CONSERVATION LEGISLATION AMENDMENT BILL 2010

Committee

Resumed from 17 March. The Chairman of Committees (Hon Matt Benson-Lidholm) in the chair; Hon Helen Morton in charge of the bill.

Clause 16: Section 33 amended —

Progress was reported on the following amendments moved by Hon Robin Chapple —

Page 20, line 27 — To insert after "protects and conserves" —

the scientific values of the land, the educational values of the land, and

Page 21, line 9 — To insert after "protects and conserves" —

the scientific values of the land, the educational values of the land, and

Hon ROBIN CHAPPLE: I rise to give reasons for those amendments. These amendments are intended to ensure that the scientific and educational values of land subject to joint management are recognised and protected insofar as they are compatible with the heritage and cultural values. By way of explanation, having worked for the National Trust of Australia, it became quite apparent that when we dealt with the conservation estate or, indeed, the heritage estate—that is, Indigenous heritage—there were factors beyond just those base principles and that certain areas have incredible scientific value and incredible educational value. Therefore, we thought it was imperative that, in dealing with this legislation, we inserted those factors so that the interests of the Heritage Council, of the National Trust and of similar bodies could be taken on board in this process. I come back to the issue of the Burrup Peninsula, where there are incredible scientific and heritage values that are currently not within the main ambit of discussion when we deal with joint management. That is the direction in which we wish to go on this matter. That supports the aspirations of the National Trust, and others within the heritage movement.

Hon SALLY TALBOT: Five days ago when this debate was interrupted, I was about to seek the call to indicate that Labor is very supportive of these amendments, which appear six times, I think, on the supplementary notice paper. The amendments seek to add to the list of values that can be protected under joint management agreements. The Conservation Legislation Amendment Bill 2010 makes reference to cultural and heritage values, and stipulates that they should be protected. It seems to be eminently sensible, logical and prudent to add two further values to that list. In addition to cultural and heritage values, these amendments will ensure that the scientific and educational values of the land will also be protected. The supplementary notice paper contains six amendments to that effect, and Labor will support all of them.

Hon HELEN MORTON: The government does not support the amendments to proposed section 33(2)(a) or proposed section 33(3A). Proposed section 33(2) applies when land subject to a proposed section 8A agreement does not, for the time being, have a management plan, and requires the land to be managed in a way that protects and conserves the value of the land to Aboriginal culture and heritage; and proposed section 33(3A) requires proposed section 8C land that is unallocated crown land, or unmanaged reserves managed by the chief executive officer for certain management functions, to be managed to protect and conserve the value of the land to Aboriginal persons from any material adverse effect. The proposed amendments—to include scientific values of the land and educational values of the land—are considered to be beyond the scope of the purpose of the bill. Such amendments could significantly widen the potential impacts of the legislation and result in unforeseen consequences because of the breadth of interpretation that can be given to scientific and educational values of land. In addition, the scientific values of the land are encompassed in the purposes of national parks, conservation parks and nature reserves under the Conservation and Land Management Act, which has management plan objectives applicable to the preservation of features of archaeological and scientific interest, and these values are adequately protected under existing provisions. Education of the public about the values of lands managed under the CALM act is a high priority for the department and underpins a range of departmental programs. For those reasons, the amendments are not supported. Subsequent amendments of a similar nature will not be supported.

Hon SALLY TALBOT: I would like to put on the record the fact that I do not accept that argument. This is not supposed to be about departmental priorities; this is supposed to be about the priorities of the government. People involved in joint management arrangements should not have to go to various sections of the act to find something as basic as a list of values to be protected. I do not accept the argument that has been put by the minister, and I suspect that the government's unwillingness to consider these amendments is connected to later amendments, which I assume it will reject, about the allocation of resources to service these joint management agreements.

Amendments put and negatived.

Clause, as amended, put and passed.

Clause 17: Section 33A amended —

Hon ROBIN CHAPPLE: I move —

Page 22, line 1 — To insert after "protect or conserve" —

the scientific values of the land or waters, the educational values of the land or waters, or

I am sorry that the minister and the department do not regard this as a fit amendment, but I can assure the minister that others within that sector—heritage, archaeological and anthropological groups—believe there is a need to insert "the scientific values of the land or waters, the educational values of the land or waters, or". We are going to go down in a screaming heap—I can see that—but I need to put it clearly on the record.

Hon HELEN MORTON: As I have already mentioned, the government does not support this and following similar amendments. To reiterate: under the CALM act, the scientific values of the land are encompassed in the purposes of national parks, conservation parks and nature reserves that have management plan objectives applicable to the preservation of features of archaeological and scientific interest. These values are adequately protected under existing provisions of the CALM act. Education of the public about the values of lands managed under the CALM act is a high priority for the department and underpins a range of departmental programs.

Amendment put and negatived.

Clause put and passed.

Clause 18: Section 53 amended —

Hon ROBIN CHAPPLE: Do the provisions of clause 18 impose requirements on the government structures for joint management bodies? What entities can be party to a joint management agreement? Is there a possible role for the National Trust in some joint management agreement?

Hon HELEN MORTON: The arrangements for joint management will be negotiated on a case-by-case basis, and there is opportunity for anybody to be a part of it.

Hon ROBIN CHAPPLE: Hypothetically, if an Indigenous group wanted the National Trust to suggest planning processes that might be taken up by Indigenous representation in the joint management agreement, what role might the National Trust take in that? Could the National Trust represent the interests of the native title parties or the Indigenous stakeholders in those joint management agreements? I am trying to ascertain not only advice, but also whether the National Trust could be a representative body of the native title parties and how that might work.

Hon HELEN MORTON: The National Trust would have to be a party to the agreement to do that. As I have mentioned, there are no barriers to it being a party to the agreement. It would be a party to the agreement and the native title holders also would be a party to the agreement. I do not think that one would substitute for the other.

Hon ROBIN CHAPPLE: I think I understand the minister, but I will just clarify it. If an Indigenous group that had signed an agreement with the government through some joint management structure and the Department of Environment and Conservation wanted the National Trust to be its arbiter—the organisation to carry forward its plans in joint management with DEC—that could not happen.

Hon HELEN MORTON: I was just making sure that my understanding and appreciation of this matter are as my advisers are letting me know. The joint management body prepares the joint management agreement. The native title holders and the government could, in that joint management agreement, require the National Trust to be involved in some way or another. But it could take responsibility for the joint management agreement only with the agreement of the parties or if it were a party to it.

Hon ROBIN CHAPPLE: I am with the minister. I am just making sure that I have got it absolutely right. The joint management structure, the Indigenous stakeholders and DEC could establish that the National Trust could manage an area or be involved in the management of an area if they agreed, but the traditional stakeholders in this matter could not have any other party or person in the consultative group hearings representing their views. I say this because, quite clearly, in some cases, Indigenous people can find themselves in a degree of conflict in those sorts of arrangements.

Hon HELEN MORTON: I will repeat something similar to clarify it a bit more. The National Trust can be a party to the agreement if it is enjoined in that. Any of the parties to the agreement, such as the native title holders, can ask whomever they wish to make representations on their behalf. Equally, the native title holders can say at any time that they do not want that party to represent them and that party will not represent them. The

decision making boils down to the entities that have a legitimate role in being a part of the joint management agreement.

Clause put and passed.

Clause 19 put and passed.

Clause 20: Section 56A inserted —

Hon ROBIN CHAPPLE: I move —

Page 26, after line 2 — To insert —

(8) The CEO must, from the existing standing appropriations for his or her department, supply adequate funding for the process of developing a management plan for the purposes of this section, and for the subsequent effective implementation of that management plan.

The reason I have moved this amendment is as per the amendments to proposed section 8A. Again, I refer to the issues paper submitted to the minister in charge of the legislation in this chamber and also to the Minister for Environment by the Indigenous group of stakeholders. It states that the bill does not address the necessity for adequate resources to be a component of joint management agreements pursuant to proposed sections 8A and 56A and for ascertaining Aboriginal cultural heritage values of land for the purposes of proposed sections 56(2) and 57A. This amendment is to clarify that, when developing a management plan between the Department of Environment and Conservation and the Indigenous stakeholders, there is a clear understanding that the funding for this process must be supplied by DEC vis-a-vis the government.

Hon SALLY TALBOT: This provision is a crucial addition to this amendment bill. During the second reading debate, I said that one of the problems with this bill is that the government has not addressed the question of resources. This is not just about the matters that Hon Robin Chapple has canvassed. It is also about the provision of money for training and money for capital infrastructure. At one stage, the minister furnished a partial explanation of the source from which this government intends to draw those resources. The minister mentioned in particular the funding that has been identified for the Great Western Woodlands and for the Kimberley science and conservation strategy. But, of course, those are specific undertakings that were given by the government in the context of an election platform. Those programs will not necessarily be found to be drawn upon in the future. Therefore, I say again that the government cannot just sit back and say, "Trust us. We have put those programs in place." We need to put a mechanism in this amendment bill that will enable future members of this chamber—future members of oppositions, of all persuasions, of all left–right leanings—to hold governments accountable when it comes to delivering resources that will be adequate to give concrete reality to these joint management agreements.

So I am speaking, obviously, in support of this amendment.

Hon HELEN MORTON: The government does not support this amendment. This amendment is similar to the amendments that were proposed to new section 8A. I will reiterate some of the comments that I made during the second reading debate when Hon Robin Chapple first raised this issue. In relation to the possible capital and operational costs that may be required as a consequence of these amendments, some may be required, but that will vary from case to case, depending upon the individual agreements. Resourcing for joint management has been, and will be, provided for in the native title settlement packages. The BMIEA, Ord and Yawuru agreements provide for resourcing of these joint management agreements. Resourcing for other training and employment opportunities will flow from other government initiatives, such as the Kimberley science and conservation strategy, partnerships with private sector companies, and other commonwealth and state agencies. Any other resources required will be a matter for government appropriation through the normal budget process.

I reiterate that this proposed amendment is not considered appropriate, as the government of the day determines the appropriations, albeit subject to parliamentary approval, and needs the flexibility to respond to changing circumstances and the priorities of the day. The allocation of funding for a section 56A agreement will be the subject of negotiations between the intending parties to the agreement. The contribution to management required by the CEO of the department will be addressed under the relevant agreement.

Hon ROBIN CHAPPLE: There are clearly statements in the BMIEA, and also in the Miriuwung–Gajerrong and Yawuru agreements, that prescribe some government facilitation. The key issue is that we are talking about new agreements that may be established in the future. The minister has indicated that these agreements will be subject to budgetary constraints. The minister has indicated also that, in some cases, corporations will provide that funding. It seems rather dangerous to me to not prescribe that funding, and, indeed, to make that funding subject to budgetary constraints and/or the interest or will of other parties to provide some facilitation of that

funding. The communities that may or may not enter into future agreements about joint management may be concerned if there is no ability for that joint management to be properly funded.

Hon HELEN MORTON: I reiterate that the government does not support this provision, for the reasons I have mentioned.

Hon ROBIN CHAPPLE: Another issue has just come to mind. It is clear that under the BMIEA, funding is to be supplied. Will there be any ability at some future stage, because of budgetary constraints, to not necessarily comply with that agreement? Secondly, there is currently an allocation of funding for a joint management plan. From my understanding, a number of plans have been submitted to the Murujuga Aboriginal Corporation. However, it does not accept those plans, because, to quote from the issues paper, it "was not party" to those management plans. I do not have the BMIEA with me, but where does that significant amount of money stand? Has it been considered by the department to have been expended; or, because the Murujuga Aboriginal Corporation was not party to the management plan as currently presented to it, will the process to develop a joint management plan with that group now continue?

Hon HELEN MORTON: The original management plan for the BMIEA is a legally binding agreement. There was an allocation of $500 000 for the development of the management plan, capital works of $8 million, and a management cost per annum of $450 000. The $500 000 allocated for the development of the management plan has been expended. No further funding will be allocated for the development of the management plan.

Hon ROBIN CHAPPLE: I am advised that the Murujuga Aboriginal Corporation has never been party—I say "I am advised"—to the development of that joint management plan. As recently as a few days ago, the corporation received a modified management plan that it, as I understand it, has packaged up and sent back to the department, because of the Murujuga Aboriginal Corporation's non-involvement,

Hon HELEN MORTON: I am advised that the Murujuga Aboriginal Corporation did not exist at the time the management plan was developed. But the individual people who were participants in determining that management plan are the people who now have formed the Murujuga Aboriginal Corporation. So, the individual people were involved. But the corporation as an entity did not exist at the time.

Hon ROBIN CHAPPLE: My reading of the BMIEA is that it states quite clearly that the Aboriginal body corporate—the ABC, which was to be established under the BMIEA, and which ended up as the Murujuga Aboriginal Corporation—was to be party to the joint management agreement; it was not individuals. The Burrup and Maitland Industrial Estates Agreement states that it is to be the ABC.

Hon HELEN MORTON: The agreement was that the state had to provide that $500 000 within 60 days of signing the agreement. Those funds were made available. Also in the agreement was the requirement for the state to negotiate on behalf of the native title holders with Mr Steve Szabo, and that took place. I understand that that gentleman has since passed away. However, the state government's requirements under that agreement have been met and no additional funding will be put into the development of the management plan.

Hon ROBIN CHAPPLE: My understanding, being fairly intimately involved in the process, is that when the management plan put forward by Mr Steve Szabo was presented, it was rejected unanimously by all parties involved in the BMIEA. It was rejected even when it was first presented.

The minister has decided in her wisdom not to respond. Could the minister please read the relevant clause from the Burrup and Maitland Industrial Estates Agreement that itemises how that management plan is to be established? I ask the minister and her advisers whether it is indeed correct to say that when the Szabo plan was presented to all parties, it was roundly rejected.

Hon HELEN MORTON: The plan was not rejected by all parties. I do not have the BMIEA with me. At this stage we are focusing on this amendment; I do not know that the intricacies of the BMIEA are relevant to the amendment we are dealing with right now.

Hon ROBIN CHAPPLE: I certainly believe it has a lot to do with this amendment, because we are talking about the funding of management plans and that is what the amendment standing in my name is about. Maybe I could ask the minister whether we can leave this clause and move on and the minister can get the Burrup and Maitland Industrial Estates Agreement and confirm what the Burrup and Maitland Industrial Estates Agreement says about the management plan and the funding relationship.

Hon HELEN MORTON: I will not go on about this. I have already outlined what the management plan included on the state's obligations for funding, the expenditure of that funding and the persons and entities involved. I do not intend to go and get the BMIEA and go through it in any further detail.

Amendment put and negatived.

Clause put and passed.

Clause 21: Section 56 amended —

Hon ROBIN CHAPPLE: I want to ask some basic questions on clause 21 before I move the amendment standing in my name. I refer to a management plan under section 56, a proposed section 8A joint management agreement or a proposed section 8C(2) order allowing the CEO of the Department of Environment and Conservation to manage unallocated crown land. Does the minister or her advisers foresee that any of those may impact on native title rights and hence trigger the future act process of the Native Title Act? If the answer is yes, can the minister give examples of how they may impact on native title rights and interests?

Hon HELEN MORTON: The answer to the initial part of the question is: yes, it could impact on the future act process. Proposed section 8A agreements would impact on things such as native title interests; for example, they would constrain the abilities to camp or other native title activity, which would impact on the rights under the Native Title Act. We must comply with the Native Title Act; that is how that would happen.

I reiterate the comments that I made about the requirement to comply with the native title legislation and the government's position on native title and the procedural rights of exclusive native title holders, non-exclusive native title holders and native claimants. Firstly, the state must and will comply with the provisions of the commonwealth Native Title Act 1993. Secondly, the state will comply with the procedural requirements for notification to native title holders, native title claimants and native title representative bodies. Thirdly, the state acknowledges that registered native title claimants have the same procedural rights as determined native title holders in proposed section 8A agreements that affect native title. Lastly, the state expects that proposed section 8A agreements that are future acts under the Native Title Act 1993 will be supported by either an Indigenous land use agreement area agreement, with registered native title claimants, or an Indigenous land use agreement body corporate agreement, in which the determined native title holders are a body corporate.

Hon ROBIN CHAPPLE: I move —

> Page 26, line 23 — To insert after "protecting and conserving" —
>
> the scientific values of the land, the educational values of the land, and

I reiterate that we would like to see this amendment in the bill. I know that the government does not support it. I have moved it and we want it on the record. I am more than happy for the government to identify that it will not support this amendment, and we will vote accordingly.

Hon HELEN MORTON: The government will not support the amendment.

Amendment put and negatived.

Clause put and passed.

Clause 22: Section 57A inserted —

Hon ROBIN CHAPPLE: Could I get an explanation from the minister of the processes and the costs that will be involved in ascertaining the value of land? Who will do that evaluation? What are the parameters that will establish the value of the land? Will they purely relate to the economics of the land, the cultural assets, the heritage value or the conservation value? How will the value of the land be ascertained, what processes will be undertaken and what costs will be involved?

Hon HELEN MORTON: With regard to the preparation of the management plan under proposed section 57A, the bill provides for any person to be consulted when determining the value of the land to the culture and heritage of Aboriginal persons. I can assure the member that this will not be done in any way that will result in frivolous or vexatious submissions that may unduly delay or mislead the preparation of a management plan. Consultation will occur with the most relevant people—for example, the Aboriginal people who have traditional connections to the land, including those who have registered claims for native title to the land—and the respective native title representative bodies will be consulted. The costs will be included in the management plan.

Hon ROBIN CHAPPLE: We are saying that this will have Indigenous values. If there are particular scientific or heritage values that might be quite significant, will those be taken into account when establishing or ascertaining the value of the land and would they require expert scientific assessment?

Hon HELEN MORTON: Again, the expense will be met by the government as part of the development of the management plan. The scientific or heritage values would be ascertained by the government in the process of developing that. The scientific values must be linked to the Aboriginal culture and heritage values of the land.

Hon ROBIN CHAPPLE: I move —

> Page 27, lines 13 to 15 — To delete the lines and insert —

> the responsible body for the land must make reasonable endeavours to consult with —
>
> (a) the relevant native title holders, if any;
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> (b) the relevant registered native title claim group, if any;
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> (c) the relevant registered Native Title Representative Body, if any;
>
> (d) the relevant registered Native Title Service Provider, if any; and
>
> (e) all other Aboriginal persons with an interest in that land,
>
> and may consult any other person, for the purposes of determining the value of the land to the culture and heritage of Aboriginal persons.

This was a significant amendment, again put forward in what I referred to as the issues paper, which states —

> Section 57A(1) enables, but does not require, the responsible body for the land to 'consult any person for the purposes of determining the value of the land to the culture and heritage of Aboriginal persons'. This risks replicating the intractable problems currently experienced by Traditional Owners and other parties under the *Aboriginal Heritage Act 1972* whereby there is no process for identifying the 'right people for country', particularly where native title has not been determined or the registered NTRB's capacity does not extend to referrals for that purpose. These amendments are potentially worse than the AHA, though, in that consultation isn't required and it can be with any person at all. This is a recipe for substandard and misdirected research in regard to the cultural and heritage value of the land to Aboriginal people. The section needs to be amended so as to provide clear direction regarding who needs to be consulted.

I think that is pretty well self-explanatory. It was one of the issues put forward in the issues paper that was attached to the letter sent to the minister representing the Minister for Environment, the minister in this place.

Hon HELEN MORTON: The government does not support this amendment to proposed section 57A(1). Proposed section 57A(1) was deliberately constructed to enable the responsible body for the land to consult with any person in determining the value of the land to the culture and heritage of Aboriginal persons; that is, it could consult as widely as possible with known relevant persons, including Aboriginal persons. Native title claimants and representative bodies would be consulted as a matter of policy.

Hon SALLY TALBOT: I found the language in proposed section 57A very, very curious. This amendment goes a long way to fixing it and that is why we will be supporting it. Why use the term "may" in the second line, which states —

> In preparing a proposed management plan for any land, the responsible body for the land may consult any person for the purposes of determining the value of the land to the culture and heritage of Aboriginal persons.

I think this amendment, aimed at taking out this very troublesome term, "may" in the second line, is a very sensible way of keeping to the spirit of what is being offered by the government. I notice that there are four or five amendments relating to clause 22 and I take this opportunity, Mr Deputy Chairman (Hon Michael Mischin), to note that we have already made comments on several of them and that my views have not changed since I commented earlier in the debate. I want to put on record that we support these amendments.

Hon HELEN MORTON: We will not support any of the amendments to section 22. I reiterate that the state must and will comply with the provisions of the commonwealth Native Title Act 1993. The government does not support this amendment. As I mentioned, proposed section 57A(1) was deliberately constructed to enable the responsible body of the land to consult with any person in determining the value of the land. The word "may" is included because once we have consulted those organisations that we are obliged to consult, it will be open to as broad a range of people as need to be consulted rather than being restricted in any way.

[Interruption from the gallery.]

The DEPUTY CHAIRMAN: Order! Members of the gallery ought not to speak. If the person continues, I will ask the Usher of the Black Rod to have the person removed.

[Interruption from the gallery.]

The DEPUTY CHAIRMAN: I require the member of the public to be removed.

Amendment put and negatived.

Hon ROBIN CHAPPLE: I move —

Page 27, after line 15 — To insert —

(2A) The CEO must, from the existing standing appropriations for his or her department, supply adequate funding for the process of consultation under section (1).

I have previously quoted from the issues paper on this matter so I do not think there is any need for me to re-state that. Quite clearly, a number of representative bodies expressed concern in the issues paper that was submitted to the minister that, without this amendment, it will be less than clear who would provide the funding for the process of consultation.

Hon HELEN MORTON: This has been discussed on numerous occasions already. I re-state that the government does not support this proposed new subsection. It is not considered appropriate, as the government of the day determines the appropriations, albeit subject to parliamentary approval, and needs the flexibility to respond to changing circumstances and the priorities of the day. I have indicated previously the contributions that the different parties have made to that.

Amendment put and negatived.

The DEPUTY CHAIRMAN: I understand that the two amendments at 35/22 and 36/22 are related.

Hon ROBIN CHAPPLE: That is correct.

The DEPUTY CHAIRMAN: Do you wish to move them both together?

Hon ROBIN CHAPPLE: Yes, I do. The key issue is that this amendment has no standing because the previous amendments were not agreed to. But it is worth revisiting the issues paper so that the minister in the other place and in this place understand quite clearly that the Indigenous parties believe this legislation contains key flaws. The issues paper reads, in part —

> s57A(2) provides the Minister with the discretion to approve a management plan without the responsible body having ascertained the value of land to the culture and heritage of Aboriginal persons and without such values being addressed in the management plan in accordance with s56(2). This applies in situations where the Minister considers such process may 'delay unreasonably' the preparation of a management plan. Management plans exempted from compliance with s56(2) must be amended or replaced so as to comply with s56(2) within the period specified by the Minister or, if no period is specified, as soon as practicable. This section has two key flaws—(i) it does not require the responsible body to have first used best endeavours to address s56(2) and (ii) it does not set a maximum time period for such exemption.

Proposed section 57A(2) also does not require the responsible body to first use best endeavours in relation to proposed section 57A(1). This amendment was consequential on the previously moved amendments. The key amendments we are arguing for seek to provide some reasonable limits on the power of the minister to provide section 56(2) exemptions. I now move —

Page 27, line 16 — To insert before "If the Minister" —

Subject to sections (3A) and (3B),

Page 27, after line 23 — To insert —

(3A) The Minister may only provide the exemption referred to in section (2) if the Minister is satisfied that the responsible body has first used its best endeavours to comply with sections (1) and 56(2).

(3B) The Minister may only provide the exemption referred to in section (2) for a period of no greater than 12 months, or a series of time periods that in total do not exceed 12 months.

Hon SALLY TALBOT: I have made my position very clear on this at an early stage of the debate, as Hon Robin Chapple acknowledged. If the government needed any further evidence about the passion that the Indigenous stakeholders have brought to this issue, they certainly had it demonstrated just now. It is not often we have interruptions from the public gallery. That is how high feelings are running about this. I have attempted to express some of those arguments and all those positions as best I can in parliamentary language in accordance with the standing orders of this place but, sadly, it appears I have not been successful in convincing the minister to reconsider some of these issues. We have heard the Greens make a similar attempt. I can only hope that the minister with ultimate responsibility for the carriage of this bill, whom we all recognise is not the minister in this house, will have the opportunity in the time between the bill leaving this house and reaching the other place to have another look at what had happened here and take on board the issues that have been expressed very

articulately, very eloquently and very professionally in the issues paper and make some of the changes we have attempted to make in this place.

Hon HELEN MORTON: The government does not support amendments to section 57A(2) because the government does not support amendment 36/22. The government also does not support new provisions for section 57A. Proposed new section 57A(3A) is not necessary as it is a given that the minister will not grant exemptions in a frivolous manner. In addition, the government does not support amendment 33/22 to amend section 57A(1). Proposed new section 57A(3B) would unreasonably constrain the discretion of the minister in conferring sufficient time to enable the responsible body to ascertain the value of the land to the culture and heritage of Aboriginal persons. Furthermore, the government's amendment 42/16 will ensure that the known values are managed in the period between approval of an exempted management plan and its amendment or replacement. This addresses the planning objective in proposed section 56(2).

I, too, agree that the native title holders are very passionate about this work. That is the very reason I feel so proud that our government, under the direction of the former Minister for Environment, who sits in this house, has been able to bring this piece of legislation to the fore. The unfortunate circumstance we found ourselves in a little while ago was the result of a misinterpretation of a comment I made when I said that we will be able to consult with anyone. We may consult as widely or as broadly as we want to. I, for one, have a full understanding of the hierarchical processes of consultation. My intent in that comment was to say that I did not want consultation to be constrained by the narrowness of what is within the proposed amendments; I want to enable us to consult more broadly or more widely if we wish to.

Hon ROBIN CHAPPLE: Before we move on with the motion standing in my name, I ask whether the process that the minister or the chief executive officer can take with future agreements if they assume that the delay is unreasonable also applies to the Burrup and Maitland Industrial Estates Agreement or the Miriuwung–Gajerrong or the Yawuru agreements. Can the minister or the CEO, notwithstanding the nature of the agreements that exist, use this clause to truncate a management plan process that he or she may not consider has come to fruition in a timely manner?

Hon HELEN MORTON: No retrospective application is possible; however, it does apply to any management plan that is currently being prepared. There is special provision in the BMIEA for the minister, after consultation with the Minister for Indigenous Affairs, to approve a management plan.

Hon ROBIN CHAPPLE: The minister mentioned my favourite subject: the BMIEA. Is the minister saying that under the BMIEA there is the ability, after consultation with other ministers, to ascribe a management plan over and above that determined by consultation?

Hon HELEN MORTON: I understand that under the agreement the minister can approve a management plan that is developed in accordance with the wishes of the parties involved, but there is also an opportunity at some point for the minister to approve the management plan, if that is not able to be achieved and the opportunities to develop a management plan through the processes that have been undertaken have stalled.

Hon ROBIN CHAPPLE: Is there a notional time frame when that may be established? What role does the federal heritage minister play in that process, given that the land is also under a National Heritage List?

Hon HELEN MORTON: The federal minister has no role. That is the simple response. In terms of the time frame, the minister has to approve the management plan as a precursor to issuing free title to the native title holders. Under the Burrup and Maitland Industrial Estates Agreement Implementation Deed, a management plan has to be approved. A joint management agreement has to be agreed and attached to the management plan before freehold title can be made, allocated or approved—whatever the word is—and those things have to occur in a time frame. If, for example, there is the trigger that results in these things being required to happen in that manner, that must occur within the 18 months.

Hon Robin Chapple: Sorry; was that 18 months?

Hon HELEN MORTON: It is 18 months once the trigger is pulled.

Committee interrupted, pursuant to temporary orders.

[Continued on page 1694.]