

ABORIGINAL CULTURAL HERITAGE ACT — IMPLEMENTATION

Standing Orders Suspension — Motion

MR R.S. LOVE (Moore — Leader of the Opposition) [2.58 pm] — without notice: I move —

That so much of standing orders be suspended as is necessary to enable the following motion to be moved forthwith —

That this house calls upon the Premier to heed calls from the community and industry to delay the implementation of the Aboriginal Cultural Heritage Act 2021, noting his minister’s failure to consult with or prepare the community for 1 July.

Standing Orders Suspension — Amendment to Motion

MR D.A. TEMPLEMAN (Mandurah — Leader of the House) [2.58 pm]: I move —

To insert after “July” —

, subject to the debate being limited to 10 minutes for government members and 10 minutes for non-government members

Amendment put and passed.

Standing Orders Suspension — Motion, as Amended

The SPEAKER: Members, as this is a motion without notice to suspend standing orders, it will need the support of an absolute majority for it to proceed. If I hear a dissentient voice, I will be required to divide the Assembly.

Question put and passed with an absolute majority.

Motion

MR R.S. LOVE (Moore — Leader of the Opposition) [3.00 pm]: I move the motion. Over the last two weeks we have seen in Western Australia an unprecedented rise of concern about the introduction of an act of Parliament. I am not talking about the act so much as the regulations formed to enable the act to proceed and the implementation date of those regulations. We heard the minister say in answer to questions in this place today that there have been delays in the development of the regulations and it has taken long than expected.

If it is the case that the regulations have taken longer than expected—we know there were different iterations of those regulations before they were finalised—there is absolutely no reason why the minister cannot recommend to the Premier that there be a delay in the implementation of the act and the commencement of the regulations that will enable the act to begin.

We are not calling for the act to be stalled. Based on the regulations, we are asking for the implementation to be stalled. In the last few weeks we have seen a groundswell of concern. There are 29 000 Western Australians who have added their names to a petition in the other place, which will close tonight. I urge anybody who is concerned and wants to add the weight of their opinion to this matter to log onto the e-petition site and add their voice to that petition. That is the largest number ever of people who have signed an e-petition to the Legislative Council and it happened in two short weeks. It goes to show the level of concern that Western Australians have around the implementation of this act.

The member for Central Wheatbelt indicated that concerns were raised at Merredin yesterday. People feel that there is no industry-specific information. A lot of rural and regional landowners, mainly farmers, are going to these meetings and are not getting the type of information that they should. There is no industry-specific information. They are being told different things about whether or not they will need approvals to, for instance, move fences or put in new infrastructure. The departmental officers at the education sessions are apparently unable to clarify even simple questions, such as whether clearing trees off an existing line would trigger the requirement for a survey. That is the type of information people are entitled to get, quite clearly, when they go to one of these information sessions.

The member for Roe highlighted concerns resulting from an information session at Esperance attended by 600 people. Again, there was a lack of information specific to those areas, and people felt that they had not been given the information they need to carry on their business successfully. The minister and the Premier have referred to the mining industry as being supportive of the start date, but it may be saying that because it does not want to see more confusion than there already is about this issue. I know that many miners are not happy with the process that is being followed and concerned that they do not know the implications for their business going forward. They have real concerns about the level of risk they might be assuming as a business from 1 July.

I am getting the same information from other people, including those involved in the drilling industry, farmers and a range of stakeholders. It is about the level of risk they face going forward, given that the act has quite severe penalties and severe consequences for businesses that unknowingly transgress the new law and regime. The Premier

said that it is just the same as the old system; that is, if it was approved before, it will be approved now. That is not the information we are getting. We are hearing that there are new elements of what constitutes Aboriginal cultural heritage under the act, and we know that the act allows for the development of Aboriginal heritage going forward. It does not assume that everything is known at the moment and that there is a place to find the information needed to make an assessment.

People in the community are understandably concerned, but I am also concerned about the effect on our state if development is called to a halt for a number of months. People desperately need land to develop housing et cetera to help cure the housing crisis in Western Australia, yet developers are concerned about their ability to get the approvals necessary to undertake further land subdivisions and land developments. If those developments are stalled, it will affect the state for years to come. This is a matter of fundamental importance to the development of our state. It is a matter that the Premier should, in his new role, having come into the role only a few short weeks ago, have the foresight to look at and make his own assessment about the implementation time line, which was in place before he became Premier. It is clear that there is great concern about the implementation time line amongst a wide range of stakeholders and a great number of people within the Western Australian community.

I have written to the Premier asking him to consider a delay and we have asked questions in this house asking the Premier to consider a delay, yet we have not received a positive response or even an indication that he is weighing up the consequences that I have spoken about.

I urge the Premier to rethink and give the Western Australian community time to understand its responsibilities and his departments time to put in place necessary measures to enable a smooth transition into the new regime.

MS L. METTAM (Vasse — Leader of the Liberal Party) [3.07 pm]: I rise to support this motion. The WA Labor government has made an absolute mess of the 1 July start date of the Aboriginal Cultural Heritage Act 2021. Much has been made in this place about the parliamentary process for the introduction of this bill. It was rammed through Parliament, debate was guillotined and there was no support in the other house for this bill to go to a committee. Since ramming this law through Parliament, the government has made a mess of its introduction on a number of fronts. The guidelines are not ready, the website is not ready and the local Aboriginal cultural heritage services are not in place. These are three critical ingredients required for the fair transition to this act. That is of great concern for pastoralists, graziers, landowners, miners and a range of groups. Indigenous groups have raised fair concerns as well. The government has failed to run an effective public information campaign, it has failed to allay fears in the community and it has failed to provide a clear and concise message. We saw that last week. The Premier had to correct the record when he got it wrong in this place after answering a question. We saw the circus in the media with the minister saying one thing and being corrected by the department, which was saying something else, and then also contradicted by people from the department on the ground raising very real concerns about the level to which this government is ready, despite having had so much time—about two years—to implement these reforms. The member for Central Wheatbelt pointed that out today in her question on those issues raised at Merredin. Over 400 people attended the information session at Merredin. That is a shire of about 3 000 people. I can tell members that the feedback that I and the member for Central Wheatbelt have heard is not that these people left the information sessions with their fears or concerns allayed, as the Premier suggested in this place, but they left these information sessions in Esperance, Merredin and other places with genuine concerns about the lack of preparedness and the lack of information made available to landowners on the ground who genuinely want to do the right thing.

We have supported the intent of this legislation. We are not calling for the act to be abolished. The opposition supports the intent of what is being proposed. We are asking on behalf of the community for time—time to better explain the regulations and time to be better prepared for the applications flowing in—and that is why I support this motion.

MR R.H. COOK (Kwinana — Premier) [3.11 pm]: We will obviously go over a lot of the material and issues that we discussed in question time just now, but I want to apologise because I did not realise that members opposite were talking about an e-petition. I thought it was a proper petition. It is just an e-petition, is it? All right. That is fair enough. It is good to clarify that. I thought it was a petition in the traditional means.

It has been unlawful to harm Aboriginal cultural heritage in Western Australia for more than 50 years. I want to re-emphasise for the benefit of members present that nothing has changed in relation to that. That obligation remains as it always has. We have undertaken to embark on a process that has eluded governments for 30 years—that is, to modernise Aboriginal cultural heritage laws in this state to meet modern expectations and obligations as expected in a modern legal framework. The laws that were crafted in 1972 were modern at the time. Those fairly new sort of laws were probably wildly opposed by those opposite back in 1972, but the Labor government at the time, led by John Tonkin, was very proud of them.

But time has passed and it is appropriate that we undertake the important and careful measures to rewrite these laws and to bring them into a modern context. As members know, I have been involved in Aboriginal cultural heritage-related issues since the early 2000s through my time in Aboriginal land councils, and I can think of at

least five occasions on which governments attempted to undertake the task of modernising these laws. Getting to the point now at which we can implement modern laws to protect Aboriginal cultural heritage is an important achievement. It is one that comes not a day too soon. We need to make sure that we bring these about. I understand and I acknowledge that it represents a change and because of that there are questions in the community and there are questions within industry. That is appropriate. It is right that on behalf of their families, and for themselves and their industries and businesses they understand and that they cross-examine these laws to make sure that they do what we all want them to do—that is, to protect Aboriginal cultural heritage in a simpler and fairer way.

We can say to members of these communities that provided their actions do not impact Aboriginal cultural heritage, they will have no obligations under the new act. Most land activities will fall into that category. Nearly all activities will fall into that category. There are a number of exempt activities, too. They include maintaining existing infrastructure where there is no new ground disturbance. For example, a farmer replacing an existing fence will be exempt and will not need approval. It will also include undertaking like-for-like activities, being activities that are to the same extent, height and depth as occurred previously. Someone will still be able to undertake paddock work and plant crops on established farms, continue with existing mining activities and maintain existing water, electricity and other service infrastructure on a property.

Of course, we all know that all residential properties under 1 100 square metres are exempt from these requirements. As we were developing the new legislation, we listened to industry's concerns that the current system takes too long. It is for that reason that we have included statutory time frames that must be complied with by all involved parties, creating a streamlined process that will result in swifter approvals. These very important outcomes need to be taken into account. Farmers, the mining industry and all land users have long had these obligations to protect Aboriginal cultural heritage, and the new act simply makes the framework clearer, with better defined activities.

I want to stress that everything that land users are already doing will now be permitted under the new act. A farmer will not require approval to plant a crop, run livestock or replace a fence or other existing infrastructure. Existing mining activities and maintenance of infrastructure will also proceed without approval. In response to specific questions from people involved in property development, there is no need to stop work on projects that are already approved or underway provided that the 1972 act has been complied with. If the project represents no potential risk or harm to Aboriginal cultural heritage, no approval is required under the 1972 act and no approval will be required under the new act.

The risks to which the Leader of the Opposition referred are the same risks that exist under the current act. The Leader of the Opposition raised the prospect that this will somehow impact land development opportunities and the development of housing. It will not. There are no further obligations required in relation to this. As we know, most property developments are upon land that has already been extensively cleared and worked in relation to farming—market gardens are a great example—and, as a result, there is no extra burden for property development in that context.

We will continue to work with the industry, community groups and individuals to make sure that they understand that these new laws are ready to go. They have been developed and crafted over a number of years. They have been subject to exhaustive consultation and debate. The time to get on with a simpler and fairer Aboriginal cultural heritage protection regime is now. We will make sure that these laws are implemented smoothly from 1 July. A lot of work has gone into this legislation. We know that it will put an extra burden on Aboriginal communities because of time limitations and the requirement to be directly involved, rather than allowing bureaucratic cogs to turn. We know this will provide many people in the industry with the opportunity they need to make sure they can do the right thing for Aboriginal cultural heritage. The consultation will continue over the coming weeks and months in an educative, collaborative and partnered way to make sure that we can implement these laws smoothly.

DR A.D. BUTI (Armada — Minister for Aboriginal Affairs) [3.18 pm]: In the time that I have left, I refer to an opinion piece in today's paper by Emma Garlett. I enjoyed this article more than the one below it in the paper! The headline is "Emma Garlett: Don't be fooled by scaremongering over cultural heritage laws". The first sentence is —

Change can and does bring out the worst in people.

Unfortunately, I think it has brought out the worst in the opposition. Further on she says —

The new Aboriginal Cultural Heritage Act comes into effect from July 1.

With the Aboriginal heritage laws changing, we need to remember that getting the law where it is now required extensive consultation which means the majority of pastoralists, miners, Aboriginal groups, land users, community groups and individuals are supportive of the new laws and welcome the change.

...

The change in cultural heritage law is in response to State-wide consultation and community expectations.

Mr Shane Love; Mr David Templeman; Speaker; Ms Libby Mettam; Mr Roger Cook; Dr Tony Buti

The new laws are a step in the right direction to rectify the power imbalance in cultural heritage decision making and the failure of the law to allow for Indigenous people to be adequately heard, the remnants of a legal system which excluded Indigenous interests.

The new laws allow for more procedural fairness in decision-making.

...

So, this change may seem like a lot; to be given the same rights as others in law. Change is scary for everyone, especially those who have been so disempowered and downtrodden.

Now, to be given a slither of power may cause an identity crisis as they have been groomed to be told what to do for so long.

Secondly, A change in law means not everyone will agree. It is impossible.

There is a minority of groups which don't want to include Aboriginal views, and this has been seen in numerous articles published. But remember, those same people probably didn't agree to laws changing and would have voiced that already to Government.

The new laws provide an opportunity for Aboriginal people to be seen as equals and have input into decisions which affect them in the same way as other groups.

Don't get fooled by the few who want to ruin it for the rest. And remember, the new cultural heritage laws are years in the making. Why should it change for a few loud voices who want to delay progress in Australia?

I just ask the opposition to work with us to allay those fears that are out there, like the Urban Development Institute of Australia, which produced a guide for its members. Some of its members are concerned, but the UDIA sat down with us and produced a user guide. Work with us and we can allay a lot of that scaremongering and a lot of those fears.

Division

Question put and a division taken, the Deputy Speaker casting his vote with the noes, with the following result —

Ayes (6)

Ms M.J. Davies
Dr D.J. Honey

Mr R.S. Love
Ms L. Mettam

Mr P.J. Rundle
Ms M. Beard (*Teller*)

Noes (45)

Mr S.N. Aubrey
Mr G. Baker
Ms H.M. Beazley
Dr A.D. Buti
Mr J.N. Carey
Mrs R.M.J. Clarke
Ms C.M. Collins
Mr R.H. Cook
Ms L. Dalton
Ms D.G. D'Anna
Mr M.J. Folkard
Ms E.L. Hamilton

Ms M.J. Hammat
Ms J.L. Hanns
Mr T.J. Healy
Mr M. Hughes
Mr W.J. Johnston
Mr H.T. Jones
Mr D.J. Kelly
Ms E.J. Kelsbie
Ms A.E. Kent
Dr J. Krishnan
Mr P. Lilburne
Ms S.F. McGurk

Mr D.R. Michael
Mr S.A. Millman
Mr Y. Mubarakai
Mrs L.M. O'Malley
Mr P. Papalia
Mr S.J. Price
Mr J.R. Quigley
Ms M.M. Quirk
Ms R. Saffioti
Ms A. Sanderson
Mr D.A.E. Scaife
Ms J.J. Shaw

Ms R.S. Stephens
Mrs J.M.C. Stojkovski
Dr K. Stratton
Mr C.J. Tallentire
Mr D.A. Templeman
Ms C.M. Tonkin
Mr R.R. Whitby
Ms S.E. Winton
Ms C.M. Rowe (*Teller*)

Question thus negatived.