynical person could say if it does not suit the government depending on what the decision might be, then it could be unnecessarily delayed or protracted. If there was a line in the sand, of course a minister could publish it much sooner in the process. It might be a matter of hours all things going well. At the very least, there is a stopping point for everyone to have confidence that no decision will be made and not made public within a timeframe.

Ms LAWLER: I have provided my response. There is nothing else to add to it.

Clause 28, as amended, agreed to.

Clause 29, by leave, agreed to.

Clause 30:

Ms LAWLER: Clause 30 provides a mechanism for declaring referral triggers. The purpose of a referral trigger is to direct the project into the impact assessment system because it has potential for significant impact by virtue of its proposed location or type of activity.

Clause 30 establishes the power to declare location-based referral triggers and activity-based referral triggers. A location-based referral trigger is where an area has been formally identified as being of exceptional environmental significance. This may be due to a feature of the natural or cultural environment such as the last known habitat of a critically endangered species.

An activity-based referral trigger identifies specific actions that may pose an extraordinary potential for significant impact. Such an activity would likely be described in terms of the threshold of activity that would require the proposed action to be referred. Threshold values may reflect scales and/or expected outputs and and/or expected waste products. For example, an activity trigger might be the construction of a new water storage dam that is located on a continuous flowing river, or which exceeds a specific height, or which captures a certain percentage of the catchment. Only proposed actions that meet the thresholds for the identified activity would need to be referred.

Specific processes including public consultation requirements will be set out in regulations. Referral trigger declarations must be accompanied by a statement of reasons. Assembly amendment 4 makes an amendment to subclause (4) by requiring the statement of reasons be published as soon as practical after the declaration is made. This amendment will improve certainty for the community that statements of reason will be published in a timely manner. This amendment reflects recommendation of scrutiny committee's report.

Mrs FINOCCHIARO: Again, minister, we see in this section that there is no publishing timeframe, there is no timeframe by which the minister has to publish her decision. Is there a reason for that?

Ms LAWLER: That was a recommendation of the scrutiny committee.

Mrs FINOCCHIARO: Well, the recommendation of the scrutiny committee was to actually put some form of loose timeframe in. Again, we see wording 'as soon as practical', but why does government not believe there should be a mandated timeframe?

Ms LAWLER: I have replied to that previously, but it is about making sure that it is a practical timeframe for it to be declared, to be published. I have responded to that previously, it is there for you to see that is practical after the declaration is made for it to be published.

Mrs FINOCCHIARO: You can see how it lacks transparency thought that we have before us a bill that no requirement around timeframe for the scrutiny committee to then suggest at the very minimum it be as soon practical. But of course government not willing to go any further on a mandated timeframe. Will under this provision proponents be notified immediately from the point of the decision?

Ms LAWLER: Proponents will be advised as soon as practical after the declaration is made.

Mrs FINOCCHIARO: Why was it decided by government that there is no requirement to give notice or consultation before you make a decision around a trigger?

Ms LAWLER: Consultation processes will be in the regulations.

Mrs FINOCCHIARO: But if the legislation does not make reference to the regulation or does not—does the government have any idea of what a referral trigger might be? This has caused some concern from stakeholders because they do not understand at this point in time what a referral trigger is.

Ms LAWLER: There are no current proposals to have referral triggers.

Mrs FINOCCHIARO: What will be the practical application of clause 30?

Ms LAWLER: Immediately there is not any, but it will give us those opportunities for consultation into the future.

Mrs FINOCCHIARO: Even though the legislation will give you the power to have activity based or location based referral triggers. Are you saying you will unable to exercise that power unless there is thresholds and processes set out in the regulations?

Ms LAWLER: Yes, it might be that there is a need to do a strategic SREBA in an area and that is why the trigger is there until you know exactly what is in that environment. You will do a broader at that environment and then work out that there is something that is absolutely specific that you need to protect or put something in place for.

Mrs FINOCCHIARO: In the regulations, you will, if the point in time arises that the government feels there should be referral triggers, you will then set out the thresholds for location based triggers and activity based triggers in the regulation, or will that already be set out in this first round of regulation?

Ms LAWLER: Yes the regulations will provide the clarity.

Mrs FINOCCHIARO: Sorry, I want to get it clear in my mind. At this stage the government has no intention to draft regulations in relation to referral triggers?

Ms LAWLER: The regulations will outline the process for a referral trigger.

Mrs FINOCCHIARO: Will that process include the thresholds?

Ms LAWLER: Yes, the threshold question is different. The threshold question refers to the declaration.

Mrs FINOCCHIARO: Will the regulations in relation to, sorry, we are not in clause 30, declaration of referral triggers? To answer my last question, will the thresholds be set out in the regulations referring to Clause 30?

Ms LAWLER: I am confused about what you are trying to achieve. It is about an activity or a location that will trigger that. I am trying to think of the example I gave. The location based referral trigger is where an area has been formally identified as being of exceptional environmental significance.

It might be because of a natural feature or a cultural environment. It is not a threshold, it is around a place or an animal or something, a flora or fauna that triggers it. I am not sure what you are trying to get at.

Mrs FINOCCHIARO: That makes sense for location based, but for activity based, will the regulations set out a range of activities that would commence the referral?

Ms LAWLER: The regulations will include a process for declaring the trigger. The declaration of the trigger is by gazette. The declaration will identify any relevant thresholds.

Mrs FINOCCHIARO: The declaration will contain the thresholds, the declaration will be gazetted, so that will not be in the regulations?

Ms LAWLER: Yes.

Mrs FINOCCHIARO: And the minister can publish her declaration by gazette at any point in time?

Ms LAWLER: Yes, as soon as practical.

Mrs FINOCCHIARO: Will the consultation process be set out in the regulations?

Ms LAWLER: Yes it will.

Mrs FINOCCHIARO: Will there be a process where the minister is required to consult, prior to making the declaration?

Ms LAWLER: Yes it will be as part of that consultation process.

Mrs FINOCCHIARO: But the consultation process will take place prior to the declaration being made?

Ms LAWLER: Yes it will.

Amendment agreed to.

Clause 30, as amended, agreed to.

Clause 31:

Ms LAWLER: Mr Deputy Speaker, I move amendment 5 to clause 31. Clause 31 allows the NTEPA to recommend environmental objectives or referral triggers to the minister. This can be done on the NTEPA's initiative or at the request of the minister. The minister may accept or refuse a recommendation and must publish a statement of reasons for the decision.

Assembly amendment 5 makes an amendment to subclause (4) by requiring that the statement of reasons be published 'as soon as practicable after the decision is made'. This amendment will improve certainty for the community that the statements of reason will be published in a timely manner. This amendment has been included to ensure consistency in the bill and aligns with recommendation 4 of the scrutiny committee's report.

Mrs FINOCCHIARO: At the risk of sounding repetitive—I do not mind, but it might become tiring for you, minister. This is a step in the right direction. The scrutiny committee has put in place 'as soon as practicable', but again I ask why the government has decided not to provide a fixed timeframe to increase transparency when it comes to publishing the statement of reasons?

Ms LAWLER: It was a recommendation of the scrutiny committee report.

Amendment agreed to.

Clause 31, as amended, agreed to.

Clause 32, by leave, agreed to.

Clause 33:

Ms LAWLER: Mr Deputy Speaker, I move amendment 6 to clause 33. Clause 33 allows the minister to amend or revoke either an environmental objective or a referral trigger. This ensures the objectives and triggers remain relevant and responsive to the Northern Territory environment. Specific processes associated with amending and revoking declarations, including public consultation requirements, will be set out in regulations.

Assembly amendment 6 clarifies that the minister's power to revoke or amend a declaration is by *gazette* notice. This amendment ensures consistency within the bill and provides certainty about the process for revoking and amending declarations. This amendment reflects recommendation 5 of the scrutiny committee's report.

Mrs FINOCCHIARO: Minister, I again question the government's commitment to providing certainty and transparency throughout this bill. This section, as drafted by government, did not even have a requirement to publish a statement of reasons. It is a good recommendation from the scrutiny committee that you should be publishing a statement of reasons, but again it is disappointing that you only have to publish them as soon as practicable. I ask you again why there is no fixed timeframe.

Ms LAWLER: I agree. That is why we have scrutiny committees. Our government brought in scrutiny committees for this purpose—to have a really close look at legislation. 'As soon as practicable' was the

scrutiny committee's recommendation regarding the wording. As we say, we believe that 'as soon as practicable' is a practical answer.

Mrs FINOCCHIARO: Thank you, minister. In subclause (2) it says that an amendment or revocation of the environmental objective or referral trigger must be in accordance with the regulations. Will the regulations for clause 33 require a consultation process?

Ms LAWLER: Yes, they will.

Mrs FINOCCHIARO: Would a proponent be notified after the decision is made?

Ms LAWLER: Yes, they will.

Amendment agreed to.

Ms LAWLER: Mr Deputy Speaker, I move amendment 7 to clause 33. Amendment 7 inserts a new subclause (3) that requires the minister to publish a statement of reasons for a decision to amend or revoke an environmental objective or referral trigger and places a timeframe on the publication of statements of reason by the minister by requiring the publication to occur as soon as practicable after revocation or amendment. This amendment ensures consistency within the bill and provides additional certainty that statements of reason will be prepared and published in a timely manner. The amendment reflects recommendation 5 of the scrutiny committee.

Mrs FINOCCHIARO: Going back to the question on certainty and transparent, why was it decided that there will not be a fixed time frame to publish reasons for decisions?

Ms LAWLER: I have given those reasons. I do not need to keep going through every clause to do with that. We have been quite clear.

Mrs FINOCCHIARO: Can you please explain why in subclause (2) a temporary declaration can have effect for the period of up to 12 months?

Ms LAWLER: I believe you are on the wrong clause.

Amendment agreed to.

Clause 33, as amended, agreed to.

Clause 34, by leave, agreed to.

Clause 35:

Ms LAWLER: I move amendment 8 to clause 35. Division 2 of Part 3 allows for declarations of protected environmental areas and prohibited actions. These declarations provide additional protection for areas of particularly high environmental value and give certainty to the community and proponents about the types of activities that are allowed or not allowed in those areas.

Protected environmental area declarations can be used to provide additional protection to areas that already receive a certain level of legislative protection, for example areas identified as a park or reserve, or to provide legislative protection for areas that do not currently have that level of certainty, such as sites of conservation significance.

Prohibited action declarations can be used to give certainty to the community and proponents about the types of activities that will not be allowed in the Territory. Clause 35 allows the minister to make a temporary declaration of a protected environmental area. Temporary declarations provide a mechanism for the minister to respond quickly to an emerging environmental risk or issue.

In making a declaration, the minister is required to publish a statement of reason. Assembly amendment 8 makes an amendment to subclause (6) by requiring that the statement of reasons be published as soon as practicable after the declaration is made. This amendment will provide certainty for the community as statements of reason will be published in a timely manner.

The amendment has been included to ensure consistency in the bill and aligns with recommendation 4 of the scrutiny report.

Mrs FINOCCHIARO: I think it is a missed opportunity from the government not to increase transparency in the process by having a time frame by which statements of reason could be made. In relation to subclause (2), why does the temporary declaration have an effect or could go for as long as 12 months?

Ms LAWLER: Twelve months was considered to provide an opportunity to gather scientific evidence and conduct consultation.

Mrs FINOCCHIARO: For a temporary declaration, a year seems like a long time.

Ms LAWLER: These declarations are made to respond quickly to an environmental risk or issue. That amount of time gives the opportunity to gather scientific evidence. I think you can imagine when they might be needed. We have a number of examples. That 12 month period provides time for the right people to get in there and have a good look and obtain all that evidence and data and talk to all the right people as well.

Mrs FINOCCHIARO: Is this statement being published on the website or is it specifically going into the gazette notice?

Ms LAWLER: The declaration is gazetted but the statement is on the website.

Mrs FINOCCHIARO: If, for example, in the gazette a temporary declaration is made and it is for the 12 month period but it is shortly thereafter determined that length of time would not be needed, would the minister then amend the timeframe of the temporary declaration by gazette or would you just proceed to move on from that decision?

Ms LAWLER: The minister would either make a permanent declaration, or revoke it.

Amendment agreed to.

Clause 35, as amended, agreed to.

Clause 36:

Ms LAWLER: I move amendment 9 to Clause 36.

Clause 36 of the bill allows the administrator to make permanent declarations of protected environmental areas. Assembly amendment 9 replaces references to the administrator with references to the minister. This amendment places responsibility for making these declarations with the minister, improving consistency with other declarations of this nature in NT law.

The amendment also improves consistency with the respective responsibilities and obligations of the administrator and ministers in the Territory system of government.

This amendment has been made in consideration of recommendation 6 of the scrutiny committee's report. Recommendation 6 recommends that the statement of reasons be published at the time of gazettal. This recommendation is reflected in the amendment's 'as soon as practicable' which is consistent with the approaches in the bill.

Retaining consistency will provide greater administrative certainty and practice. It will also minimise the potential for judicial reviews to be commenced on the basis of the timing of the publication of the statement and a declaration.

Mrs FINOCCHIARO: This clause vests significant power in the minister. Once a permanent declaration has been made, is there any mechanism for that decision to be unmade?

Ms LAWLER: Yes, it may be revoked.

Mrs FINOCCHIARO: And there would be a statement of reasons that would have to be published on the website, presumably?

Ms LAWLER: Yes there would be.

Mrs FINOCCHIARO: Is the decision of the minister for a permanent declaration, reviewable?

Ms LAWLER: Yes. There is no merit review of ministerial decisions, but there is judicial review.

Mrs FINOCCHIARO: Does the government agree with the scrutiny committee that the clause as originally drafted was inconsistent with the *Northern Territory Self Government Act* and the *Interpretation Act*?

Ms LAWLER: Originally, it was the minister. When the department originally drafted the act, it was the minister but we had considerable feedback and some of that feedback came from the mining industry. They felt it should be the administrator.

I felt uncomfortable about that because I understood the role of the administrator is not to get down into the weeds on the work of government. The decision was to let that proceed and have the scrutiny committee have a look at it. Rightly so, the scrutiny committee did the research, had a look at it and agreed it is not the administrator, it is the minister that needs to make those decisions. That is how it works in the Northern Territory. The minister is the ultimate decision maker. That comes with the job, basically.

I must also assert that is the same in other states and territories in Australia.

Mrs FINOCCHIARO: Was there a reason why a fixed time frame to publish the statement of reasons was not put into this section?

Ms LAWLER: As soon as practicable.

Amendment agreed to.

Ms LAWLER: I move amendment 10 to clause 36. Clause 36 of the bill allows the Administrator to make permanent declarations of protected environmental areas.

Assembly amendment 10 omits and replaces clause 36(3). This amendment requires the minister to publish a statement of reasons for a decision to make a permanent declaration of an environmental protection area and places a time frame on the publication of statements of reason by the minister.

This amendment ensure consistency within the bill and provides additional certainty that statement of reasons will be prepared and published in a timely manner.

Assembly amendment 10 also inserts a new clause 3(a). This subclause requires declarations to be tabled in the Legislative Assembly within six sitting days of the declaration being made. This improved governance associated with these types of declarations and allows for appropriate parliamentary oversight.

This amendment has been made in consideration of Recommendation 6 of the scrutiny committee report. Recommendation 6 recommends that the statement of reasons be published at the time of gazettal. This recommendation is reflected in the amendments as ‘as soon as practicable’, which is consistent with the approach in the bill.

Retaining consistency will provide greater administrative certainty and practice. It will also minimise the potential for juridical reviews to be commenced on the basis of the timing of the publication of the statement and declaration.

Amendment agreed to.

Clause 36, as amended, agreed to.

Clause 37, by leave, agreed to.

Clause 38:

Ms LAWLER: I move amendment 11 to clause 38. Clause 38 of the bill allows the Administrator to make declarations of prohibited actions. These are declarations that identify that certain types of activities will not be allowed in the Territory.

Assembly amendment 11 replaces references to the Administrator with references to the minister. This amendment places responsibility for making these declarations with the minister, improving consistency with other declarations of this nature in NT law. The amendment also improves consistency with the respective responsibilities and obligations of the Administrator and ministers in the Territory system of government.

This amendment has been made in consideration of Recommendation 6 of the scrutiny committee report. Recommendation 6 recommends that the statement of reasons be published at the time of gazettal. This recommendation is reflected in the amendments as 'as soon as practicable', which is consistent with the approach in the bill.

Retaining consistency will provide greater administrative certainty and practice. It will also minimise the potential for juridical reviews to be commenced on the basis of the timing of the publication of the statement and declaration.

Mrs FINOCCHIARO: Is there any requirement that you consult with Cabinet before declaring a prohibited action?

Ms LAWLER: Consultation will be in the regulations. As we have said—and you have questioned in this House—our government has a very clear process where all legislation goes through Cabinet. Yes, the work will be in the regulations.

Mrs FINOCCHIARO: Thank you. Clearly this legislation will surpass your government and many governments thereafter. It has to be future proofed to some extent. There is no express requirement that a declaration of prohibited action go through Cabinet. Are you saying that the regulations will specify that prior to making a declaration of prohibited action; that decision needs to go to Cabinet?

Ms LAWLER: No, I am not saying that, as you say if it is about future governments. It is up to the minister to be able to make that decision. That is one of the responsibilities being a minister in the Northern Territory Government.

Amendment agreed to.

Ms LAWLER: Mr Deputy Speaker, I move amendment 12 to Clause 38.

Clause 38 of the bill allows the Administrator to make declarations of prohibited actions. These are declarations that identify that certain types of activities will not be allowed in the Territory. Assembly amendment 12 omits and replaces subclause (4).

This amendment requires the minister to publish a statement of reasons for a decision to make a permanent declaration of an environmental protection area and places a timeframe on the publication of statements of reason by the minister. This amendment ensures consistency within the bill and provides additional certainty that statements of reason will be prepared and published in a timely manner.

Assembly amendment 12 also inserts a new subclause (5). This subclause requires declarations to be tabled in the Legislative Assembly within six sitting days of the declaration being made. This improves governance associated with these types of declarations and allows for appropriate parliamentary oversight. This amendment has been made in consideration of Recommendation 6 of the scrutiny committee's report.

Recommendation 6 recommends that the statement of reasons be published at the time of gazettal. This recommendation is reflected in the amendments as 'as soon as practical' which is consistent with the approach in the bill. Retaining consistency will provide greater administrative certainty and practice and will also minimise the potential for judicial reviews to be commenced on the basis of the timing of the publication of the statement and declaration.

Mrs FINOCCHIARO: Will proponents be notified of the revocation?

Ms LAWLER: Yes.

Mrs FINOCCHIARO: Separately to the statement of reasons?

Ms LAWLER: Yes.

Mrs FINOCCHIARO: Again, I will note that it is a missed opportunity for the government to increase certainty and transparency by not having an actual timeframe by which to publish the statement of reasons.

Amendment agreed to.

Clause 38, as amended, agreed to.

Clause 39:

Ms LAWLER: Mr Deputy Speaker, I move amendment 13 to clause 39. Clause 39 provides a mechanism to revoke temporary and permanent protected environmental area declarations and prohibited action declarations. Assembly amendment 13 is a technical amendment that addresses a typographical error in subclauses (1)(a), (2)(a) and (3)(a).

Amendment agreed to.

Ms LAWLER: Mr Deputy Speaker, I move amendment 14 to clause 39. Clause 39 provides a mechanism to revoke temporary and permanent protected environmental area declarations and prohibited action declarations. Assembly amendment 14 replaces 'the Administrator' with 'minister' in subclauses (2) and (3). This amendment aligns with the change in responsibilities from 'the Administrator' to 'minister' in clauses 37 and 38.

Assembly amendment 14 has been made in consideration of recommendation 6 of the scrutiny committee report. Recommendation 6 recommends that the statement of reasons be published at the time of gazettal. This recommendation is reflected in the amendments as 'as soon as practicable', which is consistent with the approach in the bill. Retaining consistency will provide greater administrative certainty and practice. It will also minimise the potential for judicial reviews to be commenced on the basis of the timing of the publication of the statement and the declaration.

Amendment agreed to.

Ms LAWLER: Mr Deputy Speaker, I move amendment 15 to clause 39. Clause 39 provides a mechanism to revoke temporary and permanent-protected environmental area declarations and prohibited action declarations. Assembly amendment 15 inserts a new subclause (5). This subclause requires the minister to publish a statement of reasons for a decision to revoke a declaration of a protected environmental area or prohibited action and places a timeframe on the publication of statements of reasons by the minister. This amendment ensures consistency within the bill and provides additional certainty that statements of reasons will be prepared and published in a timely manner.

Assembly amendment 15 also inserts a new subclause (6). This subclause requires declarations to be tabled in the Legislative Assembly within six sitting days of the revocation of the declaration. This improves governance associated with the management of these types of declarations and allows for appropriate parliamentary oversight. Assembly amendment 15 has been made in consideration of recommendation 6 of the scrutiny committee's report. Recommendation 6 recommends that the statement of reasons be published at the time of gazettal. This recommendation is reflected in the amendments as 'as soon as practicable', which is consistent with the approaches in the bill. Retaining consistency will provide greater administrative certainty and practice. It will also minimise the potential for judicial reviews to be commenced on the basis of the timing of the publication of the statement and declaration.

Amendment agreed to.

Clause 39, as amended, agreed to.

Clauses 40 and 41, by leave, taken together and agreed to.

Clause 42:

Ms LAWLER: Mr Deputy Speaker, I move amendment 16 to clause 42. Clause 42 identifies the purpose for undertaking environmental impact assessments in the Northern Territory. It identifies a range of purposes including at subclause (b), a range of matters that need to be taken into account when actions that may have a significant impact on the environment are being assessed, planned and carried out. This includes the principles of ecological sustainable development; the environmental decision-making hierarchy, contained at

clause 26 of the bill; the waste management hierarchy, which is contained at clause 27 of the bill; and ecosystem-based management approaches.

Assembly amendment 16 inserts a new subclause (b)(v). This subclause identifies that in addition to the matters already mentioned, the impacts of a changing climate are also to be considered in the assessment, planning and carrying out of development actions. This subclause is designed to ensure that both the impacts and contributions of developments on the climate and the impacts of a changing climate on developments can and are considered in the environmental impact assessment process. This amendment reflects recommendation 2 of the scrutiny committee's report.

Mrs FINOCCHIARO: I have been waiting for this one. How will the impacts of a changing climate be assessed?

Ms LAWLER: That is the role of the Northern Territory Environment Protection Authority.

Mrs FINOCCHIARO: Is there a definition of impacts of climate change in the bill?

Ms LAWLER: No.

Mrs FINOCCHIARO: Will there be a regulatory framework around what the impact of a changing climate means, or how it should be assessed?

Ms LAWLER: The Northern Territory EPA has factors and objectives of what that constitutes and they are published.

Mrs FINOCCHIARO: Presumably they would not have them at the moment because the law does not exist. Will the government rely on the EPA to create its own objectives on what to assess the impacts of a changing climate with?

Ms LAWLER: The EPA have existing ones which includes greenhouse gas emissions.

Mrs FINOCCHIARO: The reason I ask is because for subclause (b) (i) (ii) (iii) and (iv), all have their own corresponding section in the act of what they mean or refer to, whereas the new clause (v), the impacts of a changing climate, I assume–unless it is further ahead–does not have the same corresponding section going into further detail about what that means, as does the other principles in this same clause.

Ms LAWLER: Yes.

Mrs FINOCCHIARO: Is that yes, there is a corresponding clause that goes into further detail within the bill about the impacts of a changing climate?

Ms LAWLER: No, as I said, the EPA have those factors when they take it into consideration.

Mrs FINOCCHIARO: Why was it decided by government that you had to have separate standalone clauses for subsections (b) (i) through to (iv) but not for (v)?

Ms LAWLER: Yes, as I said, the purpose of the environmental impact assessment process is assessing the impacts of the project on the environment in the context of a changing climate.

Mrs FINOCCHIARO: My concern is that this is a tokenistic gesture to climate change, which has clearly been left out of this legislation except for this very point in time in which it is dealt with in six words. It does not seem to match the level of detail that has gone into its preceding subparagraphs.

The principles of ecologically sustainable development has its own section. The decision making hierarchy, waste management hierarchy, ecosystem based management. They are all explained in detail, or at least some detail, in the bill whereas this subclause (v) the impacts of a changing climate is here in isolation and you are devolving responsibility to the EPA to come up with how that will be assessed, measured and how they deal with it when assessing environmental impact.

Ms LAWLER: Climate change could also be included in the environmental objectives and this just gives it more certainty that it is to be considered, having it in this list.

Mrs FINOCCHIARO: Sure, it could be included in the objectives because you have the power to change the objectives, but currently it is not.

Ms LAWLER: Therefore this provides certainty—including it in that list.

Mrs FINOCCHIARO: I would argue that it does not provide any certainty at all because it is thrown into this section which then goes nowhere else. There is literally nowhere else in the bill you can refer to understand what that means. Just to confirm, there will be nothing set out in the regulations about how that is to be assessed or what that means?

Ms LAWLER: It was a recommendation of the scrutiny committee.

Mrs FINOCCHIARO: I understand it was a recommendation of the scrutiny committee—I dissented that report. I am trying to understand from government's perspective why it has chosen to include this. Government has the discretion to accept or reject recommendations from the scrutiny committee, and in this instance it has accepted the recommendation and is inserting words.

What I cannot understand is why it is specifically inserted into this section where all those other principles have their own stand-alone clauses, which to some extent explains what they do or how they should be assessed, whereas the impacts of a changing climate—that is it. There is nothing else wrapped around it in the bill. Can you confirm that there will be nothing in the regulations to address this clause?

Ms LAWLER: It is the role of the NTEPA to identify how it considers this and other elements of section 42 in its statement of reasons and decisions.

Mrs FINOCCHIARO: But can you confirm that there will be no guidance from government to the EPA, either through the bill or the regulations, on the impacts of a changing climate?

Ms LAWLER: Yes, the NTEPA are the independent experts in this area.

Mrs FINOCCHIARO: So, there will be no guidance from government on this issue?

Ms LAWLER: Yes, today we released our climate change response. Climate change is a priority of our government.

Mrs FINOCCHIARO: Will the EPA be required to refer to the government's climate change policy released today in making its assessment?

Ms LAWLER: No, the EPA has in its priorities climate change—I was talking about our climate change response as an example that our government has a priority with climate change. The NTEPA already has climate change as one of its factors.

Mrs FINOCCHIARO: Do you believe this clause provides certainty to proponents to leave the way in which that is assessed or defined entirely up to the EPA?

Ms LAWLER: The NTEPA is an independent advisory, and it provides advice on water, biodiversity, changes to landform and a heap of other areas that are not necessarily listed here. Climate change is one of the factors it would take into account.

Amendment agreed to.

Clause 42, as amended, agreed to.

Clause 43 to 61, by leave, taken together and agreed to.

Clause 62:

Ms LAWLER: I move amendment 17 to clause 62. Clause 62 establishes a fit and proper person test. It identifies those matters that should be considered when determining if a person is fit and proper to hold an environmental approval. Fit and proper person provisions are standard in licensing and approval frameworks.

Clause 62 currently requires the minister the consider a range of matters associated with a person's previous regulatory history, including compliance with environmental and planning laws, fraud and dishonesty laws

and work health and safety laws. These matters do not fully reflect the breadth of the definition of the environment under the bill, which includes the natural or biophysical environmental, as well as economic, social and cultural matters. This definition supports the concept of ecologically sustainable development and ensures that decisions are made in consideration of economic, cultural and social—including health—factors, and not just biophysical ones.

Assembly amendment 17 omits the words 'environmental matters' from subclause (a)(i) and replaces it with the words 'physical or biological environment'. This more accurately reflects the types of matters considered under this subclause.

Mrs FINOCCHIARO: I want to know how you would determine whether or not how a person has contravened a law of the Territory or any other jurisdiction in relation to those matters in the amendment.

Ms LAWLER: If you go through the list, fraud is quite self-explanatory. With work health and safety laws it would be a matter of investigating those matters on that person.

Mrs FINOCCHIARO: In practice, I am wondering how that works. Will a person seeking environmental approval have to provide some form of statutory declaration to say they had not contravened all of those things? Will department officials be going through some sort of criminal history check on proponents? I am trying to understand how it works practically.

Ms LAWLER: Yes, proponents are required to self-declare and then the minister may investigate. It is based on information provided by the proponent.

Mrs FINOCCHIARO: In relation to subclause (b), 'must have regard to matter prescribed in regulation', what matters will be prescribed by regulation?

Ms LAWLER: The regulations will contain information about the business matters—whether there is a joint partnership or anything like that.

Mrs FINOCCHIARO: I suppose in some instances it would be clear who the person is. Is there a way that—the person has to put themselves up. Okay, I have answered my own question, that is fine, sorry. How would you know who the person is? But the person is the one making application.

Under (c) it says 'may have regard to any matters the minister considers relevant'. What other matters might fall into this subclause?

Ms LAWLER: As I said, this provides an open-endedness to that. If I find out that there is something then I have that power to be able to do something about it. It is more that open-endedness.

Amendment agreed to.

Ms LAWLER: I move amendment 18 to Clause 62. Clause 62 establishes a fit and proper person test. It identifies those matters that should be considered when determining if a person is fit and proper to hold an environmental approval.

Fit and proper person provisions are standard in licensing and approval frameworks. Clause 62 currently requires a minister to consider a range of matters associated with a person's regulatory history including compliance with environmental and planning laws, fraud and dishonest laws, and work health and safety laws.

These matters do not fully reflect the breadth of definition of environment under the bill which includes the natural or biophysical environment as well as economic, social and cultural matters. This definition supports the concept of ecologically sustainable development and ensures that decisions are made in consideration of economic, cultural and social factors including health factors not just biophysical ones.

Assembly amendment 18 inserts a new subclause (ia) which allows the minister to consider other relevant factors that are addressed by the definition of environment but are not physical or biological in nature such as impacts on nature or built heritage and Aboriginal sacred sites.

This amendment provides clarity that in considering whether a person is fit and proper to hold an environmental approval, their behaviour in relation to social and cultural responsibilities is just as important

as their behaviour in relation to impacts on the natural environment. This amendment reflects Recommendation 7 of the scrutiny committee's report.

Mrs FINOCCHIARO: Just confirming that this requires applicants to self-report.

Ms LAWLER: Yes.

Amendment agreed to.

Clause 62, as amended, agreed to.

Clause 63 to 68, by leave, agreed to.

Clause 69:

Ms LAWLER: I move amendment 19 to Clause 69. Clause 69 provides the power for the minister to grant an environmental approval at the completion of the environmental impact assessment process. Under this clause, the minister may grant an approval as prepared by the NTEPA, amend a draft approval prepared by the NTEPA, and grant that amended approval or refuse to grant an approval.

Assembly amendment 19 introduces new numbering into this section. Numbering was not originally necessary as there was only one subclause. Assembly 19 also inserts a new subclause (2). This subclause requires a minister to prepare a statement of reasons for a decision to refuse to grant an environmental approval, to publish that statement of reasons as soon as practical after the decision is made, and to give a copy of the decision to the proponent, the NTEPA and relevant statutory decision-makers.

This amendment provides certainty that the minister must prepare a statement of reasons when refusing to grant an environmental approval. It also ensures that the statement of reasons will be published in a timely manner. This amendment addresses a perceived gap in the processes established under the legislation for refusing an approval.

Mrs FINOCCHIARO: Why, in clause 69, is the environment minister not required to consult the sector minister or Cabinet?

Ms LAWLER: Consultation is in clause 71.

Mrs FINOCCHIARO: Does clause 69 not effectively give the environment minister the power of veto over decisions?

Ms LAWLER: The minister has the power over an environmental approval decision.

Mrs FINOCCHIARO: In clause 69, the minister has no discretion except for what is provided in the draft environmental approval?

Ms LAWLER: Yes, I can amend the approval.

Mrs FINOCCHIARO: Minister, there was concern raised about the centralisation of control into the EPA. Are you saying, minister, that you can do more accept the draft environmental approval? Could you give examples of how you might exercise your power beyond the draft?

Ms LAWLER: I might add some conditions.

Mrs FINOCCHIARO: But you would have to work from the draft?

Ms LAWLER: Yes, I would have a draft to work with.

Mrs FINOCCHIARO: Would you be required then to report back to the EPA or justify decisions you make under this section to the EPA?

Ms LAWLER: Yes, I have to prepare a statement of reasons and advise them.

Amendment agreed to.

Clause 69, as amended, agreed to.

Clauses 70:

Mrs FINOCCHIARO: Minister, can you practically explain clause 70(1)(a)? How does it practically work that if you propose to grant an amended environmental approval you must consult with the NT EPA and the proponent? Is that you sit down with everyone all together, you go to the EPA first? How, practically, is that required to work?

Ms LAWLER: Practically, that would work—I would have conversations with the EPA (inaudible). The EPA then would be discussing the matter with the proponent.

I would be discussing it then with the proponent.

Mrs FINOCCHIARO: Why is it necessary for you—so stepping though it you receive the draft environmental approval from the EPA. They have clearly put all of their work and information into it, you receive it, you then make a decision to amend, alter, whatever your decision perhaps might be. Why then do you have to go back and justify that to the EPA? Presumably they would standing by their original position, which would be in the draft.

Ms LAWLER: I am not justifying to the EPA. I am getting more advice from the EPA.

Mrs FINOCCHIARO: If the EPA advice was 'no', our advice is the draft, you are going against our advice, does not that put you in a—what position does that leave you with?

Ms LAWLER: The EPA are the minister's expert advisers so I would be sitting down and discussing with them and they would be providing me with advice. They are the people who have the extensive knowledge. They are the experts.

Mrs FINOCCHIARO: It seems strange because you have sought their advice in the first place, they have given it to you. Presumably that is their best version of their advice. If you then, for whatever reasons, as the minister you are actually looking at the environmental, social, cultural, whatever reasons, you might want to change that draft environmental approval, I cannot imagine then when you go and consult with the EPA they are going to be thrilled you would be changing their original advice.

Ms LAWLER: It probably will not happen very often. I do not think as a minister I would change the advice I get from the EPA. I have a wonderful EPA. But that is an aside.

An example I am thinking of is, it could be that I have met with another organisation, an environmental group or somebody else that might have given me some other advice or asked me about something, so then I would go back to the EPA to get their advice and clarify and give me greater understanding around the other side this group have provided to me. It is an ongoing to-ing and fro-ing of conversation to get to a better result, if that was the case.

As I said, if the EPA has provided that advice I would think the majority of ministers would listen to that advice.

Mrs FINOCCHIARO: Does that component of consultation with the EPA have to have resolved prior to you commencing the process of consultation with the proponent?

Ms LAWLER: No.

Mrs FINOCCHIARO: So simultaneously you might be having discussions about your amendments with the EPA and also those amendments with the proponent?

Ms LAWLER: Yes.

Mrs FINOCCHIARO: Does the proponent receive the draft as you receive it from the EPA? Or only whatever you determine comes out of section 69?

Ms LAWLER: The proponent would receive a draft on the way through so there would not be any surprises. We would work with them.

Mrs FINOCCHIARO: In terms of section 70 subsection 2 with the stop the clock mechanism, could this not blow timeframes right out if there was a protracted period of consultation, say between the minister and the EPA?

Ms LAWLER: Yes, it would be necessary in this example to stop the clock to make sure the decision was going to get approved. It would be necessary to happen.

Mrs FINOCCHIARO: Did the government consider putting in a whole of government, a global, timeframe for processing rather than the timeframe with the stop the clock mechanism it has adopted?

Ms LAWLER: The minister has that 30-day sign off timeframe. With the other parts, it is necessary to do a thorough and rigorous job and at times it is about rewrites, going back, talking.

It is difficult to explain but if you are a mine or a mining company or whatever else, you want that to go through but there are things that will have to be discussed and things like that. So if there was just a set timeline that could cause undue stress and things, just not to actually process or work through. It needs to be done thoroughly and comprehensively.

It might be that you have employed an environmental scientist that has not actually delivered you the goods and they need to go back and do some more work or if it is not up to standard or it is not up to what is required.

The controlling bit is the 30 days for the minister, so something does not just sit on a minister's desk. If it is not signed off by the minister in that 30 days, it is taken as approved. So that is the section that the minister actually controls. If there were timeframes before that, it could be things that are rushed and not done comprehensively on both sides.

Mrs FINOCCHIARO: Do you think this clause gives greater certainty for proponents in the process?

Ms LAWLER: Yes I do. Being very clear to the proponents that it is, you know—it has gone to the minister. They have the 30 days. We have seen the MPs—as I said, this is not the legislation; this is just an aside—the environment management plans through onshore oil and gas. Having those timelines has worked and as the minister I have signed off on the timeframes I have had. The bits that government does not control is the work being done prior, whether that is by the company involved—all Territorians would want to make sure that was quality work. A rushed timeframe is not necessarily the best outcome.

Mrs FINOCCHIARO: Just to be clear, I am not proposing a rushed timeframe. I was proposing an alternative model of a sort of global time frame so that there were not those 'stop the clock' mechanisms.

Ms LAWLER: To clarify, this legislation is around significant environmental impact. That could be a substantial project such as INPEX or a mine, dam or whatever else. Each of those will be quite unique in that. I do not think putting in a three-day, five-day or three-month process is a sensible and viable way to work through those things. The needed is as such regarding these things. The bit that is controllable is the minister. It is 30 days. That is very positive.

Mrs FINOCCHIARO: At the very least, is it the intention of government to speed up its processes, obviously without devaluing or rushing any of the work? Given some of the criticism you hear of the processes that are within government control, is it intended that this legislation will move that along more efficiently?

Ms LAWLER: Yes.

Mrs FINOCCHIARO: Minister, with respect to a statutory decision-maker—as the minister you have to consult with the EPA, the proponent, and then you have to make reasonable efforts to obtain the views of a bunch of other people. Is the statutory decision-maker also other ministers?

Ms LAWLER: Yes.

Mrs FINOCCHIARO: So the Environment minister has to make reasonable efforts to obtain the views of the sector minister, who may hold views in relation to that matter. It is not explicit, but one would assume that the sector minister would be one of those people the Environment minister ought to make reasonable effort to obtain the views of.

Ms LAWLER: Yes. If it was a mine I would be discussing that and seeking the views of the mines minister.

Mrs FINOCCHIARO: Is there a reason it was worded so discretionarily? 'Make reasonable efforts to obtain the views', it is very vague and soft language. There is not much positive action required.

Ms LAWLER: It is that I am getting information from them but I am not being held up by them. I guess that would be one of the reasons for that. No.

Clause 70 agreed to.

Clause 71:

Mrs FINOCCHIARO: Clause 71 attempts to deal with consultation, however it is very, I suppose, aspirational at best. If you propose to refuse to grant an environmental approval, all the minister is required to do is—again, this wording—'make reasonable effort to obtain the views of'. Why is it not further enshrined that once you have made your decision to refuse to grant an environmental approval, that you must speak directly with the sector minister or consult the Cabinet or notify the proponent? Why has it been left so vague?

Ms LAWLER: There is a broad range of people. At the end of the day I am the decision-maker.

Mrs FINOCCHIARO: Do you not then agree with some of the concern that this it is this power of veto and lack of consultation that one singular Environment minister becomes all powerful?

Ms LAWLER: Just to clarify—the mining minister, or whichever minister, has their own approval processes which are separate. I am the Environment minister, and this is environmental legislation. The Environment minister is the one who makes the decision and gets advice from the independent Environment Protection Authority. We are talking about environmental issues, so it is the Environment minister.

Yes, you can consult with the mining minister if it is about a mine—and I am trying to think of another example. But it is the Environment minister who makes the decision on environmental issues.

The mining minister will have his own legislation on the mines acts or mine management plan, or whatever else he has to sign off on. The mine management plan the minister is looking at—he can consult with me on that, but it is up to him to make the decision on the mines management plans. He has his own jurisdiction, his own act and his own department to provide advice.

When it is environmental, why would you think it should be—you will listen and talk, but as the Environment minister I am the person who is responsible for making decisions about the environment. It falls back on me.

I think that is enough talking about this. We have clarified it. The Environment minister is the ultimate decision-maker on it. You say it is right of veto, but the Education minister makes decisions on whether a new school is going in, or anything to do with a child's education. That is what happens.

The Health minister makes decisions about hospitals and people's individual health. So does the Attorney-General. The Environment makes decisions about the environment. That is the Environment minister's job.

The word 'veto' has connotations, and they seem to be negative when it comes to environmental decisions. The Health minister has right of veto. The Territory Families has the right of veto, if you can call it that, regarding issues of child protection.

It is ultimate decision-making that results in the minister—whether or not you like calling it 'veto', which has negative connotations. The Environment minister makes decisions about the environment.

Mrs FINOCCHIARO: I guess it is so significant because—with the word 'environment', you are saying that the reason we do not need to enshrine principles or considerations around social, economic or cultural factors to provide balance is because it is combined in the definition of 'environment'. You are the Environment minister, so therefore you are the minister for balancing the environmental, social, cultural and economic elements of a proposal that comes before you.

Ultimately, if you do not approve the environmental approval it is game over.

Ms LAWLER: It is game over because they obviously will breach or have impact on the environment in the Northern Territory. They need to do some more work on their environment plan and look at the significant impact their mine, or whatever it is, will have on the Northern Territory. It should be game over if that is the

case. If it is not good enough we do not want the Territory's environment impacted. Game over; go back; do some more work; bring it forward again and show that what you will do in your industry will protect the environment of the Northern Territory. That is the expectation.

Mrs FINOCCHIARO: I do not disagree. If the negative environmental impact outweighs the other benefits. What I am trying to understand is how you are arriving at that point. It seems through the bill that the only source of of information or advice to you is via the EPA.

The EPA's primary concern must be, is, the environment so I am trying to understand, and people want to understand, how those social, cultural and economic factors are weighed in and whether they are weighed and balanced equally by the EPA.

Ms LAWLER: The NT EPA has eight members and one of the clear responsibilities as a minister is that you have absolutely quality people on the EPA and also that you have some agility around the EPA. We have brought two members onto the EPA who have expertise in the onshore oil and gas industry so they can provide me with outstanding, quality information.

I have to have that trust in the EPA. I have to have a solid relationship with the NT EPA. I have those eight members of the NT EPA who provide that.

The Department of Environment and Natural Resources also work with the NT EPA and other agencies. It is not just the Department of Environment and Natural Resources; it might be the Department of Primary Industry and Resources who also work with the NT EPA.

The checks and balances are that the Northern Territory Public Service has a code of conduct. They have merit selection processes so that you get the very best people into positions in those departments. People with the qualifications that are needed for the environment. They are the layers of protection for proponents and that is the reality.

You have qualified people in departments that have doctorates and master's degrees that provide advice. In the EPA you have high quality people who are experts in their field as well. They provide advice to the minister. The minister also talks to colleagues including the mines minister.

You have all those broad ranging checks and balances. As well, the minister gets lobbied and petitioned, all of those sorts of things, from different groups of people as well. Whether that groups is the Minerals Council or it might be the building industry if we are talking about a substantial build that might be significantly affecting the environment, or the construction or civil industry, let alone the environmental.

There is a thorough process that goes into this. I am trying to make it clear to you that it is not just the minister all of a sudden deciding I am going to say no to this, or no to somebody. There is a huge amount of work that goes in behind the scenes before we get to that.

And I also understand that, when we are talking about, let us use the example of mining because that is obviously topical, mining companies have their reputations at stake. A mining company that is proposing a mine that is going to have a significant impact on the environment in the Northern Territory, they do not want to do anything that is going to impact on the reputation of their company. Their shareholders would not want that mining company to be in trouble about some environmental factor. Have they endangered something or have they wiped out or have they caused some pollution?

What you are saying, Deputy Opposition Leader, is highly hypothetical. There are so many checks and balances through the government side and I can assure you that the mining companies I have had conversations with, the people we have dealt with, would not want reputational damage to them or their shareholders.

Mrs FINOCCHIARO: I think it is important that you recognise that proponents recognise their need for social licence and set out to undertake to do the right thing.

Clause 71 agreed to.

Clause 72:

Mrs FINOCCHIARO: In relation to Clause 72(d), is there a timeframe for which you consider the show cause?

Ms LAWLER: There is no explicit timeframe but I am still within my 30 days.

Mrs FINOCCHIARO: So that process takes place within the 30 days?

Ms LAWLER: Yes.

Clause 72 agreed to.

Clause 73 agreed to.

Clause 74:

Mrs FINOCCHIARO: This is a section that requires you to have a decision done and dusted within the 30 day period from which the EPA provides you their recommendations and then it has the effect that if you cannot meet that timeframe then whatever the EPA has recommended is taken to be accepted. Why has the government gone for this mechanism? Is it not constraining your ability to come to a different conclusion?

Ms LAWLER: It was about government listening and providing certainty to industry. As a minister, yes, you need to give this your utmost focus and not sit there and sit on your hands and delay. It is one, I talk about a dead cat, which is sits in your in-tray for a long time. You do not want any dead cats. You want to move this one so you need to give it your full attention and get it sorted basically.

Mrs FINOCCHIARO: I have never heard of the dead cat, minister. I obviously have not had any.

So for this provision, there is no 'stop-the-clock' mechanisms once that 30 days kicks off?

Ms LAWLER: Yes, it is about getting the minister moving and making sure that as soon as you get it, you give it your full attention, meet with the people that you need to meet with, follow-up, have conversations, do the work and get moving on it. The examples that we have seen, the ENPs that I have had for onshore oil and gas and I have had about six and we have worked through those in the timeframes already.

Mrs FINOCCHIARO: Is it not a concern then that essentially the EPA's draft recommendations as they come through due to that constrained time period, will just be rubber stamped effectively?

Ms LAWLER: They will not with me.

Mrs FINOCCHIARO: I am not suggesting that, but in future-proofing legislation with a 30-day timeline and a different minister in a different time, is there any mechanism to safeguard rubber-stamping?

Ms LAWLER: Yes. I am pleased to hear that you are on the other side at the moment. The industry raised concerns about a minister being able to extend the timeframe. That is why it is set in this legislation as 30 days. You are concerned about future-proofing, but 30 days is a fair and reasonable amount of time for a minister to do the work and, if necessary, go back to the EPA, meet with other people and work through this. It provides certainty to industry. It was seen as a fair and reasonable decision.

Clause 74 agreed to.

Clauses 75 to 78, by leave, taken together and agreed to.

Clause 79:

Mrs FINOCCHIARO: Minister, is there any timeframe in clause 79?

Ms LAWLER: It is still subject to the 30 days.

Clause 79 agreed to.

Clause 80:

Mrs FINOCCHIARO: This just goes back to my earlier comments regarding the 'stop the clock' provision. I suppose I know what your answer will be, minister, but I will ask the question anyway. The clock stops running once you get to clause 3. Did the government look at any alternative ways to deal with this timeframe issue?

Ms LAWLER: No, it did not.

Mrs FINOCCHIARO: Why is the time for this decision 60 business days?

Ms LAWLER: In this case, I am rejecting the EPAs advice, then I am going back and getting the final approval.

Clause 80 agreed to.

Clauses 81 to 98, by leave, taken together and agreed to.

Clause 99:

Mrs FINOCCHIARO: Minister, my comments around this section and the next go to 'stop the clock'. Was any alternative considered for these sections?

Ms LAWLER: No, there was not.

Clause 99 agreed to.

Clause 100:

Mrs FINOCCHIARO: This relates to 'stop the clock' again, but the minister answered my question in the previous clause.

Clause 100 agreed to.

Clause 101, by leave, agreed to.

Clauses 102 to 105, by leave, taken together and agreed to.

Clause 106:

Ms LAWLER: Mr Deputy Speaker, I move amendment 20 to clause 106. Clause 106 specifies the circumstances in which the minister may amend an environmental approval. This includes making amendments at the request of the approval holder and on the minister's own initiative in other limited circumstances. The clause is designed to provide approval holders with certainty whilst still ensuring that environmental impacts are managed appropriately and the environment is protected to the extent practicable.

Assembly amendment 20 inserts a new subclause (2A). The subclause identifies matters that the minister must consider before amending an environmental approval at the request of a proponent. This decision-making criteria provides additional certainty to the community that development by stealth is not allowed by ensuring that the amendments do not undermine environmental responsibilities and outcomes as identified through an environmental impact assessment process. This amendment reflects recommendation 8 of the scrutiny committee.

Mrs FINOCCHIARO: Minister, will this amendment have any impact on the 60-day required timeline?

Ms LAWLER: No, it will not.

Amendment agreed to.

Clause 106, as amended, agreed to.

Clauses 107 and 108, by leave, taken together and agreed to.

Clause 109:

Ms LAWLER: Mr Deputy Speaker, I move amendment 21 to clause 109. Clause 109 specifies the circumstances in which the minister may revoke an environmental approval. The grounds for revocation are limited in order to balance the need to provide approval holders with certainty and the need to ensure the environmental impacts are managed appropriately and the environment is protected to the extent practicable.

Subclause (c) identifies that the minister may revoke an environmental approval if the minister believes on reasonable grounds that the environmental impacts of the action cannot be appropriately avoided mitigated or managed or, if appropriate, offset.

Assembly amendment 21 amends subclause (c) to provide a further limitation that the minister's belief must be the result of compliance monitoring and enforcement activities. This makes the subclause consistent with subclause (b). It addresses concerns about the current drafting of the clause which is associated with the fact the clause appeared to potentially be in conflict with the purpose of an environment approval, which is to authorise environmental impacts. This amendment reflects recommendation 9 of the scrutiny committee report.

Amendment agreed to.

Clause 109, as amended, agreed to.

Clause 110 to 141, by leave, taken together and agreed to.

Clause 142:

Ms LAWLER: I move amendment 22 to clause 142. An environmental audit is a compliance took that provides a mechanism to obtain information to improve the understanding of the environmental impacts of specific actions. Clause 142 identifies those circumstances in which the Chief Executive Officer may direct an approval holder to undertake an environmental audit.

Assembly amendment 22 omits the current clause and inserts a new clause. Under the current clause the CEO's powers to direct and audit are limited to where the CEO reasonably believes or suspects that an approval holder has, or is likely to, contravene the environmental approval.

Under these amendments the CEO will also be able to direct an audit where the environmental impact appears to be significantly greater than was indicated during the original environmental impact assessment and decision making process.

This amendment has been designed to enhance transparency and accountability and improve the operation of the bill. This amendment reflects recommendation 10 of the scrutiny committee.

Mrs FINOCCHIARO: How is reasonable grounds decided? What would constitute a reasonable ground?

Ms LAWLER: The Chief Executive would have some information before them that they would consider important.

Mrs FINOCCHIARO: So the grounds are at the discretion of the CEO?

Ms LAWLER: Yes that is right.

Mrs FINOCCHIARO: And that will not be further articulated in the regulations?

Ms LAWLER: No. This is standard drafting, for Chief Executive Officers' roles.

Amendment agreed to.

Clause 142, as amended, agreed to.

Clauses 143 to 158 taken together and agreed to.

Clause 159:

Ms LAWLER: I move amendment 23 to Clause 159.

Clause159 allows the Chief Executive Officer to appoint a person to be an environmental officer. Environmental officers are provided with a number of powers that enable them to investigate and enforce potential breaches of the act. It also identifies that police officers are environmental officers under the act.

Environmental officers are given a number of powers and functions under the act to investigate alleged breaches of the act and environmental approvals and to take compliance or enforcement action.

Assembly amendment 23 inserts a new subclause (1)(a). This subclause provides decision making criteria for the CEO when appointing an environmental officer and will ensure that only suitably qualified, trained, skilled or experienced people are appointed as officers.

This amendment uses the expression, 'skills, qualifications, training or experience'. This recognises that highly experienced staff may not hold formal qualifications but this should not prevent their appointment as officers.

This amendment is broadly consistent with other recent legislation before the assembly, including the Animal Protection Bill 2018 and the Hemp Industry Bill 2019. This amendment reflects the intent of recommendation 11 of the scrutiny committee report.

Mrs FINOCCHIARO: It is certainly an improvement on the bill so I support that amendment.

Ms LAWLER: Thank you.

Amendment agreed to.

Clause 159, as amended, agreed to.

Clauses 160 and 161, taken together and agreed to.

VISITORS
Family of Member for Arafura

Mr DEPUTY SPEAKER: Honourable members, I advise of the presence in the gallery of the wife, father and granddaughter of the Member for Arafura. Welcome to Parliament House. We hope you stay entertained up there.

Members: Hear, hear!

Clause 162:

Mrs FINOCCHIARO: This clause gives significant powers to environmental officers. An environmental officer may do anything, cause anything to be done or take any action the environmental officer believes on reasonable grounds is necessary. Can you explain why such broad language is used in this section?

Ms LAWLER: It is fairly standard in these roles to use that language. These officers are investigating significant issues that are affecting the environment. It is broad but tight.

Mrs FINOCCHIARO: Do they undertake their duty from direction from the CEO or is it independently done as part of their duty that they exercise their discretion and powers as they deem reasonable?

Ms LAWLER: They are members of the public service. As we know, they would have a line manager, there would be an executive director above them, and above that person is the chief executive of the department, so it would be working their way up through the system. But it would be the CEO, yes.

Clause 162 agreed to.

Clauses 163 to 169, by leave, taken together and agreed to.

Clause 170:

Ms LAWLER: I move amendment 24 to clause 170. To enable the appropriate investigation of potential offences against the act and environmental approvals, the bill establishes environmental officers and gives these officers a range of powers to investigate potential offences. This includes powers to enter and search land or premises. This power only extends to entry of residential premises with the consent of the owner or occupier, or a search warrant issued under clause 170.

Clause 170 is included specifically to authorise entry to residential premises. It acknowledges that interference with a person's premises, including their residential premises, should be limited but is necessary in some circumstances. Under the bill, these search warrants can be issued by a Justice of the Peace.

Assembly amendment 24 makes an amendment to the clause to replace the Justice of the Peace with a judicial officer. This amendment reflects the seriousness associated with obtaining search warrants to enter residential premises as part of environmental investigations. This amendment reflects recommendation 12 of the scrutiny committee report.

Amendment agreed to.

Ms LAWLER: Mr Deputy Speaker, I move amendment 25 to clause 170 to enable the appropriate investigation of potential offences against the act and environmental approvals. The bill established environmental offices and gives these offices a range of powers to investigate potential offences. This includes powers to enter and search land or premises. This power only extends to entry of residential premises with the consent of the owner or occupier, or a search warrant issued under clause 170.

Clause 170 is included specifically to authorise entry into residential premises. It acknowledges that interference with a person's premises, including their residential premises, should be limited but is necessary in some circumstances. Under the bill these search warrants can be issued by a Justice of the Peace. Assembly amendment 25 makes an amendment to clause to replace 'Justice of the Peace' with 'judicial officer'. This amendment reflects the seriousness associated with obtaining search warrants to enter residential premises. As part of the environmental investigation, this amendment reflects recommendation 12 of the scrutiny committee's report.

Amendment agreed to.

Ms LAWLER: Mr Deputy Speaker, I move amendment 26 to clause 170 to enable the appropriate investigation of potential offences against the act and environmental approvals. The bill establishes environmental officers and gives these officers a range of powers to investigate potential offences. This includes powers to enter and search land or premises. This power only extends to entry of residential premises with the consent of the owner or occupier, or a search warrant issued under clause 170.

Clause 170 is included specifically to authorise entry into residential premises. It acknowledges that interference with a person's premises, including their residential premises, should be limited but is necessary in some circumstances. Under the bill these search warrants can be issued by a Justice of the Peace. Assembly amendment 26 makes an amendment to the clause to replace 'Justice of the Peace' with 'judicial officer. This amendment reflects the seriousness associated with obtaining search warrants to enter residential premises and is part of the environmental investigation. This amendment reflects recommendation 12 of the scrutiny committee's report.

Amendment agreed to.

Ms LAWLER: Mr Deputy Speaker, I move amendment 27 to clause 170 to enable the appropriate investigation of potential offences against the act and environmental approvals. The bill establishes environmental officers and gives these officers a range of powers to investigate potential offences. This includes powers to enter and search land or premises. This power only extends to entry of residential premises with the consent of the owner or occupier, or a search warrant issued under clause 170.

Clause 170 is included specifically to authorise entry into residential premises. It acknowledges that interference with a person's premises, including their residential premises, should be limited but is necessary in some circumstances. Under the bill these search warrants can be issued by a Justice of the Peace. Assembly amendment 27 inserts a new subclause (7) defining who a judicial officer is for the purpose of the clause. A judicial officer is a supreme court judge, associate judge or local court judge.

This amendment reflects the seriousness associated with obtaining search warrants to enter residential premises and is part of the environmental investigation. This amendment reflects recommendation 12 of the scrutiny committee's report.

Amendment agreed to.

Clause 170, as amended, agreed to.

Clauses 171 to 186, by leave, taken together and agreed to.

Clause 187:

Ms LAWLER: Mr Deputy Speaker, I move amendment 28 to clause 187. Division 2 of part 9 of the bill establishes a system of environmental protection notices. These are notices that can be issued by the CEO or an environmental officer to ensure a proponent or approval holder complies with the act or an environmental approval in order to minimise unauthorised environmental impacts. The division identifies who can be issued with a notice and that these environmental protection notices can be recorded on the land title. It is important that underlying land owners and occupiers are aware of any notices that may be reported on the land. Clause 187 requires the chief executive officer to advise owners and occupiers about a notice as soon as practical after it has been recorded on the title. This ensures that land owners and occupiers are aware of the notice and also of their obligations under the notice.

Assembly amendment 28 amends subclause (2) by clarifying that the chief executive officer must take all reasonable steps to give written to the owner or occupier. Subclause (4) allows the chief executive officer to give this written by addressing the notice to the occupier and posting or leaving it at the land. These amendments recognise the importance of these notifications provisions and provide certainty that the CEO will take all reasonable steps to provide impacted owners and occupiers about a notice. This amendment reflects recommendation 13 of the scrutiny committee report.

Mrs FINOCCHIARO: Minister, what constituents a reasonable step that would be expected of the CEO to take to notify owners?

Ms LAWLER: It would be that the chief executive officer would try to find their address, the right place, try to contact them, go out—just do everything possible to make sure that they receive that information.

Amendment agreed to.

Ms LAWLER: Mr Deputy Speaker, I move amendment 29 to clause 187. Division 2 of part 9 of the bill establishes a system of environmental protection notices. These are notices that can be issued by the chief executive officer or an environmental officer to ensure a proponent or approval holder complies with the act or an environmental approval in order to minimise unauthorised environmental impacts.

The division identifies who can be issued with a notice and that these environmental protection notices can recorded on the land title. It is important that underlying land owners and occupiers are aware of any notices that may be recorded on the land.

Clause 187 requires that the chief executive officer advise owners and occupiers about a notice as soon practical after it has been recorded on the title. This ensures that land owners and occupiers are aware of the notice and also of their obligations under the notice.

Assembly amendment 29 amends subclause (4) to align with the new obligations in subclause (2) by requiring all reasonable steps to have been taken to notify an occupier before the chief executive officer can use these provisions to provide the notice. This amendment recognises the importance of these provisions and provides certainty that the CO will take all reasonable steps to provide impacted owners and occupiers about a notice.

This amendment reflects recommendation 13 of the scrutiny committee's report.

Amendment agreed to.

Clause 187, as amended, agreed to.

Clauses 188 to 203, by leave, taken together and agreed to.

Clause 204:

Ms LAWLER: Mr Deputy Speaker, I move amendment 30 to clause 204. Division 4 of part 9 of the bill establishes a system of closure notices. These are notices that can be issued by the minister for those sites that may require ongoing monitoring or management after the expiration of an environmental approval. This could apply, for example, to landfills which are full and are seeking to be closed. Under the division notices

can be issued before an environmental approval expires or after the expiration or revocation of an approval. The division also identifies who can be issued with a notice. Notices can be recorded on the land title. It is important that underlying land owners and occupiers are aware of any notices that may be recorded on the land.

Clause 204 requires the Chief Executive Officer to advise owners and occupiers about a notice as soon as practicable after it has been recorded on the title. This ensures that land owners and occupiers are aware of the notice and also of their obligations under the notice.

Assembly amendment 30 amends subclause (2) by clarifying that the Chief Executive Officer must take all reasonable steps to give written notice to the owner or occupier. Subclause (4) allows the CEO to give this written notice by addressing the notice to the occupier and posting it or leaving it at the land.

This amendment recognises the importance of these notification provisions and provides certainty that the CEO will take all reasonable steps to provide impacted owners and occupiers about a notice. This amendment reflects recommendation 13 of the scrutiny committee's report.

Amendment agreed to.

Ms LAWLER: I move amendment 31 to clause 204. Division 4 of Part 9 of the bill establishes a system of closure notices. These are notices that can be issued by the minister for those sites that may require ongoing monitoring or management after the expiration of an environmental approval. This could apply, for example, to landfills which are full and are seeking to be closed.

Under the division, notices can be issued before an environmental approval expires or after the expiration or revocation of an approval. The division also identifies who can be issued with a notice. Notices can be recorded on the land title. It is important that underlying land owners and occupiers are aware of any notices that may be recorded on the land.

Clause 204 requires that the chief executive officer advise owners and occupiers about a notice as soon as practicable after it has been recorded on the title. This ensures that land owners and occupiers are aware of the notice and also of their obligations under the notice.

Assembly amendment 31 amends subclause (4) to align with the new obligations in subclause (2) by requiring all reasonable steps to have been taken to notify an occupier, before the CEO can use these provisions to provide the notice.

This amendment recognises the important of these notification provisions and provides certainty that the CEO will take all reasonable steps to provide impacted owners and occupiers about a notice. This amendment reflects recommendation 13 of the scrutiny committee's report.

Amendment agreed to.

Clause 204, as amended, agreed to.

Clauses 205 to 287, taken together and agreed to.

Clause 288:

Ms LAWLER: I move amendment 32 to Clause 288. Clause 285 of the bill gives the minister the power to direct proponents and approval holders to provide certain environmental information, including data. The intent of the section is to improve knowledge about the Territory's environment in order to inform decision making.

Clause 288 recognises that in some circumstances, a proponent or approval holder may not be able to comply with the direction. For example, because the information is sensitive or confidential, or there may be practical barriers to providing the information. It allows that person to seek an exemption from the requirement to provide the information.

Assembly amendment 32 inserts a new subclause 2(a). This subclause provides decision making criteria for the minister when considering granting an exemption to a proponent or approval holder from an obligation to provide information as required by Clause 285. Under this amendment, the minister must be satisfied that granting the exemption will not undermine the objects of the act.

Amendment agreed to.

Ms LAWLER: I move amendment 33 to clause 288. Clause 288 of the bill gives the minister the power to direct proponents and approval holders to provide certain environmental information, including data. The intent of the section is to improve knowledge about the Territory's environment in order to inform decision making.

Clause 288 recognises that in some circumstances, a proponent or approval holder may not be able to comply with the direction—for example, because the information is sensitive or confidential, or there may be practical barriers to providing the information—and allows that person to seek an exemption from the requirement to provide the information.

Assembly amendment 33 amends subclause (3) by placing a time frame on the publication of statements of reason by the minister for granting an exemption from the requirement to provide information. The amendment requires publication to occur as soon as practicable after the declaration is made.

This amendment provides additional certainty that statements of reason will be published in a timely manner and is consistent with other amendments to this bill. The amendment reflects Recommendation 14 of the scrutiny committee's report.

Mrs FINOCCHIARO: With the amendment, will you still be required to publish a statement of reason?

Ms LAWLER: Yes.

Mrs FINOCCHIARO: For the previous amendment?

Ms LAWLER: Yes.

Amendment agreed to.

Clause 288, as amended, agreed to.

Clauses 289 to 292, by leave, taken together and agreed to.

Clause 293:

Ms LAWLER: I move amendment 34 to clause 293. Clause 293 establishes the power for the Administrator to make regulations under the act. The clause contains a standard note at the end of the clause directing the reader to refer to the *Interpretation Act 1978*.

During its preparation of the Assembly amendments, the Office of Parliamentary Counsel identified that the note had been incorrectly placed at the end of the clause, rather than at the end of clause 1, and that referenced Division 2 of Part VII of that act, rather than the more standard reference to section 65 of the act.

Assembly amendment 34 inserts the note in the correct location. This is a technical amendment addressing an error in the placement of the note. The amendment ensures that the regulation-making power is consistent with other regulation-making powers in Territory legislation.

Mrs FINOCCHIARO: When will the regulations be finished?

Ms LAWLER: It is a matter of as soon as this work is done, this act is passed, the regulation work we are hoping to be finished in the next few weeks. It was just making sure this act is passed. There has been a draft of the regs that went out for consultation and there will be further consultation on these regs—but within the next few weeks basically.

Mrs FINOCCHIARO: Touching on that was to be my next question. I want to confirm. Once the regulations have finished being drafted, will they go out for consultation like your earlier regulatory draft did?

Ms LAWLER: Yes, they will.

Mrs FINOCCHIARO: Okay. So, the regulations to this bill will go out to consultation?

Ms LAWLER: Yes.

Amendment agreed to.

Ms LAWLER: I move amendment 35 to clause 293. Clause 293 establishes the power for the Administrator to make regulations under the act. The clause contains a standard note at the end of the clause directing the reader to refer to the *Interpretation Act 1978*.

During its preparation of the Assembly amendments, the Office of Parliamentary Counsel identified that the note had been incorrectly placed

Ms LAWLER: Clause 293 establishes the power for the Administrator to make regulations under the act. The clause contains a standard note at the end of the clause directing the reader to refer to the *Interpretations Act 1978.* During its preparation of the Assembly amendments, the Office of Parliamentary Counsel identified that the note had been incorrectly placed at the end of the clause rather than at the end of clause 1 and that the reference division 2 of part VII of that act rather than the more standard reference to section 65 of the act.

Assembly amendment 35 deleted the incorrectly located note. This is a technical amendment that addresses an error in the placement of the note. The amendment ensures that the regulation-making power is consistent with other regulating powers in Territory legislation.

Clause 293, as amended, agreed to.

Clause 294 to 295, by leave, agreed to.

Clause 296:

Mrs FINOCCHIARO: Will pre-existing approvals, or approvals that are on foot, be grandfathered under the legislation preceding this.

Ms LAWLER: Yes, they will because they are already in play.

Clause 296 agreed to.

Long title:

Ms LAWLER: I move amendment 36 to the long title. The long title of the act identifies the purpose of the act. The long title currently identifies that this is an act to provide for the protection of the environment. In further reviewing the act, and in particular the consequential amendments made by this act, the Office of Parliamentary Counsel has recommended that for certainty, the title of the act be expanded to include the words ‘and for related purposes.’

This titling approach is consistent with Territory drafting practice. This is a technical amendment to ensure consistency in drafting practice and provides certainty around the purpose of the act.

Amendment agreed to.

Long title, as amended, agreed to.

Remainder of the bill, by leave, taken as a whole and agreed to.

Ms LAWLER (Environment and Natural Resources): Mr Deputy Speaker, I move that the bill be now read a third time.

Motion agreed to; bill read a third time.