

ABORIGINAL CULTURAL HERITAGE ACT — SURVEY GUIDELINES

**431. Ms L. METTAM to the Minister for Aboriginal Affairs:**

I refer to the minister's response to questions in budget estimates that the survey guidelines for the Aboriginal Cultural Heritage Act, which are crucial for industry to prepare for the 1 July start date of the new laws, had not yet been published.

- (1) Is the minister aware and can he confirm that the survey guidelines were in fact published on the department's website earlier this week, only to be taken down hours later?
- (2) If yes to (1), why were they taken down?
- (3) Was it because of industry feedback to the survey guidelines?

**Dr A.D. BUTI replied:**

(1)–(3) Yes, I was aware. They were up there for a brief time. That version should not have gone up; it was some issue that we discussed with industry. We have a very consultative process with industry and we want to make sure that industry is comfortable. That is being worked on with industry and will be put up in due course. I am glad the member for Vasse asked me about the Aboriginal Cultural Heritage Act. Yesterday, there was an article in *The West Australian* on Aboriginal cultural heritage.

**Ms L. Mettam** interjected.

**The SPEAKER:** Order, please!

**Dr A.D. BUTI:** Yesterday, an article was published in the paper with the Leader of the Liberal Party behind the president of the Pastoralists and Graziers Association, and he said —

*Point of Order*

**Ms L. METTAM:** The minister has answered the question to his best ability. He is now straying into other areas. Several members interjected.

**The SPEAKER:** Please pause for a moment. Because of the noise, I have not actually heard your point of order. Points of order, I remind members, are heard in silence. I will adjudicate once I have actually heard the point of order.

**Ms L. METTAM:** The minister is now going on his own political diatribe. I would like to ask my supplementary question.

**The SPEAKER:** I am not upholding that as a point of order. The minister has only briefly been on his feet in an attempt to answer the question. It is up to him to answer how he sees fit. I believe what he has said so far has been relevant to the question asked.

*Questions without Notice Resumed*

**Dr A.D. BUTI:** We are talking about the Aboriginal Cultural Heritage Act. I wonder whether the Leader of the Liberal Party agrees with Tony Seabrook that the act that she voted for should be scrapped. Does she believe that the act that she voted for in 2021 should be scrapped? Josh Zimmerman has been writing a lot on this recently. He wrote an article, I think, on Tuesday, and he said —

No one—at least no one credible—is arguing against the intent of the new heritage laws.

Is the Leader of the Liberal Party arguing against it?

**Ms L. Mettam:** We are not arguing against the intent of the heritage act.

**Dr A.D. BUTI:** So you are not supporting Tony Seabrook and that it should be scrapped?

Several members interjected.

*Point of Order*

**Ms M.J. DAVIES:** Point of order, Madam Speaker.

Several members interjected.

**The SPEAKER:** Order, please! I am going to be giving a member a call for a point of order, and I am again going to remind members that points of order are heard in silence.

**Ms M.J. DAVIES:** I know that the Speaker has provided guidance to the house previously that ministers are not to ask the opposition questions during question time; that is, in fact, our task.

**The SPEAKER:** There is a point to be made here. From time to time, members ask rhetorical questions for which they do not expect an answer. A rhetorical question is just part of a general speech, oratory or a response or the like. There is nothing wrong with rhetorical questions. Occasionally, when someone is prepared to take interjections or

members are prepared to have a bit of repartee, that is also allowed. On this occasion, I think the minister's first question was definitely rhetorical. Some of the others have been more individually directed at members. They have indicated that they are not intending to respond. Your opportunity here is to respond to the questions asked, something that you are doing, but I just remind you particularly not to repeatedly ask opposition members questions, especially when they have indicated that they are not answering them.

*Questions without Notice Resumed*

**Dr A.D. BUTI:** Thank you very much, Madam Speaker, I always look to your guidance and experience on the rules and orders of the house.

I think the member needs to tell the community where she stands, whether she supports the legislation or does not support the legislation and whether she is prepared to stand behind someone. Do members remember the posters against Julia Gillard in Canberra and the signs that certain politicians stood behind? If a member is standing behind someone, they have to tell the public whether they support them or not. We are talking about regulations, guidelines and the act. I was surprised by the headline in today's paper and the article that said that we were suddenly changing the definition of Aboriginal cultural heritage. As I stated in my answer yesterday, that is not the case. Intangible Aboriginal culture heritage has been in place since 1972. One would have only to refer to section 5(b) of the 1972 act to know that is the case. One would have only to go to the decision of the Supreme Court of 2015 to know that is the case. Section 5(b) of the Aboriginal Heritage Act 1972, which is the current legislation, states that it is to the protection of —

any sacred, ritual or ceremonial site, which is of importance and special significance to persons of Aboriginal descent;

The Barnett government in July 2013 sought to introduce guidelines to unilaterally determine that its interpretation was —

... a place to be a sacred site requires that it is devoted to religious use rather than a place subject to a mythological story, song or belief.”

The Supreme Court rejected that. Supreme Court Justice Chaney, in a very extensive decision—and members can go to paragraph 73 if they want to look at it; they should do some research rather than scaremongering—stated quite clearly that story and songlines are sacred sites that are protected under the 1972 act. We have not changed anything. If members read the headline this morning and read the article, they would think we have made major changes in the last three days. That is not the case.

**Mr R.S. Love:** You made none of those points on those very elements.

**Dr A.D. BUTI:** Your question yesterday —

**Mr R.S. Love:** You did not put forward any of those points at that time.

**Dr A.D. BUTI:** I said songlines. That is what I said yesterday in my answer when you asked me what it was. I cannot believe you!

**Mr R.S. Love:** Go back and look at *Hansard* of the consideration in detail.

Several members interjected.

**The SPEAKER:** Order, please, members!

**Dr A.D. BUTI:** He should be reading *Hansard*.

**The SPEAKER:** Pause for a moment please, minister. Leader of the Opposition, this is not a question that you have asked. We have already had a relatively lengthy answer. If we continue to have this repartee, and frankly if we continue to have points of order, that will limit the number of questions we get through today.

**Dr A.D. BUTI:** I am wrapping up now, Madam Speaker.

Yesterday, in the answer to the question that the Leader of the Opposition asked, in regard to the Premier and that we have changed the law, I said no. “Intangible” has been part of the legislation since 1972; it is just that we have expressly mentioned that word in the new act.

The member asked for examples and I said songlines and the sacred site at the top of the hill. That is in the definition. The member should look at the decision by Justice Chaney in 2015. That is what I said. The member must not have been listening.