ABORIGINAL CULTURAL HERITAGE ACT — IMPLEMENTATION

Motion

HON NEIL THOMSON (Mining and Pastoral) [1.08 pm]: I move —

That this house —

(a) shares the extraordinary level of concern expressed by the community about how unprepared the state is for the implementation of the Aboriginal Cultural Heritage Act regulations, with a record number of signatures received on an electronic petition in a very short time frame;

(b) notes the expression of anxiety and concern of landowners and the small and medium business sector, including pastoralists and graziers, farmers, and any contractors or individuals who might need to carry out ground-disturbing activity after 1 July 2023, regarding their ability to comply with the new regulations;

(c) notes the deep concern that the Department of Planning, Lands and Heritage's permit system will be operational only on 1 July, meaning applicants will need to cease work while they wait for approvals to be processed after 1 July 2023;

(d) notes the concern that no local Aboriginal cultural heritage services are registered as yet, and the associated concerns expressed by traditional owners about the implementation of the new laws and challenges in establishing LACHS;

(e) notes that many in the community, including landowners in the metropolitan area, have not been aware of the changes and their obligations under the new act, and this cohort is only now becoming aware of how the new laws might impact on them; and

(f) calls on the Cook government to delay the promulgation of the regulations by at least six months to alleviate anxiety in the community, reduce the risk of business disruption, establish functioning and tested systems, ensure that LACHS are properly resourced and functioning, and provide better advice to all parties that are affected, including residential landowners who have blocks greater than 1 100 square metres.

I want to start by saying what an extraordinary privilege it is to be a member of this place. We have all been elected to this place for a very important task—that is, to govern in the interests of the Western Australian people. We may share different views on how that should occur, but we as members of this place have a unique task to speak on things of concern in our community. One process by which this place can be advised of a concern in our community is a parliamentary petition. Official petitions are designed and brought on through the standing orders and have high status in this place. They provide a mechanism for the community to outline its concerns and we can cautiously and carefully deliberate those concerns.

We saw the unfortunate comments made by the Premier about this petition. He said that it was not a real petition. He said that it was "just an e-petition" and said, "I thought it was a proper petition". That is disappointing, and I think the Premier should reflect on that, as we all reflect on how we can make this place more accessible to the community's views. The statistic that stands out about this petition is that in the space of a mere two weeks, 29 716 people put their names to this petition. That is an absolute record for this vehicle called e-petitions, and I believe it is one of the most heavily signed petitions received by Parliament over many decades.

From my point of view, there was no advertising. When people were talking about doing things, pushing this out and getting it out to the media, I was very determined that it had to be organic and it had to be a point of view expressed by the people of Western Australia. I think those late processes of engagement undertaken by the government through the forums held, particularly with farmers, gave some impetus and a sudden dawning realisation amongst a lot of people in Western Australia that they had not really understood what these regulations meant for them. They did not really understand what it meant for them. That is a fundamental flaw in the process that we have seen to date. We, in this house, should share the extraordinary level of concern expressed by the community about how unprepared the state is in the implementation of the Aboriginal Cultural Heritage Act regulations. This is a record number of petitioners in a mere two weeks. One can only assume what that number would have been if this petition had gone for a course of a month or more.

The people I have spoken to have expressed their anxiety and concern as landowners, particularly in the small business sector. This bill has been publicised as a matter to address the Juukan Gorge incident, and none of us ever want to see another Juukan Gorge. But what has become very apparent to people on the ground is that they never anticipated the codification of every single activity that they would undertake on their land, what is exempt and what is not. This is a new regime, despite what the government says.

Yesterday, I asked how many section 18s were approved in 2021–22. The answer was that 59 section 18s were submitted in 2021–22 and 57 were approved. By simply looking at the processes outlined in the regulations, which were finalised and gazetted only on 19 May 2023, we know that everything from digging something equivalent to the size of a bag of cement in an area that might have Aboriginal cultural heritage will be subject to a tier 2 permit, unless of course it is subject to an exemption. Those exemptions are not so easy to work out for the average person. An average person needs to understand the complexities of the Planning and Development (Local Planning Schemes) Regulations to find what those exemptions might be. An average person needs to go through the tables that are outlined in those regulations to identify whether those activities might be exempt, but an average person who has gone about their daily business in the Swan Valley, Mt Helena or Kalamunda or along the Murray River in Murray–Wellington has never, ever had to contemplate seeking a permit under the former act, because only 59 applications for section 18s went to the government for approval. There is incredible specificity and detail of the sorts of activities that may require a permit and approval under the so-called tier 3 approvals process. Eventually, once the local Aboriginal cultural heritage services are in place and people are aware of the laws, I anticipate a very low level of compliance in the first instance, because there are not the processes for an application to properly be considered. To date, we do not know what the process looks like because it is not yet in place. I expect that the number of transactions for some form of approval or permit will be in either the tens of thousands or hundreds of thousands a year. I challenge the government to consider whether that would not be the case. I challenge the government to consider going from 59 applications to tens or hundreds of thousands of interactions with a process of bureaucracy that I understand the people of this state are not fully anticipating or aware of.

Several members interjected.

Hon NEIL THOMSON: Whilst the other side may yell and make comment, I ask this reflection of members who sit in peri-urban seats, such as the member for Swan Hills, Jessica Shaw; the Treasurer, Rita Saffioti, the member for West Swan; the member for Murray–Wellington, Robyn Clarke; the member for Kalamunda, Matthew Hughes; and the member for Darling Range, Hugh Jones: have they engaged honestly with their community about the obligations for a person with two hectares or 1 100 or 1 200 square metres of land?

This process has been half cooked. This process has not been outlined in a proper way. We have seen an absolutely unprecedented response to this petition because people are concerned.

As I outlined at the beginning of my remarks, I ask people to reflect on the privilege of serving in this place. I ask people to contemplate the huge concern, because this will not go away. Over time, and as more members of the community become aware of the challenges that this will cause them in seeking approval, people will consider this in more detail and I can see the concerns increasing to an even greater extent.

This has not been an easy piece of legislation for the government, and I acknowledge that. But the government has done an appalling job of rolling out the regulations. The government has done an appalling job of engaging with every stakeholder group that needed to be engaged with. This is far reaching. It is not just about Rio Tinto or the mining sector in general. It is not just about the farming community. I commend the farming community for being the catalyst for this discussion, but it is not just about that community. It is about how a tradie who currently operates a small backhoe will operate in the Swan Valley or even around Midland, because 90 per cent of the area is referenced as having some form of Aboriginal cultural heritage site. These people probably have no idea of the obligations that will be put on them from 1 July. These people would have voted in good faith for the Labor Party in 2021; they would have voted for the Mark McGowan wave. Yet these people are now saying to me that they had no idea that these obligations would apply to them. These are the holders of mortgages on small lifestyle blocks in the Mt Helena region or in Mundaring who have built little bridges across the creek or created a bit of landscaping in their backyard because they wanted to enjoy it with their family. These people may find themselves in breach of the legislation because they never contemplated the section 18 process. The law is based on precedent.

Several members interjected.

The PRESIDENT: Order! Hon Neil Thomson has the call.

Hon NEIL THOMSON: Thank you, President; I appreciate your protection. This matter is important and we should have an honourable and reasonable discussion about it.

Several members interjected.

The PRESIDENT: Order! Perhaps it is not protection, honourable member; it is the application of the standing orders. May I also suggest that the standing orders indicate that interjections should not be sought, as well as not responded to.

Hon NEIL THOMSON: Those are the people who voted for the Mark McGowan wave and are now asking themselves, "What must I do come 1 July?

The matters outlined in the tier 2 permit system are not about Juukan Gorge. In fact, I am going to lay down a challenge for the mining sector in the last minutes of my contribution. We have seen the mining sector break ranks a little on this issue in the last few days. I put it to the mining sector that it has a social licence in this state. It stands with a social licence. I want the theme of this conversation to be about the power of the little person in this state—the power of the family who do not have the finances to back them and who might be struggling with their mortgage but want to have a comfortable home and a good family relationship around the barbecue in their backyard. This is about power.

Several members interjected.

The PRESIDENT: Order, members! You will have your opportunity to contribute to the debate very shortly.

Hon NEIL THOMSON: I say to the people in power that these laws have been sold on Juukan Gorge. I say to them that they should not forget about this when the first prosecution occurs of a farmer, a hobby farmer, an orchardist or a self-employed electrician or plumber who built a new fence and did not comply. Questions will inevitably be asked then and those in power will have to reflect on where this all began. It began when a minister was sitting in the chair and we saw the demolition of Juukan Gorge. My understanding, as conceded by those opposite, is that that office at least knew prior to the demolition of Juukan Gorge. We do not know what the minister knew, but that minister now sits on the board of the very company that did that act. I ask that company to consider its social licence, because this has resulted in the most unprecedented bureaucratic approach to the regulation of Aboriginal cultural heritage issues in the state.

I can say with assuredness because I have spoken to many Aboriginal people that this is not what they wanted. This is not what they wanted. In fact, when people from the Kimberley Land Council stood on the steps of Parliament, not a single member of the government bothered to stand with them. I was there. I was the only member of Parliament there at the time—maybe there was someone else from my side, but I cannot recall. I was asked to receive a letter in which they raised their concerns, and I tabled it in this place. Their concerns were not listened to in the discussions on this legislation. We understand that there is a pattern.

I now implore the Premier to make a 180-degree turn and listen to the concerns of the 29 716 people who signed the petition. It is a very modest request. We have read out the petition. All those people are asking for is a pause so that they can be better informed. All they are asking for is a pause so that the systems can be put in place. All they are asking for is a pause so that they can interact and plan for their future and ensure that they meet the obligations under the act and the regulations. The discussion about the appropriateness of the regulations can be had at another time, but right now, I stand in this place as a voice for those 29 000-odd people. I stand here with the strength of those 29 000 people standing behind me and I ask and implore all members present —

Several members interjected.

The PRESIDENT: Order!

Hon NEIL THOMSON: I ask and implore all members present in this place to reflect on the job that has been done to date. I ask that reasonable request of members. I implore them to consider that and I commend this motion to the house.

HON STEPHEN DAWSON (Mining and Pastoral — Minister for Emergency Services) [1.30 pm]: I rise on behalf of the government to make a contribution to this motion. I say at the outset that it is illegal today to undertake without consent activities that would harm Aboriginal cultural heritage in this state. That is the fact today. Those laws have been in place since 1972, and it will still be illegal on 1 July. That will not change. What will change is that there will be a new tiered system requiring consultation and agreement with Aboriginal people across the state. It will also provide simpler approval pathways for proponents to get their projects approved in this state. Existing approvals that apply under section 18 will not require a new approval. Exemptions will also apply to like-for-like activities and activities on residential lots of less than 1 100 square metres.

These reforms follow more than five years of extensive consultation right across Western Australia and align with commonwealth native title laws. The Aboriginal Cultural Heritage Act was passed by Parliament in December 2021, and since that time more than 1 100 people have attended 90-plus workshops around the state as part of the co-design process. I think Hon Rosie Sahanna said last night that it was 94. Another 220 submissions were received as part of the co-design process. Hundreds of meetings took place with Aboriginal organisations, industry groups, resources companies, developers, local governments, pastoral groups and more.

The new Aboriginal cultural heritage system will go live from 1 July 2023. The Aboriginal Heritage Act 1972 and the controversial section 18 process that has existed since then will cease to exist. Regulations are in place and a new online application system and directory has been built. A new statutory body, the Aboriginal Cultural Heritage Council, was appointed last year and is ready to do its work. Key guidance documents from the co-design process have been completed and published and $77 million has been allocated in recent state budgets or midyear reviews to develop the capacity of the local Aboriginal cultural heritage services. Education sessions are well underway and the act will commence on 1 July.

It is important that I speak to each of the limbs of this motion this afternoon and put my view on the record. Amendments were made to the Aboriginal Cultural Heritage Act to ensure that the legislation adequately recognises, protects, conserves and preserves Aboriginal cultural heritage and its importance to Aboriginal people and the wider community. It is fair to say that governments of all persuasions have tried to amend and update the act over many years and that it has been a difficult process, but this government made a decision to update the act, and that is what it will do. As of 1 July, the new changes will be in place. We believe that the amended act will create a more robust regulatory framework to protect Aboriginal cultural heritage. It will include a detailed framework and provide guidance for companies and individuals to undertake appropriate due diligence. The act will modernise the protections given to Aboriginal heritage sites. In this day and age, it is unacceptable that those sites are not afforded the same protections as other heritage categories. The previous speaker spoke about Juukan Gorge. Juukan Gorge was a terrible tragedy for this state and is something that future generations will have to live with, but we want to make sure that it does not happen again and that we can protect Aboriginal cultural heritage because it is our cultural heritage as a state and a nation.

In relation to the first paragraph of the motion, the government is prepared for the implementation of the amended Aboriginal Cultural Heritage Act 2021. The regulations and statutory guidelines necessary for the implementation of the act have been gazetted and publicly available for some months and the new ICT system I spoke about will be ready to begin on 1 July 2023. A range of other tasks has also been completed, such as the determining of a reduced area in consultation with the relevant parties, being the Wintawari Guruma Aboriginal Corporation, the Banjima Native Title Aboriginal Corporation and Rio Tinto, to facilitate the repeal of the Aboriginal Heritage (Marandoo) Act and the transitioning of about 78 declared protected areas under the current Aboriginal Heritage Act 1972. Individuals who have attended education sessions have left those events with a far greater and more accurate understanding of the new system. In many, if not most, cases their concerns have been mitigated, particularly about the activities that will be exempt under the new act.

I again make the point that it has been unlawful to harm Aboriginal cultural heritage in Western Australia without an approval for more than 50 years now. That fundamental obligation will not change under the new act. Unlike the existing 1972 act, this new act will allow for a range of exempt activities, as well as a streamlined approvals process for other activities. As I have said, exempt activities include like-for-like activities, replacing existing fences, maintaining existing infrastructure and minor developments attached to places of residence. A farmer or pastoralist will not require approval to plant a crop, run livestock or replace a fence or other existing infrastructure when those activities have taken place before. Existing mining activities that stay within their existing tenements and existing footprint, and the maintenance of the infrastructure, will also be able to proceed without needing approval. There has been concern that the implementation of the new act will impact on infill developments, when in reality this type of development already requires such investigations and management. Members need only look at the major residential property developers like Mirvac or Satterley. They are big property developers in this state and they currently work under the 1972 act and seek section 18 consent for their subdivisions. As I said, all residential lots under 1 100 square metres will be exempt. For land that is greater than 1 100 square metres, a permit or management plan will be required only when the activities are expected to impact Aboriginal cultural heritage. In the vast majority of cases in the metropolitan area, that will not apply, particularly when the land has been disturbed. Further, the majority of housing approvals over the next 10 years will not be affected because when there is no Aboriginal cultural heritage, no approval is required. Subdivisions that have existing approvals, including a section 18 consent, will be exempt. Exemptions may apply to like-for-like activities, whether they are for the demolition of structures or the installation of a pool, a patio, a garage or an ancillary dwelling on lots of any size, and to driveways and crossovers on lots under 1 100 square metres. If developers are in doubt, they should contact the Department of Planning, Lands and Heritage to determine what is required under the new act to facilitate the development. Developers will be required to undertake due diligence for land that is zoned for future subdivisions, just as they are required to do today. That will not change. Developments with existing section 18 consents will remain in effect for five years and an application can be made to continue the consent after that period. For the majority of infill projects and major developments in the area, proponents are already obliged to undertake due diligence and seek approval under the 1972 act. That has been in place.

We have seen many examples of developments across the state by the private sector and government when the Aboriginal cultural heritage of an area has informed the design and been able to be accommodated and celebrated in our public spaces. It can be done very effectively in consultation with Aboriginal people, and that is what we want to have. As we know, every project on every site is unique and requires a bespoke approach to heritage protections. Under the new system, people will have access to existing surveys, clarity on whom to consult, improved guidelines and new exemptions.

I refer to paragraph (c) of the motion. The requirement for an approval to impact Aboriginal cultural heritage exists under the current law. That, as I have said, will not change on 1 July 2023. The bespoke ICT system for Aboriginal

cultural heritage knowledge has been developed specifically for the new act and will go into operation on 1 July, because that is the date the new act comes into effect. I have been told that live demonstrations of the system have been taking place at different events with some industry groups, and the department is open to providing more of those sessions to interested people. If people are continuing with like-for-like activities, which are activities that operate within the parameters of existing activities, they are exempt. The only people who should cease work are people who are damaging or, indeed, risking harm to Aboriginal cultural heritage and who have not obtained an approval under the existing 1972 act. The 18-month transition period, since the act received royal assent, allows people to apply for a section 18 consent prior to the new act coming into effect.

I will address paragraph (d) briefly. As has already been stated, including at the many education sessions that have been and are being held around the state, the new system for protecting Aboriginal cultural heritage does not rely on local Aboriginal cultural heritage services being established. Native title organisations, such as prescribed bodies corporate and the south west regional corporations, will be primary points of contact. Those organisations have established governance and decision-making processes, and they are in place. In many cases, they are already engaging with proponents under the current system, and they will engage with proponents under the new system. The designation of LACHS will be ongoing throughout the life of the act, and the state government has committed both up-front and annual funding for LACHS to ensure that they are completely resourced and have the capability to meet the service requirements of the various land users who might use their services.

I will touch on paragraph (e) briefly. The Aboriginal Cultural Heritage Act, as I said, was passed by Parliament and received royal assent in December 2021. The Minister for Aboriginal Affairs has been on the public record for a long time now about the new act coming into effect on 1 July this year. This has allowed an 18-month transition period for people to start to become informed about the requirements of the new act and determine whether they may need a section 18 consent under the existing act. As I have mentioned, the need for an approval to cause harm to Aboriginal cultural heritage is not changing from the current act to the new act. That has been in place for a long time, and that is not changing. What is changing is the type of approval and the processes for obtaining that approval. Although the minister's consent was required for all section 18 notices in the past, the new system will mean that only a small proportion of approvals will need to reach the minister's desk. This makes it easier for proponents to navigate the system that has been in place for a long time.

As I have indicated, throughout 2022, the key regulations and statutory guidelines were the subject of an almost 12-month co-design process, which provided further guidance to people about how the new system would operate. A wealth of information and material to inform people is available on the Department of Planning, Lands and Heritage website. Information sessions are underway and continuing to roll out around the state to meet the new demand.

I congratulate and thank Hon Rosie Sahanna, who has been involved in much of this work, particularly over the past two years since she has been in this place, on the regulations, consultation and co-design process. Because of her involvement, the process has been much stronger, and she deserves to be congratulated. I thank her for the work she has done so far.

Members: Hear, hear!

Hon STEPHEN DAWSON: As I said, a wealth of information is on the website. The new act exempts many landowners in both the metropolitan area and regional areas from the obligations, whereas the current act does not provide any kind of exemptions. Authorisation is required only if there is risk of harm to Aboriginal cultural heritage. If there is no risk of harm, which is determined by a due diligence process that is set out in the *Aboriginal cultural heritage management code*, there is no need for any kind of approval. It is as simple as that. From 1 July, to determine whether Aboriginal cultural heritage is present, proponents, individuals and stakeholders can visit the Department of Planning, Lands and Heritage website and search the directory. Any Aboriginal cultural heritage in the area may be recorded as a site or noted in a survey report. They can also call the DPLH hotline to obtain advice.

I will briefly touch on paragraph (f). As the minister, the Premier and I have indicated, these new regulations will come into effect on 1 July 2023. There is no reason to delay the implementation date. The system will be ready to go when the new act comes into effect on that date, and the education sessions will continue to take place across the state, as I have indicated. Delaying the new act will not reduce the risk of people being in breach of the current act. In fact, the opposite is the case, given the new act contains a range of exemptions that do not require any kind of authorisation, particularly for people who are undergoing like-for-like activities.

The Aboriginal Cultural Heritage Act also has tier 1, nil to minimal ground-disturbing activities, which simply does not require formal authorisation. They only require a proponent to take all reasonable steps to avoid or minimise harm. As I have indicated, for the first time, residential lots smaller than 1 100 square metres will be exempt from the obligations. For all residential lots, irrespective of lot size, a range of activities will also be exempt, including improvements, general maintenance and small projects, such as installing a pool, veranda, garage or chicken coop.

The new act sets clear time frames, providing both proponents and Aboriginal people with certainty that they do not currently have.

In his contribution, Hon Neil Thomson really took a bet each way because he said that this was bad and that Aboriginal people do not support it. I have to say that there are people on all sides of the equation who might not be happy with where this has landed. I believe this is a good act, and it will protect Aboriginal cultural heritage for the future. It will take us out of the Dark Ages. It is a respectful piece of legislation that acknowledges the 60 000-plus years that Aboriginal people and their culture have been on this land in Western Australia. Their culture will outlast us. This act will acknowledge appropriate cultural heritage and keep it safe for future generations, but if someone has a desire to do a development and proposes to damage or take away Aboriginal cultural heritage, they will have to go through a new process to satisfy themselves and others that they are not harming what has been around for a very long time.

We will not be supporting the motion this afternoon. We believe that the new act will make a difference, and we encourage all Western Australians to get on board. If people have questions, they should go to the DPLH website, ring the phone line or sign up for one of the education sessions.

HON COLIN de GRUSSA (Agricultural — Deputy Leader of the Opposition) [1.48 pm]: I, too, rise to support the motion moved by Hon Neil Thomson about the implementation of the amended Aboriginal Cultural Heritage Act. I want to stress, from the outset, that I do not do this lightly. There has been a lot of commentary in the media and elsewhere about the way this legislation has been implemented, and a lot has been said in the other place and in this place about its implementation. Unfortunately, social media is rife with nothing less than toxic and counterproductive invective, which seeks to unravel any aspirations society has towards reconciliation and respect for the culture of our First Nations people. The respect for and need to protect Aboriginal culture and cultural heritage should be inherent in all of us. That is why the opposition supported the legislation, notwithstanding the manner in which this bill was dealt with by the government when it brought it in, which was to rush the bill through without proper briefings for the opposition. That is why when my office is contacted by the many community members, farmers and business owners who raise concerns about what this means for them, as it has been every day for months, we go to great lengths to tell them that they need to ring the department or the minister's office to get the right advice and find out whether they will even be affected in the first place. However, we will not provide those people with advice. It is up to the government to explain how those new laws will operate and what the effect—whether there is any—will be for those people. It is up to the government to ensure an orderly and smooth transition. As an opposition we will convey to the government in the strongest possible terms, which we have been doing, the concern expressed to us by our constituents about these laws and their implementation—not so much about the legislation, but about the implementation of it. I, for one, will not be accused of failing to participate or be engaged in this. My office attended every single one of the co-design workshops in Esperance, the first of which was attended by my office and the local native title body corporate, and that was all—no-one else was there. We asked the staff there what they had done to ensure attendance at that meeting. They said something about social media and advertising. Clearly, there was not enough awareness in the community that they should be engaged in this process and that they needed to be across this. When we suggested to those people from the department that they might want to consider inviting some of the representative bodies from agriculture, for example, they thought that was a good idea. When we then asked them questions throughout that co-design process about where certain agricultural practices would sit within the tiered process of the new legislation, they could not answer those questions. I do not blame those people. They are Department of Planning, Lands and Heritage people; they are not experts in agriculture. They do not necessarily know all the different practices of farmers on their farms, which is why they need those people in the room in the first place. It was disappointing that they had not done enough at that early stage to make sure those people were in the room, but it did improve.

This legislation will affect many Western Australians who are probably already unaware of their obligations under the current act. That might be right or wrong. The fact is that people are largely unaware of their obligations under the current act and are certainly unaware of their obligations under the new act, although they are far more engaged now than they were. It was always going to be a monumental task to engage with such a large cohort of people to develop those regulations and communicate them to the community. Even the department in Merredin this week admitted that developing those important complex regulations and the documentation associated with them as required by the act in only 12 months was a huge challenge for it in such a short time frame. When I asked questions in this place on various aspects of the legislation, the standard answer was, "It's all good. It's under control. Don't worry; everything's going to happen on 1 July." The representative minister in this place, on behalf of the Minister for Aboriginal Affairs, advised the house in response to a question I asked that two full-time equivalents had a specific focus on the administrative and capacity-building aspects of the local Aboriginal cultural heritage services. That there are two FTEs to build the capacity of those organisations that have so much to do with this new act is an indication of how hard the department was having to work to get all this work done. The government fails to understand that the current state of affairs is of its own making. It is not something the opposition has magically orchestrated.

Hon Darren West interjected.

Hon COLIN de GRUSSA: President, I suggest that if the opposition could orchestrate such an outcry from the public, a few backbenchers would be very worried about their seats at the next election.

Hon Kyle McGinn interjected.

The PRESIDENT: Order!

Hon COLIN de GRUSSA: The opposition did not have to solicit First Nations organisations, land developers, the mining industry, the agricultural sector, earthmoving contractors or the general public to voice their concerns; they were walking in the door of my office to voice their concerns. At this point I will take the time to read at length a statement by the Esperance Tjaltjraak Native Title Aboriginal Corporation that was released after the meeting held in Esperance. I will explain why after I read this into *Hansard*. It sums up a number of issues, with not just the regulations, but a number of other matters that I think are important to have on the record. I will start at the beginning. I quote —

> Esperance Tjaltjraak Native Title Aboriginal Corporation RNTBC (ETNTAC) has worked hard since native title was first determined by the Federal Court in 2014 to be a responsible and productive steward and manager of native title and Aboriginal Cultural Heritage on behalf of the Esperance Wudjari people.
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> ETNTAC shares the Esperance community's concerns about the workability of the new *Aboriginal Cultural Heritage Act 2021* (WA) (ACHA) and the State Government's lack of meaningful engagement with industry, farmers, the local community and Aboriginal people in relation to how the new legislation and regulations will apply.
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> ETNTAC has not yet decided whether it will apply to become a registered Local Aboriginal Cultural Heritage Service (LACH) under the ACHA and has expressed concerns to the State Government about the lack of clarity around approvals processes, the rushed timeframes and the heavy compliance obligations that will be placed on certain land users and stakeholders, including ETNTAC.
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> Despite the above, we acknowledge that ETNTAC will inevitably be drawn into the requirements of the ACHA as the representative body for the Wudjari people and ETNTAC being a farmer and land manager itself.
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> …
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> ETNTAC considers that regardless of any ambiguity created by the tier activity classifications in the new ACHA, new activities undertaken by farmers and residential land users on cleared land will pose a low risk of causing additional impact to Aboriginal Sites and should not be subject to any burdensome or costly approvals requirements.
>
> ETNTAC has no desire to be bogged down in any Government imposed compliance processes or permitting for such activities. Once ETNTAC has clarified the exact requirements of the new ACHA and accompanying regulations, it will work collaboratively with affected land users to develop streamlined and proportionate processes to deal with any new approval obligations imposed by the ACHA. But this will take time and certainly will not happen by 1 July.
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> Even for new ground disturbing activities which do hold some risk for causing cultural harm, such as mining, land clearing, and changes to hydrology, the preference of ETNTAC will be to work with proponents and mining companies to ensure any impacts on Aboriginal Sites or Aboriginal Cultural Heritage are avoided and to deal with approvals processes by agreement outside of the cumbersome regulatory processes created by the ACHA.
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> Despite our concerns with the roll-out of the ACHA, ETNTAC stands committed to continue to work to promote respect, reconciliation and cohesion in the Esperance community and to ensure the mutual interests of all parties are respected in its dealings. ETNTAC has a track record of doing this in its management of native title which caused a similar level of community concern at the time of recognition in 2014.
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> …
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> If you do decide to contact us, please be aware that ETNTAC's current resourcing enables the employment of one part-time heritage officer. For the past 2 years, our colleague has been dealing with a significant surge in heritage related matters arising from increased mining exploration in the region. There is no clear pathway for ETNTAC to increase its capacity to deal with existing demands let alone what may happen from 1 July.

That statement is important because it clearly highlights one of the big issues around the implementation of the legislation, which is that, unfortunately, many of those Aboriginal organisations will be wrongly blamed when things do not work out. That is not fair and it is incredibly disappointing at a time when, as a nation, we are trying

to move forward with reconciliation. I was at the Esperance meeting on 12 June, which this statement is a result of, as was Hon Shelley Payne, who in my view was very unfairly attacked by some in the crowd. My colleague the member for Roe, Mr Peter Rundle, was there as well. There was a lot of confusion in the audience and there was a very distinct gap between what the department was trying to present and what the people wanted to know. It was a huge gap, which is why the department got through only five of the 40-odd slides it had to show in three hours. There were no clear answers to some of the questions that people asked. This happened even in the co-design workshops. I know that stuff will be worked out, but people actually need to know —

Hon Kyle McGinn: Were you in the co-design workshops?

Hon COLIN de GRUSSA: My staff went to all three of the meetings in Esperance.

Hon Kyle McGinn: Sorry, were you in there?

Hon COLIN de GRUSSA: My staff went to all three. Most of them were on party —

Hon Darren West: So that is a no.

Hon COLIN de GRUSSA: I was not there, but my staff do occasionally talk to me, member. I could not be there for most of them because I was in this place.

The ACTING PRESIDENT (Hon Dr Sally Talbot): Members! Can the member on his feet direct his comments to me and not engage across the chamber? That will help.

Hon COLIN de GRUSSA: Thank you, Acting President.

As I said, my staff attended all three of those workshops. I made sure that I had representation there and that the questions that needed to be asked certainly were. We discussed at length what happened at those meetings. At the 12 June meeting I attended, there was a very distinct gap between what was being presented and what people wanted to know. The majority of people in that room just wanted an answer on what the process would be so that they could get on with their business doing what they do. Those people do not want to harm heritage; they want to do the right thing. That was the majority of people in that room. Unfortunately, as is the case in meetings of that size—500-odd people—there were some pretty awful views expressed by what I would say was a small minority. I do not think they are representative of that community in any way, nor Western Australia in general.

I and the many people I spoke to after that meeting took away one overwhelmingly disappointing message from that meeting. A number of people said to me that it sets reconciliation back a decade. To me, that is an awful outcome if that is what people thought from attending one of those meetings. We do not want to set reconciliation back in this country; we need to move forward with it. Legislation like this must not be delivered around political cycles that ebb and flow, but for the good of the community going forward. It should be properly collaborated on. That is not what happened with this legislation. As an opposition, we did our best with the limited time we were given. We are doing our best to raise people's genuine concerns so that we do not end up going backwards as a state and nation.

I want to talk a little bit more about some of the specific concerns people raised, rightly or wrongly. I hope that the representative minister will understand these concerns and perhaps communicate them to the minister to see what can be done. These concerns were specifically around the tier 3 activities, which is the highest tier. The new requirements stipulate that for tier 3 activities an individual must search the directory, review the reports relevant to the activity area, request advice from the DPLH regarding whether any Aboriginal cultural heritage is located in the activity area in addition to that which may or may not be listed on the ACH directory and, if the ACH reports or the DPLH are not able to confirm that ACH is not included in the activity area, the proponent must carry out an ACH investigation in accordance with the guidelines that I understand have been published on 20 June.

We are advised that the directory will be up and running by 1 July. At this stage, there is every likelihood that the LACHs will not have been established by 1 July or any time soon after. Yet, proponents must undertake an ACH investigation, presumably in accordance with the guidelines. Although they were apparently published on 20 July, I am unable to locate them on the website. That was just before we came in here.

Hon Stephen Dawson: You just said 20 July.

Hon COLIN de GRUSSA: Sorry, I meant 20 June. Thanks, minister.

Although those guidelines have been published, I cannot find them on the website so that people can easily get access to them. There are no specified time frames within which an ACH investigation should be completed. Again, another question that came up—certainly in the Esperance forum—was how long is it going to take and how much is it going to cost? That will obviously depend on the circumstances, but at the same time, people need some guidance on what to expect. The nature of any investigations could vary depending on a number of factors.

I ask members to put themselves in the shoes of an earthmoving contractor. Its business is major ground disturbance, and, by extension, it is beholden to that tier 3 process. However, it will have to stop on 1 July because it cannot frontload

the approvals and due diligence it might need. Although the systems might be ready on 1 July, the people needed to do the work will not be there. That contractor might be able to comply with some of the steps of that process, but it will not be able to complete an ACH investigation. It will have no line of sight on when or how it will be able to achieve this. It might take a month, three months, or longer; we do not know. People proposing to undertake those activities have the understanding that they will simply have to stop on 1 July and start this process for those activities.

With that in mind, members might imagine that native title holders and the prescribed body corporates—because there probably will not be any LACHs at that stage—will be inundated with requests to undertake ACH investigations as a matter of urgency. We have already heard from one such group that it already does not have enough staff to cope with what it faces now. Making sure that we have the right resources in place needs to happen very quickly.

Hon Darren West: Member, would you mind tabling that correspondence that you read from the public of Esperance?

Hon COLIN de GRUSSA: I would be more than happy to table the public document from Esperance Tjaltjraak Native Title Aboriginal Corporation. It is up on its Facebook page, if the member wants to have a look.

[Leave granted. See paper 2319.]

Hon COLIN de GRUSSA: A delayed implementation date would certainly enable anyone wishing to undertake such activities the time to complete their due diligence requirements ahead of the statutory start date, therefore providing a seamless transition with minimal disruption. It would allow native title holders or LACHs to put in place the resources they need, which they do not have, to manage their workload without the added pressure of a ticking clock. More than anything, it would relieve the unnecessary angst and stress suffered by all parties and remove the use of the ACH as a means to create division in the community by those who might have alternative agendas.

The minister himself has repeatedly stated that cultural heritage is already protected under the current Aboriginal Cultural Heritage Act. I do not understand why we cannot simply either extend this process or undertake it in stages so that the work can be done ahead of time to allow for a seamless transition. I do not see why we cannot do that. To me, it is either because of extraordinary poor judgement or an appalling lack of empathy for those who will suffer as a consequence of these acts, including those Aboriginal organisations that will be unfairly blamed because of the decision to push through this legislation in such a rush.

I support the motion. Again, I ask the government to do the right thing, which is to delay the implementation until the resources are in place, everything is working and the community fully understands its obligations.

HON ROSIE SAHANNA (Mining and Pastoral) [2.07 pm]: I would like to speak on this motion. The concept of having processes and legislation to protect Aboriginal cultural heritage is not new. For 50 years, proponents have had to follow an approvals system if they wanted to carry out activities that would harm Aboriginal cultural heritage. The new act is not introducing this concept; it is improving the requirement and processes. The new act will put traditional owners at the heart of decision-making about the management and protection of their cultural heritage. It will reform 50-year-old legislation that is outdated and unjust.

Protecting Aboriginal cultural heritage is unfortunately often seen as a tick–the-box process for proponents, but the new legislation will bring fairness and equality to decision-making and provide an opportunity for all Australians to embrace our cultural heritage. It is also important to note that the legislation will be reviewed every five years. I am well aware that some industry and local government representatives have expressed concerns about the new processes and I understand that change is always scary. Any new legislation can cause confusion or uncertainty.

Show me any legislation in history that was agreed on by everyone when it was implemented. It does not exist. All legislation has opposition and uncertainty. The key to understanding the process of the new act is education, and there has been ample opportunity for those affected by the new act to be involved in consultation and education. As an Aboriginal person, I ask whether or not 50 years is enough time to consider the necessary changes. There is something I am not entirely clear on. Are members of the opposition calling for an extension of the implementation date of the legislation as proposed today or are they calling for the new act to be abolished? Last week in the Legislative Assembly, the member for Central Wheatbelt, Mia Davies, stated —

> We are not calling for the act to be abolished or removed; we actually voted for this legislation. We are asking for time.

Hon Neil Thomson referred to the act as being a “terrible law” and “ridiculously complex”. He stated that it is going to hurt farmers and tradies and that there would be a massive imposition of red tape on the community. My colleague Divina D’Anna, member for Kimberley, discussed this contradiction in Parliament last week and mentioned an email both our offices received from a concerned constituent in response to receiving Hon Neil Thomson’s apparent call to arms, in which he encouraged people to sign a petition to delay the act. The constituent stated that the honourable member’s email was disgusting, divisive, misleading propaganda that works to divide Indigenous people and non-Indigenous people. A scroll through opposition members’ Facebook pages shows similar

propaganda and apparent concerns about the act and its processes, rather than expressing concern over the timing of its implementation.

What is the opposition asking for? Does it think we would be better off keeping the 1972 legislation? That 50-year-old legislation legally allowed the destruction of Aboriginal cultural heritage sites, has ill-defined language and terms that can easily be misinterpreted, has no scope for a tiered approach to impact assessment, does not adequately cover ancestral remains and represents outdated concepts of the rights of Aboriginal people and their heritage. Are we better off with the 1972 act that does not outline any due diligence processes, is not clear on which activities do or do not require approval, does not acknowledge native title holders or knowledge holders and holds no statutory requirement to involve Aboriginal people in decisions on their heritage?

This legislative reform represents a significant step towards achieving equality in the relationship between Aboriginal people, industry and government. The act is about respectful and efficient agreement-making with Aboriginal people. Hon Neil Thomson expressed annoyance over Juukan Gorge being continually mentioned as an example of failings of the 1972 act and stated that this is not about Juukan Gorge. I argue that it is. It is about the Aboriginal cultural heritage sites that were destroyed. The reason Juukan Gorge is remembered and often used as an example is because its destruction in 2020 was a devastating example of what can occur when there is not enough red tape or when the processes that are in place to protect history do not work. The 1972 Aboriginal Heritage Act failed Juukan Gorge.

The new act rectifies the shortcomings of the current legislation to better protect Aboriginal cultural heritage. The current legislation needs to be reformed. I do not believe the opposition fully understands this, despite its claims. It is time to accept the act and work with it rather than against it. Unfortunately, I was not here at the time, but last week in Parliament Hon Neil Thomson stood in this chamber and announced that he was offended at apparently being labelled as racist, because he said there is nobody in this place who has done more than him, that he stands up for Aboriginal people and will be a voice for them in this place and that he will stand with Aboriginal people and the protection of Aboriginal heritage.

Will Hon Neil Thomson be voting "Yes" in a referendum later this year?

Hon Kyle McGinn: To give Aboriginal people a voice.

Hon ROSIE SAHANNA: To give us a voice, yes. He claims to speak for us—I am going to include myself in that because I am Aboriginal. We do not need a knight in shining armour. We want our own voice. That is what the referendum is for. I do not need him standing here and talking for me! So before he stands up again and says that he speaks for Aboriginal people, he should choose his words wisely and think really carefully.

There is no reason to delay the implementation of the act. The systems will be ready to go by 1 July and I am confident the government is ready. I think it is time for all of us, on both sides, to be on the right side of history.

HON TJORN SIBMA (North Metropolitan) [2.16 pm]: I stand in support of the motion moved by Hon Neil Thomson. I support the motion theoretically and practically and I support each limb of the motion. I think it is important to focus on the issue at hand, which is the regulations that will stem from the passage of the Aboriginal Cultural Heritage Amendment Bill 2021, which passed this chamber in the last sitting days of 2021 along with the Aboriginal Cultural Heritage Bill. This is a matter of urgent importance. The bill was settled. This debate, quite reasonably, focuses on the implementation of the statutory instruments that will follow axiomatically from the passage of that bill.

I listened very closely to the passionate rebuttal by members opposite. I make this observation with a spirit of charity: I think the government is very good at talking about the macro picture but this motion is about the micro picture. We can talk in great thematic language about the reasons why the act needed amending: the cultural devastation, with Juukan Gorge as the principal event, that accelerated the amendment of the act. We need to take the community with us in terms of the details—how the regulations are drafted and why they are drafted in a particular way. We need to provide the community, in its greatest possible extent, with the guidance it requires to successfully navigate a new regulatory landscape. This is what a delay in the implementation—a hard date of 1 July—is designed to achieve.

I am not wont to do this too frequently because I think it is unseemly for members to stand and quote themselves, but I will breach my own agreement here. I want to quote extensively from the brief contribution I gave to the debate on the bill, on 8 December 2021. I said as follows —

> At the outset, it is worth acknowledging the sheer magnitude of these bills both in qualitative and quantitative terms. This is substantial legislation and deserves to be treated with the respect and consideration it deserves. One can make that observation irrespective of the position they take on the bills themselves, even if they take a prudent course and decide to withhold at least their opposition, but not give it their full-throated support. The Aboriginal Cultural Heritage Bill is a bill in 16 parts with 353 clauses. The explanatory memorandum is a detailed document in itself. It is a very useful document, but it is an expansive

> one. I do not think that this chamber has the capacity to scrutinise this bill with respect in the time that will be made available to us. I make no reflection on the decision of the house previously —

The previous decision of the house was to not send those bills to the Standing Committee on Legislation, which is a greatly under-utilised resource of this chamber. I will make that observation every time I get the opportunity. If those bills had been referred to that committee at that time, perhaps some of the challenges we face with the regulatory instruments that need to be generated as a consequence may have been identified.

Point of Order

Hon MARTIN PRITCHARD: I think the honourable member is reflecting on a vote of this house.

The ACTING PRESIDENT (Hon Dr Sally Talbot): Thank you, honourable member. I listened very closely to what the honourable member with the call was saying and I am not sure that he has done that. I am sure that he is very much aware of that standing order. Thank you for drawing it to our attention.

Debate Resumed

Hon TJORN SIBMA: I thank the Acting President and I thank the member for reminding me of that necessary observance of this chamber. I made that observation during that debate and I was not called at the time, I might add.

It was obvious at that point that the entire chamber had not had the opportunity to scrutinise the bills—it was a cognate debate—to the degree I think was necessary or sufficient. More germane to the motion, I further stated —

> The difficulty we have in this chamber … is in attempting to stress test black-letter law legislation and to have a sensible pragmatic view about the framework and the regulatory instruments that will flow from its passage. Quite frankly, I think "the rubber hits the road test" will apply to this legislation more than perhaps it applied—I will be generous in my description here—to the reform of the Environmental Protection Act last year or the reform of the Planning and Development Act under a COVID guise last year. This bill will affect—I hate the phrase; it is instrumentalist in its view—a broad range of stakeholders, Indigenous and non-Indigenous. A bill has to work for the entire Western Australian community—all land users. A framework that is credible, legible and predictable and does not introduce perversities in outcome is the absolute objective. I think that is the test.

I stand by that contribution. I was attempting to foreshadow not necessarily the theory, or philosophy, behind the bill but the application of the legislation in a workable, tangible, credible and predictable form. That is always the test. It is evident to me that the regulations we are now debating have failed that test to the degree that there is widespread industry anxiety and uncertainty about how they will operate. That is what this argument is about. Members opposite might take the view that this is just an opposition ruse—that it is what the opposition does and it is just trickery. That is not true. We are pointing out an obvious fact. We have not materialised out of nowhere this widespread industry and community anxiety about what these regulations are and how they will be applied, and what they will actually mean to a person who operates a small to medium-sized enterprise and does not have the scope, scale or resources of a big mining company to help them navigate this new framework. That is what it is about. It staggers me that the government is not giving itself the best opportunity to settle more comprehensively and convincingly the anxieties that have been cited by pastoralists and graziers, the property industry and Aboriginal groups themselves.

Last week in the other place, this issue was raised by the opposition and discussed in a way that was absolutely appropriate. I think the reflexive response from the new Premier was very disappointing. Hon Roger Cook used a deplorable phrase that offended and riled up my friend and colleague Hon Neil Thomson. He suggested that any opposition scrutiny of shortcomings in the process of drafting these regulations was tantamount to racism. I think the phrase he used was "like a dog returning to its vomit". I have been a keen observer of the Premier for a number of years. He always struck me as being the most diplomatic member of the McGowan cabinet. Therefore, those words were not only surprising and disappointing, but also completely disingenuous. I do not think that was the real Hon Roger Cook. It was as though he was attempting to be somebody else or perhaps to channel the spirit to some degree, unsuccessfully, of the preceding Premier. What was most objectionable, other than the cant, throwaway language that does him and his government no credit, was that it completely contradicted his commitment to be a consensus-style leader. If there is a distinguishing feature of the Cook ascendancy compared with the McGowan administration, it was to be that this new Premier would run a consensus government. What does "consensus" mean? I think it means something more than giving mere lip-service to concerns expressed by other people. I think it imperils, or demands, a conscious effort to attempt at least to come to grips with the anxieties presented.

I was disappointed with that response as I was with the flippant disregard for electronic petitions. I think they have been a feature of advocacy from members on both sides of the chamber but particularly Labor members. It has been a strongly held Labor Party view, to the best of my knowledge, for a number of years. How the message is conveyed is really immaterial because it was not dismissed because it was an electronic petition; it was the dismissal of the

views of nearly 30 000 fellow Western Australians. That is contemptuous. At least 30 000 Western Australians think that they will be directly affected by these regulations and have been given no support on how they are supposed to navigate them, yet the government is bringing them in sight unseen. Hon Colin de Grussa referred to the guidelines document being published within the last two days. I, too, have sought that information and cannot find it. I should be able to do that. The 30 000-odd people who signed that petition are, likewise, seeking that kind of guidance and it cannot be provided.

That brings us back to the original contribution I made when the bill was debated. There was an exchange between me and the Minister for Emergency Services, who was at the time the minister with carriage of the bill. At the time, the opposition was at least receiving briefings on the bill from the department. The department was quite obviously focused on the regulatory impact following the bill's assent. When department officials were asked how long it would take, I recall at the time writing down that the advice provided by the department was 24 to 36 months. The briefing was in around late November or early December 2021. The best-case scenario at that time was a two-year implementation time line. I put that across the chamber to the minister at the time. I said that I had been told this, and his response was, "I hope not." I can understand that from a minister's point of view, and particularly with the position that the minister himself was placed in, because Hon Dr Tony Buti, a fine individual whom I quite like, is the third minister for this portfolio in, I think, three or four years. This has been an enormous undertaking; I can see that. The Deputy Leader of the Government in this house, the Minister for Emergency Services, spent the better part of 2021 negotiating that bill and navigating its passage, although it was sort of rammed through this place. That was a difficult undertaking, but that was just the start of the process. Where the rubber hits the road is important.

The key regulatory guidelines and instruments are a mystery to many, contradictory to many, unintuitive to many and provide many with anxiety. It is not just the 30 000 people who signed this petition tabled by Hon Neil Thomson and it is not just the pastoralists and graziers. It is also the property industry, the mining industry, junior explorers and a variety of Aboriginal groups that are despondent that the local Aboriginal cultural heritage services have not been properly funded or established, yet will be given principal responsibility under the act with regulations that are not prepared. The Premier has turned a deaf ear to each of those groups. Why this sheer bloody-minded stubbornness, when everybody else is telling the government to slow down and get it right? It should give itself the best chance of getting this right, because as individuals and as a government, it should understand how important it is for the implementation of these regulations, which come out of the amendment of the act, to be successful. I find this difficult to comprehend. It is not just those industry groups but also the department that concedes it has not been given enough time. The minister's very own department hosted a co-design workshop in Merredin. The snapshot taken of the departmental brief published in *The West Australian* today concedes the challenges in all of this and puts as the number one challenge "Timeframes—less than 12 months to co-design important documents". I cannot believe this is the first time the Premier or the responsible minister have had their attention drawn to this issue. To me, this effectively supports the motion, as it is presented by the government's very own principal agency. The other challenges identified in the article included the diverse stakeholder group. Yes, it recognises that different groups will have differing views. The department's briefing note states —

> … disparate views from different stakeholder groups—difficulty arriving at 'agreed positions'

I say this to the government and to the department out of charity: the reason it has this is because this bill affects different industries differently. Perhaps these disparate positions could have been brought together more seamlessly or with less anxiety if industry groups had been taken along from inception. They have not been. There is a lack of familiarity with the act to begin with, and the act as amended. I have also understood that the principal defence, when invective and insults are not being thrown, is that this has been the outcome of a five-year consultation process. Perhaps that is true in terms of the drafting of the act, but it is not the act that we are talking about. We are talking about the principal documents and guidelines that are there to ensure that the act is complied with. I am begging the government to help itself. Perhaps it should make less of a virtue of stubbornness and live up to the concept of consensus that the Premier, for a moment, seemed to believe in. It is still not too late.

Yesterday afternoon, I spoke to a range of stakeholders in the minerals exploration industry. They are, generally speaking, a very pragmatic group of people, as we would expect them to be, and entrepreneurial. One of those individuals mentioned in passing the ACH knowledge IT platform. I seek a guarantee from the government that it will be ready. They asked: How is the ACH knowledge IT platform, which will apparently underpin everything from 1 July, going to cope with the volume of traffic? What market testing has it gone through? What trialling has it been subjected to? We have been given some lip service guarantees: "Don't worry; it'll be right. Trust us." I reflect upon another grandiose government IT system in the approvals space called Environment Online. That missed every single implementation deadline that was set for it, became too difficult and, in the end, the government had to do a soft launch. Perhaps this is the path of least resistance for the government to consider. If it does not agree with delaying the implementation of all these regulations by six months, it could at least stagger them out in

a pragmatic way. That would build trust with the industry, which the government needs to do, and give itself and the rest of us some assurance that this act will work.

HON DARREN WEST (Agricultural — Parliamentary Secretary) [2.36 pm]: I will keep my comments well within the time frame, because quite a few members wish to make a contribution. I begin by acknowledging the contribution of Hon Rosie Sahanna to this debate. I hope members opposite listened, because that is what this is all about—listening and learning about Aboriginal cultural heritage and doing all we can to protect and preserve it. I also acknowledge the contribution from the Deputy Leader of the House.

I am going to do something that no-one might expect; I will thank Hon Neil Thomson today. I thank him for his support of this legislation when it came through the house in December 2021. For everyone who bothers to do their research, anyone listening or any journalists, they should dig out the division on the third reading. If they do, they will see that Hon Neil Thomson and all other members of the opposition coalition present in the house voted with the government to pass the legislation. In fact, the only opposition was from the crossbench, presumably because the act perhaps did not go far enough. I want to thank the honourable member for that. I want to also thank the member for his actions over the last two weeks that have raised the public's awareness of the significance of this legislation and the importance of protecting Aboriginal cultural heritage. It has not happened in the way that he intended, but I thank him for doing that. Some of the extreme statements that the member has made outside the chamber have garnered interest in the preservation and protection of Aboriginal cultural heritage. I know that is not what he intended, but hundreds and thousands of people have been turning up to understand the real information and the facts around this legislation and how it will affect them, rather than the bile that has been flowing out of the honourable member's social media. I express my disappointment in the mainstream media, particularly the rural media, for taking a very one-sided, uneducated and biased approach to the way this issue has been reported. I will talk about that in some detail later. There are two sides to every story, and what a shame we do not always get both.

We all understand the importance of the preservation of Aboriginal cultural heritage. I will call out opposition members again. It is a bit like they say in the chamber, "We support the preservation and protection of Aboriginal cultural heritage", and then go outside the chamber and say, "We support the preservation and protection of Aboriginal cultural heritage but —". No good can come after the word "but". Of course there are challenges in updating and amending 50-year-old legislation but, as I said, the opposition supported the bill. In fact, Hon Dr Steve Thomas said at the end of the debate to the then minister, "I think if you have concerns from all corners, you've nailed it." That was his comment in the house—that he had nailed it. That is what Hon Dr Steve Thomas, the opposition leader, had to say.

Again, I thank the member. People now understand the like-for-like provisions of the act. People now understand that a farming business can continue to do what it did under the previous act. They now understand that there was indeed a previous act. I think most members of the public were blissfully unaware that we even had an Aboriginal Heritage Act 1972, and they have Hon Neil Thomson to thank for now understanding that we have worked within that act for 50 years. When I addressed the meeting in Merredin on Monday, I said that in 1970, shortly before the act came in, Western Australian farmers produced their first one million tonne crop. We successfully increased our production of grain by 20 times, all within the confines of the 1972 act. However, that act is old and needs updating, and we all agreed on that in this house. We are going to do that and we will meet the challenges. The department is well resourced and will meet those challenges.

I acknowledge the involvement of Aboriginal people in the preparation work and the workshops that were done. This was a 2017 election commitment when we came to government. The process began under the then Minister for Aboriginal Affairs, Ben Wyatt, and went over many years, and he passed the baton to Hon Stephen Dawson, who passed the legislation through Parliament, and it will now be implemented by Hon Dr Tony Buti. What those three individuals have in common is that they are all very passionate about the preservation and protection of Aboriginal cultural heritage. They are all quality individuals who oversaw this act, which will become the best law in Australia.

I have also been very disappointed in our so-called agricultural leadership groups, although I will make a concession. I have spoken to the president of the Pastoralists and Graziers Association, who freely admits that he does not fully understand what this act will mean, but, probably disturbingly, he does not want to know. I will make a concession to the president of the Western Australian Farmers Federation, John Hassell, who started out with some quite strong opposition. He took the time to go to an education workshop and understand the correct information, and he has now mellowed his view, as did over 400 people who turned up in Merredin on Monday. They left the gathering much more comfortable with these laws, thanks to Hon Neil Thomson. They probably would not have turned up otherwise; we usually get six people at such events. They now understand what this law will mean for them. I stayed for an

hour and a half after that workshop closed and I took the time to work the room and speak to as many of the participants as I could.

I will refer to a story in *The West Australian* today that really made my blood boil. The workshop was attended by the Nyaki–Nyaki people and elders Mick Hayden and his son Michael and others. There was a very sound debate around the importance of Aboriginal cultural heritage and who should oversee it. I could feel from the room that the local people were the best to determine the heritage in their area with local people. That was not disputed at all throughout the meeting. Michael Hayden is an intelligent, articulate man who runs businesses in the region and has been engaged heavily in the community through sport and other activities. I will get to Michael Hayden in a moment.

An article in today's *The West Australian* has been noted today. I spent a lot of time in Merredin after the event. I will make one observation, and I do not mind this because I am just as happy that way. Journalists interviewed the Western Australian Farmers Federation, Mia Davies and various members of the community, but not one journalist sought the government's view at the meeting. That is okay; I am sure they can get that from places other than the government member who was present. That, by the bye, spoke volumes about how this issue is being reported. Josh Zimmerman's article today underlines a fundamental reason why we need to push ahead and enact these laws. Mia Davies hopped in her car and drove back to Perth at the end of the workshop and no doubt phoned Josh on the way and sent some pictures she had taken and gave some quotes. I quote from today's *The West Australian* —

> "Even simple questions like whether clearing trees off an existing fence line would trigger the requirement for a survey couldn't be answered," she said.

That question was answered by both the department and Michael Hayden, the Nyaki–Nyaki man who was there. One of his roles is to maintain the state barrier fence, and he employs Aboriginal people to help maintain that fence. He stood up and said, "We do that all the time—clear regrowth along the state barrier fence. That does not harm Aboriginal cultural heritage." He said that at the meeting for everyone to hear, and everybody heard what Michael Hayden said, except one person. Mia Davies chose not to hear what Michael Hayden said at that meeting. And there, members, is the issue around this. Members are not prepared to listen to what Aboriginal people have to say. Michael Hayden cleared that question once and for all, but here we have in today's *The West Australian* an unchecked quote from journalist Josh Zimmerman. That question was answered, and it was answered by a Nyaki–Nyaki man on his own country who wants to be part of the local Aboriginal cultural heritage service and determine Aboriginal heritage in that area. Therein lies the issue, members: you do not want to hear it, so you will not hear it.

I could talk more about this, but I think I have made my point. I think I have underlined the importance of why we need to get on with this. The department is ready. Everybody is ready. There will be things that we will have to iron out, as there is with every new piece of legislation, but members opposite do not ask in the house that those be delayed for six months. There is a reason why this one has been brought to the house. We all know what it is.

Hon Tjorn Sibma: What is it?

Hon DARREN WEST: You know what it is.

Hon Tjorn Sibma: What is it? Say it.

Hon DARREN WEST: You know what it is. This one is about Aboriginal cultural heritage. That is why.

I think a lot of disinformation has been raised. A lot of people turned up at that meeting afraid. A man with a small landholding said to me, "I didn't put a crop in last year because I had to care for my partner. Can I put in a crop next year?" I said that of course he could. This is the level of fear and concern that has been whipped up by some members opposite. Change throws up challenge, but if we do not meet the challenge, we will never have change. We can meet these challenges. We can enact this change. It has been a long time coming. It is time to get on with it. I look forward to the Aboriginal Cultural Heritage Act 2021 being in place.

HON KYLE McGINN (Mining and Pastoral — Parliamentary Secretary) [2.47 pm]: Thank you —

Hon Peter Collier interjected.

Hon KYLE McGINN: Sorry? He gave me the call.

Hon Peter Collier interjected.

Hon KYLE McGINN: Thank you!

Hon Peter Collier interjected.

Hon KYLE McGINN: Excuse me? Thank you for giving me the privilege to talk in the chamber, even though it is not your job! Thank you, Acting President; I appreciate that.

Several members interjected.

Hon KYLE McGINN: You did not like that one, did you!

The ACTING PRESIDENT (Hon Dr Brian Walker): Members, if anyone wishes to doubt my call, please speak to me directly and I will give you an answer. Hon Kyle McGinn.

Hon KYLE McGINN: Thank you, Acting President. Wow; things got almost like a Thursday very quickly!

Hon Nick Goiran interjected.

Hon KYLE McGINN: Wow! It is really good to stand and talk. I have had the enjoyment of listening to —

Hon Nick Goiran interjected.

Hon KYLE McGINN: Keep going; I love it!

It has been really good to listen to some of the truth being put into the debate. I really enjoyed listening to my colleague Hon Rosie Sahanna not only today, but also last night when she made a member's statement. I found that it was just another way that the truth is being put into the debate in this chamber. I have found it very difficult to follow some of the rhetoric and language that has been put forward in the community over the last week or two, specifically by Hon Neil Thomson. I found it quite interesting that the member spoke a lot about not having been provided with information or enough detail and not understanding things. After I finished in the chamber on Thursday night last week, I discovered that on the following Friday morning, Hon Neil Thomson would be attending the educational session in Kalgoorlie that Hon Rosie Sahanna and I were going to. I was excited and happy because I knew that finally the honourable member would be educated about the things he has been talking about without having any knowledge of it. To be honest, the forum was well attended. I agree with Hon Darren West that getting people to forums about new regulations or new acts coming into fruition in Western Australia is a great thing. People came along to learn about the bill and it was good to see them all there. One thing that was very noticeable at the start of the event was Hon Neil Thomson out the front waving his petition even before there was an opportunity to start discussing the act. It worried me that even prior to getting the opportunity to listen to the department talk to the community in that area about the bill, Hon Neil Thomson was saying the bill needed to be delayed. He was throwing it in front of people's faces.

Point of Order

Hon NICK GOIRAN: It seems that Hon Kyle McGinn is mistakenly talking about another matter. He keeps referring to a bill and an act yet the motion before us specifically refers to the regulations. I am not sure whether it is proper for the honourable member to suggest that Hon Neil Thomson has sought to delay an act when the motion before the house expressly deals with the regulations.

The ACTING PRESIDENT (Hon Dr Brian Walker): I have taken advice and am advised that there is no point of order, but thank you for correcting the facts.

Debate Resumed

Hon KYLE McGINN: Hon Neil Thomson was waving the petition around well before the department had even commenced the education session that was set up. That disappointed me because I had left this chamber the night before thinking that the honourable member, who said he had concerns about what was coming on 1 July, would attend that event and genuinely listen and try to educate himself about what was coming. But even before I got in the door, I was let down and disappointed, and I was only further disappointed as the day went on.

I want to put on the record that the department in attendance, specifically Caesar Rodriguez, did a fantastic job running that forum. I have not heard Hon Neil Thomson mention anything like that. He tried to inject what I feel was something that may have happened at a different meeting because where I was, there was no confusion about any of the questions asked of the department. The department answered every question it got. I challenge Hon Neil Thomson to produce the questions that did not get answered. He should not produce all the rubbish that he spread consistently before he even attended the education forum and then after it. It was the exact same message. I am worried that the honourable member did not learn anything at that session. That was clear to me because the honourable member was posting on social media during the meeting. He should have had some respect for the department that was trying to achieve something that the member had been asking for, which was to educate the community. That is something the member has stood in this chamber and screamed about. He does not have the respect to acknowledge the job that the department did last Friday in the goldfields. Were there only a couple of questions? Absolutely not. Everyone got an opportunity at each breakout session of the presentation to ask their specific questions, and they got answers. Caesar did a fabulous job with that.

I agree with the member—I think it was Hon Colin de Grussa—who said that a minority of people who attended Kalgoorlie, one of whom was a former member of Parliament, said some pretty toxic stuff. It was not about the

Aboriginal heritage laws coming in or any of that sort of stuff; it was a genuinely toxic conversation. I could tell that the people in the room were zoning out from that, which I thought was good. The people whom I spoke to following the forum were generally pretty good about the fact that the state is trying to protect Aboriginal cultural heritage. I was there with Hon Rosie Sahanna, who hung around longer than me because I had another meeting to get to, but people were generally happy with the information they were given. I will follow on from what Hon Darren West said. When they entered the room, there was a real fear that had been berleyed up. We all know where it came from. Hon Neil Thomson was out there berleying it up to try to achieve I do not know what, but, in my view, it definitely was not about protecting Aboriginal cultural heritage. That is absolutely not what he is trying to achieve. We can tell from the comments that have been made throughout this debate and in other contributions to this house that his view, as Hon Darren West put very eloquently, is that we want to protect Aboriginal cultural heritage—but. Nothing good happens after "but", and nothing good has happened after Hon Neil Thomson has said "but".

I will talk about the Friday session in more detail because it was a great session. People gained information and walked away with a clearer understanding of the issues, all except for one person in the room. At the meeting, people were told that if they are acting legally today and have ensured that they are not damaging Aboriginal cultural heritage and they have the ability to do the work they are doing today, they will have the ability to do that work tomorrow. However, if someone is acting illegally today because they do not have section 18 consent and they have been clearing land—because cultural heritage has been protected in this state for 50 years and will continue to be protected under these new laws—they will be acting illegally after 1 July. I fear that Hon Neil Thomson does not understand that. Other members, including the Deputy Leader of the House, Hon Rosie Sahanna and Hon Darren West, have tried to put the message across that we protect Aboriginal cultural heritage in this state, and we will continue to do it.

I know that Hon Neil Thomson does not want us to mention this, but it was not just Juukan Gorge that was destroyed in the last 50 years; other Aboriginal cultural heritage has been destroyed. This legislation is about making sure that it does not happen again because it is the history of this state and this country and the culture of Aboriginal people who have lived in this country for over 65 000 years. That is at the heart of what this is about. That is why I believe the five years that has been put into this bill will make sure that we are in a position to achieve that. I am really proud to say that for the last year and a half Hon Rosie Sahanna, the first Aboriginal woman in this chamber, has been part of that process. I do not believe she needs a white man's voice to tell her what to do. She is an Aboriginal woman talking from experience. I am just going off what has been said in this chamber. Hon Neil Thomson is reported in *Hansard* as saying that he speaks on behalf of Aboriginal people. That is not what Hon Rosie Sahanna wants. She is an Aboriginal woman—the first in this chamber—who has been going around the state attending workshops on the regulations. She has attended 24 workshops herself and she came to Kalgoorlie because she was concerned about what had been said in social media, in the public eye and with what was said in this chamber last week. I understand some members want to have a say, and I will give them the opportunity. As Hon Darren West said, a lot more could be said, but it is very clear that I will not be supporting this ridiculous motion.

HON DR BRAD PETTITT (South Metropolitan) [2.59 pm]: I will be quick because I appreciate that others want to have a say.

I think a couple of things really need to be put on the record. As Hon Darren West said, the only people in this Parliament to speak against this bill in its original form were the Greens and the crossbenchers. That was because it did not go far enough and we were concerned that it was rushed through Parliament at the time. That view was shared by a wide range of key Aboriginal organisations, whose representatives spoke to us. They were feeling very frustrated that government did not speak with them at the time, and I will name some of them, including the Kimberley Land Council, the South West Aboriginal Land and Sea Council, Central Desert Native Title Services, Native Title Services Goldfields and the Yamatji Marlpa Aboriginal Corporation.

Here we are, 18 months on, and it would be fair to say that many of the same organisations are very concerned that the state government is not ready for these cultural heritage laws and many of these native title groups are feeling very under-resourced. In fact, to use their own words, they feel "vastly under-resourced" for next month's rollout. That is something that I will come back to. I am in strong agreement with Yamatji Marlpa's Chief Executive Simon Hawkins, who said, and I think he put it well —

> … the new Act—which replaces legislation from 1972—was "an improvement on the previous one" but … it did not meet the standards of informed consent for First Nations people.

Ultimately, it will not prevent tragedies like Juukan Gorge happening again.

Hon Rosie Sahanna interjected.

Hon Dr BRAD PETTITT: I would respond, but I really want to give my other colleagues a chance, so forgive me for not engaging.

I want to remind the Parliament, ultimately, that there are concerns about this both from that end of the spectrum and from farmers. I know; I have farming family up in Narembeen, and in recent days I have spoken to a range of farmers, all of whom have serious concerns. I appreciate that, as we talked about today, not all the concerns are real, but they are serious concerns about fencing, digging a dam or even cropping, as someone raised with me last night. Obviously, we need to address those concerns, as we need to address the concerns that other groups, like the Property Council of Australia, have raised about how it might be rolled out.

The point I want to make is that, if we learnt nothing else from this, it shows the dangers of rushing legislation through Parliament when we have fear and uncertainty from both sides. In November 2021, the bill really was rushed through; we saw the bill 24 hours before it was introduced into the other place. I think there are serious concerns.

I do not agree with everything in this motion, but I think it does raise some important issues. One last really important thing I want to say is that it would be tragic if the division over this act actually set back reconciliation this year. That is some of the concern I now have. I am getting a sense of a bit of a feeling in the community that there are real concerns, although some of them are not real. What we need to do and what I implore this government to do is ultimately realise that both resourcing and communications about the rollout of this act need to change if we are to make sure that we do not see this as an ongoing and divisive issue in our community. With the Voice referendum coming up, this is the most important year for reconciliation. We need to make sure that we properly invest in key things like this so that they do not undermine this year of reconciliation but actually support it.

HON WILSON TUCKER (Mining and Pastoral) [3.03 pm]: Very quickly, I would like to make some comments and share my disappointment about some recent comments made by our new Premier, Hon Roger Cook. I have been away, out of the country and out of the chamber, for the last few days on urgent parliamentary business. Coming back, I see that we are in the new reality of the Cook government and the new Cook era. I found these comments very disappointing, considering it was one of the first articles I read that quoted Hon Roger Cook. I think his comments are well known to members here and have been debated in the last hour or so.

For the benefit of *Hansard*, the comments were made about a 29 000-strong e-petition, which was just tabled in this place a couple of hours ago. More than 29 000 people expressed concern about the new Aboriginal cultural heritage laws, in particular, about the regulations that have just been finalised.

My main concern and disappointment is about —

The ACTING PRESIDENT (Hon Dr Brian Walker): Order, member. We have five minutes left on the debate. Does Hon Neil Thomson request the right of reply?

Hon Neil Thomson: Yes.

The ACTING PRESIDENT: I give the call to Hon Neil Thomson.

HON NEIL THOMSON (Mining and Pastoral) [3.05 pm] — in reply: My apologies to Hon Wilson Tucker. I am sorry there was not an opportunity to speak further. I am sure he will get further opportunities to talk about this subject in this place.

I think it is important to provide some responses to some of the comments that have been presented. I am disappointed that not even some concessions about the anxiety and the meaning of the 29 000 signatures were made by the speaker on behalf of the government. I think it would have been helpful to have some concession on that. Instead, we got a very standard, slick line about how if someone is damaging Aboriginal cultural heritage now, they are subject to section 18. We know the law; the law is the letter of the law, the practice of the law and the precedent of the law. We know that only 59 section 18s were put before the government, and 57 were approved in 2021–22. This is a very different regime. This is something that I believe needs to be understood: this merely prescribes very light activities that require a permit on sites that are not necessarily well defined, and that is the admission of the department. The department itself has admitted that some of those maps were drawn by hand and the department has not had the resources to go through them. In fact, I think the department would have liked some of the funding given up-front to better prepare, to understand those sites properly and to engage Aboriginal custodians and knowledge-holders with updating those sites, many of which date back to the 1970s. I think that is disappointing.

We had some commentary from Hon Darren West criticising the media on this. The article by Dylan Caporn in the paper today really sums it up. It is headed —

> Aboriginal Cultural Heritage Act: Roger Cook playing dangerous game dismissing opinions of 29,000 West Aussies

I come back to this: please think about this, because this is how government should work. E-petitions are a fantastic feature. I am a strong supporter of them, a more open democracy, and a more inclusive and widely engaged democracy. People have spoken. I know some members have said things, but I do not think they deserve a response other than to say that I have not gone out and run a campaign from way back in April with that. I am sure that if I had any power to stir this up, that is certainly overstating the facts. This is coming from people on the ground.

We know that the representative of government mentioned the permit system. We got a commitment that it will be available online from 1 July. It did not address the concerns of those people who are seeking to do the right thing and put in permit applications or address how they are going to operate. There is so much uncertainty. I think Hon Tjorn Sibma talked about having some sort of transitional provisions. Transitional arrangements over six to 12 months could have been built into the regulations to provide an opportunity for some legal protection while all the systems were put in play, but that did not occur. I think it was Hon Colin de Grussa who said the government cannot front-end load the due diligence. That is a very important point. Due diligence cannot be front-end loaded. It is unfortunate that the government is not prepared to listen. I am very sorry about that. I think this is undercooked—very much so. We have a situation that is not going to be good for Western Australia. I certainly support the motion.

Division

Question put and a division taken, the Acting President (Hon Dr Brian Walker) casting his vote with the ayes, with the following result —

Ayes (12)

Hon Martin Aldridge	Hon Nick Goiran	Hon Tjorn Sibma	Hon Wilson Tucker
Hon Peter Collier	Hon James Hayward	Hon Dr Steve Thomas	Hon Dr Brian Walker
Hon Ben Dawkins	Hon Steve Martin	Hon Neil Thomson	Hon Colin de Grussa *(Teller)*

Noes (19)

Hon Klara Andric	Hon Sue Ellery	Hon Shelley Payne	Hon Dr Sally Talbot
Hon Dan Caddy	Hon Lorna Harper	Hon Martin Pritchard	Hon Darren West
Hon Sandra Carr	Hon Jackie Jarvis	Hon Samantha Rowe	Hon Pierre Yang
Hon Stephen Dawson	Hon Ayor Makur Chuot	Hon Rosie Sahanna	Hon Peter Foster *(Teller)*
Hon Kate Doust	Hon Kyle McGinn	Hon Matthew Swinbourn	

Question thus negatived.