CONSERVATION LEGISLATION AMENDMENT BILL 2010

Committee

The Chairman of Committees (Hon Matt Benson-Lidholm), in the chair, Hon Helen Morton (Minister for Mental Health) in charge of the bill.

Clause 1: Short title —

Hon SALLY TALBOT: I would like to canvass a number of points under clause 1 that I believe are germane to understanding the context of the bill and the way in which it will operate. I will raise three issues first, and I will then seek some response from the minister, and we can move on from there.

The first point is that I wonder why the government is so intent on avoiding any issues to do with the alteration of title. When the Minister for Mental Health addressed the point that I had made about the connection between this bill and Labor's Indigenous Conservation Title Bill, I heard in the tenor of the minister's response an absolute determination to leave existing titles as they are. I absolutely understand and agree with the minister's assessment of the compensation liabilities that have accrued to government as a result of the two High Court findings about the extinguishing events in relation to Rudall River and Gibson Desert. However, as the minister well knows, the intent of Labor's ICT bill was specifically to introduce an inalienable form of title that would have addressed those problems. What worries me about this bill is that the government has run so far and so hard away from questions to do with title that what we are looking at now is a form of facilitation of joint management agreements that will leave non-Indigenous ownership of the land intact. I cannot see a reason for doing that. If the government genuinely wanted to achieve better environmental outcomes for the country in question, as well as protect the rights of Indigenous people over things such as cultural use of the land, and, as the minister has mentioned herself, medicinal purposes, the government could have taken what seems to me to be a small step further and not protected those questions of title quite so ferociously as it appears to be doing.

The next point is the regulations. The minister said something in her response that rang more alarm bills with me than have been rung up to this point. The minister talked specifically about regulations that will restrict access. If we are talking about country that in every sense belongs to the traditional owners, how can we then just slip in a regulation that will restrict access to that land? I find that a very troubling element of what might be happening in this bill.

I now want to make a general point about consultation. There has been a suggestion from the stakeholders that there has been a lack of consultation on this legislation. Hon Robin Chapple will be raising some information that has come to light only overnight about the availability of the explanatory memorandum and the problems that has created. When the minister was responding to my comments about the regulations, the minister said the government understands that the regulations will need to be devised in consultation with the traditional owners and the other stakeholders. I am still looking for convincing evidence from the government that it has a real understanding of what consultation involves. Hon Donna Faragher spoke in her contribution to the second reading debate about the consultation that she had done in the last days of her tenure as a minister. She said that the stakeholders had received a letter from the minister, there had been a meeting between the Department of Environment and Conservation and the traditional owners, and DEC had followed up queries. With respect to people who are making their best endeavours, I cannot see that there is any excuse for dressing that up as consultation. When we in this place put in place laws and regulations that will affect people's daily lives, the very least the stakeholders would expect is a letter from the minister. That surely would relate as much to changes to the cat sterilisation laws—I am not trying to suggest that is trivial, because I know it is a very important matter to some people—as it is does to what we are talking about in this instance; namely, our obligations under commonwealth native title law.

The previous minister told us that she had written one letter to the stakeholders. Hon Helen Morton has a few more dates of meetings from her colleague the Minister for Environment. But we are still not seeing anything like an involvement in the process. That, I think, is what we on this side of the house are talking about. Hon Donna Faragher and Hon Helen Morton have absolutely misunderstood the comments I put on the record about Camden Sound Marine Park, and the comments made by the traditional owners of the Dampier Peninsula, about never at any stage having been invited to participate in the process. It is participation in the process that people need. That does not mean that the minister goes to the stakeholders with a plan that has already been devised and asks them what they think of it; it means sitting down with them way before that. I cannot see any evidence that the government has understood that when it comes to determining how land is managed—that is, country that belongs to the traditional owners—surely a traditional owner's interest is not the same as the general public's interest in those outcomes.

I know that many people other than traditional owners would challenge the government about the degree of consultation on planning for marine and terrestrial reserves, but surely in this case we should be looking for more evidence that people's participation in the process has been facilitated. Nothing I heard from the minister in her reply to the second reading debate last night persuaded me that that is the case.

Hon HELEN MORTON: Is Hon Robin Chapple going to add comments around these three areas?

Hon Robin Chapple: If you would like to respond first, then I will.

Hon HELEN MORTON: I will first address the issue of avoiding the alteration of title. I think it is fair to say that the bill is focused on the joint management of existing tenures. Tenure changes are not the purview of the CALM act; rather, such changes would be made under the Land Administration Act or a special act for that purpose.

Hon Sally Talbot: Are you foreshadowing legislation under those two acts?

Hon HELEN MORTON: Will the member just let me finish this first?

The bill also provides for inalienable title to be arranged in the future. If an existing park—for example, the Rudall River National Park—were to be transferred to inalienable title, the matter would come to Parliament because national parks are A-class reserves. I understand what the member would like to see happen, but the construct of this legislation is focused on the joint management of existing tenures.

The second point raised by the member was about the regulations. The regulations are basically to be developed for protection of public safety. For example, if we were to enable people to use firearms for the purposes of obtaining food, there would have to be a balancing process to protect other members of the public who may make use of the same space. The regulations are also to be developed for the protection of environmental values. It is not unreasonable to imagine that there might be some section of an area that has to be protected for quite intensive environmental considerations. Protection of cultural values is self-explanatory; the regulations also provide for any other important values of the land. I do not think people are going to be unhappy about having regulations in place for these matters.

The member also raised the issue of consultation. I reiterate that all the native title representative bodies have been consulted, and that took place before the bill was introduced. I understand that significant opportunities were given to raise issues. I understand that the member is talking about traditional owners being involved in the process. But the process is one that has engaged traditional owners by providing information to them and getting their responses. The Kimberley Land Council provided a response, which in turn was addressed in that process. Over the past two weeks the government has gone back to those groups again and some of the concerns that have been expressed have been addressed. I do not think the process is always as straightforward as enabling traditional owners to be 100 per cent involved in every aspect; it is a matter of the government having to take some of the initiative and the lead in involving people in the process.

This bill is the culmination of 10 years of in-depth negotiations and consultations with Aboriginal groups and other stakeholders, particularly about resolving native title claims and improving the economic and employment opportunities of Aboriginal people in land management. As I mentioned, all the native title representative bodies have been consulted in the process. It would be inappropriate, therefore, for anyone to suggest that this legislation has just been cobbled together by the government in the last little while and handed back to traditional owners for them to look at; there is 10 years of consultation behind this process. The member referred to what appears to be a process of handing information to traditional owners; that is pretty much the culmination of a 10-year history of consultation. The letter from the South West Aboriginal Land and Sea Council is an example of that. The council wrote that it supported the amendments to the CALM act and the Wildlife Conservation Act and that it looked forward to the amendments being brought into law. It also provided quite a lot of information about its involvement and the fact that it felt that it had been adequately consulted throughout the process.

Hon SALLY TALBOT: I will ask a couple more questions to tease out a little more information. I would appreciate it if the minister could elaborate on the point she made in response to my first question about tenure. I want to be absolutely clear, for the record, on what she said about this bill laying the ground for some resolution of issues involving title and the extinguishment of title. I heard her say something in her response to indicate that that was somewhere in the government's thinking about this bill. I understand and absolutely accept in good faith that this is, to some extent, a learning process for all of us; not just for the Liberal–National government and the Labor opposition, but also for the land councils and the traditional owner groups. I need to be absolutely clear.

As I understand it, the Miriuwung–Gajerrong are still very unimpressed with the way the state government has responded, and by "state government" I do not mean only the Barnett government; I think they were also unimpressed by the way in which the former Labor government responded to the problem that arose over the

extinguishment of native title. My impression is that we have not yet done anything to return them to the negotiation table. I would like the minister, if she can, to make it absolutely clear: are we just being optimistic about the fact that the Miriuwung–Gajerrong and others in the same position will be encouraged to resume negotiations with government as a result of this bill? Are they waiting to see how joint-management arrangements work, or are we actually laying a legislative and regulatory framework to address some of those issues? Presumably, the compensation problems still hang over our heads. Yesterday, the minister raised the question of the compensation entitlements under the Burrup and Maitland Industrial Estate Implementation Deed. Presumably the compensation payable to the Martu and the Gibson Desert people is still unresolved for Rudall River and the Gibson Desert areas because that extinguishment took place in the critical period between the introduction of the commonwealth racial discrimination laws and the native title legislation. I think my question is clear, if a little longwinded.

Hon HELEN MORTON: I hope that I can give the member information that will allay her concerns. To start with, the joint-management negotiations can inform any proposals to change tenure or grant titles. However, this bill is not about facilitating actual title transfers.

Hon Sally Talbot interjected.

Hon HELEN MORTON: Let me finish this. There will be capacity to transfer title if this bill is passed; there is not that capacity at the moment. This will allow for the title to pass to the Miriuwung–Gajerrong people; without this bill that is not possible now. I hope the people who have indicated they are still not happy with consecutive state governments might realise that, through this piece of legislation, the things that they most want will now be possible.

Hon SALLY TALBOT: I understand that is the case for the Miriuwung–Gajerrong, but what about the Martu and Rudall River? What is in this legislation for them? They are the people I was talking about returning to the table.

Hon HELEN MORTON: I am informed the bill will provide similar opportunities; that is, the opportunities are there but to complete the process the matter would still have to come before the Parliament.

Hon SALLY TALBOT: I have a couple of quick points about the regulations. In response to my comments about restricting access, the minister spoke about the use of firearms and the protection of environmentally sensitive areas. This absolutely illustrates my point. Surely, the traditional owners are the people best equipped to advise government about how those regulations are appropriately couched. That is, I think, a good illustration of my point about involving the TOs in the process and not in ratifying the outcomes of the process. It was very interesting when the minister said that there will be times when the government has to take the lead and that nobody would expect 100 per cent participation from stakeholders. The view that "after all, we are the government and you are only the stakeholders" is an outmoded view of government and is a mentality or approach that does not wash anymore. Many of the people with whom the government should be consulting over the devising of the regulations and with whom the government might, in my view, have conducted a more genuine consultation in the lead-up to this debate today are the people who own the country.

Hon HELEN MORTON: I do not want to be mean when I say this, but the reason Hon Sally Talbot did not make this happen is that she would not take the initiative. This government has been able to make it happen because it has taken the initiative. Taking the initiative means taking steps. Taking steps means that things have to be put in place. As I have said, there is no suggestion that people are not fully involved in the negotiation process, but we did not hand over that process, because at the end of the day the government will listen to and understand the traditional owners and put what they want into the legislation. The government has to do that. I completely and 100 per cent refute any suggestion that the consultation process has not been a genuine one. I cannot imagine Hon Sally Talbot suggesting that the work undertaken by the former minister in this process was not genuine or that this government is not genuine. Everything that I have seen and heard, and been briefed about, in this process tells me this is a genuine attempt to enable these benefits to occur for the traditional landowners. The government has already indicated that it agrees that the regulation details will need to be developed in full consultation with the Aboriginal people and their representative organisations and other stakeholders, and that this needs to be done before the regulations are drafted.

Hon SALLY TALBOT: I appreciate the points made by the minister, and I think we are getting very close to that basic ideological difference between the right and the left in politics. I do not mind if the minister is mean to me. I do not hear it as meanness when the minister takes credit for the bill. However, I remind her about the comments I made in my contribution to the second reading debate. I was not blaming the minister. I was not casting any aspersions. I think that we have ended up where we are today not because Labor did not do anything, but because of legal advice about section 16. Although I was not around the cabinet table at the time, I think it is fair to say that this government has gone down much the same track as the previous Labor government, again to

the point at which the State Solicitor has identified the problems with section 16 and joint-management arrangements. That is why we are here today; it is not because of some revelatory experience on the part of Liberal members to facilitate joint-management arrangements. I wanted to correct the record in that sense.

I take the minister's point that the government is not about to hand over responsibility, but the minister needs to bear in mind that the traditional owners are not very happy about the government's attitude and about handing over what they see to be more than a fair share of responsibility to the government. That is something the opposition will certainly keep a very close eye on as these joint management agreements begin to take effect around the state.

Hon ROBIN CHAPPLE: Firstly, I must apologise to the minister, because yesterday I repeatedly referred to her as the parliamentary secretary and I humbly apologise for that. I had forgotten her elevated status.

The DEPUTY CHAIRMAN (Hon Max Trenorden): So did I! The Chair apologises as well.

Hon Helen Morton: I will just say that the issue is mostly in question time. Because I am flicking through so many questions, if I do not hear "minister", I do not think "minister".

Hon ROBIN CHAPPLE: Last night in reply to the second reading debate, the minister made a number of comments about the consultation that had taken place. According to the uncorrected *Hansard* she stated —

> … I would like to mention the extent of the consultation that I am aware of. The consultation I have listed here commenced in October but I am aware that consultation had taken place before that.

I am aware that consultation started under the Lawrence government and continued under the Court government, the Gallop government and now this government. We have been a long way on this one. The key issue is that it was identified that consultation on this legislation took place with the Yawuru Aboriginal Corporation on 15 October 2010 and with the South West Aboriginal Land and Sea Council on 21 October 2010. Last night the Minister for Mental Health identified that the Yawuru Aboriginal Corporation was provided with the bill, the explanatory memorandum and the CALM act et cetera on 15 October. I find that interesting, because when I met with the department on 11 February 2011, the department was still busily trying to get the explanatory memorandum produced—it had not been provided when the bill was introduced. An electronic version of the EM is still not available on the web. By way of ensuring that the EM is indeed the EM we are talking about, I seek leave to table the EM that was given to us on 11 February 2011. Is it different in any way, shape or form from the EM supplied to the Yawuru Aboriginal Corporation, the Kimberley Land Council, the South West Aboriginal Land and Sea Council or the Murujuga Aboriginal Corporation in 2010?

The DEPUTY CHAIRMAN (Hon Max Trenorden): Is the member seeking leave to table the explanatory memorandum?

Hon Robin Chapple: Yes.

Leave granted. [See paper 3121.]

Hon HELEN MORTON: I know that the member is not questioning whether an explanatory memorandum was made available to the groups on that date. His question is whether the explanatory memorandum they received was in any way different from the explanatory memorandum received by members of Parliament when we came back in February. Is that what the member is asking?

Hon Robin Chapple: It was on 11 February.

Hon HELEN MORTON: I am advised that some very minor changes were made but not specific changes that would be of great concern. I have not seen both explanatory memorandums, so I would need to look at what the changes were. I am advised that there were some minor alterations to the explanatory memorandum.

Hon ROBIN CHAPPLE: If there is any variation between the one produced and handed to Indigenous stakeholders in October 2010 and the one I have just tabled from 11 February—it is only a paper copy; we do not have an electronic version—would the minister consider tabling the previous version?

Hon HELEN MORTON: I am advised that there is no material difference between the two. However, I am more than happy to get hold of the one the member has tabled, which is probably the one I am working from, and a copy of the one that went out earlier and I will highlight the differences for the member. I cannot do that right now. It can probably be done over the lunchbreak, if that is okay with the member. I will hand it back to the member with the differences highlighted.

Hon ROBIN CHAPPLE: I thank the minister for that. That will certainly clarify some of the issues.

Given that this bill is about joint management for Aboriginal groups, why was it that, as far as representative bodies went, only the Kimberley Land Council and the South West Aboriginal Land and Sea Council were

provided with information about this in October? Why did it take until the recent meetings in 2011 for other groups, such as the Yamatji Land and Sea Council and the Goldfields Land and Sea Council, to receive the briefing? They were not given the ability to comment until after we had raised the issue with the department.

Hon HELEN MORTON: The three groups that got a copy of the bill were those that had a current agreement that was to be impacted by the bill; that is, the Yawuru Aboriginal Corporation, the Miriuwung Gajerrong Aboriginal Corporation and the Murujuga Aboriginal Corporation. They got copies of the bill. Given that agreements they had entered into were going to be impacted by this bill, it is understandable that they were able to look at the bill in that kind of detail. I do not want the member to imagine that the other groups were not briefed and were not given an opportunity to have considerable input into the discussion that took place, because that is not so. The Kimberley Land Council and the Yamatji Land and Sea Council were provided in a meeting —

Hon Robin Chapple: In 2011.

Hon HELEN MORTON: No, this was in 2010.

Hon Robin Chapple: I was advised that the Yamatji Land and Sea Council did not have a briefing until this year.

Hon HELEN MORTON: I am sorry, but the information I have is that it received a briefing on 21 October 2010, at which the bill, the explanatory memorandum and the CALM act were provided and discussed with them.

Hon Robin Chapple: That is the KLC.

Hon HELEN MORTON: No; the KLC briefing was on the same day. The KLC was provided with a copy of the bill, the explanatory memorandum and the CALM act et cetera. The KLC provided its conditional support on that day, as did the Yamatji Land and Sea Council. Other groups had briefings in 2010 as well, but the member has not raised those matters so I will not go into that.

Hon ROBIN CHAPPLE: When did the Goldfields Land and Sea Council have its briefing?

Hon HELEN MORTON: The Goldfields Land and Sea Council had its briefing on 1 November 2010. Again, the bill, the explanatory memorandum and the CALM act were provided and discussed. The GLSC also indicated its support.

Hon ROBIN CHAPPLE: Given that we have all received the same letter from the very people the minister has mentioned, asking that the bill be held over for three months, does that not provide information to the minister that there is some degree of concern with the bill? The minister said that those people had signed off on the bill. They are now saying that they have further concerns, which have been articulated in the letter. They are now asking for the bill to be held off for three months.

Hon HELEN MORTON: I am sure the member is not inferring that those meetings did not take place.

Hon Robin Chapple: No.

Hon HELEN MORTON: That is fine. I just wanted to get on the record that we are all in concurrence that those meetings actually took place on the dates I have mentioned, and that the people concerned had the bill explained to them and the explanatory memorandum and CALM act given to them. The bill was tabled for them to go through. They provided their conditional support at those meetings. The concerns they have raised and have subsequently written about have been considered and, in most parts, addressed.

Hon ROBIN CHAPPLE: I have just been advised that the Goldfields Land and Sea Council had a briefing in 2010 but there was no actual discussion or explanatory memoranda; they were merely provided with the bill.

Hon HELEN MORTON: I was not sure whether I heard Hon Robin Chapple correctly.

The DEPUTY CHAIRMAN (**Hon Max Trenorden**:) I think you did hear him correctly.

Hon HELEN MORTON: Did Hon Robin Chapple say "I have just been advised," meaning in the past two minutes?

Hon Robin Chapple: Yes.

Hon HELEN MORTON: Is he suggesting that the explanatory memoranda was not provided?

Hon ROBIN CHAPPLE: I am advised that no explanatory memoranda was provided.

The DEPUTY CHAIRMAN: We need order here. The member should either seek information by interjection when the minister is on her feet or wait for the call. Minister, you have the call.

Hon HELEN MORTON: I am advised that in each of these meetings the bill was tabled, the explanatory memorandum was tabled and a marked-up copy of the CALM act was tabled. People did not take copies of them away with them; the copies were presented at the meeting where people went through them.

Hon Sally Talbot: Did the officer not leave the EM at the meeting?

Hon HELEN MORTON: Yes.

Hon Sally Talbot: Why?

The DEPUTY CHAIRMAN: Members, we have to deal with this formally.

Hon SALLY TALBOT: Why?

Hon HELEN MORTON: The answer is that the bill had not been introduced into the Parliament at that stage.

Hon SALLY TALBOT: I am probably interrupting Hon Robin Chapple's flow now, but I want to be absolutely certain. Is the minister saying the EM that was shared with the groups around that time in 2010, and the EM that Hon Robin Chapple and I were provided a copy with on 11 February are different only in minor detail? Our EM is 40 pages long. Was the EM they were shown the same length?

Hon Helen Morton: Similar.

Hon ROBIN CHAPPLE: I refer now to the matters pertaining to joint management with the Murujuga Aboriginal Corporation. Again, the Minister for Environment received a letter from the Murujuga Aboriginal Corporation and indeed met with the Murujuga Aboriginal Corporation quite recently. A number of issues were raised by the corporation. In the minister's comment last night, she indicated that the Murujuga Aboriginal Corporation's concerns had been considered. How have they been acted upon?

Hon HELEN MORTON: It is really simple. The Murujuga Aboriginal Corporation wants title to the land and it wants joint management. That is what the bill will provide.

Hon ROBIN CHAPPLE: My understanding is that they need to have a number of things resolved. The first is about the management plan. The Burrup and Maitland Industrial Estates Agreement Implementation Deed is supposed to be established by the management body. The Burrup and Maitland Industrial Estates Agreement states that there will be three members of the ABC and three representatives from DEC, as exists now, and they would come together and establish a management plan. We were aware that quite a while ago a sort of proposed Burrup Peninsula conservation reserve draft management plan 2006 to 2016 was presented to them. The Murujuga corporation rejected it and said, "Look we've had no consultation in that process, we will now go through a negotiation process, once we get the management plan, through the passage of this bill." I am aware that, a few days ago, another management plan rolled up on the doorstep of the Murujuga Aboriginal Corporation almost as a fait accompli. The Murujuga Aboriginal Corporation has asked me to ask the minister what input they had into that process, because they are not aware of any.

The DEPUTY CHAIRMAN: Hon Robin Chapple, we have a dilemma here because much of what you are discussing are matters of the second reading speech, which outlines the policy of the bill. We now should be debating the content of the clauses of the bill. We have had two or three goes at it. Whether meetings happen or not is immaterial at this stage of the process; it was a matter for debate on the second reading of the bill. I do not want to rule you out of order but I want to bring that to your attention.

Hon ROBIN CHAPPLE: Thank you, Mr Deputy Chairman. I am trying to ascertain that clauses within the bill deal with joint management. I am ranging over those clauses in the short title. There is quite a distinction of how management plans will be arrived at. A process has been going on for a number of years that this bill finalises. I am trying to ascertain whether the processes outlined in the bill and in the principal agreement will be upheld.

The DEPUTY CHAIRMAN: Debate occurs in this house sometimes about how we deal with the short title. In reality, we should be doing what the member has discussed during debate on the clauses and not necessarily during the short title. We need to move on. There are a lot of amendments on the supplementary notice paper for this bill, which should be debated when we get to the appropriate clauses. Does the minister wish to respond?

Hon HELEN MORTON: I was merely going to repeat my second reading speech about joint management plans, but I think people can read that in *Hansard*.

Hon ROBIN CHAPPLE: We will move on and I will deal with that under the relevant clause. I am waiting for the minister to provide the document that was presented to the traditional owners in the 2010 meetings, so I will leave it at this stage.

Clause put and passed.

Clause 2: Commencement —

Hon SALLY TALBOT: I have a very quick question: can the minister tell us what the government's intentions are with clause 2(b)?

Hon HELEN MORTON: This is a standard clause in bills. Basically, there are some regulations to be worked out, which is why the rest of the act will come into operation on a day fixed by proclamation. Different days may be fixed for different provisions.

Hon SALLY TALBOT: I assume that the minister's advisers might be able to give her a best guess. There is a lot of interest amongst the stakeholders about exactly when we can expect to see the provisions of this act begin to be put in place, so could the minister give us an idea about that? I remember that when we have debated other legislation, ministers were able to tell us; for instance, we were told that the Minister for Environment did not expect that the development assessment panels would begin operation for something like 18 months, if I remember correctly. I am just looking for some idea about time frames.

Hon HELEN MORTON: My advice is that we want to do it quickly to settle those agreements. The kind of time frame that people are talking about, although some people might not see it as quick, is six months. I think that that is actually quite quick for this sort of work.

Hon ROBIN CHAPPLE: Who will fund that process?

Hon HELEN MORTON: The state government.

Clause put and passed.

Clause 3 put and passed.

Clause 4: Section 3 amended —

Hon SALLY TALBOT: I have a question about marine parks. I am happy for the minister to defer my question to another clause, but this is the first clause in which the term "marine park" appears. I know that this is a matter that the Greens are also very interested in. I understand that the bill does not allow joint management over marine parks. Can the minister explain why that is the case?

Hon HELEN MORTON: I am not sure where the member got that information from. My advice is otherwise; it actually does allow joint management over marine reserves —

Hon Sally Talbot: Reserves?

Hon HELEN MORTON: Yes. A section 8A agreement cannot be entered into to manage Western Australian waters beyond the low-water mark. That is stipulated in clause 8 of the bill—namely, proposed section 8A(6). I think the reason for that is that before a marine reserve can be established, it has to go through extensive pre-reservation requirements under section 14 of the Conservation and Land Management Act. The approval requirements prior to a section 8A agreement are not comparable with the pre-reservation requirements under section 14 of the CALM act; however, a marine reserve vested in the Marine Parks and Reserves Authority can be jointly managed under a new section 56A agreement. These agreements are subject to joint management being addressed in the relevant proposed management plan and a joint management agreement being approved when the management plan is approved. The Minister for Fisheries and the Department of Fisheries had extensive input in the preparation of that part of the bill.

Hon SALLY TALBOT: I want to be absolutely clear. I know section 8A is not in the existing act, but if the minister looks at the agreements that are facilitated by proposed section 8A, can she confirm that it is possible under the existing act to have those equivalent agreements over marine areas?

Hon HELEN MORTON: I think this might be what the member is looking for: section 16 of the Conservation and Land Management Act enables an agreement over private land as if it were a marine reserve, but that is not being carried over under proposed section 8A.

Hon SALLY TALBOT: I know that; however, this is good because earlier in the debate I was going to raise the point about reflective listening and the minister is obviously doing it very, very well because she has just asked the same question as I. Does the question arise in the minister's mind about why that provision is being removed? If we are supposed to be facilitating joint management arrangements, why have we removed an existing right?

Hon HELEN MORTON: Section 8A agreements are not a substitute for reservation processes, and the tenure of an area subject to a section 8A agreement will remain unchanged. I refer the member to clause 8 and proposed section 8B(2)(c) and proposed section 8B(3)(a). Concern was raised during the drafting of the bill about the possibility of section 8A agreements pre-empting the section 14 pre-reservation requirements.

Hon ROBIN CHAPPLE: The minister may note that later we will oppose her amendment because we believe that it will become redundant. I wanted to flag that at this time because we have our own amendment. I move —

Page 4, after line 23 — To insert —

> ***Minister for Indigenous Affairs*** means the Minister to whom either the administration of the *Aboriginal Communities Act 1979* or the *Aboriginal Heritage Act 1972* is committed;

The Greens move this amendment because it is in connection with a subsequent amendment that Hon Sally Talbot will move, which seeks to add a reference to the Minister for Indigenous Affairs as the minister to be consulted. The government has given notice of a very similar amendment and we welcome that. The only outstanding question is: why does the government's amendment refer to the Aboriginal Affairs Planning Authority Act 1972 and not the Aboriginal Communities Act 1979?

Hon HELEN MORTON: As a preamble to that question, I put on the record that the government agrees with the necessity to insert a definition of the Minister for Indigenous Affairs in section 3 of the Conservation and Land Management Act 1984 because it will support amendment 1/8 in the name Hon Sally Talbot and, similarly, amendment 6/8 in the name of Hon Robin Chapple. The definition is not consistent when defining a minister who administers two acts. That is the reason why the government has brought in its own version of this. Hon Robin Chapple's proposed definition of the Minister for Indigenous Affairs also refers to the Aboriginal Communities Act 1979; however, the government's version replaces this with a reference to the Aboriginal Affairs Planning Authority Act 1972, because that minister's administration of the Aboriginal Communities Act has little relevance to the bill. Under the Aboriginal Affairs Planning Authority Act, the Aboriginal Lands Trust holds significant areas of land, some of which may ultimately be subject to the new section 8A management agreements provided for in the bill. For this reason the government opposes the amendment moved by Hon Robin Chapple, but I will move an amendment in due course.

Hon ROBIN CHAPPLE: By way of clarification, has the minister indicated that she will move her own amendment to reflect my amendment?

Hon Helen Morton: Yes.

Hon ROBIN CHAPPLE: Will that appear in clause 4?

Hon HELEN MORTON: It will be inserted in precisely the same spot as proposed in the member's amendment.

Hon Robin Chapple: Obviously, I do not have the latest version of the amendments.

Hon SALLY TALBOT: I refer to my amendment 1/8 in clause 8 which would insert the words "the Minister for Indigenous Affairs". A number of other places in the bill contain a list of ministers, but no reference to the Minister for Indigenous Affairs. Are we to understand that the minister is proposing to insert a reference to the Minister for Indigenous Affairs every time there is a list of ministers in the bill? I think that is what the minister will do, but I want to check.

Hon HELEN MORTON: Yes.

Hon ROBIN CHAPPLE: I apologise. These versions have been a bit of a moveable feast as we have negotiated with different stakeholders.

Amendment, by leave, withdrawn.

Hon HELEN MORTON: I move —

Page 4, after line 23 — To insert —

> ***Minister for Indigenous Affairs*** means the Minister to whom the administration of the *Aboriginal Affairs Planning Authority Act 1972* and the *Aboriginal Heritage Act 1972* is committed, or each of the Ministers to whom their administration is committed;

Amendment put and passed.

Clause, as amended, put and passed.

Clause 5: Section 4 amended —

Hon ROBIN CHAPPLE: I understand that the Aboriginal Heritage Act 1972 is undergoing considerable review. Is the minister aware of anything in the review status of that act that will affect this clause?

Hon HELEN MORTON: If the Aboriginal Heritage Act 1972 were amended or changed in some way, that changed position would affect the act, but obviously it would have to come to the Parliament for that to happen.

Hon ROBIN CHAPPLE: It is important that we bear that in mind when we see the outcomes of the review of the Aboriginal Heritage Act. I would like to point out that I had a further question on clause 4, but unfortunately I missed that.

Clause put and passed.

Clause 6 put and passed.

Clause 7: Section 5 amended —

Hon ROBIN CHAPPLE: This clauses proposes to insert in section 5(1)(h) of the Aboriginal Heritage Act "...whether solely or jointly with another person." Can I get an absolute description of who is "solely" and who is "jointly" and who are the other persons?

Hon HELEN MORTON: An example of "solely" would be the Marine Parks and Reserves Authority, and "jointly" would refer to the Marine Parks and Reserves Authority and any other party appointed under the management order issued by the Minister for Lands. An example of any other party in this respect would be an Aboriginal body corporate or a local government authority.

Hon ROBIN CHAPPLE: Could it be in this case a pastoralist or conservation body?

Hon HELEN MORTON: I draw Hon Robin Chapple's attention to the definitions at the beginning of the Interpretation Act 1984 —

> … person or any word or expression descriptive of a person includes a public body, company, or association or body of persons, corporate or unincorporate;

For that reason, technically it could include a pastoralist or the other entity that he mentioned. Whilst that is possible, technically it is not happening.

Hon ROBIN CHAPPLE: If it is a corporation, could it be a mining corporation?

Hon HELEN MORTON: Yes.

Clause put and passed.

Clause 8: Sections 8A, 8B and 8C inserted —

Hon ROBIN CHAPPLE: In proposed section 8A, can the minister identify the hierarchies of agencies in which these amendments will apply?

Hon HELEN MORTON: I am not absolutely certain from where Hon Robin Chapple has got this notion of a hierarchy.

Hon Robin Chapple: I am just assuming there must be one.

Hon HELEN MORTON: I do not think there is. I do not think the concept is a concept of a hierarchy. If we look at paragraph (b) for the definition of person responsible in proposed section 8A(1), it demonstrates that where a person or a body in this respect is involved they actually have to give approval. For example, if it is crown land, the land administration minister must give approval. Paragraph (b)(ii) states —

> the management body (as defined in the *Land Administration Act 1997* section 3(1)), if any, of the land under that Act;

It is subject to approval by the Aboriginal Lands Trust.

Hon ROBIN CHAPPLE: So the Aboriginal Lands Trust is at the top of that hierarchy?

Hon HELEN MORTON: It is not a hierarchy. Somehow the member has this notion of a hierarchy in his mind, but it is not a hierarchy. It is a provision that states that these people must give their approval. If it is land they are involved or have a role in, they have to give their approval. There is no hierarchy involved there.

Hon ROBIN CHAPPLE: So all parties have to give an equal approval? There is no case when somebody can give an approval and somebody else does not, but it still goes through?

Hon HELEN MORTON: The member is quite correct. They all have to give approval. It would not go through if there was a dissenting voice.

Hon ROBIN CHAPPLE: In relation to proposed section 8A(5), during our consultation we asked a range of questions of the minister and the department in the lead-up to this debate about why it is possible under the

current CALM act to have an agreement to manage private land as part of a marine reserve that will not be possible once the bill is passed. We have had those answers, but I am still not convinced. I would like the minister to attempt to explain further. I have here an email from the minister's adviser as recently as 15 March that states that there is a current provision in the CALM act that enables the CEO to manage private land as part of a marine reserve under section 16. It says no such arrangements have been put in place to date and this will be replaced by proposed section 8A, and it provides the rationale below.

I am advised the changes the minister has identified in section 26B(5) of the act are consequential amendments as a result of this change. However, the effect of the current section 26B(5)(b) will incorporate into other amended sections—that is, new section 8A and amended section 26B(4). We are less than clear exactly how that is going to pan out. I have asked the minister for the record to identify how, in relation to proposed section 8A(5), it is not possible under the current CALM act to have an agreement to manage private land as part of the marine reserve.

Hon HELEN MORTON: Obviously, I have already addressed this in a response to a question from Hon Sally Talbot, so I am going to go over some of this information again. The marine reserves vested in the Marine Parks and Reserves Authority can be jointly managed subject to joint management being addressed in the relevant proposed management plan and a joint management agreement being approved for the marine reserve. That is found in proposed section 56A.

It is the intention of the government to fully engage and involve Aboriginal people in marine park management over both existing and proposed marine parks. This is specifically provided for under the Yawuru agreement over the proposed Roebuck Bay marine park.

Furthermore, the government has committed to fully engage and involve the Dambimangari people with the management of the proposed Camden Sound marine park. Similar undertakings will be made to the Aboriginal communities in the Kimberley adjacent to the other two proposed marine parks—that is, 80 Mile Beach and north Kimberley marine parks. The Marine Parks and Reserves Authority has been consulted about the bill and supports the amendments that will allow for joint management of marine reserves. A section 8A agreement cannot be entered into to manage private land or crown land, including WA waters, as if it were one of the three categories of marine reserves subject to the CALM act. I refer to proposed section 8A(6). This has been done because before a marine reserve can be established under the CALM act it has to go through the extensive pre-reservation requirements of section 14 of the CALM act. The section 14 requirements are not comparable with the agreement to manage an area as if it were a category of CALM act reserve. Section 8A agreements are not a substitute for reservation processes, and the tenure of an area subject to an 8A agreement will remain unchanged. I refer to proposed sections 8B(2)(c) and 8B(3)(a).

Hon ROBIN CHAPPLE: I am aware that the Dambimangari have always requested a culturally appropriate consultation process in regard to the proposed marine parks and yet there is no process that has come forward in relation to that. Obviously, they need to get the Wanjina Wunggurr traditional owners together and discuss the creation of the new parks. How is this process going to now come into play, given that we have not been able to get there so far? There has been a marked lack of agreement from DEC to enter into a consultative process to date.

Sitting suspended from 1.01 to 2.00 pm

Hon HELEN MORTON: Prior to the break, I gave an undertaking to Hon Robin Chapple that I would ask my advisers to mark up a copy of the original explanatory memorandum with highlighter, demonstrating that the changes are non-material; that is, they are mostly changes due to typographical errors and the occasional numbering change. My advisers have done that manually during the break and have done it in good faith. I seek leave to table it for the benefit of Hon Robin Chapple.

Leave granted. [See paper 3122.]

Hon SALLY TALBOT: I hope the minister will bear with me. I know this is a complex issue and I am willing to admit that the failing may be on my part. I will have one more go at clarifying the reason for the exclusion of marine areas from the provisions in proposed section 8A. For one very brief period this morning I thought that I understood the minister's explanation, but I went over my notes during the lunchbreak and I am afraid that I am still unclear. I am keen to either substantiate or refute my suspicion that an existing power—an existing capacity—is being removed by this amendment bill. Perhaps I will put it to her as follows. I think the minister will agree—I think I am right—that the amendment bill exempts certain marine areas from section 8A agreements. I think we have got that far. The current act, unamended, has the provision for joint management arrangements over marine areas. If my first assertion is right—that marine areas are exempted from proposed section 8A—is that not the removal of an existing right? I understand that the minister is saying that joint

management arrangements will still be available under the amended bill but why exclude them from proposed section 8A arrangements?

Hon HELEN MORTON: I have an answer.

Hon Sally Talbot: The short answer is?

Hon HELEN MORTON: The short answer is yes.

Hon Sally Talbot interjected.

Hon HELEN MORTON: That is the short answer. The member asked me for the short answer, and I asked for the short answer too.

Hon Sally Talbot: So are you removing the existing provisions?

Hon HELEN MORTON: Yes; however, under current section 16, private land abutting a marine park can be managed as if it were a marine reserve, although that provision has never been used. It will be removed and replaced with proposed section 8A, which will enable private land to be managed under a different category, such as a conservation park, but not as a marine reserve. Does that it make it easier?

Hon SALLY TALBOT: The minister has given me exactly what I wanted, which was the concession that an existing provision will be removed, but is that the intention? Why do we need to remove that? Why do we not just leave that option open as it is under existing section 16?

Hon HELEN MORTON: I hope this is not going to make it more confusing, because I think that has better clarified it for me, too. Section 14 provides only a process for establishing marine parks. We are not replacing a reservation process of section 14 under proposed section 8A.

Hon SALLY TALBOT: My question is: why? Why would the government not want to leave the option open? There must have been a point at which somebody decided not to extend proposed section 8A to marine reserves. There must have been a point at which somebody said, "It would be a good idea to remove the possibility of this ever happening, even though it has never been done before." I am trying to understand why that decision has been made, because until we understand why, we are not really in a position to evaluate the consequences.

Hon HELEN MORTON: Section 14 is the process for establishing marine parks, and it is a very detailed and very comprehensive process. We do not intend to water that down or find an alternative way of creating a marine park. To create a marine park, people will still have to go through this section 14 process, and that should not be in any way diminished or undermined by a process that is just by general agreement between the people involved, which is what proposed section 8A is about. I think the member should feel comforted by the fact that there will still be a very substantial and rigorous process involved in establishing a marine park. Proposed section 8A is a far less rigorous process; it is by agreement with the parties concerned. I think the establishment of a marine park requires that level of process to be undertaken.

Hon SALLY TALBOT: Why is that different from the creation of a terrestrial park? There should not be an intent for us to be looking at the creation and establishment of marine or terrestrial parks as an either/or; we are not saying, in relation to marine parks for example, that section 14 is the rigorous way of doing it and proposed section 8A is the everyday, home brand version. I have not understood it that way at all. I thought that proposed section 8A was a way of giving a legitimate, meaningful basis to joint management arrangements, in which case I cannot see why we would not make the same provisions—after all, terrestrial parks still have their own section of the act when it comes to their establishment. Given that this bill will go to the other place so we will not lose the opportunity for amendment once the bill has gone through this place, I wonder whether it might be worth checking with the minister whether he would be prepared to entertain an amendment to proposed section 8A to include marine areas. I cannot see what we have to lose from that. I can see that there is a temptation when in government to remove opportunities of which people have never availed themselves, but in this case there is quite a fundamental principle at stake. I offer that as a possible solution.

Hon HELEN MORTON: Terrestrial parks are created under the Land Administration Act; marine parks are created under the Conservation and Land Management Act. No equivalent process exists for establishing terrestrial parks.

Hon Sally Talbot: There is under the Land Administration Act.

Hon HELEN MORTON: This bill, as the member knows, is amending other acts.

Hon ROBIN CHAPPLE: Before lunch, I had asked the minister about and hoped she would come back to the Dambimangari people who have always requested a culturally appropriate consultation process on the proposed marine park. There seems to have been a lack of process in that consultation. It involves getting all the Wanjina Wunggurr traditional owners together to discuss the creation of the new parks across the north Kimberley and a

systematic set of principles that they can apply to joint management for existing and new north Kimberley reserves. The key issue is: how will the process be any better under this bill than it has been to date? Again, because this touches on marine parks, will that process of negotiation be in any way altered? I am advised quite clearly that the process to date has been less than satisfactory. Will the amendments proposed in this bill improve that?

Hon HELEN MORTON: The creation of the marine park aligns with the aspirations outlined in the North Kimberley Saltwater Country Plan for the traditional owners in the Kimberley, in which plan the traditional owners expressed the desire to manage their saltwater country for conservation, including training and employment of Aboriginal rangers and management of tourists and visitors to the areas. The Department of Environment and Conservation has continued to seek meetings with the traditional owners.

Hon ROBIN CHAPPLE: I thank the minister for her response. I hope that will indeed now come to fruition, because I am advised that the groups involved in this process have not been enamoured with the communications to date. I am therefore hoping that this process will now improve.

Hon SALLY TALBOT: I have a couple of other matters I want to raise in general at this point in connection with clause 8 before we move to the specific amendments. I will take them slightly in reverse order because the substantive one relates to the proposed amendments on the supplementary notice paper and is about whether the holders of non-exclusive native title should be included in the provisions of the bill. However, before I get to that, I ask the minister to look at proposed section 8A(4), which reads —

> An agreement made under this section cannot apply to any land, waters, or land and waters to which a mining lease, or a general purpose lease, granted under the *Mining Act 1978*, applies.

I have not put a proposed amendment on the supplementary notice paper to this effect, as I wanted to sound out the minister before doing so. It seems to me that the intention is clear. The proposed amendment I ask the minister to consider does not alter the intention at all, but phrases it in a slightly different way. The intention is obviously to make it clear that agreements under proposed section 8A cannot in any way override, hinder or prevent anything happening under the Mining Act when a lease or a mining tenement is in place. I suggest to the minister that it might be preferable to simply make it clear that any sort of joint management agreement under proposed section 8A be—these are the words I ask the minister to consider—subject to the exercise of rights and interests contained in any relevant mining or general purpose lease granted under the Mining Act.

I think the minister would agree with me that those words in no way alter the substance of the clause. It does seem to me that phrasing it in that way would at least facilitate the possibility of interpreting it to mean that dialogue between miners, traditional owners, DEC and whoever else is involved in a joint management agreement should take into account each other's operations and interests. If I can take a gentle swipe at the miners, it would be to say that in my view a provision worded in this way would give the non-mining managers a better chance to talk to the miners about not impacting more than is absolutely necessary on the joint management regime.

Although I am not terribly confident that the minister will respond in a positive way to my suggestion, I will give an example of this. It is not a direct example, as we do not yet have joint management agreements. I am sure that the people at Alcoa would not mind if I shared with the minister an account of one of the changes they made as a result of the global financial crisis when they tried to keep wages and conditions constant but looked at ways of cutting other costs. They called all the workers in to talk about how they might cost save, and one of the things they found as a result of those discussions—somewhat astonishing that they had not had these discussions before—was that some of the access roads that they had built to the places they were mining, which were largely through state forest, did not need to be as wide or built to the standard to which they had been built. Alcoa, therefore, was able to save pots of money just by taking a second look at what it was doing. It seems to me that that is a very positive outcome of the kind that might very well be facilitated if we considered changing the phraseology of this particular clause.

Hon HELEN MORTON: Without having those words written down in front of me, it is difficult for me to give due consideration to whether the words the member has suggested are better than the words in the bill. However, the member would understand that the issue is that agreements under proposed section 8A will not be made over areas where a mining lease is in place. This is because the purpose of mining leases and general purpose leases under the Mining Act are incompatible with the purpose of an agreement under proposed section 8A. The words, therefore, in the bill are there to reflect that intent.

Hon SALLY TALBOT: In that case, I foreshadow that amendment, and I will write it out properly and circulate it while we are dealing with the rest of clause 8.

I also raise another matter in this context, and if the minister does not want to address it now, perhaps she can tell me when she raised it earlier. I do not recall whether, in her second reading response, the minister answered my

question about the economic return from land that was subject to an agreement under proposed section 8A. The example I specifically raised was carbon rights. If the minister did answer my question, perhaps she could tell me and I will read it in *Hansard*. The minister may not be familiar with this issue, as I appreciate this is not her portfolio—although I think care for the Great Western Woodlands could greatly facilitate the people she deals with in her mental health portfolio, as it is a very special place—but the issue of the potential for carbon rights in an area like the Great Western Woodlands is absolutely immense. As the minister would well know, one controversial aspect from the point of view of many conservationists is the significant number of mining leases that exist in the Great Western Woodlands. I am suggesting that we really need to bring ourselves into the twenty-first century when we talk about joint management agreements and the relationships between joint managers and other people with interests in the land.

Hon HELEN MORTON: I think the easiest way for me to respond is to say that nothing is stopping the economic benefit from flowing through to the traditional landowners in the way that Hon Sally Talbot has suggested. That would be part of what is made possible as a result of this agreement. The member gave the particular example of carbon trading. As the member knows, no carbon trading scheme is currently applicable in WA, but it could present a benefit in the future. Nothing in this legislation stops that benefit from flowing through to the traditional owners; in fact, the amendment act will enable it.

Hon ROBIN CHAPPLE: I have realised we are dealing with a section beyond where I have an amendment. I think it is important that I now move —

> Page 8, line 1 — To delete "exclusive".

This is a corollary to the amendment I intend to move to page 8 after line 7. The Greens cannot see why the Conservation Legislation Amendment Bill 2010 should exclude native title claim groups. According to my notes, the issues paper of 10 March 2011 from the Goldfields Land and Sea Council, the Yamatji Marlpa Aboriginal Corporation and the Central Deserts Native Title Service, which I will refer to from now on as the issues paper, stated —

> Section 8A(11) requires that all persons responsible for land provide written consent to section 8A in management agreements. Section 8A(11) provides that a section 8A agreement has no effect unless: (a) each person responsible for the land is either a party or has given a written approval to it; and (b) the minister has given written approval to it. However, the definition of "persons responsible" in section 8A(1) does not include non-exclusive native title holders. Nor does it include registered native title claimants. This means that an agreement could be reached between the CEO of DEC and a non-exclusive interest holder, such as a pastoral lessee with joint management, without the consent of non-exclusive native title holders or registered native title claimants. This exclusion of native title holders and registered native title claimants is a fundamental flaw in the bill and the government cannot say that the proposed amendments will be inclusive of the interests of native title holders. A section 8A agreement that did not have the consent of the relevant non-exclusive native title holders or registered native title claimants would at a practical level be unworkable and divisive. Furthermore, the failure to include non-exclusive native title holders and registered native title claimants under the section 8A definition of a person responsible may well be in breach of the Racial Discrimination Act 1975 given the definition treats other non-exclusive interest holders differently, for example, pastoral lease holders.

I spoke to the Kimberley Land Council over the lunchbreak and we touched on consultation again, which I do not really want to go back to, but it related to this very matter. According to my notes, the Kimberley Land Council said —

> The consultation entailed the director Peter Sharp holding a meeting with two staff members and talking through the amendments that he thought were important. We did not receive a copy prior. Then we had to plead for a copy of the amendments to be left with us for a short period of time, which was given on very strict conditions. We sent a letter to DEC identifying one of the key flaws for the non-recognition of non-exclusive native title holders and we would not agree to the amendments until this fundamental issue was addressed. As we were only given a very limited time to frame a response and no explanatory memorandum, we did not have the resources to fully investigate other issues.

Quite clearly, the Department of Environment and Conservation has received a letter identifying that the Kimberley Land Council wanted to see the amendments that we have flagged on the basis that "exclusive" should be removed and, therefore, it should apply to all claimants.

Hon HELEN MORTON: No-one is denying that an information exchange took place between the Kimberley Land Council and the Department of Environment and Conservation. Since that letter was received, further correspondence has gone back to the KLC and the request from the KLC was very clear. It has been considered,

but the government was not prepared to support the extent of what it was seeking. I do not know that we need to go over consultation again, because that has taken place.

Hon Robin Chapple: It was out of that consultation that the KLC raised with DEC the very points we are trying to deal with in this amendment; it did not support the bill as it stood.

Hon HELEN MORTON: That is right; that is what I have said. The KLC did not necessarily support the government's position on the bill. I understand that and that is fine. That is the situation.

In respect to the other comment that Hon Robin Chapple made about deleting "exclusive", the government does not support the amendment to the definition of "person responsible". Proposed section 8A(1) deals with crown land that may be subject to an 8A agreement. Only exclusive native title holders have native title rights and interests to possess, occupy, use and enjoy an affected area of crown land to the exclusion of all others, and for this reason they are included in the definition of "person responsible" for the crown land. I am advised that Hon Robin Chapple has been told that 100 times, but he does not accept it. That is fine, but that is the advice that I have. Native title holders are included in the definition of "person responsible" for the crown land. That is about as clear and as simple as I can make that.

The proposed amendment would incorrectly treat other native title holders as though they had the same right as exclusive native title holders. However, nothing in the bill prevents non-exclusive native title holders or, for that matter, any other Aboriginal persons being party to an 8A agreement. In relation to the comment the member made about the potential for it to be a breach of the Racial Discrimination Act, the State Solicitor's Office has made it absolutely clear that is not so.

Hon ROBIN CHAPPLE: By way of explanation, we have obviously had our own legal advice, as has the Kimberley Land Council and a number of other Indigenous parties involved in this process. There is a disagreement between our views, the views of the lawyers of the various native title parties and the views of the minister. We agree to part company on that; hence we have moved the amendment.

Hon SALLY TALBOT: The Labor Party supports this amendment. There are a number of different amendments on the supplementary notice paper. Hon Robin Chapple, with his cast of thousands, got to the amendments office before I could get there, with amendments that were very similar. This amendment would certainly have stood in my name had Hon Robin Chapple not beaten me to it!

I understand that we arrive at the place where we have got lawyers disagreeing with each other. It seems to me, as somebody who does not have a legal background, that if the act treats different non-exclusive interest holders differently, there is a problem. I think the minister herself would concede that that is indeed the case. A pastoralist is a non-exclusive interest holder, as is somebody who is a non-exclusive native title holder. There is a clear disparity in the way those different interests are treated under the bill. A non-exclusive native title holder is treated differently from a non-exclusive interest holder who might be a pastoralist.

What about people who are native title claimants? That is yet another category of people who are precluded. That leads to a situation that I do not think any of us in this place would welcome—the government bogged down in the courts for years arguing whether section 8A agreements trigger future act processes. I do not know whether the State Solicitor has ruled on this as well. I know it is not the tradition of government to share State Solicitor's advice with other parties, but it would be of enormous assistance to me if I could at least get a flavour of how that question was addressed by the State Solicitor. In everything that I have seen and all the people I have talked to, it is far from clear that this is as cut and dried as the government seems to present.

Hon HELEN MORTON: In a similar vein to my response to Hon Robin Chapple, the advice from the State Solicitor's Office is that it is that cut and dried. Only exclusive native title holders have native title rights and interests to possess, occupy, use and enjoy an affected area of crown land to the exclusion of all others. For this reason, they are included in the definition of "person responsible" in relation to crown land.

The matter of claimants was also raised by Hon Sally Talbot. I regard it as native title holders but not exclusive native title holders.

Hon SALLY TALBOT: Perhaps the minister could tell the house who she thinks would be disadvantaged by putting non-exclusive native title holders on this list. I just need the minister to clarify this. By implication, I understand the minister is saying the traditional owners themselves would be disadvantaged.

Hon HELEN MORTON: The member's question was: who might be disadvantaged?

Hon Sally Talbot: If it was expanded.

Hon HELEN MORTON: The simple answer to that is: anybody who has registered an interest in the land.

Hon Sally Talbot: So the TOs themselves?

Hon HELEN MORTON: If the traditional owners are the exclusive native title holders, they can veto the agreement. But it would not be acceptable for other bodies that are not considered exclusive native title holders to have that power over other interested parties.

Hon ROBIN CHAPPLE: I want to understand what the minister said a few minutes ago. The minister said that claimants are regarded as native title holders.

Hon Sally Talbot: Non-exclusive native title holders.

Hon ROBIN CHAPPLE: Yes; but the minister indicated that they were claimants regarded as native title holders. It did not mean to be exclusive. Is there any way to state in the bill that claimants are native title holders?

Hon HELEN MORTON: No. That is the definition in the Native Title Act.

Hon SALLY TALBOT: I want to pursue this point a little more. The minister did not respond to my question about the triggering of future act processes, which was part of my previous question. I want the minister to have a think about that. The minister is saying that the people with exclusive rights might be disadvantaged if people with non-exclusive rights were included in the agreement. Could it be that an agreement was reached between the Department of Environment and Conservation and a non-exclusive interest holder, such as a pastoral lease holder, for joint management, without the consent of non-exclusive native title holders?

Hon HELEN MORTON: The answer to that is no. The interests of the non-exclusive native title holders are enshrined in the Native Title Act. The requirement is for this process to include the consultation required within that Native Title Act.

Hon SALLY TALBOT: Let me just recap. We will do a bit more reflective listening here. The minister is saying that an agreement could not be reached between DEC and a pastoralist without the consent of non-exclusive native title holders?

Hon Helen Morton: If it impacted.

Hon SALLY TALBOT: So, the minister would have to involve the non-exclusive native title holders?

Hon HELEN MORTON: If it impacted on their native title rights, it could be; the member is correct.

Hon SALLY TALBOT: What is the rationale for excluding non-exclusive native title holders from the definition?

Hon HELEN MORTON: I appreciate that we are taking some time on this issue, because it is quite complex and we are meandering through a couple of different acts. The interests of these people are protected under the Native Title Act.

Hon Sally Talbot: Non-exclusive native title holders?

Hon HELEN MORTON: Yes. They are included in the consultation and the consideration, and they have the right to go on the land, but they cannot exclude other people from being party to the agreement. If their rights under the Native Title Act are not being appropriately upheld, the agreement is not valid, but they do not have the right to exclude other people.

Hon Sally Talbot: No; that's not the amendment that's been moved.

Hon HELEN MORTON: They would have that right if they were being treated in the same way as exclusive native title holders.

Hon ROBIN CHAPPLE: This might help. Will the claim group that is seeking only exclusive native title that has not yet been granted be treated as an exclusive native title holder under this bill?

Hon Helen Morton: No.

Hon Sally Talbot: That's a big problem.

Hon ROBIN CHAPPLE: That is a massive problem.

Hon HELEN MORTON: We cannot do anything that impacts on commonwealth legislation. Proposed section 8A(2) makes it clear that the section will not affect the operation of the Native Title Act in relation to any person who claims or holds exclusive native title or non-exclusive native title. The rights of the claimants will be protected under the Native Title Act. This bill will be applicable to native title holders who, it has been determined, have exclusive native title rights to the land.

Hon SALLY TALBOT: I put it to the minister—I am not trying to score points—that this is a very serious problem. The minister said that one of the complexities of this bill is that it meanders between several pieces of

legislation. With respect, I put it to the minister that that is exactly what the courts do; they meander between different pieces of legislation. If I have understood correctly what the minister has just said, non-exclusive native title holders have rights under the Native Title Act but those rights are not reflected in this amendment bill.

Hon HELEN MORTON: That is correct. It is left to the Native Title Act to protect those rights.

Hon SALLY TALBOT: Absolutely in accordance with this bill, the Department of Environment and Conservation could strike a joint management agreement with a non-exclusive interest holder without consulting the non-exclusive native title holders. The government would then find itself in court for years trying to satisfy the provisions of the commonwealth Native Title Act.

Hon Robin Chapple: And this amendment will fix that problem.

Hon SALLY TALBOT: Yes.

Hon HELEN MORTON: The state will comply with the Native Title Act.

Hon SALLY TALBOT: The government could comply with the Native Title Act right here and now by including non-exclusive native title holders in the definition of people to whom a proposed section 8A agreement could apply.

Hon HELEN MORTON: If we were to agree to the amendment to include non-exclusive native title holders, we would give them more rights than they currently hold. It is not the intention of the legislation to do that.

Hon SALLY TALBOT: It would be a dereliction of our duty as members of this chamber to simply shift the problem to another place. All I can say to the minister is that the government is creating a problem with the omission of this category of persons. There are a couple of different ways in which we might proceed. The government clearly will not support the amendment that we are about to vote on. I wonder whether there is another way of solving this problem, and it is not another way that I have had time to apply my mind to, because it did not occur to me that, once we had discussed this issue in some detail, as we have just done, we would have exposed the tensions between the two pieces of legislation. I wonder whether the minister would be prepared to postpone the debate to a later stage of today's sitting to seek the Minister for Environment's response; otherwise, all we can do is hope that when this bill is debated in the other place, somebody will see sense. It is not something that we should sign off on in this place, knowing that it is deeply flawed. The minister has acknowledged that there is a problem. If she thinks that there is a better way of solving the problem than the amendment we are considering, this might be the moment to flag that, and perhaps we could postpone the consideration of this clause until later in the committee stage or to a later stage of this day's sitting.

Hon HELEN MORTON: I have not acknowledged that there is a problem. It is the member who considers that there is a problem. In fact, I am inclined to believe that there would be more of a problem and that more difficulties would be created if we were to elevate the rights of the non-determined native title holders to the same level as those of exclusive native title holders. I do not believe that there is a problem. It is the member's concern that there is a problem. Certainly, the advice that I have had from the advisers, the State Solicitor's Office and others is that there is not a problem. This is something that the member is concerned about.

Hon Sally Talbot: The stakeholders are concerned about it.

Hon HELEN MORTON: And Hon Sally Talbot's stakeholders are concerned about it, but that is not a matter that has been brought to the government.

I am always impressed by how well informed Hon Sally Talbot is when she speaks compared with the State Solicitor, the legal advisers and everybody else in Western Australia! When she says that it makes no sense to this, that or the other —

Hon Sue Ellery: *Hansard* does not get sarcasm.

Hon HELEN MORTON: That is fine. I am very interested in the fact that Hon Sally Talbot absolutely —

Hon Sue Ellery: This will be recorded as if you are paying her a compliment.

Hon HELEN MORTON: I am paying her a compliment because she indicates that her perception of what is happening in this place is so significantly better than the advice that has been received from everybody else. She advises us that we should adjourn the house while we go down —

Hon Sally Talbot: While you go back and reread his advice, is what I am suggesting!

Hon HELEN MORTON: This concern is only that of Hon Sally Talbot; it has been brought to her attention. It is not shared by this side of the house and we will not be adjourning the house deal with it.

Hon ROBIN CHAPPLE: The issue comes back to the fact that this is not in any way a vexatious amendment. This is an amendment that has been sought by all the parties, with which the minister has had limited consultation. The minister has received comments about the issue in a number of letters. I am sure that those parties are not seeking to amend this clause because they want to be vexatious. They are trying to stop, at some stage in the future, an agreement being established between two parties: the government, vis-a-vis the Department of Environment and Conservation, and other parties being caught foul of national native title legislation. The amendment seeks to minimise problems. I again appeal to the minister that that is what this amendment is about. It is not about establishing anything new; it is an amendment sought by all the parties —

Hon Helen Morton: It is not sought by all the parties. You know it is not all the parties, so don't say that.

Hon ROBIN CHAPPLE: As far as I am aware, the people who signed off on the letter that the minister received quite clearly identified that. I have the letter to hand and I am more than happy to read out all the parties who signed the letter.

Hon HELEN MORTON: I will not dwell on this matter any further. The government will not, in this bill, be elevating the rights of claimants to the equivalent of the rights held by exclusive native title holders. The comments made by Hon Robin Chapple are not borne out by the letter that we have received, for example, from the South West Aboriginal Land and Sea Council, in which it has indicated support for the bill as it is.

Hon Sally Talbot: Because you would not expect it to be relevant to the South West.

Hon HELEN MORTON: We are going around in circles here and I do not think that there will be any further argument that can be brought to bear on this particular section of the clause. I do not intend to keep repeating myself.

Hon SALLY TALBOT: I make one last point about this amendment. We have talked about compensation mechanisms that arose because of the extinguishing of native title at Rudall River and the Gibson Desert. We have also talked about that critical period between the introduction of the two commonwealth acts; namely, the Racial Discrimination Act and the Native Title Act. It is in that context that the future act provision becomes relevant. One of the reasons I am arguing that we need to include native title holders, particularly claimants, in the definitions under proposed section 8A, is that registered native title claimants and non-exclusive native title holders can only exercise their rights under the future act regime if they are made aware of planned activities that might impact, at some stage in the future, on those native title rights and interests. It is not clear that the minister has taken any of that into account. The problem would be fixed very simply by the amendment under consideration.

Hon HELEN MORTON: I repeat that we have to comply with the Native Title Act. All of the compensation provisions are a matter for the Native Title Act and, as I have said previously, the State Solicitor's Office advises that there is nothing in this legislation that could breach or be of concern under the Racial Discrimination Act. Once again, nothing additional has been brought into this debate and consequently there is very little else to say on it.

Amendment put and a division taken, the Chairman casting his vote with the ayes, with the following result —

Ayes (12)

Hon Matt Benson-Lidholm	Hon Sue Ellery	Hon Linda Savage	Hon Giz Watson
Hon Helen Bullock	Hon Lynn MacLaren	Hon Sally Talbot	Hon Alison Xamon
Hon Robin Chapple	Hon Ljiljanna Ravlich	Hon Ken Travers	Hon Ed Dermer *(Teller)*

Noes (17)

Hon Liz Behjat	Hon Brian Ellis	Hon Robyn McSweeney	Hon Max Trenorden
Hon Jim Chown	Hon Donna Faragher	Hon Michael Mischin	Hon Ken Baston *(Teller)*
Hon Mia Davies	Hon Philip Gardiner	Hon Norman Moore	
Hon Wendy Duncan	Hon Nick Goiran	Hon Helen Morton	
Hon Phil Edman	Hon Nigel Hallett	Hon Simon O'Brien	

Pairs

Hon Jon Ford	Hon Col Holt
Hon Kate Doust	Hon Alyssa Hayden
Hon Adele Farina	Hon Peter Collier

Amendment thus negatived.

Hon ROBIN CHAPPLE: Given that the previous amendment was defeated, I will no longer pursue my next amendment on the supplementary notice paper because it has no function, which is unfortunate. However, I will move amendment 5/8 on the supplementary notice paper. I move —

Page 8, lines 16 to 19 — To delete the lines and insert —

> (4) If an agreement made under this section includes land, waters, or land and waters to which a mining lease, or general purpose lease, granted under the *Mining Act 1978*, applies, then that agreement may only be implemented to the extent that it is consistent with any current or planned activities under that mining lease, or general purpose lease, as the case may be.

The issues paper states that the rationale for this amendment is —

> Section 8A(4) provides that a section s8A agreement will not apply to any land to which a mining lease or general purpose lease is granted under the Mining Act 1978. The intention appears to be to make it clear that such agreements cannot prevent or hinder mining or general purpose leases being issued over land within the agreement area.
>
> **Proposed solution:**
>
> It would be preferable that the Bill simply makes it clear that a joint management agreement is subject to the exercise of the rights and interests contained in any relevant mining or general purpose lease granted under the Mining Act. This would allow the miner to proceed but facilitate dialogue between the miner and the joint managers to ensure that the miner's operations take into account and don't impact more than is necessary on the joint management regime.

That is from the issues paper, as submitted to the Minister for Environment and his representative minister in this house.

Hon SALLY TALBOT: I assure the Minister for Mental Health that if she were to agree to the first part of the amendment—to delete the lines—I am quite certain that Hon Robin Chapple and I can arrive at an amicable agreement about the words that could replace those deleted lines. The minister can see that we are clearly both on the same page. I refer the minister to the anecdote I related to her earlier in the debate about the improvements that were made to Alcoa's access roads as a result of talking to more people. If the minister were to accept that, I feel certain that we would get better environmental outcomes, as well as better outcomes for the social, cultural and heritage values associated with these types of joint management agreements. If the minister is happy to agree to delete the words, I am happy to negotiate with Hon Robin Chapple about what words can replace them.

Hon HELEN MORTON: Thank you, Mr Deputy Chairman.

Hon Sally Talbot: Say yes.

Hon HELEN MORTON: I can hardly believe the member would ask that question. Of course it is not the government's position. We will not support deleting the words and leaving it up to Hon Sally Talbot and Hon Robin Chapple to come together and develop a form of words that we, the government, might accept. That is not going to happen, but I appreciate the offer. However, as I said before, the government does not support the replacement of proposed section 8A(4). Mining leases and general purpose leases under the Mining Act are to be expressly excluded from section 8A agreements because the purposes of these leases are inconsistent with the purposes of the proposed agreements. They are not compatible and we are not seeking to make any changes to this section of the act.

Hon ROBIN CHAPPLE: I have a question about proposed section 8A(4), which states —

> An agreement made under this section cannot apply to any land, waters, or land and waters to which a mining lease, or a general purpose lease, granted under the *Mining Act 1978*, applies.

I assume that refers to a mining lease that has been granted before the joint management is established and after the joint management is established. Is that correct?

Hon HELEN MORTON: The simple answer is yes.

Hon ROBIN CHAPPLE: I thank the minister for that answer. Is there any difference between the way a joint management regime will be established for land surrounding a mining lease, an exploration lease or whatever when developing a joint management regime after a mine site is already established and when a joint management regime is already established and a mining interest comes in afterwards? It is my view that if the mining comes on afterwards, it can annul the joint management agreement whereas if it is done before, the joint management agreement can be established around it. I think that is an interesting point. I seek some clarification.

Hon HELEN MORTON: Under those circumstances, a section 8A agreement would no longer apply to the lease area. The section 8A agreement would have to be amended in accordance with the mining lease.

Hon Robin Chapple: So that is after?

Hon HELEN MORTON: Yes.

Hon Robin Chapple: What would happen if a mining lease existed and you developed a joint management around it? Is it possible to do that?

Hon HELEN MORTON: The member used the words "around it". A section 8A agreement is not possible when a mining lease is in existence but you can do it around it, as per the member's words.

Hon ROBIN CHAPPLE: We know that there are some temporary reserves in Karijini National Park. There is already a mine in there and it has the potential for some other mines. If we establish a joint management plan over Karijini with the native title parties, and there are mines in there already, how do we deal with the Marandoo mine? Can we have a joint management plan over Karijini because Marandoo exists in the middle?

Hon HELEN MORTON: I think the member knows the answer. The mine area would just be excluded from the section 8A agreement.

Amendment put and negatived.

Hon SALLY TALBOT: I think we have already discussed this amendment and I think the minister has agreed to accept it.

Hon Helen Morton: I would be frightened to think I agreed, but go on.

Hon SALLY TALBOT: I think she did. We are up to amendment 1/8, which is to put the Indigenous affairs minister on the list. The minister could say, "Yes, I agree."

Hon Helen Morton: I agree.

Hon SALLY TALBOT: I move —

Page 9, line 25 — to insert after "Products," —

the Minister for Indigenous Affairs,

Amendment put and passed.

Hon ROBIN CHAPPLE: I move —

Page 10, after line 14 — to insert —

(c) the eligible land has been the subject of at least a preliminary survey for potential new Aboriginal sites, as defined in sections 4 and 5 of the *Aboriginal Heritage Act 1972*.

The reason for this amendment is to ensure that the heritage values of any land subject to a joint management plan are known, at least in a preliminary way. We tend to talk about conservation all the way through this bill, and I am totally supportive of that. In many regards, and especially with something such as the Burrup and Maitland Industrial Estates Agreement, heritage is the pre-eminent issue. If there is not at least modicum understanding of the heritage values when establishing the management plan, the heritage values could be excluded. If there were to be joint management over areas such as Burrup, Windarling Peak, as we have had in the past, or Woodstock, the primacy would be the heritage values. There is nothing in this act that deals with this at the moment. That is the rationale for the insertion. Again, it is preliminary. It does not require a full detailed survey, just some understanding of the heritage values of the region within the management body. As we have already seen, the minister's amendments, my amendments and Hon Sally Talbot's amendments identify that the Minister for Indigenous Affairs should be a party to this process. Therefore, one would think that there is a need to have some heritage evaluation with respect to any eligible land, and it would have no effect unless these are tested.

Hon SALLY TALBOT: Labor will be supporting this amendment. I suspect that if the government does not support it, it will be because of the problems that have been going on for some time with the Aboriginal Heritage Act itself. We know from repeated questioning in estimates committees and other forums that governments so far have spent hundreds of thousands of dollars in consultancy fees trying to rework the Aboriginal Heritage Act. We have not seen any results of that yet.

It makes sense to ensure that these preliminary studies have been done, otherwise we will be entering into the cone of intractable problems that already exist under the Aboriginal Heritage Act but there is no process for identifying the right people for the country, particularly where native title has not been determined. This would not be an expensive measure to put in place. It would serve the same objective as many of the amendments that we are considering in association with this bill. It will facilitate an easier route to the agreement and a better outcome once that agreement is in place. It will minimise the likelihood of legal action down the track. We would certainly support this amendment.

Hon HELEN MORTON: At the outset, let me just say that the provisions of the Aboriginal Heritage Act protect sites, even unregistered ones, so the government will not support this amendment to proposed section 8A(11). The amendment is not appropriate in the context of this provision because proposed section 8A(11) sets out the requirements for approval of a section 8A agreement by specifying the role of persons responsible for the land subject to the agreement. That is, they must be a party to the agreement or have given their written approval to it, and the minister's written approval is required for the agreement to have effect. In any event, the envisaged survey requirements for potential new Aboriginal sites may be cost prohibitive, particularly to private landowners or lessees who wish to enter into a joint management agreement and would be likely to divert other management planning resources.

Hon ROBIN CHAPPLE: I am quite bemused by the minister's response. A consistent problem that dates back to, virtually, the establishment of the Burrup as an industrial estate is the failure to recognise heritage values. The establishment of the Burrup as an industrial complex was achieved by a ministerial statement made in this place after two botanists went to the area and reported that although the area was rich in biodiversity, they had seen only a couple of hundred carvings. I cannot remember the minister of the day's name, but he stated in this place that because there were a couple of hundred carvings only, it did not really matter, and therefore it did not need to be included in the conservation estate. I think Alcoa had the first salt ponds up there and it moved into the area, and, following that, the iron ore facilities went in. It was only after the event that we actually discovered the area was rich in heritage value. The amendment has nothing to do with native title or the Department of Indigenous Affairs process; its purpose is to make sure that the management is cognisant of those values in this process. I think hindsight identifies quite clearly that the failure to do this in the past for these areas has been an abject failure. I sincerely hope that the minister representing the Minister for Environment will take on this amendment because, again, it will do nothing to inhibit this process; it is an amendment to strengthen.

Hon HELEN MORTON: I will respond by again saying that the Aboriginal Heritage Act is there to protect and recognise heritage values, and this act will be required to take notice of the Aboriginal Heritage Act. We do not want another cost or hurdle for people to have to get over before they can actually enter into these joint management agreements.

Hon ROBIN CHAPPLE: This will not impose another cost. This bill does not establish the need for the Department of Indigenous Affairs, representatives of the Aboriginal heritage committee, or indeed the Aboriginal Cultural Materials Committee, to have any input into this—it is agreed that they have to comply. This is not about whether they have to comply or not, it is about whether they are cognisant of the issues pertaining to the land they are dealing with when they actually come to an agreement. Without this amendment, agreements will be able to be reached with a total disregard of the Indigenous heritage values of the area.

Amendment put and negatived.

Hon ROBIN CHAPPLE: I move —

> Page 11, after line 3 — To insert —
>
> (14) The CEO must, from the existing standing appropriations for his or her department, supply adequate funding for the process of developing an agreement under this section, and for the subsequent effective implementation of that agreement.

The reason for this amendment is that the bill does not address the necessity for adequate resourcing as a component of joint management agreements, pursuant to proposed section 8A or proposed section 56A, to ascertain Aboriginal cultural heritage values of land for the purposes of section 56(2) or proposed section 57A. Again, a fair bit of disquiet has been expressed to me about this. I think the minister has responded already by saying that the Department of Conservation and Land Management will be providing the funding for all of this, but this amendment will make it clear where those appropriations will come from and how the funding for these processes will eventuate.

Hon HELEN MORTON: The government does not support this proposed new provision being applied to section 8A agreements. The proposed amendment is not considered appropriate as the government of the day will determine the appropriations—albeit subject to parliamentary approval—and it will need the flexibility to respond to changing circumstances and the priorities of the day. The allocation of funding for a section 8A agreement will be the subject of negotiations between the intending parties to an agreement, which may or may not require the chief executive officer of the department to make a contribution. Any proposed agreements are likely to specify resourcing requirements that will need to be agreed to by all parties to the agreement.

Hon SALLY TALBOT: I think that means no, but I want to indicate that Labor will support the amendment. I thought the answer the minister gave yesterday was better than today's, because she said last night that money would be made available under the Kimberley science and conservation strategy, and presumably the Great Western Woodlands funding will include some money for these joint management programs. Of course what the

minister read out is technically correct, and of course the government through the appropriation bills retains authority over how the budget is spent. However, for the traditional owners and a great many other stakeholders, the government has done nothing in two and a half years to give us any confidence whatsoever that this will not be yet another case of out of sight, out of mind. The minister needs to know—I hope she will convey this to her colleagues around the cabinet table—that the opposition will be watching very carefully when it comes to the funding and proper resourcing of these joint management agreements. We know not only from watching what the minister is doing, but also from our own experience of government that the minister needs help from these people. The traditional owners throughout the state, from the Kimberley in the north to the South West in my electorate, are the people who know the country. They are the people who are there. They are the people who are in places where government bureaucrats cannot reach. There is an advantage in that if we enter into proper agreements that are adequately resourced, there is a huge benefit to be gained from the state making sure that this sort of thing works. However, I resile not one jot from my comments in the second reading debate, to which Hon Donna Faragher took exception, that there is absolutely no benefit to the state if all we are doing is dressing up people in a ranger's uniform, giving them a badge and sending them out to do this important work. The government, therefore, needs a substantial budget for training and a substantial budget for capital resourcing. To tell us that it will be up to the minister and the government to determine where the budget will come from is nothing but cold comfort in the light of this government's record. That is more a statement than a question to the minister, but it indicates that we will support the amendment.

Amendment put and negatived.

Hon ROBIN CHAPPLE: I move —

Page 12, lines 25 to 27 — To delete the lines.

Why, in a conservation and joint management bill, is a recreational activity—fishing—elevated to a status over a protected right? I would think that the important provisions of management were between the Department of Environment and Conservation and the individuals. Certainly mining, as we have agreed, has a right, but I do not know why fishing rights have some sort of right in this bill. I like fishing, but I do not think it needs this level of input in the legislation.

Hon HELEN MORTON: The government does not support the deletion of proposed section 8B(2)(i), which prevents proposed section 8A agreements from affecting any common law right to carry out recreational fishing on land agreed to be managed as if it were a state forest, a timber reserve, a national park, a conservation park or a nature reserve. Common law rights to carry out recreational fishing relate to those aspects of recreational fishing that have not been removed by statute; for example, by the Fish Resources Management Act and regulations made under that act. If those rights are to be affected, the fish resources legislation is the appropriate vehicle for that to occur.

Hon ROBIN CHAPPLE: I cannot see anything in the amendment that would affect those rights anyway. Pastoralists and other people who have rights to land can stop fishing activity in certain areas. Therefore, if issues of heritage values or whatever else were affected in specific areas of a joint management agreement, one would have thought those areas might have some exclusivity. I point to previous comments made by the honourable Premier when dealing with the Burrup. He said that he believes the northern end of the Burrup should be excluded from any activity other than activity of scientific value. Quite clearly, the Premier has a view that certain areas can be excluded from other uses, especially in relation to the Burrup and Maitland Industrial Estates Agreement. I have heard the minister's statement, but I am puzzled about why proposed section 8B(2)(i) is in the bill.

Amendment put and negatived.

Hon ROBIN CHAPPLE: I move —

Page 13, lines 16 to 18 — To delete the lines.

The reason for this amendment again is as above: it puts in place a process that might be against the interests of the management group and the Indigenous stakeholders, and indeed the Department of Environment and Conservation for that matter. I have therefore moved the amendment and will watch it as it is set to go down in flames again, but it is important that it be on the record.

Amendment put and negatived.

Hon ROBIN CHAPPLE: I move —

Page 13, line 27 — To insert before "On the recommendation" —

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

I need to explain amendment 29/8 on the supplementary notice paper, as it reflects the following amendment 30/8. I will therefore talk to the reasoning behind 30/8. The issues paper was produced by Indigenous stakeholders in a letter to the minister, of which the Minister for Mental Health has a copy. Proposed section 8C provides that the chief executive officer of DEC can be authorised by the government of the day—in effect, the DEC minister and the lands administration minister acting together—to take on the management of any unallocated crown land or unmanaged reserves, including land reserved for the use and benefit of Aboriginal people.

This provision could be used in a way that would undermine the possibility of proposed section 8A agreements and/or the possibility of an Aboriginal corporation taking on the management order. Furthermore, the extent of the CEO's management authority is vague and unclear. It may, for example, affect the exercise of native title rights and interests and, therefore, be a future act under the Native Title Act. The bill does not require any consultation at all prior to the authorisation of the CEO of DEC. This is unacceptable. There needs to be consultation with the relevant native title holders, the registered native title claimants and the Minister for Indigenous Affairs if the land in question includes an unmanaged reserve for the use and benefit of Aboriginal people.

Further, if the management arrangement proposed affected or impacted upon native title rights and interests, it could only validly affect native title if done pursuant to the future act processes under the commonwealth Native Title Act 1993. If native title rights and interests are affected by the arrangement, and the aforementioned processes are not used, then the arrangement will likely be invalid and native title holders not bound. In that instance the CEO of the Department of Environment and Conservation would need to seek the consent of the native title holders to the management arrangements; for example, in the form of an Indigenous land use agreement. The moving of the amendment at 29/8 to insert before "On the recommendation" the words "Subject to sections (3A) and (3B)" is purely to facilitate the further amendment standing in my name at 30/8, page 13, after line 32. Moving 29/8 on page 13, line 27, is crucial to the moving of the following amendment, 30/8.

The DEPUTY CHAIRMAN (Hon Jon Ford): Members, before we proceed, the member makes a valuable point. I think each of the amendments is dependent on each other. Perhaps Hon Robin Chapple could move 30/8 as well and we can deal with it as a job lot if that is the will of the chamber. The question would still be the same; that is, the words to be inserted be inserted.

Hon ROBIN CHAPPLE: I move —

Page 13, after line 32 — To insert —

(3A) Subject to section (3B), the Governor may only make an order under section (2) if he or she is satisfied that the Minister has first consulted —

(a) the relevant native title holders and registered native title claim groups (if any);

(b) the relevant registered Native Title Representative Body, if any; and

(c) the relevant registered Native Title Service Provider, if any.

(3B) In the case of an unmanaged reserve for the use and benefit of Aboriginal persons, the Governor must also be satisfied that the Minister has first consulted the Minister for Indigenous Affairs.

The DEPUTY CHAIRMAN: Members, we are now dealing with proposed amendments 29/8 and 30/8.

Hon SALLY TALBOT: I am particularly keen to see proposed section (3B) inserted. It seems not a sensible situation at all to endorse something when there is no consultation at all required prior to DEC's CEO making a decision. There needs to be consultation with the relevant native title holders. We have already canvassed the question of registered native title holders. I think Hon Robin Chapple and I have made it abundantly clear that we think the government has gone down the wrong track in the way it has interpreted the advice from the State Solicitor, particularly when the land in question might include an unmanaged reserve for the use and benefit of Aboriginal people. Clearly, the Minister for Indigenous Affairs needs to be involved. Although I am not optimistic that the minister will support the amendment, I ask that in addressing the amendment, she gives us some indication of whether there is another way we can include the Minister for Indigenous Affairs.

I go back to the points I made in the context of the second reading debate when I talked about the traditional owners from Dambimangari who would have a particular story to tell when it comes to the way the government has undertaken these consultations. I again point out that the substance and object of this amendment is to make sure we have Indigenous people—be they native title owners or claimants, people with some sort of registered interest—participating in the process and not simply tacked onto the end of a process of consultation. When it comes to determining how country that belongs to a group of people is managed and treated, the owners of that

country cannot just be treated on the same level as the general public interest. A very well intentioned government might want to improve the way it is doing things so that people are indeed consulted adequately, but there is no demonstration from the government that has happened in relation to this bill. Indeed, we have evidence quite to the contrary. I say enshrine the principle in the legislation and then we will have something in the future to which we can hold governments accountable; that is, about the participation of the traditional owners in the processes of determining how their country is managed.

Hon HELEN MORTON: The government does not support these amendments to proposed section 8C(2). The Governor can only make an order to place any eligible land under the management of the CEO and may specify the CEO's functions in relation to the management of that land if it complies with the future acts provision of the Native Title Act. An order under this section would be invalid to the extent that it is inconsistent with the provisions of the Native Title Act. The requirements for consultation with native title claimants are provided for under the Native Title Act, which the state must comply with.

In terms of the Minister for Indigenous Affairs being consulted, that could happen anyway as part of the role of cabinet and executive government. I think members are already aware that, apart from the requirements under the Native Title Act, consultation with traditional owners and others would be undertaken as a matter of policy to ensure that the process is compliant with the Native Title Act.

Hon SALLY TALBOT: Can the minister show me where this amendment is inconsistent with the Native Title Act?

Hon HELEN MORTON: It is a duplication of the processes. For that reason, it is not necessary. Perhaps "inconsistent" might have been a tad strong, but it is a duplication and unnecessary. It is irrelevant.

Amendments put and negatived.

Hon ROBIN CHAPPLE: We move on to amendment 31/8 standing in my name. I move —

> Page 14, after line 3 — To insert —
>
> (4) The making of an order under section (2) does not prevent or in any way hinder the future transfer of management to another body.
>
> (5) The CEO's functions pursuant to an order under section (2) shall not be exercised in a manner that affects the exercise of native title rights and interests.

The reasons given for this are the same reasons I gave for the previous amendment—this bill does not require any consultation at all prior to the authorisation of the CEO of the Department of Environment and Conservation. The native title parties that have signed the letters, which the minister has received, were concerned that without these insertions this section diminishes the intent of the Conservation Legislation Amendment Bill 2010.

Hon SALLY TALBOT: My comments will reflect those I made on the previous amendments. I do not think that the government has got it right with the evocation of the future act process. I cannot see any sense in endorsing a process in which authorisation for the use of unallocated crown land can be given prior to consultation taking place. The minister may say that that will not happen because all members opposite are good guys. We are back in the position that we have been in many times in recent weeks in which the government is saying "trust us" and we are asking, "Well, even if we trust you, why would we want to foreclose on events 10 or 20 years down the track?" By accepting this amendment, we are simply enshrining in law the principles of the need for consultation on which I suspect we all fundamentally agree. I point out to the minister, perhaps for the last time, that it does not really cut the mustard for a government or a bureaucracy to stand up and say that consultation with the stakeholders has been adequate, when the stakeholders unanimously say it has not been. There is a process to get to a point where the minister has done enough to satisfy the stakeholders, and she has not got to that point.

Hon HELEN MORTON: The government does not support these additional provisions to proposed section 8C. Proposed section 8C(4) is not necessary as there is no change to the tenure of land under a section 8C order. Proposed section 8C(3) enables the government to "vary or cancel an order made under subsection (2)". Subsequently, there would be no hindrance to a future management order being made by the minister responsible for the Land Administration Act 1997, and proposed subsection 8C(5) is not necessary as the state must comply with the provisions of the Native Title Act 1993.

Amendment put and negatived.

Clause put and passed.

Clauses 9 and 10 put and passed.

Clause 11: Section 17 amended —

Hon ROBIN CHAPPLE: I intend to move —

Page 14, lines 12 to 17 —

To oppose the clause.

The reason is not on the behest of the stakeholders or in any other form; it is purely and simply because clause 11 seems to be an erroneous and unnecessary part of the bill. Clause 11 seeks to amend section 17(2) of the principal act so that when it is proposed, for example, to cancel the purpose of a certain type of reserve, the proposal must be referred to either the vesting body or the body that has the care, control and management of the land. However, the current section 17(2) requires a referral to any associated body. I think the government has not grasped that the bill also changes the definition of an associated body. Clause 4, which has been put and passed, brings into the definition of associated body the idea of care, control and management. It would appear that if we were to pass clause 11, we would be passing a tautology.

The DEPUTY CHAIRMAN (Hon Jon Ford): I make the point that there is not an amendment to move; the member is simply opposing the clause.

Hon HELEN MORTON: I will respond to the comments made by Hon Robin Chapple. Obviously, the government continues to support clause 11 as it stands. Section 17(2) of the Conservation and Land Management Act 1984 needs to be amended to align its terminology with the Land Administration Act processes and terminology, because unlike most reserve categories, the miscellaneous reserves described in section 5(1)(h) of the CALM Act are not automatically vested in the Conservation Commission of Western Australia or the Marine Parks and Reserves Authority under section 7. Hence, section 5(1)(h) reserves can only be placed by Land Administration Act management order under the care, control and management of the Conservation Commission or the Marine Parks and Reserves Authority. The current wording of section 17(2) does not reflect this.

Hon Sally Talbot: If I could clarify this; is the minister saying they may be, but are not necessarily, vested in those bodies?

Hon HELEN MORTON: I was just making sure I have this absolutely clear for the member. All other categories are automatically under the Conservation and Land Management Act section 7, but section 5(1)(h) reserves must have the management order under the Land Administration Act.

Clause put and passed.

Clauses 12 to 15 put and passed.

Clause 16: Section 33 amended —

Hon HELEN MORTON: I move —

Page 20, lines 22 and 23 — To delete the lines and insert —

(2) If any land to which this Act applies or any section 8A land —

(a) is not the subject of a management plan; or

(b) is the subject of a management plan that, due to an exemption given under section 57A(2), was not prepared in accordance with section 56(2),

then,

Amendment put and passed.

Hon ROBIN CHAPPLE: Amendment 32/16 seeks to insert after the words "management plan" in line 23 on page 20 the words "that complies with section 56(2)". The issues paper indicates that proposed section 57A(2) will provide the minister with the discretion to approve a management plan without the responsible body having to ascertain the value of land to the culture and heritage of Aboriginal persons and without such values being addressed in the management plan in accordance with proposed section 56(2). This will apply in situations in which the minister considers that such a process may delay unreasonably the preparation of a management plan. Management plans exempted from compliance with proposed section 56(2) must be amended or replaced so as to comply with proposed section 56(2) within the period specified by the minister or, if no period is specified, as soon as is practicable. This proposed section has two key flaws. First, it does not require the responsible body to first use best endeavours to address proposed sections 57A(1) and 56(2); and, secondly, it does not set a maximum time period for such an exemption.

The DEPUTY CHAIRMAN (Hon Jon Ford): Order! I need to interrupt the member. The advice I have received is that the chamber has agreed to the previous amendment and so the appropriate time to move this amendment would have been during discussion on the previous amendment.

Hon ROBIN CHAPPLE: I am prepared to drop it.

The DEPUTY CHAIRMAN: I think the member will have to, otherwise we will have to recommit the clause. The member might want to move amendment 12/16.

Hon ROBIN CHAPPLE: Amendment 12/16 seeks to insert after the words "protects and conserves" in line 27 on page 20 the words "the scientific values of the land, the educational values of the land, and". The reason for this amendment applies also to the next two amendments. These amendments are intended to ensure that the scientific and educational values of land subject to a joint management agreement are recognised and protected insofar as they are compatible with the heritage and cultural values. Although amendments 12/16, 13/16 and 14/17 are to different parts of the bill, is it possible to move all three amendments at this time?

The DEPUTY CHAIRMAN: No, because the amendments are to different clauses, but the member can move the first two amendments.

Hon ROBIN CHAPPLE: I move —

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

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

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

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

Committee interrupted, pursuant to temporary orders.

[Continued on page 1574.]

Sitting suspended from 4.15 to 4.30 pm