ABORIGINAL HERITAGE LEGISLATION AMENDMENT AND REPEAL BILL 2023

Second Reading

Resumed from an earlier stage of the sitting.

HON STEVE MARTIN (Agricultural) [5.07 pm]: Before question time, I was reflecting on some of the issues that have got us to this point at which we are considering the repeal and amendment of the 1972 act. I was not going to, but Hon Peter Collier set the tone when he quoted himself. It is not something that I want to do often but I want to reflect on some remarks I made when we were discussing the 2021 bill, subsequently act. On Thursday, 9 December 2021 I said —

> 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.

Of course, I was not the only member from this side who mentioned that the detail would be crucial to this legislation we are now repealing. I can only imagine the horror—I hope it was horror—on the minister's face when those very prescriptive regulations and guidelines landed on his desk. It was a different minister, of course. That is when things started to unravel. I know a number of members attended the consultation meetings that were held across the state after details of the regulations became public. I want to spend a little time talking about that experience. A least a few of my colleagues and I think Hon Darren West and I were at a couple of those meetings. The public were genuinely confused about what was coming. It was more than confusion. They were angry in certain circumstances. One of the reasons that they were angry was due to the way they had been dealt with and, by extension, the way we have been dealt with. Hon Peter Collier raised this. Now Premier Roger Cook made a brief exploration of his tough guy role early in his tenure. He got on the front foot and compared us to "a dog returning to his vomit"—sorry, not "his" vomit; Freudian slip: "our" vomit—and members of his team accused Hon Shane Love of racism. I think members of the public were looking on and thinking, "Hang on. We have genuine concerns here, and they are the government's views about the people raising those genuine concerns on our behalf."

I return to the series of consultation meetings that were held around the state. I attended a fair few, but there was one, in particular, at which I realised that things were really starting to unravel. It was a very mild, well-mannered and polite local government meeting—one of those zone meetings that a few of us regional members have to turn up to fairly regularly. There were 15 or 16 shire presidents and CEOs and they were getting a briefing from a department staffer about the rollout of the Aboriginal Cultural Heritage Committee. A fairly sharp CEO from a town in the great southern was inquiring about the local Aboriginal cultural heritage services process and how it would work if, for example, a local government wanted to widen a road or put a culvert in. Who were they to call? The department staffer said, "Well, you'd get in touch with your local LACHS. Obviously they haven't been established yet, so you'd probably call the South West Aboriginal Land and Sea Council". The CEO quickly replied, "Well, I've been doing that for a week and a half. I'm calling them twice a day. They're not picking up." The staffer went ashen and said, "Well, I'll have to get back to you on that." This was literally weeks before the rollout of the legislation that, as we heard from the government, was to be far-reaching legislation that would have an enormous impact on landowners of properties greater than 1 100 square metres. The department staffer absolutely knew there was a problem. It was not resourced, the LACHS did not exist in most of the state and whatever consultation had taken place between December 2021 and the rollout of the legislation had not been enough.

I attended another meeting in Merredin where a local Aboriginal person was, from memory, about the second or third speaker after a fairly fired-up first or second speaker. He said to the departmental advisers, "I don't know anything about this at all, and this is my patch. I'm the guy who'll be involved if there's a LACHS set up in my area, and I don't know what's going on." Again, this was weeks before the legislation was due to arrive.

I want to make some remarks about one of the reasons this legislation hit so hard and why people, particularly where I am from, were so upset about what was going on—the 1 100 square metres. That was one of the key changes from the 1972 act to the 2021 act. The people who live out there, away from the suburbs, knew what it was about. Apparently this new legislation was brought in after what happened at Juukan Gorge. It was meant to solve all the issues surrounding Aboriginal cultural heritage in Western Australia, but only on blocks bigger than 1 100 square metres. Suddenly it was the responsibility of farmers, horticulturalists, hobby farmers and all the other people out there to save and preserve Aboriginal cultural heritage on their land. I assume Aboriginal cultural heritage exists in the suburbs, but apparently that does not matter. The government's position was, "We've carved that out of the legislation and we're looking after them. That's probably where most of the votes in Western Australia are." I think that 1 100 square metre change played a significant role in the response to this legislation, particularly from the farming communities in the regions. The miners knew what was coming, so they were prepared; in fact, they welcomed the change, but the 1 100 square metre change rankled with larger landowners.

It became obvious quite quickly that there was a problem. The LACHS did not exist and it was very difficult to get the same bit of information from the minister, an adviser and a third adviser. That information changed over the short lead-up to the enactment of the legislation. After the event, as we have heard from other members, the government's position was: "Nothing to see here; it's all good." I think "going smoothly" was the phrase used by Hon Tony Buti, the Minister for Aboriginal Affairs. It was going smoothly until, all of a sudden, it was not. In a staggeringly short period of time, the government went from talking about a landmark change to the legislation to, "Hang on; we've got a problem. We need to scrap it."

Of course, the timing was interesting. I do not want to spend too much time talking about the concurrence of these events with the Voice to Parliament, but I am guessing that there were calls from Canberra on a daily basis to ask, "What are you doing? The public are linking the two issues, very clearly. You've got to sort this." The state government probably could have ridden this issue out, but it was smashing support for the Voice and dividing communities, and that was very disappointing.

I want to move to a couple of other issues about which I will seek answers from the Leader of the House in her reply to the second reading debate or during Committee of the Whole, but I will flag them with her now. Where are we now? We are going back to the 1972 legislation with some amendments, and frankly not that many amendments. I have some issues with that. The 1972 act has no exemptions at all, yet the government is suggesting that these amendments will somehow improve the 1972 act. As we have heard from the mining sector, the section 18 process was backed up and was not working fast enough.

I thank the minister and the department for an excellent briefing on this bill—they were much keener to talk to us this time than they were last time!—but there was reference to the 1972 act being a complaint-based mechanism, meaning that landowners were pretty much okay unless someone either made a complaint or dobbed them in. That was in respect of the vast bulk of private landowners. The mining companies went through that process; it was slow and cumbersome and they certainly wanted some change, but most of the rest of us did not know that the act existed to be honest. Certainly the farming community has had no interaction with that act on any real level for the last 50 years. That is probably some of our fault, but it is the truth.

What has changed now is that the government is trying to put that toothpaste back in the tube. One of the reasons the complaints-based mechanism worked, I suppose, was that there were not many complaints. People did not know what was out there. Is there anyone in Western Australia now who does not know that we have had two Aboriginal cultural heritage acts over the last 50 years? Everyone knows it is there. People are now looking for more sites and they are probably going to be looking for more things to make complaints about. The nasties in the 1972 act have now been magnified by what has happened over the past 18 months with the 2021 act. How the department deals with that and how compliance is handled will be crucial to the legislation's success. Even if it is to be short-term success, the minister has said that this is it; there is nothing else planned. I think that is a little unusual, but we will see how it goes.

With regard to consultation, Minister Buti said in the other place in his second reading speech —

> The approvals system that applied under section 18 of the 1972 act is a simpler system to understand and navigate but it needs strengthening to ensure that Aboriginal people can also object if they do not consider their views have been appropriately considered.

I am interested in the level of that consultation. Which Aboriginal people? Are there statutory bodies? Are there land groups? Are there land councils? Is the gentleman who spoke at the Merredin meeting now able to have a view on what is happening on his patch? Apparently, he could not do so before the 2021 act, and I am certain he would like to now. I would like some background about whose views are being appropriately considered. I think it was raised by others. What does that look like and what is the timeliness of that? For how long do those views need to be considered? Is it after the event? Another issue I would not mind a little bit of detail on is the minister's power to suspend a consent while new information is considered. Again, there was a fair bit of debate about this in the other place, but the level of new information is, I think, interesting. An amendment was moved in the other place that obviously did not succeed. I am sure the Leader of the House will be able to outline what exactly that new information means. Is it everything between, "I have discovered another Juukan Gorge", or something a lot less important?

In the time lines to transition to the new act, where are we with the people who have already acted in that little window between when the 2021 act came into place and whenever the new act that replaces it is enacted? Are those processes still rolling over or has everyone just stopped? I do not know what the mining sector is doing. I do not know what farmers are doing. I think they are pretty much ignoring it, but are they liable for any work that takes place at the moment? I think everyone has put their head in the sand, hoping it goes away, to be frank. Leader of the House, could I have a little bit of detail about that?

I would like some information around what this has cost, and will continue to cost, the state and the taxpayers of Western Australia until the new act comes into place. Significant work was done getting the last process started at least. I do not know how far that got, but I seek some indication of what that looks like. I am sure surveys were raised, I think, at least by Hon Peter Collier and others. I am very interested in this survey rollout that the government has talked about over a 10-year time frame. One area that I have not heard much about is unallocated crown land, crown land, road reserves and local government. I always thought that local government bodies, the Water Corporation and Synergy would be important or heavily involved in the 2021 act. Will road reserves be surveyed? There is an enormous amount of unallocated crown land. I am also very keen to discover the priorities of that rollout. I assume the first port of call will be wherever there is some iron ore, lithium, gold or some other valuable minerals. However, then we have where most of the people reside. Since there are no exemptions to the size of the land involved, are we talking suburban surveys or new subdivision surveys? I would like some detail there, please.

That is probably enough from me on this. I wish the government well with this—seriously, I do. This is an important issue. It has been a mess. The rollout, communication and implementation of the 2021 Aboriginal Cultural Heritage Act has been a mess, and some harm has been done. I hope that the amendments to the 1972 act are sufficient for a regulatory framework going forward that meets the needs of Aboriginal people in protecting their heritage, and landowners and business to keep this state moving ahead.

HON COLIN de GRUSSA (Agricultural — Deputy Leader of the Opposition) [5.24 pm]: I, too, rise to contribute to second reading debate on the Aboriginal Heritage Legislation Amendment and Repeal Bill 2023. I will start with a quote that has been used in contributions on this side today already, but it is an important quote. They are the now infamous words of the Premier on 13 June when he said —

> Members, listen for a second. Do you hear that? That is the same dog whistle that has been blown in this Parliament by that side of politics for decades … Every time, like a dog returning to its vomit, these guys trot out their straw man arguments to simply distract members of the community and raise these issues in people's minds.

If we move forward just a month and a bit from those infamous words to the front page of *The West Australian* on 24 July 2023 with the headline for an article was "Shock Poll", that showed a pretty interesting result had an election been held at that point. Just three days after that, the front page of *The West Australian* had the headline, "Heritage Changes (and it's not a moment too soon…)". The start of this article states —

> Premier Roger Cook is prepared "to make changes where (Aboriginal heritage laws) need to change" in the clearest sign yet momentum is building for an overhaul of the controversial legislation.
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> The statement—delivered by the Premier in Port Hedland on Wednesday—was echoed by Finance Minister Sue Ellery, who said the Government was open to modifying regulations governing the Act "immediately" if major issues were identified.

It is interesting that so soon after that other article outlining the polling results a sudden desire to change the legislation seemed to emanate. Just a little later than that, we obviously know that the government made a media statement on 8 August headlined, "Laws overturned, Aboriginal cultural heritage legislation replaced." We know that the government was prepared to indeed make major changes. In fact, it was prepared to repeal this legislation in an act that has not occurred very often at all in this place.

We all know that cultural heritage is a very complex area to navigate. It is not easy to get it right and it is something that we all, across both sides of the chamber, ought to collectively work together to do. I know a number of members have referred to the debate on the 2021 legislation. Indeed, those comments were reflected in much of the speeches on the second reading debate from members on this side of the chamber in this place and the other—that is, that we need to get this stuff right and need to do it in the right way to achieve the best outcome for the state and for its people in order to protect Aboriginal cultural heritage. That is how it is supposed to work, but that is not how it works under this government and the former McGowan Labor government. The arrogance of both those governments has certainly played out on the floor of this Parliament, in the media and in the community. It is a government that believes it cannot do anything wrong and does not have to answer to anyone. It is so self-deluded and arrogant, in fact, that it could not contemplate that it had got something so seriously wrong. Even when the opposition was raising legitimate concerns during debate and afterwards on how that new legislation was going to be implemented, it just would not listen. The government could not understand that there were circumstances in which the opposition might actually genuinely be interested in good public policy. It simply could not believe that the opposition's intentions were not politically motivated and that what we were dealing with was an issue that was far too important to get wrong. Instead, the government seemed to believe that the opposition's sole intention was simply to score political points to get the government to delay the implementation of that bungled bill. Of course, it was very wrong. It is disturbing that there seems to be no point at which the government truly understood how desperately badly it had botched the implementation process when it was absolutely clear to everybody else in the community that it

had. It is not an issue that the opposition magically created or orchestrated. We did not have to solicit the First Nations organisations, community members, industry members and everyday citizens who came to us. Mining, agricultural and earthmoving contractors and other members of the general public were voicing their concerns about the implementation of the 2021 Aboriginal cultural heritage legislation. We simply reflected the community concern from industry and everyday citizens, who had this very complex and cumbersome legislation imposed on them.

It was never more clear to me that the government—I extend "government" to mean its agencies as well—had no understanding of just how concerned people were in the real world than when I was at terminal 2 at Perth Airport, about to catch a flight to Esperance one evening in June. It was the night before the implementation meeting was held in Esperance for the Aboriginal cultural heritage legislation. I bumped into a couple of the poor public servants who were tasked with the job of running the meeting in Esperance. My colleague and I had a good conversation with them about what we were hearing on the ground. We asked them whether they were ready and discussed the sort of questions they would get asked. We said, "This is the sort of thing that people are coming to us with." We knew that the meeting was oversubscribed and could not fit in all the people who wanted to register to see it. We certainly did our best to forewarn them to be prepared. We said that they would probably get some hard questions and suggested that they make sure that they were ready to listen and hear the people. They were not worried at all: "Oh, no. This is all fine. There is not a real problem. After the first slide, everyone will be calm because they will see it will not impact them, and they will see it will be fine." Of course, we all know that they got through only five slides of their presentation at that meeting. They could not answer most questions put to them by concerned members of the community, and they were not really hard questions. They were genuine questions about the processes and things that these people do every day. They wanted to know the answers and what they would need to do to ensure that they could go on doing what they do, whether they were farmers or contractors or so on.

It is not the fault of those public servants; I am not at all apportioning any blame to them. The problem was that the consultation process to that point had been a disaster. It had simply not engaged widely or well enough to make sure that people were aware of the impending regulations and legislation, and were involved in developing them so they would work. It probably could have been done if the government had taken more time, but that is a moot point now. Regulations were being developed. Co-design workshops were being held around the state prior to the Esperance meeting, in the intervening period between the bill passing and becoming an act. Many of those meetings had very, very few attendees for a variety of reasons—not least of which was a lack of community awareness about the legislation and how it would affect them and about the workshops being held. As a consequence, when we attended the workshops and put questions to them about farming, contracting or earthmoving practices, we found that they had not considered or thought about those things. We encouraged them to try to get more people to attend those workshops, but unfortunately, it did not seem to happen. The regulations were released at the eleventh hour, despite promises that they would be ready early in 2023.

The opposition tried to assist in salvaging something of this legislation at the last minute. We asked for additional education workshops so people who would be required to use the legislation would have a chance to understand their obligations, but we were dismissed. It was not needed, and it was not necessary. Until some of these matters were raised by the opposition, I do not think the minister had questioned the department's strategy for the education sessions that would be rolled out or the level of concern I have talked about. I do not think the minister considered that or fully understood what was happening and how the department planned to roll out the legislation. We saw education session after education session added at the end, but that created a huge amount of further pressure on a department that was already stretched from trying to develop the regulations, guidelines and so on at the very last minute before the act came into being. That really did not help and added to the confusion in the community.

People attended different education sessions, and the same questions were asked by different people at different sessions, but they all got different answers. Confusion was rife in the community. Unfortunately, that really came down to the minister's and the government's complete mismanagement of the implementation of this legislation. That resulted in a great deal of concern, and the community affected by the new legislation lost faith in the government.

The bill was nursed along in consultation phases by three ministers—Minister Wyatt, Minister Dawson and Minister Buti—until the Juukan Gorge disaster occurred. No-one in this Parliament condones the Juukan Gorge outcome; that was a disaster and should not have happened. Of course, we all share a responsibility to make sure it cannot happen again. As a result, I think there was a behind-the-scenes drive to protect the Minister for Aboriginal Affairs from ever having to sign another section 18 application and being ultimately responsible for the destruction of Aboriginal cultural heritage. That is what the minister does: the minister puts their signature on the bottom of section 18 applications, which then provide consent for the destruction of Aboriginal cultural heritage. It was clear that the system being set up was effectively trying to shift the government out of the firing line. The minister might say otherwise, but it was a disastrous situation politically for a party that presents itself as the only

party for Aboriginal Western Australians to trust with their vote. It was also certainly a disaster for our state heritage. The rush was on to finalise the consultation and to get the legislation to Parliament for debate.

Others have reflected on how the 2021 legislation debate occurred and how it was rushed, under the guise of not letting another Juukan Gorge happen. The government absolutely rushed it through, which meant that the opposition had limited opportunity to get briefings or to consult widely on the legislation. Nonetheless, we did our best, as the opposition always does. A number of members reflected on what we said during debate at the time. I am looking at *Hansard* extracts, and some of the comments I made were about clarity and the need to ensure that the regulations developed under the new act would be fit for purpose, widely consulted and endorsed by the community long before they were implemented.

In short, the devil was always going to be in the detail, and the detail took forever to be produced. For the life of me, I cannot understand why—despite repeated calls and questions from me and others in this place—the government would not simply delay the implementation and get it right instead of hammering it through and forcing it on people when it was not ready. We know the regulations were developed under pressure and in haste and consultation was not done as well as it could have been.

At several briefings, the department admitted that people did not fully understand the operations of the old act or the intent of the new act and how it would operate. That does not seem like the appropriate environment in which to come up with regulations and rules to go forward. It was not particularly useful and the regulations, as I said, were released extremely late. In fact, during the latter half of last year when I briefly held the Aboriginal Affairs portfolio as shadow minister, I asked a number of questions of the then Minister for Aboriginal Affairs around the regulatory and consultation process as well as the funding model for the local Aboriginal cultural heritage services. Every assurance was given that the consultation would be wideranging and far reaching and everyone would be well aware of it and everything would be in place and everything would be smooth sailing for the 1 July 2023 implementation; the LACHS would be resourced and have the funding they needed.

I was asking those questions not because I wanted to make a point or write a media release. I was asking those questions because those people in the community—Aboriginal groups, farmers, contractors and others—were all asking me: How is this going to work? Has the government got the funding model right? Will the groups be appropriately equipped to handle the new workload doing the cultural heritage surveys? I was reflecting that. That is why those questions were asked and, as I said before, I believe that had things been slowed down, we could have this right. It could have been done properly, but it is too late now. The government has made the decision to repeal the act because it did not listen and rushed it through and ended up creating more problems and more headaches. I do not think the government really understands and, as I said, in that conversation I had in the airport, it was clear to me that the department certainly did not understand the angst that it had created in the community by the way it had gone about the implementation process.

We ploughed right on through the winter break of this year after the act was commenced, yet when we reached August the government went, "No, we have to throw out the baby with the bathwater. We have rushed it through. It's too complicated." As the media statement from the government on 8 August said —

- The new legislation went too far, was too prescriptive and complicated
- Common sense to drive Aboriginal cultural heritage protection

It turned around and said it would amend the 1972 act with some relatively simple amendments and all is good. Again, if we could have done that in the first place, why was that never considered? Was it considered? I do not know. That statement also clearly articulated at one point —

> The decision to revert to the original laws … draws on legal advice from the Solicitor-General …

The Leader of the Opposition in the other place certainly asked a question about whether that legal advice could be shared. Despite there being precedents for that sort of thing, no way would that be shared. This government is very keen to say that it is transparent and accountable. It points that out from opposition and in the lead-up to elections, but when it has the chance to put it in practice, it chooses not to, and, unfortunately, that is the case here. We do not know what that advice was. There are precedents for that to have been tabled. It would have been good if it had been.

We arrived at this point because of the way that this legislation and the regulations were approached by the government. It is quite ridiculous, in my view, that the best defence that the government had for this legislation was that the opposition did not vote against it. That is what members of the Labor Party have been using as justification for this disastrous act. They said, "Well, the opposition did not vote against it." No, we did not. We certainly made the point during debate that there were areas of concern. We did not have any visibility on regulations. Given the limited time frame we had to debate the legislation, we did our level best, but we did not vote against it—absolutely—

because we wanted to be part of the solution to protect Aboriginal cultural heritage, as do all members of this place I am sure. Unfortunately, the end result, as we have seen, just has not worked. We had no ability to have input into the regulations and no capacity, really, to disallow those regulations, so to suggest that we had any responsibility in any way for the debacle that this government created is quite laughable really. We are coming from that with a degree of cynicism about the new bill.

Of course, the repeal bill that we are dealing with in this place is bill 125–2, which would indicate that that bill has been amended since it was introduced in the other place. Of course, only a matter of days after the bill had been introduced in the other place, the government moved a significant number of amendments to that legislation. Already we have seen, "Get the bill in. Wait a minute, we missed this and we have forgotten that. What else has been forgotten? What else haven't we got right?" What are the consequences from rushing yet another piece of legislation? We need to get this stuff right. We need to get past this whole idea that things need to be done in a rush. Here we are with a bill that has been amended since it came in because the government realised there were things it had not included.

Having said all that, I will talk a bit about the bill and what it will do. Obviously, it will repeal the 2021 act, along with the regulations, guidelines and all associated aspects of that failed legislative framework. To completely repeal an act that came into effect in only July this year in and of itself, despite being a very small part of the bill, is pretty significant. Under section 18 decisions, proponents and native title parties will have the same right of review, which was not the case under the 1972 act. That change is a good one. The Premier will have calling powers on matters deemed of state significance, and when a section 18 has been approved, there will be a requirement of the owner to inform the minister of any new information about the site subject to the section 18. The Cultural Heritage Council was referred to earlier today. The Cultural Heritage Council that was established under the 2021 act will take on the role previously executed by the Aboriginal Cultural Material Committee. I think Hon Peter Collier had some questions for the minister that, hopefully, we will get some answers to in the second reading reply. The committee will provide recommendations to the minister on the approval or otherwise of section 18 applications.

There will be a removal of gag orders that constrain traditional owners. The government stated in its media statement of 8 August —

> There will be no requirement on everyday landowners to conduct their own heritage survey.

I would certainly like to have absolute clarity from the minister on that statement. Is it the case that there are no exemptions under the 1972 act for any class of project or proponent or landowner as every landowner is equal?

The LACHS, which were not ready and were never going to be ready for the 2021 act, will not continue. The government has advised that support will instead be provided to existing native title groups, including the relevant prescribed bodies corporate, registered claimants or native title representative bodies to improve capacity. I would like some clarification from the minister on how much of the funding announced for the implementation of the LACHS has been expended. The funding was $10 million. There may have been more after that. Will the new model require any of that funding or new funding? Will any funding that has been provided under the 2021 act be returned if it has not yet been expended? The government has also indicated that it will commence a long-term plan over the next 10 years to undertake heritage surveys of unsurveyed areas in high-priority areas of the state, with the consent of the landowners. That is not in the legislation, but it would be good to make sure that the minister provides some clarity about how that would work and how it would be prioritised. Will particular areas need to be done first? Who will do that sort of work? Will there be a consultation process around determining the priority for that? Where and how will that data be made available to the public and in what format? Will landowners have a right of refusal for those surveys? I would also like the minister to reflect on the comments in the media statement of 8 August, which states —

> "The Section 18 process will be strengthened—with these changes mainly impacting miners and Government, whose work most impacts cultural heritage.

To be clear, this legislation has the potential to impact every landowner because there are no exemptions. It is important that we know exactly how the legislation —

> … will provide confidence to all WA property owners that they can continue to operate on their property, just like they have for the past 50 years, without any fear of committing an offence by unknowingly disrupting cultural heritage.

It is all very well for the minister and the Premier to make those sorts of statements, but the 1972 act and the 2023 bill do not have any exemptions or exceptions in them, so let us be crystal clear on that because obviously that is a significant concern, as it was under the 2021 act.

To emphasise the point, the Attorney General, in that same media statement, said that the changes mean —

> … that all landowners, be they freehold, leasehold, licensee, invitee or citizen, at large have one simple obligation: that is to not knowingly damage an Aboriginal cultural heritage site …

We need to be clear about the real obligations of all landowners. Although it may suit the Premier and ministers of the state to say that the legislation will provide confidence to all Western Australian property owners if they continue to operate on their property just like they have over the last 50 years, I want to know how that could possibly be the case if they adhere to the letter of the law. Hopefully, the minister can provide some clarity on that in her second reading reply.

Another change that certainly will be welcomed, although it will still raise questions, is the costs, fees and charges. Again, that was one of the issues that was consistently raised at the education sessions that were held, such as the cost of the cultural heritage surveys and so on. A number of people want to do the right thing. A number of landowners said they just want to get the whole farm surveyed and asked how much it would cost. No answer or time frame could be provided, so there are a lot of questions around that. Although the 2021 act has been replaced with a different schedule of fees, industry was not consulted on that act. It was confirmed, in fact, through questions, that it was a unilateral decision of government to pursue the particular cost-recovery model that was chosen. Apparently, the new fee structure is fairer and simpler in that a flat fee of $250 will be charged for everyone who applies for a section 18 application, and the proponents will be charged $5 096 per site within the application, with the exception of small business, non-profit organisations and/or a government proponent. I would like to know what the consultation process was with the mining, exploration, pastoral and agricultural industries, for example, in the preparation of those fees or the creation of that fee schedule. How was the fee of $5 096 arrived at? Where did that number come from? It is a very specific non-round number. Also, will any new offences be created under this bill and in the regulations? I understand that a number relate to the committee breaching its duty, but I am keen to understand and have on the record whether any other offences and penalties can be clearly articulated in one place during the debate. Is a penalty of imprisonment not contained in the act or regulations?

I said from start that the first attempt at reforming the cultural heritage legislation has ended in a complete disaster of the government's own making. It could have been avoided had more time been taken, more consultation been held and a genuine engagement with the community to listen to the people and engage in good-faith consultation been done. I have said that before on a number of other issues, but it is a hallmark of this government that good-faith consultation just does not occur. Had that happened, we probably could have had a far different outcome. We do not want a second disaster, and I am deeply concerned that we are heading that way. The bill was introduced and further amendments were made to the bill after it was introduced. What things have not been foreseen? Should we slow down, take our time and make sure that we are diligent in our scrutiny of the bill? We will do our level best to do that, but, of course, we cannot foresee everything that may occur.

We will not rush to support this legislation with open arms. We certainly want clarity and certainty. We do not want what happened before to occur again. We look forward to the committee stage of the bill and hopefully many of those questions can be answered and people's fears can be allayed. We certainly hope that the government is keen to get this right and not suffer the consequences of the failed 2021 act and will actually listen to the concerns of not just the opposition but also the community. We must make sure that we will do our best to protect cultural heritage while at the same time not again creating fear and angst in the community.

HON DR BRAD PETTITT (South Metropolitan) [5.57 pm]: In the few minutes I have left, I will start my contribution to the second reading debate on the Aboriginal Heritage Legislation Amendment and Repeal Bill 2023. I want to start by reading from *Never again: Inquiry into the destruction of 46,000 year old caves at the Juukan Gorge in the Pilbara region of Western Australia — Interim report*. That very important inquiry made recommendations in its interim report. Recommendation 2 states —

> That the Western Australian Government:
>
> - Replace the *Aboriginal Heritage Act 1972* with stronger heritage protections as a matter of priority, noting the progress already made in consultation on the draft Aboriginal Cultural Heritage Bill 2020. Any new legislation must as a minimum ensure Aboriginal people have meaningful involvement in and control over heritage decision making, in line with the internationally recognised principles of free, prior and informed consent …

That is a key recommendation and a key test for the new bill that is before us tonight. My assessment of this bill is that it does not pass that important recommendation that the inquiry into the Juukan Gorge incident made. I go back to that incident because in many ways that was the start of this. This has been a very long process as we have sought to improve the legislation that deals with Aboriginal cultural heritage. We obviously had the terrible circumstance around Juukan Gorge a long time ago and only in the last few weeks there was almost a repeat of that. Thankfully not, but we again saw another significant piece of Aboriginal cultural heritage damaged in a minimal

way by Rio Tinto. Thankfully, that was not more severe, although the traditional owners of the area think it is quite severe. I want to look at this bill in the context of that as we go forward.

I am also aware of the time. I will talk later and reflect on the timing of this bill, which I certainly have some reservations about. We are trying to have this debate in probably one of the most important weeks in which we will obviously hold perhaps the most significant referendum in a generation.

Sitting suspended from 6.00 to 7.00 pm

Hon Dr BRAD PETTITT: Before the break I was quoting from *Never again: Inquiry into the destruction of 46,000 year old caves at the Juukan Gorge in the Pilbara region of Western Australia — Interim report*. The report makes an important recommendation, recommendation 2, that is worth reading in a second time. It states, in part —

> That the Western Australian Government:
>
> - Replace the *Aboriginal Heritage Act 1972* with stronger heritage protections as a matter of priority … Any new legislation must as a minimum ensure Aboriginal people have meaningful involvement in and control over heritage decision making, in line with the internationally recognised principles of free, prior and informed consent …

This, I think, should be a key test for us as we consider the bill before us today. It is my view that the new bill does not pass this test, because it does not ensure that Aboriginal people will have meaningful involvement and control over heritage decision-making, and will not ensure free, prior and informed consent. Fundamentally, I do not think it will actually give us the right checks, balances and penalties to prevent another Juukan Gorge. That is something I will come to in a minute.

The Aboriginal Heritage Legislation Amendment and Repeal Bill 2023 will reduce the voices of First Nations people on their own cultural heritage. Perhaps there is some irony in the fact that, during this week of all weeks, in the lead-up to the most significant Australian referendum in a generation for First Nations people—I would argue, the most significant referendum for our nation in a generation—we are debating legislation that will reduce the voices of First Nations people. We have already heard some members today linking this bill with the Voice to Parliament, in a largely negative way. That comes as no surprise; I do not agree with that view, and I think it is worthwhile outlining why I think it is wrong, but undoubtedly and unfortunately the Aboriginal cultural heritage legislation and the Voice to Parliament have been fundamentally confused. For the record, I think it is important that we recognise that they are fundamentally different.

Hon Dr Steve Thomas said earlier today that the Voice is unexplainable. I quote him from the uncorrected *Hansard* of earlier today —

> The Albanese government is coming up with the Voice, saying, "Just trust us; it's the vibe."

That conflation is unfair because, unlike the legislation before us today, the Voice is a very simple and clear gesture of giving Aboriginal people a say, via an advisory body, on the matters that affect them. To put it another way, it is an advisory body made up of Aboriginal people from around the country to provide advice to Parliament and executive government on matters relating to Indigenous peoples. That is not complicated and it is not too much to ask. It is actually pretty straightforward. In fact, Noel Pearson summed it up pretty well when he was quoted in *The Guardian* of 9 October as saying —

> "Frankly, the voice is a proposal so pathetically understated that I'm amazed most Indigenous people are settling for it. After all, I helped design it as something so modest that no reasonable non-Indigenous Australian could reject it. More fool me."

I do not think that Noel Pearson is a fool at all, despite his self-deprecating comments. The point I am trying to make here is that the Voice is a very simple, clear concept. If members do not mind a little bit of humour in the chamber, I read something quite funny on The Shovel today. If members want to explain the Voice to people, they could say this —

> Quite simply, The Voice is a dedicated body that exists to help shape government policy. Like News Corp, but for Indigenous Australians.

I thought this would be kind of funny if members were perhaps speaking to some of the more conservative elements.

The bill, which I think most people in this chamber understand, unlike the Voice, is a simple, clear and highly supportable concept. Unfortunately, the 2021 act and the repeal bill before us today are in contrast. They are quite complex and, frankly, a bit of a mess. I think that conflating them is not something that we should do, especially in the lead-up to such an important referendum—in part, because it is factually wrong. I have made my comments clear on this, and I do not think that this is the ideal week, in many ways, for us to debate the bill before us, given the referendum and given the unfair conflation of the referendum and the bill. Ultimately, it would have been good

to have some clear air in which to discuss the Voice, without muddying the water by looking at the legislation that is before us today. I worry that the challenges around this legislation and its regulations and what has clearly been some poor communication and a poor rollout have been weaponised against the Voice. I worry that the bill will be further weaponised against the Voice just by being before this chamber today. It is perhaps a somewhat bizarre and disappointing outcome that we are here today debating the bill, but so be it!

I voted against the Aboriginal Cultural Heritage Act 2021 for several reasons, and I will not go back over and repeat what I talked about then because that is not what is before us today. My points were pretty simple. I think it was only the crossbench that voted against the 2021 bill. For me, it was because it did not go far enough in recognising Aboriginal cultural heritage. It did not go far enough in giving traditional owners and Aboriginal people a say over their Aboriginal cultural heritage. The bill left too much of a say with the minister, as an isolated person, which I think was fundamentally problematic, and I know that many Aboriginal people and traditional owners thought that as well. But there were good parts to the former bill, as I acknowledged in my speeches back in 2020–21. It certainly was an improvement on the 1972 act in giving traditional owners a voice. It was much fuller legislation that would have far better protected Aboriginal cultural heritage. On this, I think even the government agrees with me, and, at this point, it is worth acknowledging that the government said as much about the 1972 act when Hon Stephen Dawson read in the second reading speech. I will read some small excerpts of that speech. In his second reading speech, Hon Stephen Dawson said —

> Although the Aboriginal Heritage Act 1972 was considered progressive for its time, it is now outdated and does not meet the expectations of Aboriginal people and the broader community. It has changed little in the past 49 years, most clearly demonstrated by the devastating loss of the 46 000-year-old Juukan Gorge rock shelters.
>
> In 2017, the McGowan government committed to review the 1972 act. The review process has been comprehensive … with a particular focus on the Aboriginal community, and more than 380 submissions, all of which have been instrumental in the final design of the bill. The review process clearly established the need for better protection, for Aboriginal people to be given a voice and for greater efficiencies and certainty for all parties.

The 2021 bill was far better than the 1972 act. Hon Stephen Dawson went on to say that the 1972 act —

> … gives no role to Aboriginal people to be consulted or be involved in making decisions about their cultural heritage. Under the new act, proponents will need to provide notice to the relevant Aboriginal people to undertake tier 2 activities and will need to consult for tier 3 activities. This requirement for notification and consultation is a recognition of the fundamental right of Aboriginal people to be included in decisions that may impact their heritage.

I think all those are very good sentiments. All those things will be rolled back as we return to the 1972 act. That is of real concern. I appreciate that there are issues with how the regulations and parts of the 2021 legislation were rolled out, but the only way, for me, that this repeal bill and a return to the 1972 bill could be supported is if it were just an interim measure whilst a better, properly done, new Aboriginal Cultural Heritage Bill is drafted and improved. Unfortunately, all the advice that we are getting is that the return to the 1972 bill, the very bill that this government says is outdated, will be permanent. It is not an interim measure whilst the government takes the time to learn the lessons of rushing through the 2021 bill, which we were all part of here, and the regulations, before it goes back and does it properly. I really encourage this government, noting it has the numbers to pass this repeal bill, to make this merely an interim arrangement and properly consult on new workable legislation that will properly protect Aboriginal cultural heritage.

That said, some amendments to the 1972 act are on the table, and most of those will take a very outdated bill and make it marginally better. There are further amendments that should be made and I will highlight some of those. Obviously, we will talk to more of those as we go into the Committee of the Whole stage later this week. The first is around definitions. One of the highlights of the 2021 act is that it uses a much broader definition of "Aboriginal cultural heritage". The 1972 act is very outdated. It has a very archaeological and narrow definition of "Aboriginal cultural heritage". It largely looks at objects and tangible sites and does not understand the point of view of what cultural heritage is. I want to remind members what is in the 2021 definition because it is actually quite thorough. The 2021 act states —

> ***Aboriginal cultural heritage*** —
>
> (a) means the tangible and intangible elements that are important to the Aboriginal people of the State, and are recognised through social, spiritual, historical, scientific or aesthetic values, as part of Aboriginal tradition; and
>
> (b) includes the following —

(i) an area (an ***Aboriginal place***) in which tangible elements of Aboriginal cultural heritage are present;

(ii) an object (an ***Aboriginal object***) that is a tangible element of Aboriginal cultural heritage;

(iii) a group of areas (a ***cultural landscape***) —

That is really important for anyone who has an interest in Aboriginal culture and understands that those storylines and songlines that flow across the landscape are really important —

interconnected through tangible or intangible elements of Aboriginal cultural heritage;

It also refers to the bodily remains of a deceased Aboriginal person and the like. That very thorough definition looks at both the tangible and intangible elements of Aboriginal cultural heritage. Through this repeal bill, we will return to a much narrower definition that we all know does not capture it all. It is a very outdated incomplete version of the definition of "Aboriginal cultural heritage" and I think we should all be concerned about it given what we know today. We should be looking at a much broader and fuller view with Aboriginal people.

The second amendment, which is really important and one that I certainly hope we may be able to get some agreement on in this place, is around the offences in the 1972 act. I understand these were updated in the early 2000s, 20 or so years ago, but they are not in the regulations and cannot be easily adjusted. Now is the time when we would update the penalties. The penalties are extremely low. In fact, it is the lowest penalty rate in Australia by quite a margin. We are talking around $20 000 for a first offence and $100 000 for a repeat corporate offence. Just to give members some context on that, according to a document I have—I am certainly happy to table it—that looks at all the different jurisdictions' associated penalties, the plan in the 2021 act for WA was penalties of $1 million and/or five years' imprisonment, plus $50 000 a day up to $10 million. Compare that with $20 000 for a first offence and $100 000 for a repeat offence. It is a very small fraction of that. Even so, there is an important opportunity here to make sure that as the 1972 act is updated, we make sure that the penalties reflect not only the changes in value that have happened over the last 20-plus years, but also what is happening in other jurisdictions around the country. To give members an example, the maximum penalty for damage to registered cultural heritage in Tasmania is up to $1.9 million; in Queensland, up to $1.4 million; in Victoria, up to $1.8 million; and in New South Wales, $1.1 million. We get the picture. I remind members that under the bill that we are about to pass, the penalty will be a maximum of $100 000. Surely, if there is any opportunity to bring the 1972 act into the twenty-first century and how we understand Aboriginal cultural heritage today, it would be to update the penalties. That is something I hope we can all agree on.

That is important because one of the changes that government has talked about is the removal of gag clauses, which is something that we would all support. Of course, the removal of the gag clause becomes greatly watered down if there is still no penalty for destroying heritage that in many ways is significant. For many of these companies, that $20 000 for a first offence or $100 000 would be a very small fractional cost of their work. The real danger is that it is a cost they might be willing to wear, especially if they were not good corporate citizens. One of the dangers of removing gag clauses is that it could become a hollow claim, unless those penalty clauses are greatly increased. This is real. To give members some context, there are 60 permits for section 18s every year. That is 60 permits for the destruction of cultural heritage each year. We need to make sure that not a lot of cultural heritage is being destroyed, assuming there is cultural heritage where those section 18s are occurring. We need to make sure that we have the right process and penalties in place if any more cultural heritage is destroyed beyond what those permits allow.

There are many minor amendments that the groups we have been talking to in the lead-up to this debate would like us to make.

The third major issue I refer to is the section 18 process and the requirement to consult native title parties. The requirement for proponents to consult native title parties should be in either the legislation or at the very least the regulations. At the moment, it is a guideline. Guidelines are nice to have, but they are not enforceable: we would like you to do this, but there are no consequences if you do not. This is probably a key change, and we are hearing from traditional owner groups who see this as really important. As it stands, the bill will not require a proponent to consult native title parties prior to submitting a section 18 application, even under the regulations. The amendment and repeal bill proposes placing this requirement merely in the guidelines, which, as I have said, are not enforceable.

Under the 1972 act, native title parties usually found out that their cultural heritage sites were being altered, destroyed or impacted only after the section 18 application had been submitted, giving them no prior and informed consent or right to proper consultation. This comes back to the very important point I made about the Juukan Gorge recommendation. Again, I think it is really important that we see those kinds of changes as we go forward.

There is so much that we could do to make this 1972 act better. That said—I come back to the point I made before—it really should be just a stopgap while a new bill is drafted, and that should be done with proper consultation. It is fair to say that I will be asking questions about this when we get to the Committee of the Whole stage for clause 1. Certainly, we are hearing that there was not a lot of consultation on this during the 1972 process. Many people were frustrated in 2021 when the consultation process involved only giving information, and was not looking for or willing to take on any feedback. That is not how we should make legislation for First Nations people in our community.

As I said, there are good bits in some of the changes that have been suggested. The amendment to make reference to native title parties is an improvement. I think one party we talked to said that it was perhaps damning with faint praise, but certainly it acknowledged that there was some good. The new information obligations, the removal of the gag clause and the support for the State Administrative Tribunal review process are also improvements, but unfortunately there is still plenty that makes this bill a major step in the wrong direction.

It is extraordinary and strange timing for this legislation. I really hope that this government goes back and reflects upon those words that are in the Juukan Gorge inquiry, where we started. We all need to reflect on these powerful, strong words. I read it again —

> Any new legislation must as a minimum ensure Aboriginal people have meaningful involvement in and control over heritage decision making, in line with the internationally recognised principles of free, prior and informed consent …

I am not convinced that a return to the 1972 act will do this, and I am certainly not convinced that the minor amendments that have been suggested go far enough to do this. We could draft further amendments that could improve it, but, ultimately, I think we all agree that this is a step in the wrong direction.

HON WILSON TUCKER (Mining and Pastoral) [7.23 pm]: I must say that it feels suspiciously like groundhog day to be getting a very last minute briefing on a very complex and important piece of legislation. That was certainly the situation that the crossbench and I faced back in December 2021, when we were dealing with the original Aboriginal Cultural Heritage Bill 2021. I add that I believe that the crossbench was unified in opposing that bill. I think the cruel hand of history has certainly exonerated us in our unified opposition to that legislation.

After the briefing I received this morning, I have had only a matter of hours to digest that information and form an opinion to express in this place. I have heard the community express some views about the repeal bill and I have a number of concerns and questions about the legislation. I think that is best done in the Committee of the Whole. I will outline some of the major points in this contribution and, potentially, the minister can, in reply, get the ball rolling and hopefully respond to some of those, otherwise we will deal with them in committee at the appropriate time.

As I said during the second reading debate on 9 December 2021 —

> This is a once-in-a-lifetime bill that will affect the culture of this state.
>
> …
>
> 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.

I would like to say at the outset that I do not support this legislation for the same reason that I did not support the passage of the 2021 bill, which is, as I just said, that I do not think it goes far enough to protect Aboriginal cultural heritage in Western Australia. On the consultation and the views of the traditional owners regarding the repeal bill, I feel that the consultation that was undertaken was rushed and very shallow. I am more than happy to be proven wrong on that point. We can dig further into that during the committee stage. If the government has taken the opportunity since drafting this legislation of putting it out for consultation in the community and has listened to and has the majority support of the traditional owners, I will certainly reflect the will of the majority support of the traditional owners and support the bill. However, until I have seen that evidence and heard from the government that that is the case, I will oppose the passage of the repeal bill.

A few things have been said about the Voice and the ACH bill. They have been conflated. I have said previously, and I will state it again, that I am a supporter of the Voice. I find it incredibly disappointing that we are marching towards a reality in which WA is, essentially, the linchpin that could sink the referendum. If we do not have the majority support of the states and territories, the Voice will not be successful, and Western Australia could be the catalyst for that. The ACH bill could be the catalyst in WA that shifts support away from the Voice and could mean that we will not see any movement in that space. I do not think governments will have the appetite to revisit it for a long time. I will not go into any great detail on that because I do not think it is helpful to conflate those two issues

more than has occurred. The reality is that it is very hard not to conflate the issues. When we talk about cultural appreciation, preservation and conservation in Western Australia, it is impossible to differentiate the two in the minds of many Western Australians. Unfortunately, that is what we are seeing reflected in the polls. I hope that is not the reality we will see this coming Saturday.

I will foreshadow some of the questions I have here and I will raise them in committee. The first is about how many groups, entities and traditional owner groups and prescribed bodies corporate support this repeal bill. I understand that the government is navigating a very tricky balancing act on this bill by taking the time to undertake consultation while also giving businesses and traditional owners certainty about how they can operate and how the guidelines will be set around cultural recognition and preservation in Western Australia.

I have spoken to a number of industry groups in the lead-up to the debate on the repeal bill, and certainly the Association of Mining and Exploration Companies is of the view that we should deal with it quite quickly. It supports the passage of the bill, not necessarily because it is the best legislation ever, but because it wants to get this out the door and have it put in place, which will give industry some certainty about how it can operate. However, in my view, the timing of the bill feels very politically motivated. In one fell swoop, the government is taking a bandaid approach with the repeal bill, which has been lauded for its very simple and targeted amendments. Basically, it is getting rid of everything. Unfortunately, it feels as though what have been called targeted amendments to the 1972 act, which all members in this place agree is outdated, have not been given due consideration. We are very quickly dealing with the repeal of what was a once-in-a-generation piece of legislation, but this is actually a twice-in-a-generation piece of legislation, but it is still an important piece of legislation that should not be rushed.

I understand that the opposition is going to seek to deal with the repeal at one moment in time and then refer the targeted amendments to a committee for consideration for four weeks. To be honest, I think that is quite a sensible move. This is a very important piece of legislation. The government is obviously dealing with it again. I do not think there will be any appetite to deal with it for a third time. Essentially, we are now dealing with the laws that we are going to be dealing with for a very long time. I do not think they should be rushed, just as the 2021 bill should not have been rushed, but, unfortunately, it was. I hope that the government has learnt from the mistakes of the past and has given due consideration to a very important piece of legislation that will protect the cultural heritage of the oldest living culture on this planet.

The second question I have is about the veto powers of the Premier. I am not going to get into this in any great detail, as we can get into it in committee. However, it seems like it is a confusing decision and flies in the face of the traditional owners who called for the power of veto to rest with them. I am curious to know the rationale behind this and whether there is any precedent in this area. It feels like it is a very confusing decision. I would like to hear more from the government about its decision-making process in giving the Premier the power of veto.

Aside from these questions, I certainly have some others. Like I said, I will wait for the committee stage. I have some general reservations and concerns that history is repeating itself, that the government has not fully learnt the lessons of the past and that it has not listened to the traditional owners. It is for those reasons that I will not be supporting the bill and certainly not the second reading.

HON SUE ELLERY (South Metropolitan — Leader of the House) [7.32 pm] — in reply: I thank members for their contributions thus far to the debate on the Aboriginal Heritage Legislation Amendment and Repeal Bill 2023. There was much reflection on the circumstances that have got us to this point. I will note that the Premier has apologised to the state; the minister has apologised to the state; Hon Samantha Rowe, in reading the second reading speech of the bill on my behalf, has apologised; and I will apologise in my own voice on behalf of the government for the circumstances that saw us create more uncertainty rather than less. That is all I am going to say on that.

Some members focused some attention on the contents of the bill before us, so I want to respond to those in particular.

Hon Neil Thomson, as the lead speaker, indicated early on that he intended to seek to split the bill and refer it to the Standing Committee on Legislation. The government will not support that motion, but we can have that debate when that happens. The member also referenced the statute of limitations. There is nothing specific in the 1972 act, but as set out in the Criminal Procedure Act 2004, a 12-month period in which to commence prosecutions for simple offences applies. Such prosecutions will not be a role of the new Aboriginal Cultural Heritage Committee. Complaints will be investigated by the Department of Planning, Lands and Heritage and any prosecutions must be commenced within 12 months.

The member referred to a number of issues that were raised by others and no doubt will be raised again in committee, but I will touch on them now. The offence provisions in the 1972 act are subject to investigation on receipt of a complaint by the department to determine whether a prosecution is warranted. They are not new provisions or unique to this legislation. Protecting Aboriginal heritage is not about putting people in jail. Specifically, section 62 of the act provides a reasonable defence when a person did not know and could not have been expected to have known

that they may be causing harm to Aboriginal heritage. The State Administrative Tribunal will be able to deal with that. The tribunal already has that jurisdiction, but without the amendments in the bill before us, the right to seek a review will be exercisable only by landowners under the 1972 act. I confirm that what is proposed in this bill is not a right of appeal to SAT; it is a merits review, which SAT deals with daily. The member referred to the proposed call-in power. I reinforce that that is modelled on the provisions that exist in the Planning and Development Act 2005 and have existed for many years. It is not the case, as the member said, that those powers were introduced only in response to the COVID-19 pandemic. That is not the case. Finally, questions of law can be referred to the Supreme Court where appropriate. Judicial review is available via the Supreme Court. This is not new, but I am happy to clarify that.

Hon Dr Steve Thomas raised issues around heritage surveys. Heritage surveys undertaken through the government's proposed survey program will be subject to the consent of eligible landowners and conducted in consultation with traditional owners or native title parties. As I think the member and some others noted, the survey program will not be a legislative change; it is a government initiative in response to very clear feedback from landowners who want to do the right thing to protect Aboriginal heritage but for various reasons cannot fund the cost of surveys. When an eligible landowner does not want to consent to a survey, we will not progress. The onus will then be on that landowner to be aware of the Aboriginal heritage on their land.

The member raised water legislation and the Environmental Protection Act. By way of interjection, I said that I was not in a position to make any comment about any bill that was not before us, so I could not talk about any water legislation that might or might not be coming before us. With regard to the Environmental Protection Act, there is a relationship between the 1972 act and the assessment of social surrounds. We remain committed to addressing any duplications and streamlining the processes.

Hon Peter Collier raised some very specific questions. The Aboriginal Cultural Material Committee requires a minimum of four members. By comparison, the new Aboriginal Cultural Heritage Committee proposed by the bill will have at least six members, two of whom are to be co-chairpersons and must be persons of Aboriginal descent. The ACMC—the committee formed under the 1972 act—continues to consider section 18 applications that were lodged prior to 1 July 2023. Some applications were deferred from a recent meeting pending new information. Should the need arise, the committee will meet again until the amended 1972 act takes effect and the new committee assumes its new statutory role.

The bill and the regulations also propose to streamline and modernise committee procedures, for example committee appointments, quorum, meeting procedures and subcommittees will be in more detail than what is currently set out in the 1972 act. It is not about further amendments by stealth, if you like, which I think perhaps might have been the suggestion. When conflicts of interest arise, the regulations have been specifically tailored so that possible stalemates will be avoided and proper decision-making can continue where conflicts of interest arise and might otherwise stall decision-making. The member also raised a question about the survey program. I reiterate that it will not be compulsory for landowners to participate. Work is underway to scope that program in consultation with Aboriginal organisations and details of the program will be made publicly available in due course. I thought the member asked some other questions.

Hon Peter Collier: I did.

Hon SUE ELLERY: Yes. I am sorry; I will have to do them in the clause 1 debate. I did ask for that information. Hon Steve Martin raised the issue of consultation. He specifically sought clarification on whose views will be heard. A standalone consultation policy has been drafted, which outlines the expectations of proponents to engage and engage early with the relevant native title party. Currently, the 2021 act remains in effect. Three sets of regulations have been drafted, including a specific set of transitional regulations to address what will happen to processes that commenced under the 2021 act. For example, permits granted or management plans authorised or approved under the 2021 act will transfer to section 18 consents. Similarly, any work undertaken by proponents to prepare a permit or management plan application will also transition to a section 18 notice. The member raised the issue of costs to the state and taxpayers. Hon Colin de Grussa raised this as well, including funding that has been set aside for LACHS. It has been confirmed by the minister that the government's $12 million funding commitment for LACHS will become part of the new capacity building program.

Another issue raised was that there will be a standalone policy in place to set out consultation expectations before an application is lodged under section 18(2). For the new information provisions, the Minister for Aboriginal Affairs is not obliged to but will have direction to suspend, in whole or in part, a section 18 consent upon receiving a report of new information that can minimise the impact on any Aboriginal site or, equally, on project delivery. The member queried the requirement for payment of surveys for road reserves on unallocated crown land and the like. Any surveys required by government agencies for their projects will be at the cost of that agency. There are no exemptions in priorities for surveys. The program is currently being scoped. Hon Colin de Grussa also sought further clarity on

the survey program. The government will be engaging directly with Aboriginal organisations, key stakeholder groups and eligible landowners to scope that program, including priority areas. Previously surveyed areas may be resurveyed to correct any inaccuracies on the register. A right of refusal will exist for landowners who choose not to have a survey undertaken on their property. The government will ensure that the department is appropriately resourced to deliver the 10-year program that will provide for unsurveyed areas and surveys in response to requests to support section 18 notices.

Repeal of the 2021 act removes the requirement for local Aboriginal cultural heritage services. Funding expended or committed for LACHS to date totals just over $3 million, most of which has been paid out. There is no intention for this funding to be returned. It remains available to those Aboriginal organisations for capacity building that will assist with the implementation of the amended 1972 act.

The draft fees regulations are based on a standard cost-recovery method in line with Treasury guidelines. The variable fee of $5 096 per place that warrants assessment is based on the annual cost of the department's team that processes and assesses applications—$2.4 million divided by the average number of place assessments undertaken a year, which is about 480.

Mining companies and government agencies are currently the largest users of the section 18 process. It is expected that the amendments of this bill will strengthen the process for all proponents and users of the system. There is only one new offence proposed to be added to the 1972 act and it relates to not notifying of a change of ownership in the land within the prescribed time frame in order to consider the transfer of related section 18 consent for that land. Failure to notify would attract a penalty of $1 000. A penalty of imprisonment is available in the 1972 act where no penalty is specified. Whether or not a penalty of imprisonment is imposed is a matter for the court to consider what is appropriate. There is no imprisonment for regulatory offences. There are six new regulatory offences that relate to notification of native title holders and the Aboriginal Cultural Heritage Committee in relation to a change in land ownership—two offences for disclosure of interest, both of which are in the draft amendment regulations; one offence for security of seized things; and two offences for confidentiality—all of which are proposed in the transitional regulations.

I turn to Hon Dr Brad Pettitt, and I think Hon Wilson Tucker made this point as well when he referred to the briefings. I am sorry if the briefings were too late. That is not my intention ever. I do not think it is reasonable. If members are in any doubt, Chris puts it at the bottom of every email that if members have any issues about briefings or anything like that, they should come directly to my office and Chris will sort it out. With the best of intentions, the minister's office was trying to get members all in one go at the same time, but if that cannot be done except just hours before the bill is to be debated, we need to make other arrangements; it is not reasonable. I have said it to the minister's office and I said it directly to the minister on Monday. In future, if in doubt, members should come directly to me—they have my text number—or they should speak to Chris. That should not happen, and I apologise to members for that. The minister certainly did not intend for that to happen either.

I turn to the issues that both Hon Wilson Tucker and Hon Dr Brad Pettitt raised about the bill. Hon Dr Brad Pettitt and I will have to agree to disagree about whether this bill meets the requirements set out in recommendation 2 of *Never Again: Inquiry into the destruction of 46,000 year old caves at the Juukan Gorge in the Pilbara region of Western Australia — Interim Report*. I am not sure I can take that much further. We will have discussion about that in the course of Committee of the Whole House. But the bill includes very targeted amendments to ensure that Aboriginal people are provided a voice and that their voice is not reduced in matters relating to their cultural heritage. That is clearly represented in the anti-gag clause, extending equal rights of review and requirements to report new information.

Majority Aboriginal representation on the Aboriginal Cultural Heritage Committee, including male and female Aboriginal co-chairs, is a key change proposed in this bill to give fundamental statutory authority to Aboriginal people. That was carried over from the 2021 act and was an important amendment in recognition of the feedback from Aboriginal people over years of consultation on legislative reform.

Hon Wilson Tucker, one of the reasons that the government will not be supporting the referral is that it is critical that the bill passes through the house and is able to commence before 31 December. The Aboriginal Heritage Act 1972 has, by way of the operation of sections 4A and 4B, a very limited application. These sections were inserted by the Aboriginal Cultural Heritage Act 2021 and limit the application of the 1972 act to determining applications under sections 16 and 18 and regulations 7 and 10, which were made prior to 1 July 2023. The 1972 act will, through the operation of sections 310 and 311 of the 2021 act, be repealed from 1 January 2024, so we are on that time line. As such, it is necessary to both repeal the 2021 act and make amendments to the 1972 act before 31 December 2023. Of course, we now have only four-and-a-bit sitting weeks to deal with the bill before Parliament rises on 30 November.

Having said that, I am sorry if I did not provide specific responses to some of the things that honourable members have raised, but I am sure we will be able to do so during the course of our committee considerations—if not under those precise clauses, then certainly under clause 1. I commend the bill to the house.

Question put and passed.

Bill read a second time.

Instruction to the Committee of the Whole — Two-Bill Split

HON NEIL THOMSON (Mining and Pastoral) [7.51 pm] — without notice: I move —

(1) That it be an instruction to the Committee of the Whole to divide the Aboriginal Heritage Legislation Amendment and Repeal Bill 2023 into two separate bills —

(a) the first to have the title of the Aboriginal Heritage Legislation Repeal Bill 2023 and is to consist of —

(i) a long title —

"***An Act to repeal the Aboriginal Cultural Heritage Act 2021 and regulations made under that Act.***"; and

(ii) the following clauses —

a clause 1, **Short Title** —

"This is the Aboriginal Heritage Legislation Repeal Act 2023.";

a clause 2, **Commencement** —

"This Act comes into operation on a day fixed by proclamation."; and

clause 3 as printed.

(b) the second to have the title of the Aboriginal Heritage Legislation Amendment Bill 2023 and is to consist of —

(i) a long title —

"***An Act —***

to amend the Aboriginal Heritage Act 1972; and

to make consequential and related amendments to other written laws."; and

(ii) the following clauses —

a clause 1, **Short Title** —

"This is the Aboriginal Heritage Legislation Amendment Act 2023.";

a clause 2, **Commencement** —

"This Act comes into operation as follows —

(a) sections 1 and 2 — on the day on which this Act receives the Royal Assent (assent day);

(b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.";

clauses 4 to 34 as printed,

(c) and to do such things as may be necessary to achieve that purpose, and thereafter report the bills separately to the house.

In essence, the intention of this motion is to provide the committee with the capacity to consider this motion and to separate the repeal component, which is the urgent component, from all the other amendment components into a separate bill, which will enable the matter, if the house agrees, to be referred to the Standing Committee on Legislation. That is the intention of the motion. Obviously, it is subject to the deliberation of this house, but that is the intent. The Standing Committee on Legislation would then assess those amendments over a relatively short time and provide feedback for us to consider, but it would enable the repeal of the Aboriginal Cultural Heritage Act 2021 to occur forthwith or as soon as the house decided to do so. That is my intent with this motion, and that is all I wish to say on the matter.

HON DR STEVE THOMAS (South West — Leader of the Opposition) [7.54 pm]: Thank you, President, for the opportunity to support this excellent motion moved by Hon Neil Thomson. This is a very simple attempt—although the motion before the house is obviously a fairly complicated one—to split the bill so that we can address those things that need to be sorted out immediately, which is the stress on the community. We need to fulfil the commitment of this government, particularly the Premier when he said that he got it wrong and apologised for that. We need to do this as a matter of urgency. We need to get this off the table so that the threat felt by the community and the people of Western Australia is relieved. That is of absolute urgency.

If there is a comparison to be made as to why this motion should be supported, it is between where we were nearly two years ago in 2021 when the government thought that the Aboriginal Cultural Heritage Bill 2021 needed to be passed so urgently—no less, that the government had to effectively brief the opposition in the lower house before it had the bill finished, and had to rush that through in an urgent sense—and this circumstance now when there is a much greater sense of urgency and distress on the landowners of Western Australia, which was expressed with a petition of nearly 30 000 signatures. It was also expressed repeatedly at meetings across the state of Western Australia. It has been put out there time and again. That is what is urgent in relation to the bill before the house today. When it comes to getting the rest of the bill right—that is, the required amendments to the Aboriginal Heritage Act 1972—surely a bit more time can be taken to try to get that right. Surely there is an opportunity to try to get a better outcome that might actually involve—here is an uncalled for suggestion to the government—some consultation with the opposition and the landholders who might be negatively affected.

Hon Wilson Tucker: And the crossbench.

Hon Dr STEVE THOMAS: Maybe the government could consult with the crossbench as well. We are all here happy to help and happy to assist. The opposition and the crossbench are all here to help. Perhaps there is an opportunity for that potentially hardworking, but almost non-existent at this point, Standing Committee on Legislation to have a look at this and come up with some better suggestions. Surely it is not the case that the government thinks that nobody else can come up with suggestions because its legislation is so good! Surely the government would not think that, after the first version of the bill in 2021—the version that the government has now apologised for repeatedly. Maybe there is a lesson to be learnt here. Maybe there is a lesson that says, "We could get this better if we stopped and talked to people a bit more and stopped assuming that we knew what we were doing and we didn't need to consult. Perhaps if we put our arrogance aside for a while, we might actually come out with a better outcome." We are thinking of a better outcome for everybody. We are thinking of a better outcome for Aboriginal people in Western Australia and non-Aboriginal landholders, who would, for the most part, like to see Aboriginal cultural heritage protected and preserved. That would be a pretty good outcome.

The motion before the house, moved by Hon Neil Thomson, will do precisely that. It will split the bill to allow the repeal to happen forthwith. Surely we have had adequate examples over the preceding—it is eight o'clock and we started at nearly two o'clock—five hours' worth of debate. Surely nobody on the government's side could still suggest that the original act and the original debate and the original position taken by the government was a sound and positive one. Surely nobody is still doing that. I suspect not. Surely there is a recognition around the house that the urgent part of this bill is to repeal the damage that was done by the McGowan–Cook Labor government in its initial Aboriginal Cultural Heritage Act 2021. I think we all agree with that. Obviously, the government's position is that it would like to move to the repeal of that act immediately. Our position is that we would like to move to the repeal of that act immediately. Once again, we are in furious agreement in the Legislative Council of Western Australia that that is the best outcome for everybody. We should move immediately to the repeal of that damaging act that raised expectations and shattered them. We are all in agreement with that. I think the crossbench is in agreement with that too. Let us get rid of the embarrassment. The government should be happy to do that, surely. But let us take the time to get the next step right.

It is not a complicated argument. The government got it so wrong. It did it so poorly a couple of years ago, so let us all help the government. Let the opposition, the crossbench and the wider community help the government to try to do a better job. Let us help it try to get it right this time. It is not quite an award for turning up. It is not the old "could do better". We might be able to do what the government intended to do in its first ham-fisted approach to this issue—that is, increase the protection for Aboriginal cultural heritage significantly without going to war with landowners at the same time. Surely the place for that to be looked at is the Standing Committee on Legislation. If there was ever an argument that we should have an investigation into a piece of legislation, surely a failed piece of legislation as has been presented is the ideal place to start.

It is not only the opposition saying that we think the first round of legislation is a failure; it is you guys. The government said its first round of legislation was a failure. If there was ever an opportunity to use a legislation committee to make a piece of legislation better, this is it. I do not think we will ever see a better situation for the use of the legislation committee. It probably should have gone to the Standing Committee on Legislation in the first instance; it might have come back and said, "Don't be so silly." Surely if there was ever a piece of legislation

that deserves scrutiny and should go to a committee that could have a serious look at it, it is this. It is the amendments to the Aboriginal Heritage Act 1972. I am very interested to hear the arguments. The government will stand and say it is not supporting it and the Leader of the House has already said that, but I am interested to hear the arguments to say, "No, no, no, we told you we got it absolutely right last time. You're a bunch of fools for questioning us and now we're telling you we got it right again and you're still a bunch of fools for questioning us." Fool me once, shame on you. Fool me twice, shame on me.

Surely this is the best opportunity that we will have to make use of the Standing Committee on Legislation because I do not know what other bill is likely to get there in this term of Parliament, but probably, more importantly, I doubt we will ever see in our parliamentary careers—we will certainly never see another ham-fisted backflip like the one we have seen five weeks into the use of the legislation—a piece of legislation that should have gone to the Standing Committee on Legislation more than the one that went through in 2021 and the bill before the house tonight. It is an excellent motion by Hon Neil Thomson and it beggars belief that we would not make use of the normal processes of Parliament to improve the process.

There is a bunch of questions around this. The proposal before the government is far from perfect. The Standing Committee on Legislation would look at a lot of those issues and work out whether it is deliverable or not. I have huge concerns about whether a government-initiated survey process is deliverable. I have huge concerns about whether the government can take the land-owning community with it. Reverting to the 1972 act is better than the 2021 act, but it is still imperfect, and the amendments before the house need to address some critical issues. From my perspective, there is no more critical issue than the one that revolves around tangible and intangible heritage. There are plenty of other issues for debate in the committee stage of the bill, but there is no more serious issue than the debate around tangible and intangible heritage—under what circumstances intangible heritage should be able to block development or interfere with a landowner's use of their land, and to what extent that might occur. Surely, that needs further investigation. I do not see the government doing it.

I think the government is a little lost and desperate to get the repeal bill through and the backflip done. As we keep saying, we are absolutely keen to help it with that, and that is why splitting the bill along the lines of Hon Neil Thomson's motion is really important, because then it will get that repeal bill through, but the things that it would like to do to improve Aboriginal cultural heritage outcomes, the things that it is talking about and have been unable to deliver to date, are things that the Standing Committee on Legislation might actually assist it with. I would be interested in that committee. I am sure that committee is still chaired by Hon Dr Sally Talbot and it has done good work before on legislation. I am sure she would be a highly qualified person to look at Aboriginal cultural heritage and the capacity for government to regulate intangible heritage. It might even be able to define intangible heritage, because the act itself struggles to do so. That is precisely the sort of thing that the legislation committee should look at. Surely, this is an opportunity for government to bring everybody along in the discussion. Dare I steal a phrase? This is an opportunity for us to all walk together. I did steal that one. Here is an opportunity, people. If members believe in walking down this path together, if members believe in bringing people with them, surely they will vote for this amendment by Hon Neil Thomson. Surely they will vote for an amendment that brings the entire Legislative Council with them.

We all accept and understand the distress around the current act. We are here to say that we support the government in getting rid of the 2021 act as quickly as possible. We absolutely support that and agree. The government thinks it is a disaster; we think it is a disaster—we all agree it is a disaster. We are all walking together on that one. That is simple. The question going forward is: how quickly does the government need to get it right, and can it get it right? I do not think for an instant that members of the government think that this is a perfect bill. I think they are fully aware and that behind the scenes they agree. In their most honest and deepest moment in a conversation they would say, "Yes, it's far from perfect, but we had to get something through and we had to save a bit of face because we made such a mess of it to date." I doubt that any members opposite will jump to the defence of the original bill. I am happy for them to do so; I think that would be really interesting, but I do not expect it and do not think they would. I think they understand the mess it was and the mess it is, and I really do not think they believe that the new bill is the perfect solution to it. I think that they believe it is still something of a mess, and, in their heart of hearts, they understand that they have cobbled something together rapidly just to try to cover their faces, let us say. I accept that that is the position we find ourselves in. I suspect that the government is about to stand up and say, "We will not support the intent to make it better. We will not support splitting the bill and sending it off to the most appropriate committee, which has not met because it has been waiting for a piece of legislation like this—waiting for the opportunity to contribute to the improvement of life in Western Australia." The government is going to snub that again. It is going to save face at the expense of the standard of the legislation that passes this place, and ultimately at the expense of both sides of the argument. It is going to save face at the expense of the Aboriginal community that is trying to save its heritage and the landowners who are concerned about the impact of this legislation. It is basically going to sacrifice both of those groups, because that is politically easier than admitting

how bad this mess is and using the normal systems of this Parliament and this house to make it better. That is the sad, pathetic state that we find ourselves in tonight. It is going to be a sad, sad night when the government votes down this very good motion.

HON COLIN de GRUSSA (Agricultural — Deputy Leader of the Opposition) [8.10 pm]: I rise to make some brief remarks on this excellent motion moved by Hon Neil Thomson. Although the motion itself sprawls over a couple of pages, its intent and actual application are quite simple. The motion seeks to split the bill to make sure that the Aboriginal Cultural Heritage Act 2021—the botched act that we have all been talking about today—is repealed, but also that we get an opportunity to further scrutinise the proposed amendments.

In my mind, this comes back to one single word—clarity. That was not provided at all when the 2021 act was passed and during its implementation. We want to ensure that the Aboriginal Heritage Legislation Amendment and Repeal Bill 2023 does not end up in the same place as that other bill did. We have already seen that we are dealing here in this place with bill 125–2. Of course, the bill that was introduced in the other place was bill 125–1. It was subsequently amended by the government as it progressed through the other place, hence this bill is numbered 125–2. That means that the government has already recognised that after it had introduced the bill in the other place, it had not got everything right—it had missed things; it had problems. There can be no better reason to split the bill and consider the other changes and amendments separately. We should repeal the current legislation now to give clarity to landowners; properly consider the further changes that are required; and engage in good faith consultation with the community, the opposition and others to make sure that we get it right this time, because that is what we all want. Everybody in this place wants that. Everyone in the community wants to get this right so that we achieve the outcome of protecting Aboriginal cultural heritage and providing clarity to landowners. I absolutely support this motion and I encourage others right across the chamber to do the same.

HON SUE ELLERY (South Metropolitan — Leader of the House) [8.13 pm]: The government will not be supporting the motion before us. I want to make a couple of points. A motion in similar terms was moved in the other place. While this bill is before us, if all we do is repeal the Aboriginal Cultural Heritage Act 2021, we miss the opportunity to put in place those measures that will be achieved by the targeted amendments. We will also not create any transitional arrangements.

I listened carefully to the debate on this motion and on the second reading. I thought it was interesting that a number of members made the point that most people out there think that this issue has been fixed. Most people out there accepted it when the Premier and the minister stood and apologised and said, "We did not listen. We did not create greater clarity; we created less. We are sorry, so we are going to repeal that and add some targeted amendments." We cannot have it both ways. Either most people out there think that has been fixed, which is the point members made in their second reading contributions, or there is mass confusion, great distress and a huge lack of clarity, but it cannot be both. Members have argued both so far since we have been debating the bill before us now. If we just repealed the 2021 act because of the operation of sections 4A and 4B of the Aboriginal Heritage Act, which I referred to in my second reading reply, we would not include the amendments to ensure that the gag clauses cannot prevent native title parties from seeking a right of review to the State Administrative Tribunal or commence being heard in court or tribunal proceedings. We provide the same right of review through SAT for native title parties. We would not be able to do that. That right is already afforded to landowners when they are aggrieved by the minister's decision about a section 18 notice. We would not require the holder of a section 18 consent to report new information about Aboriginal sites to the minister and for the minister to review the consent. We would not ensure that the advisory body that provides recommendations on section 18 notices had majority Aboriginal representation as well as being skills based. We would not be giving the Premier the power to call in matters that have gone to SAT when the Premier considers it to be of state or regional importance. In fact, we can achieve both desired outcomes, which is to repeal the 2021 act and address the clear deficiencies in the 1972 act, and provide certainty for landowners, Aboriginal people and the community. We acted quickly when we made the decision to reinstate the 1972 act. We needed to do that quickly because of the operation of sections 4A and 4B of the Aboriginal Heritage Act. We have consulted with key stakeholders, we have listened and we are governing in the interests of all Western Australians.

Even if the opposition does not think that the amendments that I just read out are worthy of inclusion right now, the bill will deal with important transitional issues that arise as a result of the repeal of the 2021 act. They include ensuring that any permits granted and management plans approved or authorised under the 2021 act are deemed to be section 18 consents under the 1972 act. That includes any applications for these approvals falling away and the applicants having to start all over again. How would that give certainty? The transitional provisions also allow people to rely on the defence of having undertaken a due diligence assessment in accordance with the 2021 act that determined there was no risk of harm to Aboriginal cultural heritage and, therefore, there is no need for any kind of approval. The transitional provisions also exempt tier 1 activities, including emergency activities, from having 12 months to be completed. Without these transitional provisions, which the member did not think about in his motion, uncertainty will arise.

It is also the case that the 2021 act repealed the Aboriginal Heritage (Marandoo) Act. Repealing the 2021 act obviously would not reinstate that act, which means that the proponent in question would not have any approval to carry out its existing operations. The proponent would have spent an enormous amount of time working with all the relevant stakeholders to agree to an area in which they could continue to operate, which was put into effect by the 2021 act and needs to be transitioned to the 1972 act. To repeal only the 2021 act and reinstate the 1972 act without those amendments would mean that important transitional issues would not be dealt with and that people who have obtained an approval under the 2021 act to undertake an activity would no longer have any approval to do so.

It is also the case that the 2021 act amended the 1972 act by inserting provisions in sections 4A and 4B, which I referred to in my second reading reply. However, for the purpose of closing the loop in this debate, those two sections limit the application of the 1972 act to determine applications under sections 16 and 18 and regulations 7 and 10 that were made prior to 1 July 2023. If the 1972 act is reinstated without amendment, as the opposition has proposed, landowners will not be able to apply for any kind of approval under the 1972 act. This will obviously have a significant impact on anyone wanting to undertake an activity within the boundaries of an Aboriginal site and bring significant economic activity to a halt. There are very sound reasons for the house not to support this motion.

HON PETER COLLIER (North Metropolitan) [8.20 pm]: I want to make a few comments on the motion moved by Hon Neil Thomson and to offer my support for splitting the bill and referring the amending bill to the Standing Committee on Legislation. I speak from experience. I have been on that committee. I am one of the few members of that committee who did some work, and that was when I first started here in 2005. In those days, when the government did not have a majority, we would reasonably regularly refer complex bills to the committee and forensically assess them and almost exclusively unanimously support amendments to the legislation that would refine and improve it. That is what the committee was set up to do. Unfortunately, it has become redundant now. It is such a shame, particularly when we have a bill like this.

I am sure that a number of members opposite will feel very frustrated at the opposition's audacity to move to refer the bill to the legislation committee and will think that we are filibustering or wasting time. I can assure them that it is anything but that. I repeat: when I sat on that side of the chamber and we had a thumping majority, with every second bill that we brought forward, members of the opposition would stand and make a speech and then they would all speak to a motion to send it to the legislation committee. That happened constantly with some of the most innocuous bills. It was purely a time-wasting exercise. This is not one of those. I do not do this lightly. I am very supportive of this motion.

I listened very closely to the words of the Leader of the House, but, with all due respect to her—I know that this is not her bill per se—the Labor government has lost all authority in this area. It has no credibility in this area whatsoever, so I do not want any lectures on what is right and what is wrong. The government had its opportunity. It consulted for two years. It spent endless hours preparing to get that bill right and it completely messed it up, so the Leader of the House should not stand and tell us that what we are doing is wrong. For goodness sake, we told the government time and again that there were problems with this piece of legislation and it ignored us. At the end of June, we proceeded. This was going to be the fount of all wisdom on Aboriginal heritage. It had this wonderful piece of legislation that was visionary and was going to change the shape of Aboriginal heritage throughout Western Australia, yet, five weeks later, it had to repeal it, so do not for a second stand and lecture us. The government completely messed this up.

The reason I support this motion is that it was only a matter of weeks between when the announcement was made to repeal the 2021 act and when this bill was introduced to Parliament. Are we now led to believe that after all the additional consultation that took place, the drafting experts et cetera have got this watertight? If this piece of legislation is so simple, why on earth did we have to go through the previous two years, during which the government purportedly got it right? The government kept on telling us that it had consulted everyone, including the cleaning lady and the gardeners, and got it all right and that everything was perfect, yet it messed it up. It could not get it right after two years of consultation, but it is watertight and perfect after five weeks! Why on earth did we waste all that time, money and resources when we could have got it right in five weeks? Go figure. Those dastardly Tories and that terrible crossbench—I am not sure where the crossbench sits on this motion—had the audacity to harbour some concerns with the previous bill and now continue to make trouble. We have not made any trouble with this. I make this perfectly clear. Our position on the last bill was transparent. We begrudgingly supported it. If we had not, we would have been labelled racists by members opposite. That term has been used regularly, but that is simply not the case. We raised valid issues. As it turned out, we were right and the government was wrong.

From my perspective, what Hon Neil Thomson has asked for is eminently sensible. The motion asks for a very short, sharp inquiry. We still support the bill, but we want an inquiry. Once that is done, we will still pass the bill by the end of the year. How could the government go wrong? We could then say, "Yes, we can live with that now." There was a "trust us" mentality with the previous bill. We did trust the government and we got it wrong. Having said that, as far as members opposite are concerned, the government has no authority with this legislation. We are

supporting it, but we want to assist the government in this process. If there are any problems with this legislation, which was constructed in five weeks, the Standing Committee on Legislation can actually do a bit of work, make some recommendations, bring them to the house and we will more than likely support them.

With that said, I enthusiastically support the motion of Hon Neil Thomson.

HON NICK GOIRAN (South Metropolitan) [8.27 pm]: What this short debate has demonstrated is that the government is confused about the question that is presently before the house. The question before the house is not complex; it is to seek an instruction to the Committee of the Whole House to split the bill. It might assist members to better understand the question before the house if we were to split the question that we are considering—that is, the intention proposed by Hon Neil Thomson and the detail. The intention is simple. If members are familiar with the bill that is before the house, they will know that it is a four-part bill. Three of those parts—parts 2, 3 and 4—are significant operative provisions. Hon Neil Thomson is seeking that part 2, which is the repeal part, be considered separately from parts 3 and 4. The intention is very clear. Why would the honourable member want to do that? It is because it is demonstrably clear that the people of Western Australia do not want that legislation on the statute book any longer. That was clearly articulated by tens of thousands of Western Australians in June this year. When people raised concerns at that time, the Premier of the day, Mr Cook, referred to them as dogs. It was very clear at that time that the people of Western Australia did not want that legislation on the statute book. Part 2 of the bill will give effect to that express intention of the people of Western Australia. No sooner had the Premier referred to those of us with concerns as "dogs" did he then, after the winter recess, have to spectacularly backflip and announce that he would be repealing the legislation. Hon Neil Thomson is expediting the process. Quite unbelievably, here we are now on 10 October 2023 and that legislation remains on the statute book. This motion gives the opportunity to the government to effect the desires of the people of Western Australia; that is, to scrap this legislation. I find it odd, to use the most charitable word I can find at this time, for the government to then want to oppose what the people of Western Australia expressly want.

With regard to the detail, Hon Sue Ellery, the Leader of the Government in this place, has raised three substantive points. Two of them are manifestly wrong and one warrants some further consideration. The Leader of the House has said in her response on behalf of the government that if all we do is repeal, we will miss the opportunity to deal with amendments. That is manifestly untrue. It requires members only to familiarise themselves with the motion moved by Hon Neil Thomson to see that he is facilitating both the repeal and the capacity for amendments. It is not an either/or scenario. It is expressly facilitating both. If members bother to read the motion that is presently before us, they will see he has very generously, in my view, enabled both of these split bills to come into operation on a day fixed by proclamation. If it were me, I would say that the repeal bill should come into operation on the day of assent. With this government, we know they do not hesitate at times to have the commencement clause commenced the day after assent and sometimes on the day of assent itself—in other words, for provisions to come in instantly. I remember when there was a bill for which the government ensured that the Governor would be available in the late hours of the night with his pen ready to bring the bill into operation on that same day. When the government wants something to happen in an expeditious fashion, it most certainly has the capacity to do so. It has already demonstrated that previously. Why is it now frustrating the will of the people of Western Australia rather than facilitating it? It is bizarre for the honourable Leader of the House to suggest that if all we do is repeal it, we will miss the opportunity to make amendments. Read the motion.

The second point made by the honourable Leader of the House was to say the bits we would miss out on and then she proceeded to list a whole range of issues, which are captured by the bill. We will miss out on none of those things, honourable Leader of the House because, as Hon Neil Thomson has set out in part (b) of his motion, there will be the opportunity for all of those things to be dealt with in clauses 4 to 34 as printed. None of those things need to be missed out unless, during the Committee of the Whole house stage, they are proven to have flaws and the government then agrees to some form of amendments. Let us not pretend for a moment that there has been, on each and every occasion, bills brought before the house that have been flawless pieces of art that have been unable to be critiqued. Time and again, there have been proven to be flaws and, on occasion, some good-willed ministers have even agreed to amendments. There is absolutely no reason to fear that anything will necessarily be missed out. With all due respect to the honourable Leader of the House, those first two propositions are simply not made out. That said, the third point made by the honourable Leader of the House requires some consideration. She said it will be very important for the transitional provisions to be included at the same time as the repeal. Members will find that in division 1 of part 3 of the bill. If the Leader of the House is adamant about that point—I have no reason to quibble with her about it—what she has said seems to make good sense that, if we are going to repeal the bill, at the same time we also need to simultaneously have the transitional provisions in place. A simple amendment to the motion moved by Hon Neil Thomson would give effect to that. The government is well within its rights to move an amendment to the motion before us. It chooses not to; instead, it chooses to frustrate this process rather than facilitate it. Why not include part 3, division 1 in the first of these two bills? We know the government has every intention for that provision to come in immediately. I draw the attention

of members to page 2 of the bill and the commencement clause 2(b), which says that part 3, other than division 1, will begin on the day after assent day. Therefore, it will be the very first thing that comes into effect other than part 1.

The motion moved by Hon Neil Thomson will give effect to the will of people of Western Australia. Never before has there been an e-petition that has been tabled with so many signatures. Nothing has come close to it. The government is adamant that if there is to be this repeal, amendments will need to be moved. It is entitled to have that view. This motion still gives the government the opportunity to do that, but it equally gives the government the opportunity to repeal this law, which it has reluctantly accepted and acknowledged is fatally flawed, and it could do so this week. What is the government so concerned about that would warrant this thing being delayed a little further? I do not think that most Western Australians are aware that if this motion moved by Hon Neil Thomson does not get up and if this bill passes unamended, the Premier of Western Australia will have given to his government a special executive power that will enable the repeal never to take place. It is all well and good for the government to say it intends to repeal the bill, but at every stage the opposite has been done.

In the months of August and September, the government moved slowly as possible. Reluctantly, only after massive pressure, did it bring the bill on in the Legislative Assembly. Now it is finally before us here. Hon Neil Thomson, the lead speaker for the opposition, seeks to facilitate and expedite the repeal, and the government still wants to frustrate that process. Why is that the case? Why is the government so adamant that it loves lines 21 and 22 on page 2 of this bill that say that the rest of the act will happen on a date fixed by proclamation and different days may be fixed for different provisions? Translation: the government can delay the repeal of this law indefinitely. We could go to the election in 2025 and this repeal could still not have taken place. I do not think most Western Australians are aware of that. There is no good reason that that should be the case. If it is good enough for part 3 to come into effect on the day after assent, it is good enough for the repeal to happen immediately. I strongly encourage members to support the motion moved by Hon Neil Thomson.

Division

Question put and a division taken with the following result —

Ayes (9)

Hon Peter Collier	Hon Steve Martin	Hon Neil Thomson	
Hon Nick Goiran	Hon Dr Brad Pettitt	Hon Wilson Tucker	
Hon Louise Kingston	Hon Dr Steve Thomas	Hon Colin de Grussa *(Teller)*	

Noes (17)

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

Pairs

Hon Donna Faragher	Hon Rosie Sahanna
Hon Martin Aldridge	Hon Kyle McGinn
Hon Tjorn Sibma	Hon Ayor Makur Chuot

Question thus negatived.