ABORIGINAL CULTURAL HERITAGE BILL 2021
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Second Reading — Cognate Debate

Resumed from 8 December.

HON COLIN de GRUSSA (Agricultural — Deputy Leader of the Opposition) [11.38 am]: When I began my contribution yesterday I pointed out, of course, given the commitment the opposition made to get through this legislation in as timely a manner as it could, although recognising that that would reduce the opposition's ability to effectively scrutinise this important legislation and reform, that I would limit my remarks to specific aspects of the bills. In particular, my main concerns are around the processes for tiers 1, 2 and 3 activities and exempt activities.

The government appears to have taken a reasonable approach to addressing these matters in this legislation, but without having had much detail or enough time to properly consult on it, it is difficult for us to gain a clear understanding of how it is all going to work. I am not sure that the debate in the other place provided any clarity either. Effectively, anyone in this state who holds tenure over a piece of land of 1 100 square metres or more will be unsure about what this legislation means for them. Significant portions of Western Australia have never been surveyed for Aboriginal cultural heritage, and a great deal of that is on freehold land. I would have thought that it would be highly likely that much of that freehold property would have cultural heritage issues that could be identified.

That is important, because we do not want to miss any of the Aboriginal cultural heritage in this state; we want to ensure that it is there and that it is correctly assessed. On 23 November, the minister in the other place said —

> This is also a pragmatic approach. Properties over 1 100 square metres in size will generally be on the outskirts of the city anyway.

I am not sure which city we are talking about. He continued —

> If someone has been using their land normally up to now, it is highly unlikely that they will need to worry about this.

That is quite disturbing, in reality. Firstly, what is "normal" use of land? Secondly, if tier 2 or 3 activities that are considered "normal" are being carried out on that land, are we going to exempt those activities? That would raise a question about the point of the legislation. We will have a bunch of exemptions for properties that would mean that cultural heritage will not be assessed. Conversely, if a range of "normal" activities are exempt, it will compromise the intent of the legislation. If we go the opposite way, every single activity on that land will need to be assessed, which in my view will create a huge capacity and capability issue.

The government has put $10 million of one-off funding in the budget for capacity building and the establishment of administration and so on for some of the local Aboriginal cultural heritage services, but there is no guarantee of funding beyond this budget. I am not even sure where the figure of $10 million comes from, because the government apparently has no visibility of the scale and scope of the organisational capacity that will be required by LACHS throughout the state. Co-design of the activities that will be exempted or captured under the tiers 1, 2 or 3 categories has not been done, so where does the $10 million figure come from? Will it be anywhere near enough?

There is quite an issue here, in my view. We are looking at roughly 54 000 properties of 1 100 square metres or more, and the majority of landowners do not have a clue about whether or not Aboriginal cultural heritage exists on their property. If they have had activities carried out on those properties for years, it could be assumed that those activities will fit into the broader categories of tiers 2 and 3. Will they be exempt? If they are exempt, how will the legislation protect cultural heritage that may exist on those properties.

Conversely, landowners need clarity as to what activities will be exempt and how to go about the process of determining cultural heritage. How will they ensure that that happens in a timely manner? With that much land to survey, there will be the capacity issue we talked about a moment ago. That may well lead to backlogs on some of these surveys, which will potentially cause delays and so on in the activities that can be undertaken on that land. As I said, there is a capacity issue and a capability issue in making sure that those organisations have the ability to do the surveys.

The other interesting thing about that is how support will be provided to those local Aboriginal cultural heritage services. Will centralised support be provided by state government agencies? Will it be providing those individual LACHS with the necessary funding to provide the services that they do? The important and salient point here is that it is one thing to mandate a requirement to consult to ensure the protection of Aboriginal cultural heritage, but it is another thing to provide those organisations at the pointy end of that process with the means with which to deal with what will be a substantial workload. We can be of no doubt that there will be a substantial workload by virtue of the fact that these bills incorporate processes that encapsulate a lot of land across Western Australia.

The other part of that is the actual survey itself and the integrity of that process. This process must be of the highest integrity so that the system not only does not miss cultural heritage, but also will not be open to challenge necessarily by landowners or whomever. Will a proposed methodology be standardised across the assessment of cultural heritage? Will we see, as is the case in other jurisdictions, codes of practice, for example, and specified guidelines into the ways in which the surveys are conducted, the way the results of the assessment itself and those of significance are interpreted, and in the management approach as defined by the act? Obviously, we want those surveys to be done not only in accordance with archaeological and ethnographic best practice, but also to provide a clear understanding of the process so that everyone involved in that process understands what is going to be done and how that works. Essentially, it is very important that we get the survey methodology right. It is not clear in the legislation whether that will be standardised and that all those various corporations that are doing the assessments will follow a standard methodology. Also, what will the clarity be from a landowner's perspective?

I said at the start, and my colleague Hon Neil Thomson said in his contribution, that the opposition will not oppose this legislation. It is a significant reform. It is a reform that is well and truly overdue; however, it is also a reform, certainly in my view and I would suggest certainly in the opposition's view, that should be done across the chamber so that we get it absolutely right for the future, with clarity for everyone involved. We want to make sure that the things that have gone wrong in the recent past do not happen again. We want to preserve and protect the cultural heritage of this state at the same time as ensuring that we provide clarity for Western Australians as well. The opposition does not oppose this legislation, but we are very disappointed in the way that the bills have been handled both in this place and the other, with a lack of ability for us to be involved in the process of scrutinising the legislation thoroughly and properly. The government will say that this has been developed over a number of years. The reality is that the bills before us have significant amendments over the ones that were proposed in the previous Parliament and it is a limitation that we have not had an ability to consult widely in a reasonable time frame on the changes in the legislation in general.

We hear a number of different views from many different stakeholders involved in this debate about the various levels of support for the bill. The process through which this has been done is not good enough. It is not acceptable that at the very end of the sitting year we are forced to hastily deal with such an important piece of legislation. It is really important for Western Australia. There is uncertainty and a lack of clarity not only in the way the bill has been introduced, but also about the regulation-making powers. There is a lack of understanding of what those regulations may entail and how some of these processes will be developed. It is clear that process from here must involve wide consultation with as many stakeholders as possible about land use and cultural heritage. We would have preferred that that was front-ended, I guess, so we had the opportunity to see the result of that consultation before the bill came into this place. The opposition believes that Aboriginal cultural heritage is too important to play politics with. That said, we should all have a very good opportunity to debate this legislation properly so we get it right for the future of Western Australia. I am not sure that the government really appreciates how important that is. That opportunity has been to a large extent missed by the fact that we now have to consider this legislation in such a short time frame without the ability to consult. With that, I will leave my remarks and again reiterate that we will not oppose this legislation.

HON PETER COLLIER (North Metropolitan) [11.51 am]: I rise to make some comments on the Aboriginal Cultural Heritage Bill 2021 and the Aboriginal Cultural Heritage Amendment Bill 2021, and I am delighted to do so. I reiterate what has already been stated, particularly by Hon Neil Thomson; that is, the opposition will not oppose these bills, which is a quirk of words, I guess, but I say it reluctantly. Ideally, I would like to be able to say we support the bills, but we do not. That is not out of spite or political vitriol, but necessity, because as much as these bills are most definitely a positive step forward for streamlining a process for recognising Aboriginal heritage, they raise more questions than provide answers.

I will make a number of comments about the bills, but before I do so, I will confine to the first couple of minutes my, dare I say, critical comments about the contempt that the government continues to have for the opposition, constantly, relentlessly, day-to-day, day in and day out in this chamber and the Parliament. It is evident that this government now treats the Parliament as this petty little inconvenience. We have seen the destruction of conventions on a daily basis; we have seen legislation railroaded through the Parliament without due scrutiny and complete contempt for the processes that have existed for hundreds and hundreds of years.

These bills are a perfect example of that. Without a shadow of doubt, these bills, which deal with our First Nations peoples, with issues of heritage, deserve cross-partisan support. I am always a little reluctant to pass comment about lack of consultation on Aboriginal heritage, because as a former Aboriginal affairs minister for six years, I am conscious that no matter how much consultation you do, never the twain shall meet in this area. No matter how much consultation you do, you are never, ever going to get everyone on the same side ever, but the government could have so easily got us on board with this. I was so desperate for this thing to go through in a seamless fashion, and it took me all of my courage not to oppose the bill, as opposed to supporting it, which I cannot in all conscience. I find

it extraordinary that a bill of this calibre, of 350 pages and hundreds and hundreds of clauses, was read into the Legislative Assembly one afternoon, declared urgent and had to be passed the next day. Do members know what we have become now? We have become the enemy, not the opposition. There is a seismic shift when a government treats the opposition as the enemy because it treats the opposition with contempt; it wants to kill it. The opposition is irrelevant.

Hon Stephen Dawson: That's not what we do in this place.

Hon PETER COLLIER: I am sorry, minister, but that is how I feel; that is honestly how I feel. How could the government bring in this Aboriginal Cultural Heritage Bill?

Hon Stephen Dawson: I will not comment on that end. That is certainly not what is going on here.

Hon PETER COLLIER: Why are we sitting for another week to deal with this bill now? This again gets back to that very point: the government is doing it because it can, not because it is right. As I said, and I will say it over and over again, for four years I sat in the chair on the other side as leader of a government with a thumping majority. Never once did I or my colleagues ever consider using the tactics you guys are using—never once. We could have. Day in and day out we could have done exactly what the Leader of the House does almost on a daily basis now and completely usurps the conventions of Parliament, but I did not because I respect this place. We are seeing the destruction of the conventions of this Parliament and every single member sitting opposite is complicit. They will all be gone and I will be gone, but this place will have to live with it.

I am very disappointed that a bill like this is being treated with this contempt. We are dealing with Aboriginal heritage, constructing legislation that, ideally, will ensure that nothing like Juukan Gorge ever occurs again. It will ensure that a seamless process will engage and empower Aboriginal people, so they can be part of the decision-making process that will protect Aboriginal heritage and at the same time allow for development in a cooperative, collaborative fashion. That is what I like to think will happen with this legislation and I am not convinced it will, because, as I said, the devil is in the detail. There are many question marks around this legislation because much will be left to regulation, and there is much subjectivity.

As I said, I understand where the minister is coming from in terms of the criticism he will receive from a lot of Aboriginal land councils and Aboriginal groups throughout Western Australia. I have been in his seat and I know what he is going through and that no matter what happens, he will never be able to appease everyone. We have to get to a good balance. We have to achieve a balanced outcome and we have to have consultation. To be honest, from the briefing and my reading of the information that has been provided, I think there has been reasonable consultation. Having said that, this is just the start. This is a marathon and we are only at the 100-metre mark, because we have a long, long way to go to work through the regulations. As I said, there are many gaps in this legislation that have to be filled. If we do not get it right, I will say at the outset—I want this on the public record—I want the government to 100 per cent own this legislation. Even though I am not opposing it, it is the government's legislation, so if it all goes pear-shaped and there are problems in the short to medium term with this legislation as a direct result of there being so little time for the people's house, the Legislative Assembly and the Legislative Council, to scrutinise this legislation, it will be at the government's feet, not ours. We are pragmatic and understand it is definitely an improvement on the existing act, but I am not convinced that we are there yet. Having said that, the minister will be pleased to know that that is the last criticism I will provide.

I will go through a couple of things to give people a little bit of history on how we got to this point. This legislation contains some really good provisions and I think it is probably positive in many aspects, but we will have to deal with problems into the future. Aboriginal heritage is extraordinarily important. It is part of us as a nation. As I have said over and again, I loved being the Aboriginal affairs minister. I personally resurrected the Western Australian Aboriginal Advisory Council that was made redundant under the previous government because it did not meet, even though it is a statutory body. I introduced the KindiLink kindergarten program for Aboriginal students and the cultural standards framework into our schools, which means that Aboriginal culture is now being taught in our education system, and a raft of other things. This is not a chest-beating exercise; I am just showing that I am genuine about this.

When I took over the portfolio about 10 years ago, one of the very first things I had to deal with was reforming the Aboriginal Heritage Act. I went down exactly the same path as the minister. I went all over the state. I will tell members what else I did. I wrote to every single member of Parliament and invited them to every consultation workshop in their region—every time. I made sure that I engaged every member, regardless of their political colour or persuasion, and invited them to the consultation workshops. I have not been invited. I do not know whether anyone on this side has been, but I certainly have not been. That could have been avoided. This is not a partisan issue. It is yet another example that it is in the Labor Party's DNA to treat the opposition as the enemy rather than the opposition. That is a dangerous place to be because it breeds contempt.

The minister might be interested in this because he will see the comparison between what I presented to cabinet as the minister and had passed by cabinet. It was one of those times—I am sure the minister will get there—when a minister can see the finish line. We actually introduced and read our bill into Parliament. At that stage, our alliance colleagues decided they had a few issues with it, time ran out and we could not get it through, which was a real shame. In retrospect—I will go through this in a moment—it was probably a good thing because it meant that section 18 was retained. I am pleased to see that section 18 notices will be removed. For the benefit of members, I will read from my notes so they can hear an analogy between the bill that we have here and the bill that I presented back in 2014. My notes refer to the consultation on the proposed amendments. We engaged Dr John Avery, an expert in the field, who went all over the state. I will not read the whole of what he said, but an exposure draft version of the bill was released for public comment in June 2014. The consultation period was extended for an additional two weeks to allow remote Aboriginal communities more time to forward submissions on the bill. In total, 172 responses were received, which represented approximately 120 stakeholders from all sectors that made use of the opportunity to express their views on the bill through either a written submission, a face-to-face meeting or both. On 10 November 2014, the bill was endorsed by cabinet and introduced into the lower house. The point is that we had quite a considerable amount of consultation.

Let us look at what that bill hoped to achieve. The amendments to the AHA would have delivered a number of key benefits. It would have enhanced the protection of the state's Aboriginal heritage by significantly increasing the penalties for site damage. The minister will love the next point. The penalties would have increased tenfold from $100 000 to a maximum penalty of $1 million for bodies corporate that were convicted of a second or subsequent offence. The courts would also have had the ability upon conviction to order site remediation when that was possible. If time was available to commence a prosecution against the alleged offender, the penalty would have increased from 12 months to five years. You don't think I copped it when I increased the penalty to $1 million! One of the biggest criticisms was that it was too high.

Hon Stephen Dawson: I bet you did.

Hon PETER COLLIER: I did. As I said, time moves on. That was, of course, prior to the Juukan Gorge incident and a raft of other things. A lot of water has gone under the bridge.

The former bill would have improved the efficiency and effectiveness of the decision-making processes for applications made under section 18 of the AHA. The revised process would have provided for areas where no site exists or where no site damage would occur to be handled by the chief executive officer of the then department of Aboriginal affairs. The CEO would have been required to assess the information provided against the criteria outlined in proposed section 7A and any matters prescribed in the regulations. Proposed section 7A would have required the CEO to consider the following: any existing use or significance of the area or object; any former or reputed use or significance of the area or object; anthropological, archaeological and ethnographical interests; aesthetic values; any matter prescribed in the regulations; and associated sacred beliefs, ritual and ceremonial usage. That could almost have come out of the current bill. The consideration of proposed section 7A would have inherently involved the participation of Aboriginal people to assist in the identification and assessment of those factors.

The Aboriginal Cultural Material Committee will retain its role of assessing proposals when damage to a site may result and of making recommendations to the Minister for Aboriginal Affairs. That will remove barriers to early engagement between land users, such as project proponents and Aboriginal people who speak on behalf of the area. By encouraging early engagements, the process will move away from site damage and towards site avoidance. The ability will exist to have section 18 permits transferred from one party to another without the need to make a new application—for example, when a project is purchased by another company—and for a legal land user rather than just the landowner to make a section 18 application. The creation of a new register of declarations and permits will make every decision by the minister and the chief executive officer freely available and will significantly increase the transparency of the decision-making process. The clarification of roles in the assessment of Aboriginal heritage sites will make it clear that the CEO of the department of Aboriginal affairs has this role. The requirement to have an anthropologist on the ACMC will be removed as Aboriginal people are more than able to speak on behalf of themselves without the legislation perpetuating previous policies of having someone speak on their behalf. Improvements will be made to provisions relating to the appointment of honorary wardens so that the minister is better able to appoint honorary wardens who have powers appropriate to their role to help protect Aboriginal heritage, and there will be an in-built mechanism requiring its review every five years so that the AHA will remain relevant and effective.

It did engage with Aboriginal people. There was a lot of consultation with Aboriginal people. It tried to seek a balance, while at the same time making the process seamless. As the minister would well know, a large number of cases for approval go to the minister—I will come to this in a moment—but not sites, and that is a real issue. In fact, when I left the position of Minister for Aboriginal Affairs, there was a backlog of 15 000 applications, so we had to deal with that. We had to get to a point where agriculture, mining and industry in a generic sense, although

it did not have carte blanch with Aboriginal heritage, did not come to a grinding halt. Surely we could find a common medium where Aboriginal heritage was recognised, and at the same time provide a seamless process where there was no Aboriginal heritage. It is eminently sensible. Ideally, that is what we hoped to achieve through that bill. It is virtually identical to the aims and processes of this bill. I think we see eye-to-eye on that. The big difference is that that sought the retention of section 18 applications. The problem with section 18s in itself was that they caused a backlog. As minister, I would get anything up to 130 section 18s from the ACMC every year. No wonder we had the Juukan Gorge issue when the ACMC has to deal with those sorts of heritage issues. Believe it or not, the problem is that the Aboriginal Heritage Act, with the establishment of the ACMC, does not have any requirement to have Aboriginal people on that board. That was the problem. It did not even have a set number on the board. I changed that. How can I word this? I was going to say I did it by stealth —

Hon Stephen Dawson: You ensured that there were representatives on the board.

Hon PETER COLLIER: I did, and I will show the minister how I did it in a moment. I have so much to get through and it is a shame I do not have the time.

I draw members' attention to the Aboriginal Heritage Act 1972. I wanted to read this into *Hansard* but I might table it. In essence, the act refers to the membership of the ACMC, and states in section 28(2) —

> The membership of the Committee consists of —
>
> (a) appointed members, each of whom shall hold and vacate office in accordance with the terms of the instrument under which he is appointed; and
>
> (b) ex-officio members.

The only requirement is subsection (3), which states —

> Of the appointed members, one shall be a person recognised as having specialised experience in the field of anthropology as related to the Aboriginal inhabitants of Australia and shall be appointed by the Minister after consultation with the persons responsible for the study of anthropology at such of the establishments of tertiary education situate in the State as the Minister thinks fit.

In essence, firstly, it does not say how many members are required; and, secondly, there is no requirement to have any Aboriginal people on the ACMC. When I first started, there were five members on the ACMC, none of whom were Aboriginal, making judgements on Aboriginal heritage under section 18. Go figure! That should not have happened, so I changed it.

I will read from the 2015–16 annual report of the Department of Aboriginal Affairs for our last year of government, 2016. This will explain the situation. It states —

> Report from the Deputy Chair—Ms Vanessa Kickett

I appointed Vanessa; she was very good —

> In 2015–16 the Aboriginal Cultural Material Committee (ACMC) assessed 419 heritage places in relation to section 5 of the *Aboriginal Heritage Act 1972*. This was 154 more places than were assessed in the previous year. The Committee continues to work toward reducing the number of heritage places lodged in the Register of Places and Objects pending assessment by the ACMC.
>
> The ACMC also considered 73 Notices under section 18 of the Act to impact upon Aboriginal heritage places and seven applications under section 16 of the Act to undertake research.
>
> During the course of the year, the ACMC welcomed four additional members, bringing the total number to 10, of which seven Aboriginal members all bring with them a wealth of experience and cultural knowledge.

There we go. I increased the membership of the ACMC to 10. Seven of those 10 members were Aboriginal people. I thought that was a positive step forward. But that does not matter in terms of the magnitude of the considerations that members of the ACMC have to deal with on a day-to-day basis—in what are part-time positions, I might add. It was always problematic.

I thought I would check to see whether things had changed in the ensuing four years. In the chamber on Tuesday of this week, I asked —

> How many heritage places in relation to section 5 of the Aboriginal Heritage Act 1972 are currently waiting to be considered by the Aboriginal Cultural Material Committee?

I was told there are 16 109. If people do not think there is a problem with the current act, they should understand that. I then asked —

> How many section 18 applications have been submitted in 2021?

I was told —

> There are 142, inclusive of resubmissions and withdrawn applications.

Again, if members think the ACMC can comprehensively and, dare I say it, without failure, deal with 142 section 18s in a year, they need their head read. Further, I asked —

> How many section 18 applications are currently waiting to be considered by the ACMC?

There are 12 at the moment, so the ACMC should get through them. I also asked —

> Are there any other applications waiting for approval by the ACMC in relation to the Aboriginal Heritage Act 1972?

I was obviously referring to section 16. The answer was —

> There is one Aboriginal Heritage Act 1972 section 16 application requiring consideration by the ACMC.

If we ever wanted evidence on why we need this bill, it can be seen in those figures alone. If we think that a 1972 bill—quite frankly, it was well received in those days and served well for a number of years—is still appropriate in 2021, 50 years later, with some minor amendments, quite frankly, that argument is flawed. That is why I said that, overall, in a general sense, I support the intent of this bill. We desperately need it. As we move forward and as those last 50 years have seen, there is much more understanding, appreciation and love for Aboriginal heritage. I am not only talking about Aboriginal people; I am also talking about the nation. We acknowledge that Aboriginal heritage is an essential part of our past, our present and our future.

I would like to go through some aspects of the bills. I do not intend to go through every molecule of the bills because I can ask questions during Committee of the Whole. If he would not mind, I would like the minister to respond to a few questions in his reply to the second reading debate, which will help me. The first is about the Aboriginal Cultural Heritage Council. It is proposed that there will be two chairs. I like that idea. There will also be four to 10 members. The appointment process will be a vexed issue. I promise the minister that this will be an issue for him. To get those male and female Aboriginal persons who will be—dare I say it—acceptable to the Aboriginal groups across Western Australia will be extremely problematic. I am not saying for one second that it will not work. I am saying that it will take an enormous amount of consultation and a great degree of patience.

I turn now to the local Aboriginal cultural heritage services. They will be responsible for negotiating cultural heritage management plans and consulting with Aboriginal people. I just make a point here. With regard to LACHS and consultation—I am going out on a limb a bit—some people make the assumption, and it tends to feed into their mantra, that somehow there is a them-and-us attitude 100 per cent of the time with industry, mining and Aboriginal people, and that never the twain shall meet; no matter what happens, we cannot negotiate. I am not part of that; I really am not. I was Minister for Aboriginal Affairs for almost nine years. I travelled the length and breadth of this state and I constantly engaged with Aboriginal people. I found, particularly up in the remote areas when we went through the Regional Services Reform Unit, that the engagement and the communication with a lot of the big boys, the multinationals and the mining companies et cetera, was very good. I think it has actually improved, and it is continuing to improve—it has to improve.

Hon Sandra Carr: The big boys?

Hon PETER COLLIER: Sorry?

Hon Sandra Carr: It is interesting that when you talk about mining, you say the big boys.

Hon PETER COLLIER: And the big girls, yes—the big companies.

Hon Sandra Carr: I appreciate that.

Hon PETER COLLIER: Thank you. Yes—fair cop.

We have to be careful that we do not throw the baby out with the bathwater. If we keep going down the path of always portraying the big companies as the evil elements of society and we point to lack of consultation as the excuse, we will never progress and we will be stuck with the same legislation. We need to acknowledge that enormous inroads have been made with the Indigenous land use agreements and reconciliation action plans that have been implemented very effectively and comprehensively across the state over a number of years. With Juukan Gorge in particular we have seen even further acceleration. That is a good thing. As I said, that consultation is good.

The bill states that a LACH service will be able to charge a fee. This is a bit of a sensitive issue. We will have to be careful that Aboriginal groups and people are not exploited through this process. I assume that the charging of fees will be done through regulation.

Hon Stephen Dawson: Yes. They will have to go through the council.

Hon PETER COLLIER: Good. They will have to go through the council, of course. That is fine.

The prescribed bodies corporate, or the local Aboriginal groups who hold the authority over an area of land, will be responsible for negotiation of the agreement. Again, that will provide an opportunity for engagement and consultation with Aboriginal people. It will empower Aboriginal people. When we have these arguments with the land councils, there are some in particular that will never, ever agree with any of this—never. When we do that—I do not mean to be flippant about this—rather than just say, "Scoreboard; that's the way it is; our way or the highway", we should actually point to the consultation process that has existed up until this point and is embedded in the legislation. We need to do that and engage with people in—dare I say it—a sincere and meaningful way and get them to understand that they are being empowered and that this bill is actually about Aboriginal heritage.

I know for a fact that one of the biggest criticisms of the bill has been that all power will rest with the minister. I copped it when the bill I introduced said that ultimately the CEO would be the final recipient of that decision-making responsibility. The minister would have signed off on it, but the CEO would have made the determination. Ultimately, it has to land somewhere. My issue with this is that I have received an enormous amount of correspondence on this bill, as all members have. Hon Neil Thomson tabled a lot of the letters I received, as everyone else did. I do not intend to go through them. In almost all the correspondence I received, the single biggest issue was a lack of consultation. I went back over it yesterday while I was sitting here, and again this morning. I have not found, with all due respect to those people who have written to me, any constructive suggestions or recommendations on how the bill can be improved. There could be some problems with the implementation, and I concur with that. Until the regulations are identified, I think we have an issue here. However, if people are going to say—the minister will know exactly what I mean by this—that the only solution is that the Aboriginal people ultimately have the power of veto, that is impractical. To provide that power of veto is impractical. I understand where some groups of Aboriginal people are coming from. I have to say this is not all Aboriginal people at all. They will be engaged in the process. From what I can see, they have been engaged, to a large degree, in the consultation phase and they will be engaged in the process to develop the regulations. As opposed to being fearful, I strongly, strongly recommend that those groups with concerns engage in a very wholehearted fashion in the development of the regulations. I understand, minister, that they will get that opportunity, will they not? There are some workshops in January; is that correct?

Hon Stephen Dawson: The work starts in January. I will go into that in my reply later.

Hon PETER COLLIER: To those groups or land councils et cetera that are watching and reading this debate, I am not criticising them. All I am saying is that rather than go back to a default position of veto, they should say, "Well, that's not going to happen, so let's try to work a way through this so that we can be part of the decision-making process." Being part of that consultation process is the way to get a more beneficial outcome. Can the minister be as extensive as he possibly can in his response to explain to the chamber, so that it is on the public record, exactly how Aboriginal people can be engaged in that consultation process in the development of the regulations? As I said, there are so many gaps in the bill with the determination of land use tiers et cetera and the various bodies, that we have to make sure that we do not completely alienate those groups. I do not want it to happen. I would like to think that the minister is sincere in his approach, and I am sure that he will provide that information.

I have already been through the penalties. The penalty for damaging Aboriginal places, objects or ancestral remains and cultural heritage will be $10 million for a body corporate and $1 million or imprisonment of up to five years for an individual. As I mentioned to the minister, I got a smashing on this matter when I wanted the penalty to go to $1 million. I imagine there will be some critics, but I imagine they will be negligible. Most people would think that is small change. If someone is going to destroy Aboriginal heritage, quite frankly, $10 million would be tea money to some of these companies, so I do not have a problem with it. Having said that, I am interested to know where that figure came from. Was it plucked out of the air or based on some determination; and how does it compare with other jurisdictions' penalties?

The minister referred to "the management of activities that may harm Aboriginal cultural heritage". The key feature in this area is about tiered land use. This gets back to the aspect of a bill that I introduced almost 10 years ago now, whereby a piece of land was deemed not a site, which would bypass the section 18 process and the application would go through the chief executive officer of the department.

I will go through the briefing note and advice provided by the minister, and I thank him for that—mind you, it is in the bill. I am concerned about the subjectivity in part 6 of the bill. Again, this is where I take on board the point made by Hon Colin de Grussa about uncertainty, particularly in the agricultural sector and among small land users. It will be easy for some members of the community to, dare I say, spread the fear, for want of a better term. If that fear can be eroded and avoided, it will go a long way to enhance the confidence of those groups so that they feel that they are not going to lose their land, and if they want to put in a swimming pool, change a fence, or whatever it might be, they will not have to put in an application. The lack of clarity is providing that uncertainty. I genuinely get that, but the determination will be very difficult. For example, an "exempt activity" in the bill includes small-scale residential developments, emergency services and recreational activities. There is a little ambiguity in that area, and that does not require approval.

A tier 1 activity will be specified in the regulations and will include minimal ground-disturbance activities. That is where the subjectivity inevitably comes in. I will be fascinated to know how that is determined. A tier 1 activity does not require approval. Tier 2 activities will be specified in the regulations, and will include low ground-disturbance activities and will require an Aboriginal cultural heritage permit from the Aboriginal Cultural Heritage Council. Proponents must take all reasonable steps possible to avoid or minimise the risk of harm to Aboriginal cultural heritage.

Tier 3 activities will be specified in the regulations and will include moderate to high ground-disturbance activities. The bill sets out the pathway for when the Aboriginal party and the proponent reach agreement and the ACH Council approves an ACH management plan. When the Aboriginal party and the proponent are not able to reach agreement, it is the decision of the minister whether to authorise the ACH management plan. It is that lack of clarity that causes unrest, confusion and concern.

Having said that, I have been through this forensically in the past and also with this bill and I understand that the regulations are forthcoming. That is why I emphasise, yet again, if the government wants to avoid an absolute—I nearly said "cluster", but I will not!—mess in the future, it will have to make sure the regulations are watertight but also empower Aboriginal people so they cannot in any shape or form look back and say, "Oh, the minister is just going to tick off on things." A process must be gone through before that so that we do not go back to a particular group that is playing hardball and using its power of veto, because then the state would come to a grinding halt. I am sure Aboriginal people do not want that. They want to work hand in hand with industry, with agriculture and with their non-Aboriginal brothers and sisters. That aspect of the bill will need clarity, minister.

I refer also to the management plan itself, and I will read from the second reading speech, which states —

> Both parties will be required to use their best endeavours to agree on a plan. When agreement cannot be reached, the council may assist the parties to reach agreement and act as a mediator. When agreement still cannot be reached, the council must make a recommendation that the minister authorise a management plan, which may be the proponent's, the Aboriginal party's or the council's, or refuse to authorise a management plan. The minister's decision must be made on the grounds of whether he or she is satisfied as to the matters set out in the bill and what is in the interests of the state. It is open to the minister to seek the views of other members of executive government in making his or her decision on what constitutes the interests of the state.

Alarm bells definitely went off for me when I heard that line. If they went off for me, I can bet your bottom dollar they went off in particular for those groups that will make the minister's life difficult over the months ahead. I will read it again —

> It is open to the minister to seek the views of other members of executive government in making his or her decision on what constitutes the interests of the state.

I know that the current Minister for Aboriginal Affairs has a deep appreciation for Aboriginal people, but his tenure in this place is finite and he will not be here in years to come. We may not have a minister in the future who has the same interest in and compassion for Aboriginal people that the current minister has. If we embed that in the bill, it will be problematic in the future. We have to be careful. Subjectivity opens the door for further criticism and, in the minds of those groups that are adamantly opposed to the bill no matter what, it will justify them saying, "We told you so." As I said, that process is vital.

I need to move on. I will not bother going through the protection mechanisms with regard to the 60-day limit et cetera. The remaining clauses are operational and administrative in nature and cover miscellaneous matters, regulation-making matters and transitional provisions. Damn—I am only halfway through. I could ask for an hour's extension—joking!

On the issue of Juukan Gorge, a Senate inquiry was held into that action. A number of the recommendations are a bit concerning to me.

Hon Stephen Dawson: The Senate recommendations?

Hon PETER COLLIER: They are about the federal takeover of heritage issues. As a ferocious federalist, I would be very opposed to that, and I would like to think that the state government would be as well. I will read out a couple of the recommendations. Recommendation 1 states —

> 7.13 The Committee recommends that, at a matter of urgency, the Australian Parliament amend the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* and the *Environmental Protection and Biodiversity Conservation Act 1999* to make the Minister for Indigenous Australians responsible for all Aboriginal and Torres Strait Islander Cultural Heritage matters. As an interim measure, the Australian Government should take action to prohibit clauses in agreements that prevent traditional owners from seeking protection through Commonwealth legislation.

> 7.14 Administrative responsibility for all Aboriginal and Torres Strait Islander heritage matters should be transferred to the relevant portfolio agencies reporting to the Minister for Indigenous Australians.

Under recommendation 3, it states —

> 7.77 The Committee recommends that the Australian Government legislate a new framework for cultural heritage protection at the national level.

There is an assumption, of course, that the commonwealth government does not want to take over heritage and that it would just be mirror legislation. In either case, it would be problematic. If we want to see industry, agriculture and heritage come to a grinding halt, we should give it to the feds; it would be an absolute basket case and would not work. I embrace the Senate report, but any talk of the federal government taking over heritage issues, which I know there has been talk of, would be problematic.

Hon Stephen Dawson: I would find it extraordinary, given in my last portfolio of environment we were going the other way. The commonwealth was actually handing over to the state.

Hon PETER COLLIER: Yes. Tell me about it; I have been there. It depends on the day. The commonwealth government does not understand the implications. It must be retained within state tenure.

I will provide a personal perspective on the issue of consultation. As I said, I spent a lot of time on this. I resurrected the Aboriginal Advisory Council of Western Australia. I asked a question on this. That council still meets regularly, does it not?

Hon Stephen Dawson: Yes.

Hon PETER COLLIER: Was it consulted on this bill?

Hon Stephen Dawson: Yes.

Hon PETER COLLIER: It was; good. Was it comprehensive? Did it put in a submission?

Hon Stephen Dawson: It has been involved at various times.

Hon PETER COLLIER: That should still be a beacon for a broad cross-section of Aboriginal views and representation.

In the last minute that I have can I say to members that the current act is unworkable. We must move forward. We have paralysis out there with industry, and members will find that mining will come to a grinding halt if this thing does not alter in the not-too-distant future. Having said that, that is not the real motivation for changing the act. The motivation for changing the act is that not only is it unworkable, but also, more significantly, we will get to a point at which Aboriginal people are enshrined in the determination of the Aboriginal heritage places that represent them. Members cannot argue against it. It is eminently sensible. The bill must empower Aboriginal people so that they are part of the decision-making process and they can work hand in hand with their non-Aboriginal brothers and sisters, as I have said, and find a way forward.

Members will find that Aboriginal people are extraordinarily resilient, willing and cooperative. I do not want them to be alienated. I want them to be part of the consultation process even further, particularly as we move into the pointy end of the regulations. Having said that, because in this instance the opposition has been the enemy of the government, which really disappoints me, I cannot offer full support for this bill. It really bothers me. Having said that, I stand with the alliance to say that although I endorse the bill and I think it is a positive step forward, my view will be that I will not oppose the bill.

The ACTING PRESIDENT (Hon Dr Sally Talbot): Hon Peter Collier, I believe you were seeking leave to table some documents?

Hon PETER COLLIER: I was. What was it? The Aboriginal Cultural Material Committee—that is right. Sorry!

[Leave granted. See paper 981.]

HON WILSON TUCKER (Mining and Pastoral) [12.36 pm]: I rise today to give my contribution to the second reading debate of the Aboriginal Cultural Heritage Bill 2021 and the Aboriginal Cultural Heritage Amendment Bill 2021. I would like to state from the outset that I will not be supporting the Aboriginal Cultural Heritage Bill 2021 today for several reasons, which I will go into shortly. First, I would like to acknowledge the significant history and effort that has gone into this bill. It is an important piece of legislation, as is arguably all legislation that comes before this house. But this bill is particularly important, given the number of groups and people in WA who will be affected by this legislation, and it is really important for what it is trying to achieve, which is to preserve our history and cultural legacy here in the state. This bill will certainly have implications for not only our generation, but also generations to come. This is a once-in-a-multigenerational bill that will affect the culture of this state, which goes back over 40 000 years.

Australia, as a country of the Commonwealth of Nations, is a very young country, but we are incredibly fortunate here in WA, and in Australia, that we have the oldest living culture living in this country, which has an unbroken history, going back over 40 000 years. I will give a bit of a shout-out to the Mining and Pastoral Region and say that—this is particularly true in the Kimberley and Pilbara areas—the groups still living there have managed to survive the early years of colonisation here in this country, through the tyranny of distance, and have really formed their identity through their spiritual and physical connection to country.

The other side of the equation that this bill seeks to address is the economic interests of the state. WA is in an economically advantageous position, given that we have an abundance of natural resources here at our disposal. These resources provide a lot of economic benefits for not only the state, but also the country and the region. There are a lot of countries that rely on our LNG reserves and iron ore deposits. Efforts to protect the state's economic interest and preserve the country's heritage are really at constant odds, and the bill before us today strives to find a middle balance. That is a very difficult balance to strike, and I do not envy the government nor indeed the minister in trying to achieve that. I agree with the words of Hon Peter Collier: I think it is a lose–lose situation. It is impossible to really strike that balance and appease all stakeholders on both sides of this equation. However, I oppose this bill because I believe that it does not strike the right balance in preserving our cultural heritage. This is not just my own view, but is echoed by the majority of the prescribed bodies corporate and traditional owners here in WA.

I have consulted with and heard from many Aboriginal people, and we have heard testimony from many members, certainly from Hon Dr Brad Pettitt who read out many names of distinguished people who have voiced their opposition to this bill. The vast majority of the Aboriginal people I have consulted do not want this bill, and most landowners I have spoken to also do not want this bill. The only people who seem to be happy with this bill are those at Rio Tinto and BHP, which really raises the question: If this bill is not wanted by the very people for whom it is drafted to help protect their culture, then what are we doing here? What is this bill seeking to do? Really, it is not enough to say that this bill is an improvement on the existing 1972 act. We can do better, and we have an opportunity to do that today. I was disappointed that this bill was not referred to the Standing Committee on Legislation yesterday, as that was a good opportunity to take a step back, take a breath, and refer to the committee this very important legislation that will affect multiple generations.

It is also very disappointing to see that the majority of the recommendations in the *A way forward* report have been ignored. The incident that sparked this report was the destruction of Juukan Gorge. I believe we are all familiar with that incident by this time, and it is the very reason this bill was created. The recommendations in this report were ultimately created to prevent a similar incident from occurring in the future. Given that this bill ignores the majority of that report's recommendations, it raises serious concerns for not only me, but also all the traditional owners who have reached out to me, that this bill does not go far enough in protecting our cultural heritage.

I refer to land users. More than anything, they want certainty. That has been the overwhelming feedback that I have received through consultation leading up to this bill here today. They want to know that they can invest in this state and that the rug will not be pulled out from underneath their feet, which is incredibly important. Here in WA and in Australia we have stable governments and stable industry, which is an attractive enticement for investors, who are important to this state. This bill aims to provide a framework to give certainty to investors. Their problem is that the bill does not contain any details. How will the LACHS operate? What will the management plans look like? What will the fee for services be? What will approval times be? What activities will fall within the tier systems? These are all going to be worked out after the bill has passed and will appear in the regulations. We have not seen those. There have certainly been calls from land councils, PBCs and traditional owners to see what some of those regulations will look like. There is a lot of uncertainty right now.

I have spoken to two exploration companies. Their main concern is really the uncertainty that this bill will bring. There is certainly a lot of red tape contained in this bill, and the companies are concerned that the LACHS will operate effectively as part of the negotiation process to get approval to use land and bring it forward. Typically, it costs in the order of $1 million for an exploration company to conduct activities on its mine tenements. By conservative estimates, exploration companies think that this bill, once legislated and in force, will result in a two-year increase to that process. All these regulations are still yet to be determined.

Indigenous stakeholders are nervous about how this legislation will operate and perform when it is live, and if history is an indicator, they certainly have every right to be. They will be competing with mining companies and lobbyists to negotiate which activities fall into the tier system. Certainly, the government has a history of siding with mining companies and the big end of town. I acknowledge that the legislation will provide a general framework, but there is a lot of uncertainty for traditional owners about how it will operate when it is live.

I estimate there will be about 70 local Aboriginal cultural heritage services. The government has allocated $10 million for initial funding of these organisations. I think it should be clear to anyone with any sense that $10 million is not enough and really will not go far at all. At a minimum, the LACHS will require a principal legal officer and

administrative staff. The services will need to establish governance and compliance processes, and provide in-house or seek external anthropological and archaeological services. Essentially, they will become a one-stop shop for Aboriginal cultural heritage, and that will take a lot of time, money and effort. This is a concern for not only traditional owners who will be responsible for fulfilling all these functions under the legislation, but also land users who will rely on the smooth operation of LACHS to continue to use their land. Again, the minimum time frame of two years certainly could blow out if a LACH service is dysfunctional.

Several honourable members in this chamber have already spoken about the lack of consultation on this bill. The Indigenous representatives I have spoken to and consulted with in Perth and the regions provided testimony that they do not feel they were consulted with at all. Workshops were held, but they consisted of PowerPoint slides, and, as Hon Dr Brad Pettitt indicated yesterday, they were not conducted in native languages. The people I spoke to did not feel that there was a conversation about this bill during the drafting process; it was a one-way dialogue. I understand the government and the Minister for Aboriginal Affairs need to strike a balance with this legislation. I agree that the minister is a fair minister, but this legislation is also for future ministers. Making sure the primary stakeholder feels included in this process is, to me, one of the most important aspects of this bill. Whether or not the recommendations were incorporated is one matter, as is ensuring that natural justice is performed. That the very people this bill aims to protect feel they were brought into the process is a testament to the success or, indeed, the failure of this bill.

This is a once-in-a-lifetime bill that will affect the culture of this state. It has implications for not only future generations in this state, but also other states and territories that are looking to Western Australia to see what this legislation will look like when it is implemented and how successful it will be. We had an opportunity to adopt best practice in legislative drafting principles, following the advice of the Joint Standing Committee on Northern Australia's report on the Juukan Gorge incident, but that has not been done to date. It is mind-blowing that the report *A way forward: Final report into the destruction of Indigenous heritage sites at Juukan Gorge* has largely been ignored, and we have, again, another rushed bill before this house. The government hopes to push through this bill at lightning speed so that all the controversy, anger and sadness surrounding this bill will be forgotten over the holiday period and swept under the rug in 2022.

The traditional owners of WA and I do not feel that this bill goes far enough to prevent another Juukan Gorge incident. Traditional owners do not feel they were consulted with or included in the drafting of this bill. It is for those reasons that I cannot support this bill today.

HON STEVE MARTIN (Agricultural) [12.48 pm]: I rise to make a contribution to the second reading debate on the very important Aboriginal Cultural Heritage Bill 2021 and the Aboriginal Cultural Heritage Amendment Bill 2021. Like my colleagues in the alliance, unfortunately I am forced not to support the bill for reasons similar to those we have heard, especially those from Hon Peter Collier.

There is simply too much that we do not know and the regulation process will be crucial to how this lands. The minister will have a large workload and I wish him all the best, because this is important legislation and it deserves a good outcome. As I said, I think that much of it probably depends on the regulatory framework that will be decided upon.

Before I get to the substantive issues I have with the bill, I want to comment on the consultation process. The Aboriginal Cultural Heritage Bill is large. We have been given time to examine it, but members of the other place had almost no time to examine it. There are hundreds of pages and it contains hundreds of clauses. Even the explanatory memorandum is a doorstopper. I have no idea how members of the other place could have given it any serious scrutiny. I may be wrong, but I believe that a briefing was offered to members of the Legislative Assembly before they saw the bill. Processes in this place are important, and this legislation is significant, but the process the bill went through to get to this chamber has been nowhere near appropriate. As we approach the end of the calendar and sitting year, we are left in a difficult position. Normally, a bill such as this would take some time to go through the Committee of the Whole stage, but our time will be limited. Of course, the home for proper examination of legislation is the Standing Committee on Legislation, and I am disappointed that that will not happen.

I want to comment on some of the stuff that will fall to the regulations, particularly the tiers of activity. There is limited detail in the bill to determine what that will mean exactly. Like some other speakers, I am sure that certain industries will do it very well. In fact, I had a meeting recently with a Queensland mining company that was well aware of this legislation and, as far as I could tell, it had no dramas with it at all. It is used to dealing with this type of legislation. That is fine; it is a multimillion-dollar set-up. It has great lawyers and good processes and I am sure that it will be okay. However, I am concerned about how the bill will be handled by Aboriginal people, whom it is aimed to protect, and their heritage. I hope that they will have the resources to do their part well. Clearly, some of them do not think they will, and I will get to that later.

I am also interested in sectors of industry that are not as well prepared as the large mining company that I met with recently, particularly in the wheatbelt and the great southern—agriculture, for example. I urge the minister to consult people in the ag sector on the co-design process that the minister will be running, I assume, in the new year and for

some time. I think that they are nervous—that is my best summation of how they have approached this bill. It is not something that they are used to dealing with. The pastoral industry possibly has a better grasp of these sorts of things, but this is new territory for people involved in small-scale broadacre agriculture, and they will need to be closely involved in the co-design process. In the briefing we were given some indication that a small group of people would be at the top of the co-design process and underneath there would be a wider group. I hope that there is enough room in that lead group for someone from the ag sector. Obviously, there will be someone from the mining sector and an Aboriginal person or two, I hope, but I hope that there will be someone from the ag sector in that lead group as the co-design process rolls out.

We heard from Hon Colin de Grussa about what the levels of activity mean. There is concern about what will be considered to be normal use and how that might change. For example, if a landowner of a grazing property that has been grazed for 150 years and has never been cropped, and that is its normal use, changes their view about the appropriate use of their property and they go to cropping, will that trigger a normal-use provision that shifts it from one tier to another or put in place a change? We do not know—the sector certainly does not know—and we are not going to know through this process in the house. It will be left to regulations. It is fair to say that there is a level of anxiety in the ag sector about where it will be placed in the various tiers and whether it has the resources to deal with the regulation process. It would be a shame if there were to be more regulation placed on that sector, or any other sector, for no benefit.

During the briefing and in discussions in this place, we have heard over and again about Juukan Gorge. I understand that that was a very significant and serious event, but I am always nervous about politicians rushing to find a solution to something that has just happened. We heard from Hon Peter Collier that the process for clearing the backlogs and inefficiencies of the existing legislation has been in place for some time, but obviously something has triggered this mad rush at the end of our parliamentary sitting year. We saw that in the lower house; it had a day and a half to debate this legislation, and we have some time, but it would be a shame if, because of Juukan Gorge, there were a perceived need to get this legislation through right now. Legislation on this scale deserves as much examination as possible. I urge the minister to use the consultation process as widely and as well as he can, and I wish him all the best in that. As Hon Peter Collier said, he is not going to please everyone, and we understand that, but let us get the best result —

Hon Stephen Dawson: Welcome to my world!

Hon STEVE MARTIN: That is why they pay you the big bucks, minister!

I hope we come out of this in the best shape possible for our Aboriginal people and their cultural heritage, which has an important place in our state; for the various agricultural sectors; for the mining sector; and for landowners.

I will now move on from those industries. Apparently, properties under 1 100 square metres in size will not be captured by this legislation, and I am intrigued by the distinction; properties of 2 500 square metres will be captured. We heard the minister in the other place talk about properties on the outskirts of cities; we might suddenly creep up on a 2 500-square-metre block, a five-acre block or a hobby farm. Somehow, the Aboriginal heritage on those lands is important and worth capturing and protecting, but if it is less than 1 100 square metres and the owner puts a pool in the backyard, it is not. I would like some clarification from the minister about why that distinction was made. For those of us who live further out and have homes on larger titles of 50 or 60 hectares, would we trigger the legislation if we were to put a pool in our backyard? There are no home blocks on farms; it is a title with a house on it. If someone were to put a septic tank down on such a title, would that trigger a level of activity?

I assume our Committee of the Whole process will be quite rushed, so if the minister sees an opportunity in his reply to the second reading debate to deal with any of this, it will save us some time.

Hon Stephen Dawson: Honourable member, I will, but I suspect there will be many questions on the 1 100-square-metre issue, so I will give only a cursory response and we will deal with that later.

Hon STEVE MARTIN: I appreciate that, and I thank the minister.

I have a couple of other questions about inspectors. We have dealt with a number of pieces of legislation since I have been in this place, and it is rare for us to not have increased inspection regimes. In this legislation there is a very significant inspection regime, and I would again like a response from the minister on that. Who will qualify as an inspector? I believe that under clause 234, the inspectors may, at any time, stop and enter a vehicle, other than a mobile home. I hope those inspectors will be wearing uniforms or some other very obvious form of identification. It strikes me as being extremely dangerous for someone to be given the role of inspector and to have the authority to stop a vehicle. By the way, "vehicle" means a vehicle other than a mobile home, so that includes a road train. If an individual is given powers, more often than not they will try to use them. It strikes me that that will put those inspectors in a very difficult position, and possibly the drivers of vehicles, who will not know why they have suddenly

been flagged down by someone who may be wearing a uniform that does not look like a police uniform or who may not even be wearing a uniform.

The inspector will also be able to detain a vehicle for a reasonable period. I have no idea what that means. Is that an hour, a day or a month? The inspector will be able to move the vehicle to another place suitable for carrying out an inspection. If the driver is 300 kilometres east of Meekatharra and the inspector says, "We can move the vehicle back to Meekatharra to inspect it", will that be at the driver's cost? Will the inspector be able to drive the vehicle? It strikes me that some of these powers around inspection are significant, so we would like some more detail about that from the minister.

I have a couple of other points to raise before the luncheon break, if I have time. I was amused by Hon Peter Collier's remark that a $10 million fine would be small change. It might be to BHP and Rio, but it certainly will not be to a farmer, a horticulturist or someone with a family operation. I was amused by that. There does not seem to be a distinction between BHP and a family farm, so can the minister also give us some detail about that?

Perhaps I am new to this, but I believe that under questioning from an inspector, people will not have the right to silence and they will not have the right not to incriminate themselves. There may be lawyers in the chamber who are better informed than I am. Under clause 238, "Directions", an inspector may direct an occupier of a place or vehicle to answer questions. Again, that will put a lot of pressure on inspectors, and the people they are inspecting and asking questions of. It will not be like a police officer talking to a suspect, if you like; it will be someone possibly travelling on an outback road—are you going to interrupt me, Acting President?

The ACTING PRESIDENT (Hon Dr Sally Talbot): I was going to let you finish the sentence.

Hon STEVE MARTIN: I will come to that after the luncheon break.

The ACTING PRESIDENT: Noting the time, I will leave the chair until the ringing of the bells.

Sitting suspended from 1.00 to 2.00 pm

Hon STEVE MARTIN: I will conclude my remarks and, in summation, urge the minister—as he suggested he will—to use the consultation period wisely. This is very important legislation with far-reaching effects right across the state. I sincerely wish him all the best in this process. It is quite a task that, as I said, will have far-reaching outcomes. It is important that we do not get this wrong for all sorts of reasons. I look forward to seeing how the co-design process is rolled out and hope that all sectors get to play an adequate role. I also look forward to the minister's second reading reply speech and a detailed examination of this legislation, if we have the opportunity, during the Committee of the Whole process. I conclude my remarks.

HON SOPHIA MOERMOND (South West) [2.03 pm]: I will keep my contribution on the Aboriginal Cultural Heritage Bill 2021 and the Aboriginal Cultural Heritage Amendment Bill 2021 short, as always, and also because my honourable colleagues have covered all the valid points. I can only add that I am saddened by the lack of consultation both with our Indigenous elders and in this chamber. This is our one chance, or one of the best chances, to create a relationship of trust and cooperation with the traditional owners of this land, and it feels as though we are missing this opportunity. I think that is such an incredible shame.

HON DR STEVE THOMAS (South West — Leader of the Opposition) [2.05 pm]: As a number of members of the opposition have indicated, the opposition is not opposed to the Aboriginal Cultural Heritage Bill 2021 and the Aboriginal Cultural Heritage Amendment Bill 2021. The government will no doubt explain how they will function.

I want to raise a few quick points before we move to Committee of the Whole House. It is always hard to discuss Aboriginal affairs after Hon Peter Collier has spoken, so I will not try to compete with his knowledge in the area. I will just make a few broad points that the minister will, hopefully, address in his reply to the second reading debate. Otherwise, we might address some of these things in the clause 1 debate of the Committee of the Whole House. Obviously, this bill cannot be all things to all people. I have always said about bills of this type that when everybody generally is a bit unhappy, we are probably somewhere close to the mark. In this case, despite the criticisms from groups that are not particularly happy, there are some very good parts of this bill, but not necessarily all of it. The biggest issue we face with this bill are the unknowns around the regulations that are yet to be written. Much of what we might discuss over the next day or two in the Parliament will perhaps centre around things that the minister will try to manage by regulation. I suspect that the minister will not accept amendments, so the best we can do with this is to raise issues and ask the minister to address them with good intention.

I will run through a few of those things. I agree with the comments of Hon Peter Collier that there was a large degree of consultation on this bill for a large number of years. We can absolutely consult these things to death and progress can be emasculated as a part of that. There will obviously need to be more consultation on the regulations as they go forward, but there has been a wide degree of consultation. I think there are groups that think they have not got the outcome they wanted and, as we know, lack of consultation is sometimes confused with consultation that

did not deliver the outcomes desired, but government must progress. All members need to remember that at this stage this is the government's agenda, it is the government's bill, and how this process rolls out eventually will be a judgement upon the government of the day.

I would particularly like to raise a couple of things, and will just run through some of those key questions, which might minimise my contribution to the clause 1 debate. My understanding is that we need to look at this bill as a replacement that moves on from the old 1972 act. The first question is one we always need to get across: what in the bill and the process will make Aboriginal heritage not universal across the state of Western Australia and will allow appropriate development? As I understand the briefings, there will still need to be a judgement about what constitutes Aboriginal heritage, while local area committees will identify what they think are Aboriginal culturally significant areas. My understanding is that, ultimately, a review process will allow the government to make a decision about the extent to which the significance exists and whether its existence should prevent further action from occurring. I hope that the minister will explain the process and if that is the case, I can move on from that. I note that clause 100 defines "exempt activity". I want to note the prescription of 1 100 square metres as an area of exempt activity.

Again, from the briefings I have received, my understanding is that the 1972 act effectively had no exemptions. For the first time in this place we will be applying exemptions. The Acting President's memory might be better than mine, but I had to look up precisely how many square metres there are in an acre; it is 4 046.86. A quarter acre is 1 011.7 square metres. The cut-off point is a bit over the old-fashioned quarter-acre block. I will be interested to hear the minister tell me in his second reading reply whether the government was aiming for a quarter-acre block. Why is it that number, as opposed to a one-acre or 10-acre block, and what was the reason for that number? I am not suggesting that I am opposed to it. I think the government has taken the positive step of exempting most people's backyards from the legislation. The question in my mind is why the government drew the line at that point. That will be interesting to hear.

The government has indicated that the intention is for the local area consultative groups to, effectively, represent the native title holders. I presume that in his second reading reply, the minister will also describe the government's intention for those bodies. I wish the government well, because an issue that it will face is the conflicting claims over various areas. I have spent a lot of time talking to groups with conflicting claims over sites. I think that will be a very difficult issue. Hopefully, the minister can tell the house precisely how he plans to manage that. I think it is wise to link this issue with the native title holders because they have some authority over the land. However, we will probably need a greater description of how that process will work and I will be pleased if the minister can give us an indication about how that will be managed when there is a conflict.

I would like the minister to respond to a couple of other issues. The first will not surprise him and a number of industries have raised it with me. I refer to the definition of risk of harm when dealing with a site, area or item that has been determined as a cultural heritage site. This applies throughout the bill, including at clause 115. Under that provision, when applying for an Aboriginal cultural heritage permit, the applicant must set out how the proposed activity will be managed to avoid or minimise the risk of harm. There is another example at clause 163. Under that provision, the ACH management plan is to be managed to avoid or minimise the risk of harm. Another example is at clause 120. Under that provision, when granting an ACH permit, the council must be satisfied that the applicant will take all reasonable steps to avoid or minimise the risk of harm. Can the minister provide examples of avoiding harm to a site? That would seem pretty obvious, but what is the definition of "minimise"? I am thinking of Main Roads in particular. It might need to take down a tree that is determined to be culturally significant because there is no other way around it. The matter would come before the minister for ministerial discretion and a decision would have to be made about whether it was appropriate to take down the culturally significant item or object, such as a tree, to widen a road to make it safe for the community. The minister would have to justify that decision. Can the minister give us some more details about and define how that will be applied at the council level and, ultimately, the ministerial level?

I would also like the minister to describe to us the level of accountability and how much of the ministerial decision-making process will be made public. I fully understand that, ultimately, the government will have to make decisions, as it has with the legislation, and that probably both the proponent and the local area consultative group will be somewhat unhappy. If that is the case, the interesting question is: how much responsibility will there be on the minister for disclosure around that case? Can the minister give some detail around that? That is also particularly important. We may have to ask further questions when we discuss clause 1 in the committee stage.

One of the other members mentioned this. I presume the minister will describe the relationship between the Environmental Protection Authority and its consideration of Aboriginal heritage and what will, effectively, be the new Aboriginal cultural heritage act. I suspect the EPA, of its own volition, has decided to have a greater component of Aboriginal heritage in its assessment; therefore, there will be an interaction. Will the EPA step back so that the Aboriginal cultural heritage act will be the foremost document? How will we manage the conflict? What will be done if a management plan is put in place that the Heritage Council of Western Australia and the minister endorse,

but the EPA has a different opinion about? In terms of the relative strengths of these things, which one will override the other? The beginning of the EP act tends to override every other act. It is critically important that we understand that as much as we possibly can.

I agree with Hon Peter Collier that the removal of section 18 is a good outcome for Western Australia, and I commend the government for that. It has bogged down into a very difficult process. That is not to say that the new process might not bog down as well, but I am hopeful that the government will be able to push that through to a level that will provide a way forward. I think that is critical. Those are some of the key questions that I hope the minister will address in detail, either in his reply to the second reading debate or during Committee of the Whole House.

The other critical point that I want to put on the table is that much in the way of regulations will go forward. Other members spoke about ensuring that there is representation and wide consultation when those regulations are put together. I have had multiple conversations with agricultural groups, for example, that are not necessarily opposed to what the government is trying to do. Those groups want to be part of the negotiation and consultation on the regulations. I ask the minister to ensure that groups such as the Pastoralists and Graziers Association and the Western Australian Farmers Federation are part of that consultation around the regulations, along with all the other bodies that I know the department has to go through. I said earlier in my short address that we can consult these things to death and never proceed, but, in this case, the regulations will be utterly critical to the success or failure, particularly in taking the wider community with us as we go. I really think that will be a critical component. I personally request that the minister, firstly, notify the house of the groups of people who will be involved in that consultation phase and when it gets to the regulations; and, secondly, potentially engage with all those groups, as painful as that might be.

One other issue that I would like the minister to address—we may need to do it in Committee of the Whole—relates to enforcement, which I am a little concerned about. I know that the government likes having inspectors for lots of things. It has inspectors for everything. We have groups of people wandering around, from animal welfare to fisheries to health inspectors et cetera, with one lot checking people's COVID vaccination status and the next lot checking people's catch, and now we will have a group of inspectors checking that people are not removing items of Aboriginal cultural heritage. I am a little concerned that if inspectors are going to be appointed, it is done in a way that is not unnecessarily confrontational. Under part 10, some very strong powers will be granted to Aboriginal inspectors, including the power to enter into places that are not residences. That may well be reasonable. Inspectors will also have the power to stop vehicles and to seize vehicles and take them to an alternative place to be searched. I urge the minister to make sure that this process is sensitive to both sides of an argument. The minister might be able to explain this in a bit more detail. Is it feasible that a tourist could pick something up unknowingly and suddenly have their car seized? How will that interaction be managed? A lot of these situations will probably occur in the minister's electorate. For example, some gruff person driving along will take quite unkindly to being pulled over for picking up an inappropriate stone. I am not suggesting that that is the intent, but it behoves the government to explain precisely how those stop-and-search powers will be expressed. Some of that will come under the regulation component. If inappropriately used, they will be like everything else; poor old police officers get abused a lot for the things they try to do, so we might find that the enforcement and compliance section of the legislation will end up being something of a flashpoint if it is not managed carefully. I would prefer the minister to indicate the sensitivities around how that will be managed.

Hon Stephen Dawson: I might do some high-level stuff in my reply, but we might canvass that properly in committee.

Hon Dr STEVE THOMAS: That is a little further down in the bill. That is also a critical component.

Those are the key questions that I want the minister to address, either in his reply to the second reading debate if possible—I will tick them off—or as we go through the committee stage. This includes the consultation process for regulations and particularly how the definition of harm minimisation will be managed so that it does not become an encumbrance that prevents development.

Overall, I am quite supportive of these bills. I do not think any bill is perfect, and no doubt we will find some flaws in these bills. I would love to find a big enough flaw to move an amendment to recall the lower house for a while, but that might be just mischief talking! I can imagine the Legislative Assembly sitting on 22 December if we can find something. We will have a good try. It is a big bill. It is an important bill. The balance is critical. Dare I say it, as I finish my speech, I suspect that if we get to the end of this point and everybody is unhappy, the minister will probably be pretty close to nailing it.

HON STEPHEN DAWSON (Mining and Pastoral — Minister for Aboriginal Affairs) [2.23 pm] — in reply: I thank all those honourable members who have made a contribution to the debate today on the Aboriginal Cultural Heritage Bill 2021 and the Aboriginal Cultural Heritage Amendment Bill 2021. These are important pieces of legislation, as many members have pointed out. I first want to respond to comments made about the complexity of the bills. I note that when the Aboriginal Cultural Heritage Bill 2021 was debated in the Legislative Assembly, the Leader of the Liberal Party, David Honey, MLA, said in his contribution —

I say to the people who wrote this bill that it is one of the clearest bills I have read, so I thank them very much.

I entirely agree with Dr Honey. I thank the drafter from the Parliamentary Counsel's Office, Ms Elaine O'Hare, for her countless late nights in drafting the bill.

Hon Dr Steve Thomas: You know that sentence is in *Hansard* now!

Hon STEPHEN DAWSON: It is in there twice!

Certainly, there are levels of complexity to the bill. That is because Aboriginal cultural heritage protection is a complex, important and highly sensitive subject matter to legislate for. As we heard from Hon Peter Collier in his contribution, although the Aboriginal Heritage Act 1972 was groundbreaking for its time, it has been heavily criticised for being out of kilter with modern standards of heritage management and for its lack of clarity and certainty, which has resulted in an inefficient and ineffective framework for both Aboriginal parties and land users alike. This bill is lengthy, but we make no apologies for it. That is because it contains all the necessary checks and balances required to ensure that better protection of Aboriginal cultural heritage will exist in this state. The bill will serve to provide a modern and balanced legislative framework that will effectively recognise and protect and, indeed, celebrate the cultural heritage of Aboriginal Western Australians. It will provide a clear and transparent framework to ensure that better decisions are made about Aboriginal cultural heritage matters.

I also want to clarify the misconception about the consultation process that was raised by a number of members. When the former Minister for Aboriginal Affairs Hon Ben Wyatt announced the review of the 1972 act in early 2018, the consultation paper that marked the commencement of the three-phase public consultation process said —

> Recognising there are many individuals and organisations that have an interest in Aboriginal heritage and the effect of the Act, a multi-stage consultative approach to develop contemporary legislation is proposed—starting with this consultation paper. Rather than propose amendments, this paper aims to engage stakeholders in an exploratory conversation on key aspects of the Act as it operates now. Phase two will see the release of a Discussion Paper that will offer a series of protocols on what the amended Act should do following distillation of the feedback on the Consultation Paper. The Discussion Paper will take into consideration past experience and current practice, and a scan of approaches in other jurisdictions. Following the second round of public consultation, State Government approval will be sought for the preparation of an Exposure Draft Bill. The Green Bill will be released for public comment. Feedback on the Green Bill will inform the preparation of a new Aboriginal Heritage Amendment Bill for consideration by State Parliament.

This is what the government promised to do at the start of the consultation process, and this is exactly what the government has delivered—an open, transparent, extensive and, indeed, inclusive three-stage consultation process that has lasted for almost four years.

To those honourable members who have made comment today that there has been no consultation, I say: you are wrong. You have done yourselves a disservice by not looking into the history and at what has gone on before us.

Several members interjected.

Hon STEPHEN DAWSON: To those members who have made comment that no consultation has happened, you are plainly wrong.

A key component of the consultation design process was to ensure that engagement would be accessible to as many Aboriginal people as possible, and not limited to those Aboriginal people aligned with native title representative bodies or other organisations. This was to ensure that government received views from the broad range of Aboriginal stakeholders. The design of the methodology for consultation involved significant input from Aboriginal officers of the Department of Planning, Lands and Heritage who are based in the regions and who are also members of their local community. These officers were well placed to advise on the best consultation process that would ensure maximum input from the Aboriginal community, including on the choice of culturally appropriate locations, venues and dates, and when to use interpreters and the like. Independent facilitators were hired. Butcher's paper was used to record thoughts and feedback, community members were encouraged to take photographs to ensure that their invaluable input was correctly documented and meeting records were taken, and all are available online.

I am aware of at least one location, Warburton, at which the session was done in language. It was asked to be done in language, and it was done in language. To those members who have suggested that it was not, again, you are wrong.

Hon Dr Brad Pettitt interjected.

Hon STEPHEN DAWSON: No. I answered the question the way it was asked. Your comments are wrong.

Public information sessions and workshops were held in 35 locations across the state, over 1 500 people attended, and more than 380 submissions were received from a wide range of stakeholders, including Aboriginal organisations,

industry, government, landowners, pastoralists and heritage professionals, who all informed the development of the bill.

Various members of the chamber are concerned that there has been a lack of consultation, as I said, with some parts of the community, such as landholders, farmers, the housing industry and others. The Property Council of Australia and the Urban Development Institute of Australia were consulted. The Western Australian Local Government Association was consulted. Government proponents—such as Main Roads, which is most likely to be affected by the new regime—also have been heavily consulted. We will continue to engage with all stakeholders, as part of our co-design process, on the development of key documents that will support the bill, such as draft regulations. Given the importance of these documents, the WA government is committed, and has committed, to a co-design process. In relation to the farming sector, I am aware the Pastoralists and Graziers Association has been involved in conversations with my office and has been at briefings that I have attended over the past while.

Consultation and engagement with Aboriginal people about the new Aboriginal cultural heritage regime continues, but now with a focus on the development of the regulations and the guidelines that will support the new act. This includes the development of regulations that will outline activity categories and time frames; the Aboriginal cultural heritage management code, which will outline the due diligence process; and the Aboriginal cultural heritage management plan template as well as other guidelines to support the operation of the new act and to ensure that it achieves the intended purpose. Working throughout the regions and holding workshops with local people is our priority to make sure the new laws work for everyone. As I have said, I am thoroughly committed to a co-design process for this important work. The first step in this process will be to establish a reference group with representatives from Aboriginal groups and industry to provide feedback and guidance on the consultation co-design process. The reference group will also engage stakeholders and seek their feedback on the next steps and the investment needed to ensure local Aboriginal cultural heritage services are supported to administer the new heritage regime.

Yesterday, Hon Neil Thomson raised concerns about the interaction of this bill with the Environmental Protection Act 1986, as the Leader of the Opposition also mentioned today. Hon Neil Thomson also raised the risk of additional red tape and duplication. The Environmental Protection Authority was consulted throughout the process and the development of the bill. I quote from the EPA's submission on the consultation bill —

> For direct impacts, the EPA is supportive of the Aboriginal Cultural Heritage Bill 2020 being the primary legislation dealing with the protection of Aboriginal Cultural Heritage. It also supports the removal of unnecessary duplication in the environmental impact assessment … process where there are legislative overlaps between the … Bill and the EP Act.

The EPA also supported the amendment to the Environmental Protection Act 1986 for the removal of the constraints that currently restrict the Minister for Aboriginal Affairs from making decisions on Aboriginal cultural heritage issues during environmental issues. It stated —

> To further express the primacy of a future Aboriginal Cultural Heritage Act in consideration of direct impacts, the EPA also proposes to amend and update its key policies and guidance that outline how the EPA considers Aboriginal cultural heritage issues.

This government has worked closely with all government stakeholders to ensure that there is a whole-of-government response and consistency across government agencies towards the better protection of Aboriginal cultural heritage, and we will certainly continue this work when the legislation is enacted.

The claims by Hon Neil Thomson that a new regulatory system will be imposed on landowners is not correct. I would like to address the concerns raised about the impacts the processes in the bill will have on all landholders with lots larger than 1 100 square metres. The 1972 act is silent on lot sizes. Under the 1972 act, any activity on any parcel of land that when undertaken alters, damages, destroys or conceals an Aboriginal site is an offence and as such would require a section 18 consent to lawfully proceed. There are no exempt activities in the 1972 act. Just because approvals for such activities have not been sought in the past does not excuse that approvals should have been sought. This lack of adherence to current regulatory requirements has resulted in large swathes of the state having been developed at the expense of Aboriginal people's cultural heritage without any due regard for that heritage or the impacts to the relevant communities.

Hon Steve Martin asked for the rationale for the lot size of 1 100 square metres. The 1 100 square metres is based on lot sizes that are currently exempted from bushfire planning requirements, and is well understood in the planning context. The rationale is that if lot sizes were to be smaller than 1 100 square metres, a house's footprint could not be easily moved to avoid an impact to Aboriginal cultural heritage or, likewise, to be bushfire safe. If we made the lot sizes any smaller, we would end up essentially sterilising people's land or making building a house prohibitively expensive if Aboriginal cultural heritage is in existence on that lot.

Hon Dr Steve Thomas: Which already happens under the Bush Fires Act.

Hon STEPHEN DAWSON: Yes. This lot size captures most of the metropolitan dwellings in already built-up areas. This bill is an improvement on the 1972 act as it makes it clear that any activities associated with residential development on lots smaller than 1 100 square metres will not require an approval to proceed as such activities are exempt activities. This bill will provide certainty around processes and decision-making by specifying activities that require approval should they harm Aboriginal cultural heritage and by including a due diligence process that outlines the pathway for evaluating whether an approval will be required. The due diligence process will consider existing land use and prior disturbance and will be subject to co-design with stakeholders. This co-design process will allow parties to contribute to the finalisation of the activity categories that will result in well-informed, consultative decisions regarding the constitution of the activity tables.

This new legislation, as a number of members have noted in their contributions, is about a balanced approach to Aboriginal heritage management and endeavours to reach agreement on avoiding or minimising harm to Aboriginal cultural heritage. The bill will allow for further exempt activities to be prescribed by regulations, which again will be the subject of co-design with traditional owners and other stakeholders, including landholders, pastoralists and local government authorities.

Concern was raised by Hon Tjorn Sibma and also the Leader of the Opposition about the appointment of inspectors. Hon Tjorn Sibma raised in particular Aboriginal inspectors and inspection powers, such as the right to stop vehicles. These same inspection powers are provided to inspectors appointed under numerous pieces of legislation in Western Australia, including the Biodiversity Conservation Act 2016, the Environmental Protection Act 1986 and the Heritage Act 2018. That legislation has come from both sides of politics. Under these other pieces of legislation, inspectors have the power to co-opt the assistance of any person in the state to assist in the performance of investigation powers. Why were these concerns raised about the appointment of Aboriginal inspectors? The appointment of Aboriginal inspectors will empower Aboriginal people who are on the ground to monitor compliance with the management of their heritage. We foresee Aboriginal rangers and members of local Aboriginal cultural heritage services taking up these roles. The government will oversee Aboriginal inspectors and will ensure that they have the necessary support and training to undertake this role. I remind members that the contested Aboriginal inspection powers and exemptions for lot sizes under 1 100 square metres were part of the consultation draft bill that has been available to the public since September last year.

Comments were made that this new framework will result in consultants hijacking the system. In contrast, this bill will empower Aboriginal people themselves to determine the importance of their heritage, rather than a government body asserting the significance of their heritage, as is the case under the current 1972 act. With this authority, traditional owners will be able to negotiate agreements with miners and other land users on how their cultural heritage will be managed. This approach significantly redefines the relationship between Aboriginal people, proponents and government with respect to Aboriginal cultural heritage management.

This bill further supports the pursuit of self-determination by traditional owners across the state through the designation of local Aboriginal cultural heritage services. LACHS will be able to charge a fee for service for services provided in connection with their functions. These fees must be reasonable and will need to be in accordance with a fee schedule endorsed by the Aboriginal Cultural Heritage Council. The appointment of LACHS to undertake a formal role in facilitating consultation and agreements on Aboriginal cultural heritage management plans in their area of designation will empower Aboriginal parties and strongly aligns with the government's recently released Aboriginal empowerment strategy and the Closing the Gap implementation plan. LACHS will provide a platform for local groups to engage in on-ground heritage management services, which should lead to economic opportunities and jobs that are not currently available in many regions of our state. Yes, consultants with specialist skills may be required from time to time, but it will be up to the LACHS to decide whether this service is required, and the LACHS will employ these consultants. It is hard not to wonder whether this is the reason that some groups such as native title representative bodies and some consultants oppose the bill. Finally, the power to make these decisions will be with the traditional owners and is not with intermediaries, which may explain why some groups are not so happy.

The bill represents a fundamental shift in the approach to Aboriginal cultural heritage management that will transform the heritage landscape and position local Aboriginal people at the heart and guts of the regime. The creation of the LACHS was a direct response to feedback received during consultation from Aboriginal people that decision-making should be decentralised and in the hands of local people with local knowledge. The government is committed to supporting Aboriginal organisations to build their capacity to become LACHS should they wish to do so, and to this end $10 million has been allocated to help build capacity for these groups, long before the new law becomes operational. The bill will also allow for further funding to be provided to LACHS on top of the fees they may charge for services related to the performance of their functions.

We have heard from a number of honourable members that this bill will not prevent a scenario similar to the destruction of Juukan Gorge. That is simply not true. Juukan Gorge would not have happened had this bill been an act of Parliament at the time leading up to its destruction. Juukan Gorge was the result of flaws in the 1972 act,

including not having legislative mechanisms in place to manage harm to an Aboriginal site once it is established it may have higher significance and the inability for the minister to intervene. If the bill had been in place at the time of Juukan, an application to harm the site and a decision to approve the application could not and would not have been considered without full consideration and knowledge of the value of the heritage to the community. If the new laws had been in place, Aboriginal parties would not have been bound by gag clauses in private heritage agreements and would have been able to voice their objections or withhold consent for activities that might harm their heritage. The reforms we are debating today will mean that gag clauses will no longer be able to be used to silence the voices of Aboriginal people. If the new laws had been in place, local Aboriginal cultural heritage services would have been established across the state to coordinate consultation with local knowledge holders and would have ensured that Aboriginal people, as a collective, would have had an active role in negotiating the cultural heritage implications of new land use proposals before any proposed activities commenced. We know that Rio Tinto had four options for expanding its Brockman 4 mine site, but it told the traditional owners, the PKKP people, about only one option—to blow up the Juukan rock shelters. If the new laws had been in place, for the council to approve an Aboriginal cultural heritage management plan for an activity that may harm heritage, it would have needed to be satisfied that Aboriginal parties had given their informed consent to the agreement, including having been given full and proper disclosure of information by the proponent of the method and other feasible alternative methods for its proposed activities. The bill will enshrine the United Nations Declaration on the Rights of Indigenous Peoples' principles of free prior informed consent in its agreement-making process. "Informed consent" is defined in the bill as consent that is given without any coercion, intimidation or manipulation and includes full and proper disclosure by the proponent of the method and other feasible methods for the proposed activities.

Critics of the bill say that the destruction of Juukan Gorge would still have happened under this bill because the minister will have the final say and history has shown that ministers on both sides of politics have failed to protect Aboriginal heritage. I acknowledge the cynicism towards government, but I would like to point out that the minister's final authorisation on an Aboriginal cultural heritage management plan cannot be compared with the minister's approval of a section 18 consent under the 1972 act. They are completely different tools. The legal framework, the grounds for making a decision and the process for making a decision for a section 18 notice versus an Aboriginal cultural heritage management plan are simply not comparable. Decisions on Aboriginal cultural heritage management plans will not come to the minister for authorisation except as a last resort. Hon Dr Brad Pettitt claimed that a mining company could just hold out from coming to an agreement with the Aboriginal party so that the minister can decide. However, the bill does not make it easy for a proponent to seek the authorisation of the minister. As part of the authorisation process, the council will need to be satisfied that proponents have used their best endeavours to reach agreement before it can even come to the authorisation process. Ministerial decision-making will occur only when, despite best endeavours, parties cannot reach agreement and after the council has attempted to mediate an agreement between both parties. The council will be able to recommend authorisation of a plan to the minister only if the plan provides that the proposed activity is managed to avoid or minimise harm to heritage. The minister's decision to authorise a plan will be considered on the grounds of what is in the interests of the state, which is defined as including the social and economic benefits of Aboriginal people and the interests of future generations.

Currently, a section 18 consent is a blanket consent to destroy or impact Aboriginal cultural heritage. There is no requirement for the harm to heritage to be avoided or minimised. Unlike section 18 consents, the authorised ACH management plan will have a standard condition that new information about heritage needs to be reported to the council. This will allow for ministerial intervention in the form of stop activity orders and prohibition orders. As Hon Ben Wyatt, the former Minister for Aboriginal Affairs, has previously stated, had he had the tools available under this bill, he would have issued stop activity orders to prevent the destruction.

Hon Neil Thomson: Did he know about it?

Hon STEPHEN DAWSON: You will have to ask him, honourable member. Sorry.

The bill will also allow for the cancellation or suspension of an ACH management plan if the minister is no longer satisfied that the plan meets the requirements for a plan to be authorised. This may include that that plan no longer adequately provides for the activity to be managed in a way so as to avoid or minimise the risk of harm to Aboriginal cultural heritage. In direct contrast, the section 18 consent cannot be cancelled or suspended once issued. The authorisation of an ACH management plan may be subject to any other condition the minister considers appropriate to ensure the activity to which the plan relates is managed to avoid or minimise the risk of harm to Aboriginal cultural heritage. Further, when new information comes to light, the minister will also be able to impose a new condition or amend a condition to ensure the activity to be undertaken is managed to avoid or minimise the risk of harm to Aboriginal cultural heritage. I stress again: section 18 consent cannot be compared with a ministerial authorisation of an Aboriginal cultural heritage management plan.

Hon Dr Brad Pettitt quoted from an article from *The Conversation* that said —

> … the developer can appeal to the state administrative tribunal over ministerial decisions they don't like. The Aboriginal custodians for that area will not have an equivalent right of appeal.

This is inaccurate and wrong. Under the bill, neither the proponent nor the Aboriginal parties will have a right of review to the State Administrative Tribunal for ministerial decisions to authorise an ACH management plan. I point out that under the 1972 act, the right to SAT review for section 18 decisions is afforded to only the proponents. Unlike what Hon Dr Brad Pettitt said, SAT review avenues will be available for various decisions under the bill, both for the proponent and the Aboriginal party; for example, there will be a right of review to SAT for both the proponent and the Aboriginal party if the minister cancels an Aboriginal cultural heritage management plan that is agreed between both parties. There will be a right of review to SAT for proponents if the minister issues a stop activity order that stops the activity. There will be a right of review to SAT for Aboriginal parties if the minister cancels a prohibition order that was prohibiting an activity that was harming Aboriginal cultural heritage. Therefore, I think members need to stick to the facts and stay away from myths or untruths that are being perpetuated by some people whom I cannot be confident have read the final bill.

Unfortunately, although the Juukan tragedy received international attention, this is not the first time that a significant rock shelter site has been lawfully harmed due to decisions being made before its importance was known. The limited and archaic nature of the 1972 act means that we cannot be sure how many times in the past we have lost sites similar to Juukan without even being aware of it. Juukan is not the only significant incident of destruction of Aboriginal cultural heritage that has happened over the past decade. How would those events have unfolded if this bill had been an act of Parliament?

Hon Neil Thomson talked about his role in the former Department of Aboriginal Affairs when the Chaney decision came out. If this bill had been in place, we would not have seen the landmark Aboriginal heritage case in Robinson v Fielding in which Justice Chaney overturned the narrow definition of "sacred site" under the Aboriginal Heritage Act 1972, which the Aboriginal Cultural Material Committee had adopted on the advice of the former Department of Aboriginal Affairs to deregister a Port Hedland Aboriginal sacred site. The bill would have spared Aboriginal people the despair of seeing their sites being deregistered and not being afforded protection under the legislation. Under the act, the assessment is done by a statutory committee that does not mandate Aboriginal membership. Under the bill, it will be done by Aboriginal people themselves. This ineffective and inefficient assessment process is the cause of the backlog of 1 600 places to be assessed, as mentioned by Hon Peter Collier. This bill will ensure that there will no longer be a backlog. If Aboriginal heritage is important to Aboriginal people, it will be afforded protection under the legislation.

If this bill had been in place, we would not have seen the situation of proponents, whether it was through confusion, uncertainty or otherwise, shopping around for Aboriginal people to consult, resulting in disputes within communities and leading to the destruction of important Aboriginal cultural heritage by not including the right knowledge holders in discussions. We have seen this in a number of high-profile cases over the past few years. The bill will mandate consultation with Aboriginal people and make clear who needs to be consulted. Under this legislation, we will have longer time frames and stronger inspection powers to investigate potential breaches. I thank Hon Peter Collier for his contribution about penalties of days gone by. Under this legislation, we will have the highest penalties in the country to deter and punish those who harm heritage without authorisation. Importantly, the penalties for those offences will be able to be paid to Aboriginal people as compensation for harm to their heritage. That is something we put in place following the feedback from Aboriginal groups on the consultation bill.

If this bill had been in place a decade ago, we would have seen more Aboriginal cultural heritage of outstanding significance being protected through the declaration of protected areas and we would have been in a situation whereby Aboriginal people could have been granted tenure to look after those outstanding sites of significance. We know of groups of knowledge holders for protected areas who see the economic potential in opportunities for funding under the commonwealth Indigenous protected areas program or by undertaking tourism ventures, but who have not been able to do those things because under the 1972 act, they are not able to lawfully secure the necessary tenure. The 1972 act vests the exclusive right to occupation and use of protected areas with the Minister for Aboriginal Affairs, thereby triggering future act implications under the Native Title Act. This has resulted in no protected areas being declared since the Native Title Act was enacted. The bill addresses this by ensuring that protected areas declared under the new laws will no longer be vested with the minister. This will enable traditional owners to apply for more areas containing Aboriginal cultural heritage of outstanding significance to be made protected areas. A protected area will have the highest protection under the law, meaning that no activities that may harm that heritage, including exempt activities, will be able to be undertaken in the protected area. Furthermore, both houses of Parliament will be required to approve the repeal of a protected area or any amendment to reduce the size of a protected area.

No other reform initiative undertaken by the McGowan government has been subject to such extensive and transparent stakeholder consultation. There will always be critics of consultation. Consultation will never be perfect, given the diversity and extent of Western Australia, and I think Hon Peter Collier made that point. However, some

of the loudest critics of the bill and the process have only recently chosen to be involved. They did not attend meetings or information sessions and ignored the many opportunities to put in submissions to inform government of their important views.

Although members have raised concerns about the 100-odd amendments made since the consultation draft of the bill, I ask: is this not evidence of thorough consultation, co-design and active listening? We released a consultation bill, we diligently combed through each submission in detail, we listened and we acted by drafting important amendments. The Aboriginal Cultural Heritage Council will be made up of a majority of Aboriginal members rather than Aboriginal membership being preferred, as was in the consultation bill. Existing section 18 consents will be given an end date of 10 years unless they have been substantially commenced. This will allow and encourage transition to the new regime. Importantly, fines collected from harm offences will now go into an Aboriginal cultural heritage compensation fund rather than government coffers, so that compensation can be paid to Aboriginal custodians whose heritage has been harmed. Yet we face calls for more consultation—to scrap the bill and start again. This debate has gone on for too long. Every few years there has been a review of the 1972 act; some governments even managed to introduce a bill. But we know that for both sides of politics, all past attempts to reform the 1972 act have failed due to the lack of consensus from stakeholder groups and lack of government will.

There has been debate and commentary about which jurisdiction has the best Aboriginal cultural heritage legislation. Much has been said about the Northern Territory Aboriginal Sacred Sites Act 1989. That act has a limited context compared with the bill before us. Its application is confined to Aboriginal cultural heritage of a sacred nature rather than the far broader application under this bill. Under the NTASSA, proponents of activities that may harm Aboriginal cultural heritage are required, firstly, to approach the authority, which then arranges consultation with the relevant local Aboriginal organisations. Under this bill, the proponent will, in the first instance, engage directly with local Aboriginal people with knowledge of their heritage rather than through intermediaries. This not only is the respectful approach, but also encourages the building of ongoing relationships. The requirement for early engagement and consultation at the local level with the right Aboriginal people is a key principle of the bill and a direct outcome of the feedback from the early consultation that took place prior to drafting the bill. Under the NTASSA, the authority evaluates whether a place is considered to have heritage that can be protected by the legislation. Under this bill, no such evaluation will occur; if a place or object is considered by an Aboriginal person to be important, it will be protected under the legislation. The removal of such an evaluation process is a significant step in recognising that Aboriginal people are the primary custodians of that heritage.

Although the Northern Territory Aboriginal Sacred Sites Act includes provisions for agreement-making between parties, no standards or principles on free, prior and informed consent are enshrined in its agreement-making process and it has no provisions that disallow gag clauses in its agreements.

Concerns have also been raised about the penalties in the Northern Territory legislation for damaging a sacred site, as they are some of the lowest in the country. Under the NTASSA, the authority's decisions can be overruled on appeal to the minister. Although it has been pointed out that there may have been only four instances in the Northern Territory of a decision by the authority being overruled on appeal by the minister, the system in place is similar to what is proposed under the bill; that is, in effect, the minister will become the final arbiter only when agreement cannot be reached.

I do not make these points about the NTASSA as a point of argument on who has the better or best legislation; I make them to highlight that the NT legislation works for the Northern Territory. The bill before members needs to be seen in the unique context and practical reality of the state of Western Australia, which is home to both some of the world's oldest known Aboriginal cultural heritage and some of the world's most significant natural resources. It also needs to be viewed in the context of the 1972 act, and the enormous steps the bill is taking to ensure there is a real and effective Aboriginal voice in decisions impacting Aboriginal cultural heritage.

I heard a land council CEO say, "Okay; we know the bill is better, but is it the best?" The question is: are we willing to lose what we know is much better and continue on with the 1972 act? I certainly am not. Those who reach for the impractical and the ideal, and use fear, divisiveness and other cheap tricks to win their argument, do not mind if we lose the solution in the process of argument and debate. The solution is a much better, modern, progressive piece of legislation that will better protect Aboriginal cultural heritage in Western Australia. The solution cannot be the status quo.

I encourage deep reflection by those who stood up in this chamber and stated that they will not support the most progressive bill on Aboriginal cultural heritage this nation has ever known. In the future, things will progress further, as they have today. That is exactly the point: if we are too afraid to take a step, we will never move forward. These new laws and this government will ensure we keep moving forward, for the good and for our shared future. These new laws will deliver monumental legislative reform and transform the way Aboriginal cultural heritage is valued and protected by the state.

When Yindjibarndi leader Michael Woodley said no to Fortescue Metals Group mining Yindjibarndi land, it led to a legal tussle that went on for 17 years. This exemplary and inspirational figure, a strong critic of big mining companies and someone who has been at the forefront of the conflict between Aboriginal heritage and development, says the new bill will put First Nations people at the forefront. I quote —

> "It puts the prescribed bodies corporate in control," he said.
>
> "That means developers must engage directly with the people who have the connections to country and the knowledge to undertake heritage surveys."
>
> …
>
> "First Nations peoples, with the government, hold a unique opportunity following this Bill when placing our cultural heritage at the centre of discussions, when it comes to improving the awareness of industry and developers, who want to impact our country …

Mr Woodley also addressed the calls for a power of veto for Aboriginal people. I quote —

> "We need to be clear, the burden of having final say comes with a lot of pressure and confrontation for all the wrong reasons," he said.
>
> "We also need to be realistic and practical in accepting the role of government.
>
> "Governments have a responsibility for First Nations people, but they are not going to give up their powers to anyone when it comes to representing the public's best interest."

A balance needs to be achieved between ensuring the protection and management of Aboriginal cultural heritage and a resources industry that generates employment, opportunity and prosperity for thousands of Western Australians, including many Aboriginal Western Australians, as well as the prosperity of the state and nation as a whole. Ultimately, it is the role of government to balance potentially conflicting interests in the best interests of the state.

Hon Dr Brad Pettitt mentioned several times during his contribution that this bill is a missed opportunity. Over the years there have been missed opportunities by governments of both sides to reform the 1972 act. These missed opportunities have resulted in an outdated piece of legislation that both Aboriginal parties and industry agree is in desperate need of change. These missed opportunities have resulted in the continued loss of irreplaceable heritage and the disempowerment of Aboriginal people in decisions about their heritage. These missed opportunities led us to Juukan. If we allow the endless debate to continue, and if we hit the pause button, as suggested by the honourable member, it will be a missed opportunity. The honourable member quoted his federal Greens' colleague Senator Cox, who said —

> To their credit, this Government has been the one to end the appalling 1972 Act.
>
> But what we have ended up with is business as usual.

I have to say that the reality for the Greens is that they get to say and promise anything, but they never have to balance anything; they can sleep well at night in the knowledge that they will not be in government and have to make these hard decisions. To those members of the Greens who insist on firing symbolic rhetoric in protest, I think they are permeating yet another missed opportunity; they are encouraging business as usual and the gross inadequacies of an outdated 49-year-old act to remain.

The McGowan government is a government that takes action. It will not persist with business as usual. It will not allow another missed opportunity. This government has listened to Aboriginal people, who have told us year after year that the 1972 act cannot continue. My departmental officers, some of the same advisers who are sitting at the back of this chamber, have travelled far and wide to consult with Aboriginal people over the past four years. They have heard and witnessed heartbreaking stories. They have heard firsthand from traditional owners, who have said to them, "Why have you come so late? Why did you not have this law sooner? Our heritage has already been destroyed. We have lost our heritage." I say to those traditional owners: it took us a very long time to get here, but we are here now.

I think Hon Brad Pettitt was one of those who has said that there are no greater protections in this legislation than in the 1972 act, and that it may contain less. I say to those people that I regret that statement and think that people who say that are doing Western Australians a deep disservice. These bills will deliver historic reform that will empower Aboriginal people and put them at the heart of decision-making about the management and protection of their heritage.

I have a few other comments in relation to Hon Dr Steve Thomas's questions. He asked a question around what will prevent everywhere in the state from being considered Aboriginal cultural heritage.

Hon Dr Steve Thomas: To be universal.

Hon STEPHEN DAWSON: Yes; he asked what will be the failsafe in the act. For Aboriginal cultural heritage to be added to the ACH directory, it will need to be supported by a knowledge holder for that heritage. Minimum recording standards will also need to be met before Aboriginal cultural heritage is added to the directory. The purpose of the minimum recording standards is to ensure that sufficient information on why the heritage is important and who it is important to is captured. A statutory body will no longer be responsible for determining whether Aboriginal cultural heritage is important to Aboriginal people. The council will provide oversight of local Aboriginal cultural heritage services and will be able to suspend or cancel a LACH service if it is not performing. In terms of the minimisation of harm, it will be similar to what happens now—for example, the salvage of material and Aboriginal monitors on the ground. In relation to the member's question about transparency of the minister's decisions, there will be full transparency around that. The minister will publish decisions and reasons for decisions. Of course, that could potentially be looked at via judicial review at some stage to see whether a minister's decision aligns with the legislation that will hopefully pass this place.

Before I finish, I want to acknowledge the people who have worked on this for many, many years. I particularly want to acknowledge Cesar Rodriguez, Diana Ting, Wanjie Song, Jeff O'Halloran, Joe Aldis, Chuck Ellis, Anita Nation and Ben Harvey; my policy staff, Shaye Hayden, a proud Noongar man who has been my adviser for this year; and my chief of staff, Darren Forster.

This has been a long journey, but I have been here for only a part of it; I have been here for only eight months of the journey that started in 2018. As a number of honourable members correctly pointed out, the legislation is but a step in the journey, because, of course, if the bills pass this place, the regulation-making process will have to start. An incredible amount of work will go into that process. I have committed to a co-design process to have all players involved. I have committed to traditional owners and prescribed bodies corporates doing stuff on their land. My commitment to industry—be it the mining industry or the farming industry—is to ensure that they have sessions with stakeholders to enable them to have input into the regulations that will sit under this important legislation.

Honourable members, again, I thank you for your contributions. I am very grateful for the nice things that have been said by a number of honourable members about me personally. I do not see this as being legislation that I will be leading or responsible for in years to come, because as Hon Peter Collier pointed out, we all have a shelf life in this place, but hand on heart, I believe this is the most progressive legislation in the country. In my mind, I have placed the most right-wing minister in the role of Minister for Aboriginal Affairs, and I am confident that even if such a person were in this role, safeguards in the legislation before us will protect Aboriginal cultural heritage for years to come. This bill is a good bill, and I commend it to the house.

Question put and passed.

Bill (Aboriginal Cultural Heritage Bill 2021) read a second time.