ABORIGINAL HERITAGE — ARCHAEOLOGICAL SITE PROTECTION

Motion

HON ROBIN CHAPPLE (Mining and Pastoral) [1.04 pm]: I move —

> That this Legislative Council debate the failure of the nation and the state of Western Australia to protect some of the world's oldest Aboriginal and archaeological sites and proffer ideas to improve the situation.

I rise to speak today on this motion and, in doing so, I will briefly address the subject matter that has led us to this situation—that is, the destruction of Juukan Gorge. But the debate should be about much more than that. The debate should be about the systemic problems that have led to this situation and should not be about recriminations or, indeed, who is better than anyone else in managing Indigenous affairs. I do not want this debate to be about apportioning blame or about political jousting, but about traditional owners having free and unfettered decision-making in respect of their land.

Before I go any further I really should acknowledge the traditional people whose lands we are talking about. These are the people who cover the area we call the Hamersley Range uplift. These are the Ngarluma, the Yindjibarndi, the Banyjima, the Nyiyaparli, the Gumala, the Ngarlawangga, the Yinhawangka, the eastern Guruma, the Puutu Kunti Kurrama and Pinikura and the Kuruma Marthudunera people. I wish to acknowledge their elders, past, present and emerging.

We were all pretty well shocked when we first saw the press release from the Puutu Kunti Kurrama Pinikura Aboriginal Corporation, released on 25 May, which referred to the destruction of the Juukan Gorge caves, Brock-20 and Brock-21, on 24 May. It is an interesting document, and I will not actually go through it, but one of the fundamentals was that by releasing this document, the PKKP had breached a contract, and I want to turn to that now.

In the lead-up to the destruction, a number of things had happened. There had certainly been quite a bit of communication between the PKKP and Rio Tinto. The PKKP was reassured on 28 October 2019 by Rio Tinto that there were no plans to mine the area. Since the PKKP established its cultural heritage unit in January 2019, it had had ongoing discussions with Rio Tinto but, unfortunately, little had resulted in any communication back. Rio obviously knew all about this; it had copies of the communication.

I found out from a question asked in Parliament that there had been a conversation between the PKKP and the registrar on 19 May, but rather than the department of Aboriginal affairs advising the minister about the issue, it advised Rio Tinto. That is very interesting when we consider that question. I refer to question without notice 541. Part of the answer states —

> At the end of the meeting on 19 May 2020, the advisers to PKKP sought confirmation of their understanding of the section 18 consent issued for the Brockman mine in 2013 …

It further states —

> The department is aware that Rio Tinto has an established agreement with PKKP. Subsequent to the meeting, the department contacted Rio Tinto to ensure that it was aware of the meeting with PKKP advisers.

That is very telling, because by doing that, it alerted Rio Tinto to the fact that there were problems, and that the PKKP had, in fact, breached the agreement.

A number of ethnographic reports were done, including one by Heather Builth in 2013 to the Aboriginal Cultural Material Committee about a proposed section 18 application, which I will come to later. I note that no statement in that report identified that the traditional owners were opposed to it, and there is a reason for that; namely, the contracts signed subsequent to the Indigenous land use agreements prohibit a traditional owner who has signed the agreement from raising any objections. I will come to that shortly. The two sites were desecrated—namely, Brock-21 and Brock-20, which are sites 22298 and 22299. They are on the Aboriginal heritage register and appear in 2013 at the time of the section 18 application. That leads me beyond that issue. I want to park that; that is the scene setter. The issues are around Juukan and Djadjiling Range, which is the BHP site, but it always goes back to the Aboriginal Heritage Act 1972. It came about because of the Weebo case in which some artefacts or stones of high cultural significance were removed from a site and attempted to be sold, I believe, in a shop in Leonora, which created quite a furore. As a result, the Museum's department that had carriage of Aboriginal affairs at that time combined with a number of people to draft the 1972 act. I will quote from a paper by Mike Robinson, who was an early member of the ACMC and was at one stage its registrar. He stated —

> "The Weebo case hastened the drafting of the Aboriginal Heritage Act and the Weebo site itself became an exemplar for the definition of an Aboriginal site. The description of a site contained in section 5 of the

> act and the values to be taken into account when evaluating a site in section 39, reflected the evidence that emerged about Weebo and why it was of significance to Aboriginal people."

That gives members an idea of how the act came about. Amendments have been made to the act, including those made by administrative decisions.

I turn to an evaluation of the act as it existed some time later by David Ritter, who was originally one of the directors of the Yamatji Land and Sea Council. He went on to do a number of things and is currently, I believe, working in the eastern states. He did an analysis of how it all fails, and the last part of his document states —

> What a critical legal analysis of the *Aboriginal Heritage Act* demonstrates is that the *Aboriginal Heritage Act* does not protect Indigenous interests, rather to the moderate extent it acts to prevent non–Indigenous people from disturbing Aboriginal places and materials that the non–Indigenous community regards as being worthy of such preservation. It is legislation by the non–Indigenous community for the non–Indigenous community that creates a superficial veneer of protection for Aboriginal interests. The result is that the colonising power can continue to do with Aboriginal places and materials exactly as it wants. Far from being an instrument for Indigenous power, the *Aboriginal Heritage Act* is an instrument for the ongoing colonisation and subjugation of Indigenous people that denies the legitimacy and validity of Aboriginal people making political decisions about their own land.

I refer to a document produced by Philip Moore, a fairly eminent anthropologist and archaeologist, which states —

> Aboriginal people in many parts of the state expressed concern that the Act was a way of managing the destruction of their heritage rather than means of protecting it

That is reflected in Seaman 1984.

Over the period that I have been in this place a number of things have changed. The ACMC is literally on a hiding to nowhere. It has a lot of work to do and not enough hours in the day to do it.

I refer to a datasheet that I have in front of me, which states that between January and June 2011, 729 sites were reported. Of those, 317 were assessed by the ACMC, and 254 of those 317 were assessed as sites. By January 2014, some three years later, the number of sites reported went up considerably to 1 085, of which 416 were assessed by the ACMC and only 24 determined as sites. A massive variation of what was considered a site occurred in that period. Hon Peter Collier will know that I was banging on about that at the time, but there were issues way beyond our control. The ACMC deals with lots of site issues, but when it comes to mine sites, I refer to an answer provided by Hon Ben Wyatt to a question I put. I make the point that I have great respect for Hon Ben Wyatt and countenance him as one of my friends. The ACMC considered 463 sites in respect of mining issues between 2010 and the time when I asked the question, which was on 18 March this year. Of those sites, the total number was 463 and none were objected to by the ACMC. The damning statement is contained in part (b), which states —

> This confirms what I have consistently highlighted. The obligations under the Aboriginal Heritage Act 1972 are not an impediment to the effective operations of the mining industry, particularly when mining companies enter into positive consultation with traditional owners.

Therein lies the problem. It is also interesting that the department of Aboriginal affairs is more concerned about the effect that its legislation has on the mining industry than where we go to from here.

My friend Liz Vaughan has authored a number of documents. She has a website called the Aboriginal Heritage Action Alliance on which she has written extensively. She is a dear friend of mine and partner to Francis Woolagoodja. They currently live in the Kimberley but I understand that they are moving to Derby very shortly, which will be quite close to me. The first problem that emanated was the Aboriginal Heritage (Marandoo) Act 1992. It passed through both houses of Parliament in two days. I refer to the comments made by Hon Norman Moore. I think Hon Peter Collier will find it quite interesting that I support the comments of Hon Norman Moore, who said —

> What a disgrace it is that this Parliament is called together for one day in an attempt to address one of the most significant and difficult social problems faced by this community and to pass this legislation, the Aboriginal Heritage (Marandoo) Bill, in an attempt to overcome a significant problem related to the development of a major resource project in Western Australia; that is, one day to try to deal with two major issues affecting the whole of Western Australia.

He was fairly critical of the passage of the legislation, and other issues came out of that. Quite clearly, there were problems about accessing country at Marandoo and threats of legal action. The company had been informed at an earlier stage. The Legislative Council *Hansard* of 6 February 1992 states —

> The company was informed at an early stage of its requirements under the Aboriginal Heritage Act that anthropological and archaeological work would have to be undertaken.

The company provided that information. The *Hansard* continues —

> The ACMC could not make a recommendation to the Minister because the archaeological information provided by Hamersley Iron was either inadequate or incomplete.

The government of the day sought to introduce the Aboriginal Heritage (Marandoo) Bill, which I hope will be rescinded very shortly, to take away oversight of the department of Aboriginal affairs and, indeed, to prescribe, by the nature of the act, that a section 18 consent had been granted over the whole area. There were issues in relation to the 14 caves that were to be investigated and a number of articles had been written about a couple of the caves being destroyed before archaeologists could get in and do the work. That people would still be able to go into the area and deal with those issues had been enshrined in the second reading debate on the bill. A statement attached to the second reading speech, which we would call an explanatory memorandum today, includes an agreement that reads —

> Further, the Government has, in providing consent to the Project under Section 18 of the Aboriginal Heritage Act 1972, ensured that three important Aboriginal sites within the Project area will be exempt from this Bill and will be subject to the provisions of said Act …

I know the traditional owners quite well; they are good friends of mine. Unfortunately, one passed away a couple of days ago—Nyaparu Parker. The word "Nyaparu" is used to dismiss a person's first name for a period of at least six months. I have spoken to these guys and many other people, and they do not know whether these sites still exist, are under a section 18 consent or whatever.

That in itself was a very sorry time for the development. I also want to talk about the Indigenous land use agreements and contracts that Indigenous people have to sign. In this process I put out feelers to a number of Aboriginal corporations and other parties—archaeologists, anthropologists, former workers in the Aboriginal Cultural Material Committee and former staff members of the Aboriginal heritage department—and I got a lot of feedback. I cannot disclose the source of some of that feedback because doing so would indicate that the source was breaching the agreements that they had struck. Feedback from the Pilbara mob is that the Rio Tinto agreement releases it from any actions, claims, demands or proceedings of any kind under any law, including the Racial Discrimination Act 1975, the Native Title Act 1993, the Aboriginal Heritage Act 1972, the Fair Trading Act 1987, the Trade Practices Act 1974, the Environment Protection and Biodiversity Conservation Act 1999, the Environmental Protection Act 1986, the Mining Act 1987, the Aboriginal and Torres Strait Islander Heritage Protection Act 1984, the Rights in Water and Irrigation Act 1914, the Land Act 1933 and, finally, the Land Administration Act 1997. Having entered into these agreements, the traditional owners are hamstrung. They also suffer because the contracts that they sign have a nondisclosure clause. That is the very point about what the PKKP Aboriginal Corporation did when it released its media. I do not know whether Rio Tinto has sought to take any action against the PKKP for doing that.

HON JACQUI BOYDELL (Mining and Pastoral) [1.25 pm]: I rise to make a contribution to the debate on the motion that Hon Robin Chapple has brought to the attention of members of the Legislative Council today. As the member outlined in his contribution, this motion was probably driven by recent activity in this space and the exceptionally unfortunate incident with Rio Tinto. I am sure that hurt is being felt on both sides of that argument. I have no doubt about that.

I want to put on the record my interpretation of some of the events occurring in this space in relation to the review of the Aboriginal Heritage Act and what exactly a section 18 consent means. It is not only the mining industry that uses section 18 consents; even government departments—for example, Main Roads Western Australia—could potentially use a section 18 consent. I am going to focus on what a section 18 consent is, the steps the mining industry takes to engage with local traditional owners, particularly those in the Mining and Pastoral Region, and the complexities and emotions around this issue. There is no doubt it is an exceptionally emotive and sensitive topic and I want to give due regard to that in the chamber today. I absolutely respect the cultural significance of these sites to Aboriginal people and to Western Australians.

During the previous Liberal–National government, Hon Peter Collier as Minister for Aboriginal Affairs sought to review the Aboriginal Heritage Act. It was a complex process. At the time, Hon Brendon Grylls and I were particularly involved in that process. I recall attending a meeting in Kalgoorlie of traditional owner groups from the goldfields region about the Aboriginal Heritage Act review. The meeting was well attended and there was a lot of emotion in the room. I think that goes to the heart of the issue. When governments start to review legislation like the Aboriginal Heritage Act, we see the sometimes very fraught nature of that debate. I recall it was certainly displayed at that meeting. These are challenges for governments. There is a requirement for legislation on the protection of Aboriginal heritage sites—absolutely—but there has to be a way in which both industry representatives and traditional owners can have their voices heard in that process. To some degree, a section 18 application is how we get to that point under the legislation, but particularly mining companies spend years consulting with traditional owners before a section 18 application is lodged. There would be years of consultation and engagement with

traditional owners and a number of surveys conducted over a long time. In my experience, generally, there has been an enormous amount of engagement in this process from local traditional owner groups.

Ultimately, the mining industry has the same principle in mind, which is to protect culturally significant heritage sites because there is no win for anyone, as we have seen in the media in relation to the Rio Tinto story. There was a miscommunication and a misunderstanding and issues arose and not everyone was on the same page. Consultation and communication is the key in the space—there is no doubt about that.

In March 2018, the Minister for Aboriginal Affairs, Hon Ben Wyatt, announced reform to the Aboriginal Heritage Act. He announced a three-phase component to that reform. The act has remained largely unchanged for 45 years. At the time that Hon Peter Collier undertook a review of the act—which I am sure he will speak about—there was a definite feel for a need for change in this space. There is absolutely no doubt about that. We are up to the second phase of the consultation on the current reform process and although it was the government's intention to release the review of the act for public consultation in early 2020, with the issue of the COVID-19 pandemic, phase 3 of that consultation has been deferred. The public will have an opportunity to comment on what has been brought forward through the consultation process so far.

If land users conclude that there is unavoidable impact to a site, the minister's consent may be sought under section 18 of the Aboriginal Heritage Act to give notice to the Aboriginal Cultural Material Committee, as Hon Robin Chapple referred to. The ACMC comprises representatives of traditional owners from various areas around the state, and is established under the Aboriginal Heritage Act to represent Aboriginal people on heritage matters. To clarify for members who may not be as familiar with this space, that is what the ACMC does. The ACMC usually meets on a monthly basis. Once a section 18 is granted, neither the Minister for Aboriginal Affairs nor the ACMC can review or revoke the decision. Since July 2010, 463 section 18 notices for land, which have been described as "mining leases", have been brought before the ACMC. That is what a section 18 notice is and that is what it does under the legislation.

Prior to a resource company getting to the point of lodging a section 18 notice, I will outline to the house some of the steps that the resource industry undertakes, because it does recognise its responsibility in this space. The first step is to navigate a native title agreement, which outlines agreed processes for meetings, notices, communications, heritage identification and protection, environmental stewardship, employment, training and contract opportunities and, ultimately, cash for compensation. The first step in that heritage process before broadscale explorations of an Aboriginal ethnographic survey is to identify a no-go zone; that is, a zone that is designated to be culturally significant to the traditional owners of that region. At that point, usually archaeological surveys are carried out and traditional owners physically walk the line that the exploration drill and the rigs will drill into. They follow that line looking for that culturally significant material or site so that it can be catalogued and hopefully avoided. That is what traditional owners do in a negotiation with resource companies, and I have seen this repeated many times with different resource companies and different traditional groups.

Once the layout of the mine is agreed to—usually designed to avoid all those culturally significant heritage sites—the only thing on a mine site that cannot be moved to avoid heritage is the actual ore body itself. Everything else is mobile and is often removed at enormous financial cost. Once the final layout of the mine is decided, the company and the traditional owner group need to negotiate about whether a section 18 applies. The entire process from start to finish—before it even gets to the point of lodging a section 18 notice—can take upwards of five, six, seven or 10 years in some instances. Sometimes it can be longer than that; therefore, I am setting out some of the realities that resource companies face, which they absolutely should face. I am not saying that they should not face them, and I think there is a recognition that they believe that they have responsibility to do that as well and that is why we need legislation to ensure that they do that. A massive consultative process is undertaken prior to the section 18 notice getting to the table. At that point, the submission of a section 18 notice is never a surprise to a traditional owner group, certainly one that is dealing with a larger resource company in the Pilbara anyway, because of the process that was undertaken years prior to getting to that point.

That does not mean that the traditional owner group will support the application. I am saying that it is by no means a surprise. At worst, they are at least informed of the nature of the application, why it has been made and they are aware of the exhaustive process prior to getting to that point. I just want to reiterate that lots of resource companies—particularly the larger resource organisations because they have the structure to do it—allocate significant resources to this process and undertake a consultative process with traditional owner groups, and, for the most part, usually that goes fairly well. The resource companies undertake employment of traditional owners to conduct the surveys. They also undertake extensive research to make sure that they engage with the actual traditional owners, which at some points can be a complex situation in itself when the traditional owner groups across the region do not agree, and that does occur. Therefore, extensive research and extensive resources are put towards ensuring that they are all trying to be on the same page if they think they are heading towards a section 18 notice. I will reiterate that that does not mean that all parties agree at that point. At that point, the section 18 notice goes to the ACMC and then

a further consultative process is undertaken. Therefore, we are not saying that companies go straight to a section 18 notice, if anyone is under that impression. In my experience, that does not happen in reality.

The government has done some good work so far in reforming the Aboriginal Heritage Act that we find ourselves looking at in 2020, and that should be acknowledged for sure. It has been an extensive consultative process so far. The feedback from the traditional owner community, and probably the mining industry as well when looking at the reform from that consultative process, has largely come in around the section 18 notices, and Hon Robin Chapple indicated this as well. The main feedback is that there needs to be provision for a review of a section 18 decision. I do not think that anyone can dispute that. There has definitely been evidence through the consultation process that the minister is currently undertaking that people want to see a review process for section 18 decisions. The consultation seems to indicate that people want local traditional owner groups to have a better opportunity to consult. All governments want to consult on the decisions that they make. That is good government and they should do that, particularly in this culturally sensitive area. However, I will bring to the table that there has to be some balance in that because an enormous consultative process is already undertaken. When the minister gets to the stage of releasing the draft for public comment, I will be interested to see how he thinks he will address that because the process is fairly extensive as is. From a resources and mining industry perspective, companies make an enormous financial contribution in this space. Before projects get to being shovel ready or companies able to do exploration, sometimes millions of dollars have already been spent in the space by the resources industry as it moves towards the opportunity to mine.

Some of the feedback that I have heard in this space about the latest media coverage of the issue at Brockman mine is that some Aboriginal people feel that their voice has been a little lost in the media conversation. There is a difference between archaeologically important sites and culturally significant sites. A site might be archaeologically important and, from a historical perspective, may need to be preserved, but that does not mean that traditional owners believe that it is of cultural significance. That is the feedback that I have received. I am sure that there are archaeological sites all over the state of Western Australia where there are artefacts and where Aboriginal people have stopped overnight and used it as a meeting point. That does not mean that the site is culturally significant until a survey is conducted, the traditional owners are engaged with, and they believe that it is culturally significant. It may be an archaeologically significant site, but it needs to be culturally significant to the traditional owners. We need to make sure that we remember that in the process. It is for the traditional owners who the government consults with to tell the government what is culturally significant and not the other way around. We need to ensure that we continue to respect the views of traditional owner groups about what they believe are their culturally significant sites.

I refer to the motion. I am not quite sure what the member is asking us to do in the wording of the motion. The motion states that the Legislative Council should "debate" the issue, but by the time we vote on the motion, we will already have debated it, so I was a bit confused about what the member was asking. However, in principle, I absolutely support the idea that the nation of Australia and the state of Western Australia need to continue to improve in this space. We need to make sure that Aboriginal people are part of this conversation and they should lead the conversation. We need an Aboriginal Heritage Act that reflects modern practice. There is no doubt that it is in need of review. I look forward to the bill being finally presented to the house. I thank the member for bringing the issue, at least, to the Legislative Council for us to highlight the significance of the review of the Aboriginal Heritage Act that the government is undertaking.

HON PETER COLLIER (North Metropolitan — Leader of the Opposition) [1.45 pm]: I stand, also, to make some comments about this motion. I thank Hon Robin Chapple for bringing it to the house's attention. As I have said on numerous occasions, I have enormous respect for Hon Robin Chapple and his commitment to Aboriginal people. I think that it is probably second to none in this chamber and in the Parliament of Western Australia. Like Hon Jacqui Boydell, I was a little perplexed with the wording of the motion, but I understand its intent and we will certainly support the intent of the exercise—that is, to look at the way in which we can collectively move forward and improve the manner of protecting Aboriginal heritage across Western Australia and the nation. I think that is the intent of the exercise, and we support that intent.

I could talk about a number of things on this issue. It was my great privilege to be the Minister of Aboriginal Affairs for six years and I loved every second of it. I have said this over and again. I grew up with the Wongatha people and I have deep personal regard for Aboriginal people. It was a great privilege to be Aboriginal affairs minister.

Heritage was one of the areas that was always in contention. The Juukan Gorge rock shelters are testament to exactly why it is such a contentious issue. I imagine that the decimation of those sites must have been devastating for the traditional owners. Aboriginal people have a very strong spiritual connection to the earth and to the land. To them, the decimation of sites that were over 40 000 years old must have been excruciating from a spiritual perspective. I acknowledge that. Rio Tinto has, legitimately and correctly, apologised. I understand that in a lot of instances those will be empty words for the traditional owners. I understand that. Ideally, it will not happen again. In the current structure of the Aboriginal Heritage Act, it quite possibly could. It was under my jurisdiction that this section 18

application was approved in 2013. In that same year, 71 other section 18 applications were considered and approved by the Aboriginal Cultural Material Committee. It assessed 1 100 Aboriginal heritage places in that year. The ACMC, which is a small body, assessed 1 100 Aboriginal places. On average, 1 500 heritage information forms are submitted to the ACMC for assessment each year. In itself, that shows that there is a problem. It is a small body. In the act its numbers are not finite. The quorum is five people, but that is it. There is no requirement in the act to have an Aboriginal person on the ACMC—none whatsoever! Evidently, there will be a problem with this piece of legislation in its current form.

The Aboriginal Heritage Act had its genesis in the discovery of some sacred stones out of Laverton in the late 1960s under the Liberal government of Sir David Brand. That was the stimulus for the development of a heritage act. Until that point, it had been carte blanche; people could just go for it. Imagine the number of sacred sites that were decimated prior to that. The John Tonkin Labor government took over in 1971 and passed the Aboriginal Heritage Act in 1972 with unanimous bipartisan support. It could not be argued with and was eminently sensible. As a result, we at least had something to protect Aboriginal heritage sites, but let us not forget that in those days, Aboriginal people largely did not have a voice throughout our nation. It was in 1967—only a few years before—that they were first recognised in the Constitution. That was the first time they were recognised in our nation. I do not mean to be flippant, but that is what I am talking about. Just five years later, in 1972, they did not have a voice. We have moved on as a society. We have come to acknowledge, respect and admire Aboriginal culture and heritage across our nation.

I will talk about what I tried to do in my relatively long time in not only Indigenous Affairs, but also Education, to stimulate an acknowledgement of Aboriginal culture throughout our community. In two years, it will be 50 years since the Aboriginal Heritage Act was passed in 1972. There have been several attempts to amend the act. I can promise members that, at the moment, it is flawed. Trying to deal with it was one of the banes of my tenure. When I took over as Minister for Indigenous Affairs, I instigated a review of the act. Dr John Avery, the director of Indigenous heritage law reform in the federal Department of Sustainability, Environment, Water, Population and Communities was contracted by our government to go out and assess the views of everyone in the community—Aboriginal people, the traditional landowners and the mining industry communities—and come up with a system that protected Aboriginal heritage while at the same time provided an avenue for development. We wanted to see whether the two could coexist. Over that time, John Avery met with more than a hundred discussion groups and stakeholders across the state. We received 172 written and verbal responses to the request for people's views, representing 120 stakeholders from all sectors. As a result, in 2014, we released an exposure draft of the Aboriginal Heritage Amendment Bill 2014 and we extended the consultation process for another two weeks so that we could access as many views as possible. It was not going to be the gospel according to Pete or non-Aboriginal people; we had to make sure that we engaged the Aboriginal community to ensure that their views were sacrosanct. The heritage sites are theirs and we had to make sure that they were protected. As a result, we put forward the bill. We tried to streamline the process while protecting Aboriginal heritage at the same time. At the moment, one little group—the Aboriginal Cultural Material Committee—has to deal with thousands of applications every year, in some instances. Evidently, it is ineffective and inefficient, and inevitably things will slip through. I would like to think that when we look at the section 18 notices issued over the last 20 years, we will not find that anything else has slipped through and that other sites across the state will be decimated. I will talk about the new bill in a moment.

As I said, we had an enormous amount of consultation. I personally went all over the state with John Avery and met members of the Aboriginal community to access the views of Aboriginal people. The bill enhanced the protection of Aboriginal sites. At the time, there was no real punitive action if a site was decimated. There is still not. Back then, it was just a rap on the knuckles, so the amendments we put forward would have significantly increased the penalties for causing damage to an Aboriginal heritage site. The maximum penalty for bodies corporate that were convicted of a second or subsequent offence was to be increased from $100 000 to $1 million, and the maximum penalty for individuals convicted of a second or subsequent offence was to be increased from $40 000 to $200 000. Terms of imprisonment for individuals would have been retained, and strengthened. Also, courts would have had the ability upon conviction to order site remediation when it was feasible. That was essential. We increased the penalties for the desecration of Aboriginal heritage sites.

One area that caused conjecture was the role of the CEO. I know that Hon Robin Chapple did not approve of the measure at all. I acknowledge that; that is fine. We had to find a common medium. We could not have the ACMC assessing every single application because it simply could not do it. One little group assessing hundreds upon hundreds of applications every year was not working. A vast majority of those applications—90 per cent—would have been deemed not to be heritage sites, yet the ACMC would still have to consider them. The point of the exercise was to provide an avenue to streamline the process whereby the CEO of the then Department of Aboriginal Affairs would have the capacity to either approve or not approve a site as a heritage site, only on the assumption that they were not heritage sites; that is, it would provide applications involving areas where no heritage site existed or no site damage would occur, and that would be handled by the executive of the Department of Aboriginal Affairs. Under the proposed model, the chief executive officer would have had the ability to issue a declaration of whether

a site on the land was deemed a heritage site or could have issued a permit that a site would not be destroyed or significantly damaged by activity. Currently, that is the role of the ACMC, and that is why we have problems. We have had a wake-up call with the issue of the Juukan Gorge caves. Inevitably, other sites may have slipped through. We need to be mindful of that, and that is why we must have a more stringent process than currently exists.

Another area of the bill that we introduced regarding the ACMC proposed that the CEO would have the ability to issue a declaration, as I said, when there was no Aboriginal heritage site. If there was an Aboriginal heritage site, that matter would remain with the ACMC. The ACMC would retain its role to assess proposals when damage to a site may or will result, and make recommendations to the Minister for Aboriginal Affairs. That was very important to streamline the process.

Another area that I insisted upon was that the role of honorary wardens—quite frankly, it was piecemeal; they were Aboriginal people—be more clearly defined. Aboriginal people were to be part of the decision-making process all the way through. It is their land. It was not up to me as the then minister or Hon Ben Wyatt as the current minister, or whoever else is minister beyond him. The Aboriginal people must have a more formal say in the determination of the sites. The role of the honorary wardens would have been expanded considerably under the legislative proposals that we put forward. In essence, we would have allowed the government to partner with Aboriginal people and groups to enhance the protection of Aboriginal heritage and recognised the important role of Aboriginal people in protecting their own heritage; that is, the decision was not to be imposed on them by non-Aboriginal people, which is what has been happening for 200 years. The bill would have empowered Aboriginal people to play an active role in heritage management and complemented the active role Aboriginal people play in land management.

We brought that bill forward and it was read into the lower house when some other issues emerged. I promise government members, including Hon Stephen Dawson, that issues will inevitably arise when the draft bill goes out for consultation and comment. It is a complex area but we simply have to get it right. What I tried to do with the Aboriginal Heritage Act was empower Aboriginal people and provide them with much more clarity on the determination of whether a site was an Aboriginal heritage site. That is what I wanted. I made it quite clear. I wanted to increase the penalties and make it more seamless, while at the same time retaining the heritage of Aboriginal sites and also increasing Aboriginal participation and involvement in the process through the Aboriginal wardens. That is what I wanted to do.

I will pick up on Hon Robin Chapple's point about having proper ideas to improve the situation. This issue goes beyond the Aboriginal Heritage Act. It is about having cultural awareness throughout our community of the significance of not only Aboriginal culture, but also Aboriginal heritage across the board. There is much more awareness of Aboriginal heritage within our community today than there was previously. It is not left-wing ideology that is seen as preventing development. Aboriginal heritage is sacrosanct. It is part of our generic culture. One of the oldest living races on this earth, of 40 000 years, needs respect. These people have a deep personal spiritual connection to land and we have to respect that. They are Australia. They are a part of Australia. They are much more Australian than we are or I am.

I tried to empower various advisory groups throughout the community with Aboriginal people, and I did. In 2015, I appointed Ian Trust as chair of the Western Australian Aboriginal Advisory Council. He is a man who has an enormous understanding of Aboriginal people. Also in 2015, I appointed Dr Robert Isaacs as the new chairperson of the Aboriginal Lands Trust. The Aboriginal Advisory Council of Western Australia, a statutory body in the Aboriginal Affairs Planning Authority Act 1972, was redundant for years; it did not exist. Even though it was in the statute, it did not exist or operate. When the former Liberal–National government took office in 2008, we resurrected it and I worked with the Aboriginal Advisory Council constantly. I met with it all the time and kept it vibrant and dynamic. It provided advice to me constantly. Do members know what? Every single person on that advisory council was Aboriginal, as they should be. It was a broad reflection of Aboriginal people. I reinstated that council and we ensured that the Aboriginal Advisory Council advised government on what Aboriginal people want; I did not tell them what was good for them. In addition, the Aboriginal Cultural Material Committee did not have a finite number of members; it just needed a quorum of five. For years, most members of the ACMC were non-Aboriginal. In 2015, I increased membership to 10 members and six out of the 10 were Aboriginal so that there was a majority of Aboriginal people on the ACMC. I had a look at the website yesterday and three of those are —

Hon Stephen Dawson: It has six Aboriginal members, two non-Aboriginal members and then some observers.

Hon PETER COLLIER: That is what I said. I made it six.

Hon Stephen Dawson: Yes, and at the moment that is what it is.

Hon PETER COLLIER: That is good. It has not changed. That is how it should be. It should have been that way all the time, but it was not. All I am saying is that I made sure that Aboriginal people told us about heritage sites, and I did not tell them.

As far as education is concerned, growing up in Kalgoorlie in the 1960s and 1970s, Aboriginal kids were taught in a donga at the back of the school. I am serious! The previous government provided discrete, vastly increased funding for Aboriginal students. Every single Aboriginal student in our schools is now recognised and funded, but the best thing we did as a government with education for Aboriginal students was being the very first state in the nation to introduce an Aboriginal cultural standards framework. Aboriginal culture is now embedded in our curriculum. It is compulsory. It is important that all students understand Aboriginal culture, not just Aboriginal students. A lot of Aboriginal students need to understand their culture as well. Is it not great that in Western Australian schools we now have an Aboriginal cultural standards framework? We were the very first state to do that and it was nationally applauded. We did that in 2015. Also, the Partnership Acceptance Learning Sharing program goes to schools and teaches students about Aboriginal culture. When I started, 138 schools had the program and 520 schools had it when I finished. Virtually three-quarters of public schools are now part of the PALS program, which is wonderful. I also introduced the elders in residence program. I got some elders of the Aboriginal community to talk with our schools right across the state to teach and explain Aboriginal culture.

As I said, we tried to do some things with the Aboriginal Heritage Act, but we went well beyond that with the ACMC, the WAAAC and also within our education system. Now, the baton has been passed to the current government. I applaud the government's attempts in initiating a replacement of the Aboriginal Heritage Act, which is probably good. Good luck with it. I promise the government—I cannot speak on behalf of the Liberal party room, because at this stage we have not seen the bill—that if the bill empowers Aboriginal people, provides for a more streamlined process and protects Aboriginal heritage, I can almost guarantee that the government will have our enthusiastic support.

I once again thank Hon Robin Chapple. It is a very worthwhile debate, very pertinent and I like to think that, ultimately, we will all come out of this better in recognising Aboriginal culture and heritage.

HON STEPHEN DAWSON (Mining and Pastoral — Minister for Environment) [2.05 pm]: I, too, thank Hon Robin Chapple for bringing this motion before the house. I understand what he is doing in how the motion is written. He has created a debate today based on a motion that is unusually written, but he has succeeded or achieved what I think he set out to do. I acknowledge his passion. I share an electorate with Hon Robin Chapple and thank him for his knowledgeable passion for Aboriginal people, particularly in the north west of the state. I acknowledge my other parliamentary colleague, Hon Jacqui Boydell, who also shares the electorate, and has a deep interest in Aboriginal issues. I also acknowledge Hon Peter Collier as the former Minister for Aboriginal Affairs, and thank him for his contribution. I would say Australian Aboriginal culture goes back not 40 000 years but more likely at least 60 000 years. It is one of the oldest continuing cultures in the world. I think we take it for granted. In his contribution, Hon Peter Collier did not say we take it for granted, but he made the point that they are Australian, they are well and truly intrinsically part of our culture in Australia, and they are certainly a lot more Australian than I will ever be. We have not grasped their culture and have not tried to understand their culture as a nation to the degree that we should have. A great deal more work needs to be done in that space.

Aboriginal heritage is essential to the health and vitality of Aboriginal communities, and it provides an essential link to their past, present and indeed their future. It is why we now acknowledge the traditional owners at meetings and events and acknowledge their past, current and future leadership. That has been a positive acknowledgement and addition to the discourse over the past few years and it is something I do at every opportunity.

The recent destruction of the rock shelters at Juukan Gorge has been devastating for all parties involved and it should have been avoidable. The state government is aware that Rio Tinto has had an agreement in place—Hon Peter Collier mentioned that—with the Puutu Kunti Kurrama and Pinikura native title group for many years that outlines protocols for managing Aboriginal heritage at the Brockman mine. I am told Rio Tinto has consulted with traditional owners about this project and has undertaken a number of archaeological and ethnographic surveys in consultation with PKKP representatives who have been involved in the process on the ground. Objects connected with traditional cultural life have been appropriately salvaged and recorded.

Although the actions of Rio Tinto were not unlawful, the matter really highlights inadequacies in existing legislation and, certainly, the inadequacy of the current legislative protection for Aboriginal cultural heritage. The Minister for Aboriginal Affairs, Ben Wyatt, and indeed the McGowan government want to see the impact on Aboriginal sites limited to the most practical extent possible. As members have alluded to, we have committed to introduce new modernised Aboriginal cultural heritage legislation that reflects best practice in the recognition and protection of Aboriginal cultural heritage. The legislation will provide an Aboriginal voice in the management of Aboriginal cultural heritage and will hopefully lead to better decisions and improved protections.

The existing Aboriginal Heritage Act 1972 has been around, as Hon Peter Collier said, for almost 50 years. It is well outdated. It was written before the Native Title Act 1993 and does not line up with it at all. Although it was progressive for its time, it is now totally outdated and does not deliver for Aboriginal people and requires updating. It does not adequately reflect the relationship between Aboriginal people and their culture, and it needs to. A modern,

progressive act would do that. It is not aligned with native title processes or principles, it does not recognise the heritage outcomes resulting from native title agreements that are made between land use proponents and traditional owners, and it has been a source of major conflict between Aboriginal people and land use proponents because of its procedural uncertainty and lack of dispute resolution mechanisms. More importantly, the current act does not allow or provide any right of appeal for Aboriginal people on decisions about their cultural heritage.

The current act has had various reviews, as Hon Peter Collier alluded to, since its introduction, but none of those reviews has resulted in a major overhaul of the act, despite significant changes in the legal, social and environmental circumstances surrounding the preservation and protection of Aboriginal cultural heritage. We, as a government, recognise the need for change that results from genuine and extensive consultation with Aboriginal people and, indeed, other stakeholders. The current legislative review was started by Hon Ben Wyatt about two years ago. Since then, more than 550 people have attended more than 40 workshops held around the state. More than 130 submissions were received on a consultation paper that sought views on the effectiveness, or lack thereof, of the current act, and any gaps in the legislation. It also requested ideas on what modernised legislation should set out to do and how it should operate in the interests of all stakeholders. Following that feedback, a discussion paper was released last year that received a further 70 submissions and engaged more than 100 people in workshops. That just shows the interest out there in this issue. All the consultation to date has informed the new legislation, which is moving through the drafting process at the moment. Hon Ben Wyatt hopes to have that legislation before this house later this year.

The Aboriginal cultural heritage bill will reflect two years of review and consultation. I will give members a sense of what will be included in it. It is proposed that it will update the definition of what constitutes Aboriginal heritage, and include definitions of cultural landscapes and place-based, intangible heritage that reflects a living culture that is central to the wellbeing of Aboriginal people. It will provide for the management of Aboriginal ancestral remains and secret and sacred objects, which are of utmost importance to Aboriginal people. It will establish a new directory for all identified Aboriginal cultural heritage, including that listed on the current register, as well as heritage places. It will seek to empower Aboriginal people—not a statutory body, like the Aboriginal Cultural Material Committee—to be responsible for evaluating the importance and significance of their heritage sites. It will provide for the establishment of local Aboriginal heritage services—new local Aboriginal bodies that will be incorporated—to ensure that relevant Aboriginal people and knowledge holders are consulted. It will enable local Aboriginal heritage services to make agreements on Aboriginal heritage management and land use proposals in specific geographic areas and will support the implementation of existing agreements. It will seek to ensure real and meaningful consultation with Aboriginal people in the identification, management and protection of their heritage. It will also, hopefully, establish a tiered land use approval system. It will encourage proponents to take due diligence to determine whether a proposal will impact on Aboriginal cultural heritage. This system will replace the current section 18 process which, as we know, in effect allows for sites to be destroyed.

Land use proposals with medium to high impact will be required to seek agreement from relevant Aboriginal people and develop a cultural heritage management plan for authorisation to proceed. Unlike section 18 notices, cultural heritage management plans will provide an avenue for taking into consideration new Aboriginal cultural heritage information or discoveries.

Another important element is the intention to introduce stop-work orders to prevent unauthorised impacts on Aboriginal cultural heritage. Stop-work orders may be required when there is an imminent risk of harm to Aboriginal cultural heritage by a person acting without any approval or acting outside an existing approval. There will also be provision for notices and orders to allow for remediation work to be undertaken to restore impacted Aboriginal cultural heritage; although, of course, when you get rid of some of these things, it is very difficult to take it back.

Another element is a proposal to establish an Aboriginal heritage council that is chaired by an Aboriginal person and provides strategic oversight of the Aboriginal heritage system. Members will be selected based on their skills and experience, with preference for the appointment of Aboriginal people. Hon Peter Collier mentioned in his contribution how few Aboriginal people were on the ACMC when he started. We have come a long way, but this new Aboriginal heritage council will actually put things into law to require certain things. It will not be at the whim or passion of a minister who cares about this issue; they will have to do it, and that is a good thing.

The Aboriginal heritage council will promote public awareness, understanding and appreciation of Aboriginal cultural heritage in Western Australia. It will also authorise cultural heritage management plans—this is really important—that can demonstrate informed consent, adequate Aboriginal consultation, and agreed management of impacts on Aboriginal cultural heritage. For a variety of reasons, if agreement cannot be reached—we know, regrettably, that that is not always possible—although not the preferred option, the new bill will provide for a government authorisation process in such cases, whereby proponents will be required to demonstrate that they have made a serious and genuine attempt to engage with local Aboriginal people regarding their cultural heritage.

A key aspect of the state government's determination to modernise the Aboriginal Heritage Act is to ensure that the new regime and new law align with the recognition of native title rights and the operation of the Native Title

Act 1993. That act provides native title holders with the right to negotiate with proponents who seek to use their land for developments that will impact on native title rights. As a consequence, over the past 20 years or so, a quiet revolution has been taking place that has transformed the relationship between traditional owners and mining companies, based on agreement making. During this period, at least 38 Indigenous land use agreements relating to mining and more than 2 000 section 31 agreements have been formalised under the Native Title Act between native title parties and mining companies. The system of agreement making is now the primary regime for Aboriginal heritage protection in Western Australia, but, as we have seen recently with the destruction of the rock shelters at Juukan Gorge, there is significant room for improvement in the system of agreement making. We are not saying that the Native Title Act 1993 is flawless; it is not. A native title agreement in Halls Creek took 20 years to resolve; it should not take that long. There is a great deal more work to be done, but certainly this legislation will align with the current Native Title Act and, hopefully, progress a lot further.

The current act provides for the declaration of Aboriginal sites that are of outstanding importance to be protected areas. It vests exclusive use of the land in the Minister for Aboriginal Affairs. Conferring protected area status on an area is a future act under the Native Title Act, which means that statutory native title processes must be complied with before a declaration can be made. This has resulted in no protected area declarations having been made since the early 1990s. The limits that protected areas impose on activities within the designated boundaries make it difficult for Aboriginal people to actively manage and conserve these most significant of areas. Under the new Aboriginal cultural heritage bill, protected areas will no longer be vested with the minister and will not trigger provisions under the Native Title Act. This will enable active management by Aboriginal people and provide opportunities for more places of outstanding importance to be declared protected areas.

I want to briefly touch on the environment portfolio, given that I am talking today. We have been doing some significant work in my portfolio on Aboriginal culture and heritage. In the Department of Water and Environmental Regulation, we have established the Aboriginal Water and Environment Advisory Group, with membership of Aboriginal people from across the state. This group will ensure not only that the department's key water and environmental initiatives provide an opportunity for Aboriginal engagement, but also that the department considers the needs of Aboriginal people. DWER is also working with the Department of Planning, Lands and Heritage. Since 2018, the departments have been consulting on the review of the Aboriginal Heritage Act 1972. The departments are also working together to ensure that Aboriginal heritage is protected and legislative reforms are aligned.

Another place in my electorate is Murujuga on the Dampier Peninsula. This is an example of how we have tried to act to improve the protection of Aboriginal heritage. Hon Robin Chapple knows the area well. As we know, Murujuga has one of the largest collections of rock art or petroglyphs anywhere in the world. This rock art is of immense significance to Aboriginal people and has significant state, national and international heritage value, so we have started the process to get this area World Heritage listed. That is a cumbersome but nonetheless very worthwhile process. I want to acknowledge the leadership of Peter Jeffries and the Murujuga Aboriginal Corporation, who have been working in lock step with us to get this area the international protection that it requires. Included in the Environmental Protection Amendment Bill that we will hopefully debate very shortly in this place are amendments that will allow for regulations to be made to recover costs from industry to implement environmental monitoring programs, again to help protect the unique cultural heritage that exists in Murujuga.

One of the proudest things I have been involved in as Minister for Environment is the design and rollout of our Aboriginal ranger program in Western Australia, which was an election commitment from the last election campaign. That $20 million investment over four years has enabled Aboriginal organisations to, in some cases, actively manage Aboriginal culture on their lands. The scheme itself was designed with Aboriginal people at the table. It was not well-intentioned whitefellas saying, "This is what we think you should have", but saying, "Tell us what should be in this scheme and what it should manage." Obviously, it has been tenure blind, so it does not have to be on state land. That has enabled Aboriginal cultural projects to be worked on. Thirteen of the projects funded through the Aboriginal ranger program are carrying out activities to enhance the protection of cultural values, and at least 43 Aboriginal sites across the state are now protected, managed and conserved by Aboriginal rangers. That is a significant achievement. About $9 million has been directed into these projects, three of which are in the Pilbara. The Martu, Yindjibarndi and Palyku peoples have been involved in those projects. We are also rolling out our plan for our parks, which is an ambitious expansion of the conservation estate over the next five years. Again, that has created opportunities for Aboriginal people right across the state. Whether it is in the Kimberley or the rangelands in the south west, we are creating and jointly managing new marine and national parks. That, too, is providing significant opportunities for traditional owners to not only identify and protect sites that are important to them, but also work on and actively manage those sites through the ranger program. That has been significant.

To go back, I acknowledge the devastating destruction of ancient rock shelters. Understandably, there has been much grief in the community at the loss of sacred cultural heritage. As we have said, under the current legislation there was nothing unlawful about the actions of Rio Tinto, but what these events have highlighted loudly, I would

say, is the inadequacy of legislative protection for Aboriginal cultural heritage. I think all members of this place are committed to affording greater protection to Aboriginal cultural heritage. Aboriginal people and industry will need to work together, have early conversations and reach agreement on the appropriate protection and management of cultural heritage. For years now, major mining companies and developers have made significant decisions on the basis of such agreements with Aboriginal groups, which in turn generate substantial benefits for Aboriginal people and the state. But there also have been issues for years. That is one of the reasons we are reforming the legislative protection for Aboriginal heritage to end section 18 processes and reinforce the need for land users to negotiate directly with traditional owners. The Minister for Aboriginal Affairs is a great believer in self-determination for Aboriginal people, as am I. He supports native title groups using their hard-won rights to make commercial agreements with land users. We have to acknowledge and respect the decisions made by Aboriginal people. If they have come to an agreement and want to get benefits for their community, we should support those decisions. I thank the member for bringing this motion before the house.

HON DIANE EVERS (South West) [2.25 pm]: My colleague Hon Robin Chapple raised a lot of issues, and I am really pleased with the debate that has gone on in the room. Given all the progressive ideas that we have been hearing, I am surprised that we are in this situation! As we know, when the Juukan Gorge was destroyed, news of that not only made headlines here, but also spread around the world. This has received international notice. It happened on a long weekend during the COVID-19 crisis. The company was possibly hoping that it would not make such big headlines, but it has. It has really destroyed the social licence that mining companies might have had. It was a big mistake on its part, but it was completely legal. I do not understand what the company means when it says it is sorry. Is it sorry about the way it did it or that it did not tell somebody that it was about to do it, or, whoops, did it make a mistake? How can it be sorry? It was approved, it was legal, it was done, it is over and we cannot get it back. All we can do today, with the things we have been talking about, is to try to hold on to what does remain and make sure that the Aboriginal voice is heard and respected and that Aboriginal people are empowered to say, "No; not here." I love the idea of no-go zones; that makes so much sense. Some people have said to me that Aboriginal people have been across the whole of Australia—they have been everywhere. Over the past 40 000, 50 000, 60 000 or 70 000-plus years, there is probably not a spot in Australia that has not been traversed, made use of or lived on. That is a really long time. As we go forward, we have to make sure that we listen to and empower those voices.

Mining companies are doing what some might say is a service to us by digging up Australia, selling it overseas and giving us a portion of the profits back in royalties. We need that money to provide services. The mining companies are trying to call themselves sustainable. They try to be green in some way. They try to be socially responsible. They know all the right words. Although they might have laid off a few people in their companies at the moment because of the tightening fiscal situation, we have to acknowledge that they are after profit. That is the first point of them being—that there is profit. No matter how much sustainability, greenwashing and social responsibility we hear about, these companies are still there to make a profit. That is why it comes back to the government being the strong one—the one that puts in place regulations to stop this and say that the mining companies cannot do what they are trying to do. We cannot shirk that responsibility. We know that the section 18 approvals come through here. I had never considered that the membership of the Aboriginal Cultural Material Committee would not be all Aboriginal people. That was news to me. It made sense that that was how it would be. I am really pleased to hear that at least the majority of its members are Aboriginal, but that is where their voice has to come from. I know the government aims to support the mines because, of course, the mines give us jobs and people want jobs in construction, mining and all that, and of course we get the royalties, as I said, but this is clearly not working. The destruction of the Juukan Gorge shows very clearly that it is not working. That is the most obvious example—it is the big deal one that everyone has heard about. It is spreading like wildfire and we are all aware of it. But we do not know how much other destruction occurred in the past. This is not the first time and it is not likely to be the last time, but I sure hope that we are on the path to making it the last time that something of this significance is destroyed.

I want to point out that the government is involved in this. It is nice to be on the Standing Committee on Estimates and Financial Operations because we find out about accounts; we even have an agency special purpose account called the native title holder incentive for mineral exploration and land access account. The purpose of this account is to hold funds to provide a financial incentive to native title holders who are prepared to endorse a government Indigenous land use agreement for the purpose of expediting procedures for the grant of exploration and prospecting licences and low-impact activities in areas where native title rights are recognised. The fund is $7.5 million currently and it gets another $25 000 each year. Not much has been going out of the fund each year, but it is a $7.5 million fund for the purpose of providing a financial incentive to native title holders. I do not understand why the government would be involved in trying to persuade with money native title holders to make decisions that they are not happy with. It just does not make sense. The reference to "low-impact activities" is actually exploration and prospecting. I would hope that does not include blowing up 46 000-year-old archaeological sites. I think we need to check out why we have that special purpose account and maybe change its purpose so that it can be used to support native

title holders who are trying to stop a mine coming onto their land and destroying their cultural heritage sites. It is just a thought, but it is an idea that can come up when we have debates like this.

I would like to look at the long-term prospects. I always like to look to the future and what we would like it to be. We know that we need revenue to provide services, but at what cost? What are we prepared to destroy, change or blow up and never have again in order to get those funds? If any of us were asked questions about this gorge before it was blown up, I do not think we would have said, "That's fine." It is 46 000 years of human heritage that shows something of how we all started—how people might have lived and so forth. It is phenomenal to think that anybody would say, "That's fine. There are others. We can find the same sort of thing somewhere else." We have to weigh up the cost. What is the value of these artefacts of human evolution and these cultural sites of the oldest continuous culture on Earth? How can we put a dollar value on that? I do not think we can put a dollar value on it, and that is why it irritates me that we sometimes think that if a mining company gives an Aboriginal corporation enough money, everything is okay and it was a fair price. But we cannot get those things back and we cannot put a price on those sites because no amount of money will change that. If we just throw money at the issue, it will be held in a trust fund for a long time. The board that administers the trust may use it, but it will have very specific directions on how much it can take out and what it can do with it. That is why we have to not only consult with Aboriginal people, but also empower them and put them in a position in which they will get to make decisions on the things that they need, what will work and what can be done. It may not be something that needs money; it may be restoring the landscape through the ranger program. I really appreciate how that program works and I hope it spreads further throughout the state. That is what we have to look at.

If we want to look back in 50 years and still see these sites, how will we get there? How can we not only mine enough to receive the royalties required to run the state as well as we can, but also respect and protect those sites and allow that Aboriginal voice to be heard? As is stated in the motion, there is a problem with the system. I am really pleased to hear that changes will be made to the Aboriginal Heritage Act and the Aboriginal Cultural Material Committee, but we have to reassess the system. We have to reassess our values of what we think is a reasonable price for destruction of this sort. I do not think we can put a price on some of these sites. Something is absolutely wrong in the process that allowed this to happen and we should be reassessing all the approvals that have been given. If even Rio Tinto is now saying, "Sorry; we didn't mean to do that", maybe other miners, too, are realising that there are some activities that are no-go zones and they do not have social licence to continue doing them. The idea that this could happen with the full approval of our government is no longer acceptable. We have to stop thinking that when an Aboriginal corporation signs an agreement, that is it and the Aboriginal corporation cannot speak out against it any longer, even when it becomes aware of something else or something changes. We have to empower Aboriginal people to make these decisions, and we have to respect that and not just continue to put a price on the destruction of that cultural heritage and our environment.

HON COLIN TINCKNELL (South West) [2.35 pm]: I will be brief because I know other members would like to speak on this motion. I thank Hon Robin Chapple for bringing this motion to the house. I acknowledge that the honourable member has been very consistent during his time in Parliament about protecting Aboriginal archaeological sites and being a great voice for Aboriginal people in this house. Aboriginal people need a voice in this house and the other house to represent their concerns. The best way to represent someone's concerns is to build a relationship with them. That goes for everyone. I was very happy to hear from the Minister for Environment about the changes that are being made by this government and I also acknowledge the changes that were made by the previous government, with things like the Noongar native title agreement. In many ways, this state has led the way recently. Yes, we have a chequered past, but I acknowledge the great deeds that have been done.

It goes without saying that many companies—mining companies and others—have done very well because they value their relationship with Aboriginal people. I know that from seeing the work of the Association of Mining and Exploration Companies and mining companies. I was the only one in the room who is not a lawyer, and I was there about relationships. When I arrived at some of these places, I would hear that section 18 consents were often asked for. That was because the companies really did not have a relationship with the local Indigenous people where they operated. If they had a relationship, they may have been given the okay to put a road through an area where there is a site of interest or a dry creek bed that has not run for many years but there are ways to make sure that it still runs. There are many things that can be done, and the relationship is important.

As I have mentioned in this place before, since the day I entered Parliament, I have had a relationship and talked with Hon Ben Wyatt about many things. Early on, about three years ago, I talked with him about Aboriginal heritage. I am really happy now to see that the Aboriginal Heritage Act will be updated and hopefully come into this place soon. I would like to see that legislation properly debated because if we get these things wrong, it can have a detrimental effect on the wellbeing of the state, companies and Aboriginal people—all Western Australians. I have no doubt that these Aboriginal sites need to be protected. If all companies, the government, Aboriginal organisations, prescribed bodies corporate and the native title services work in a consultative way, we can get a great outcome. I know that,

because Aboriginal people want the best of both worlds: they want to protect their heritage sites, and they want to have jobs and a future for their young people because they did not get those opportunities when they were young. It can happen if we all work together. I wanted to make that small contribution and I thank the member for bringing this important motion to the house.

HON ALISON XAMON (North Metropolitan) [2.38 pm]: I rise to make some comments on this motion brought forward by my colleague Hon Robin Chapple who, as has been widely acknowledged in this chamber, has been passionate about bringing Aboriginal heritage issues to this chamber since he was first elected 20 years ago, but was actually active in this space long before that. Aboriginal heritage has received particular prominence in recent times as a direct result of the destruction of the rock shelters at Juukan Gorge. I do not know about other members, but I received correspondence around that issue from a range of people whom I would not ordinarily hear from, who were devastated that this was legally able to occur and who wanted to know how something could go so terribly wrong. I think it was particularly jarring that this happened on National Sorry Day and in the current political environment, in which we are starting to talk more about the rights and needs of First Nation people, not only here, but also globally, in terms of the Black Lives Matter movement, so it has a particular currency that is very distressing for people right now. I note that as a direct result of the destruction of these shelters, Reconciliation Australia withdrew its relationship with Rio Tinto. I think that sends a very clear message to our mining companies; that is, mining companies are able to undertake these activities only in so far as people are unaware of them, and that their social licence to mine is seriously on the line. That is one of the reasons that we have to finally grapple with the complex issues around how to undertake the protection of Aboriginal sacred sites.

I know that there is a general perspective amongst a number of traditional owners that one reason the Aboriginal Heritage Act is the way it is is that mining companies want it that way and simply have too much influence. We can point to a range of provisions in the act that highlight the disparity between traditional owners and mining companies—for example, the fact that mining companies can appeal decisions but traditional owners cannot. One of the key concerns that has been raised with me by traditional owners is that they very often cannot speak out when they are concerned that sites that are sacred to them are potentially at risk, because they have signed contracts, particularly in the Pilbara, that explicitly stop them from being able to speak out.

We know that Aboriginal people want to and need to be able to access mining royalties as well as job opportunities, but that does not mean that they should ever have to sign away their right to complain or raise concerns, particularly considering that very often when they are left to sign those contracts, the work to actually identify where those sites are has not even been completed. As far as I am concerned, that practice should basically not be allowed. We know that prior informed consent means not having it hanging over your head that you are going to be denied what should rightfully be yours anyway if you dare to speak out.

We know that Aboriginal cultural heritage provides a very important link for Aboriginal people to their past, present and future. Our Aboriginal cultural heritage is also really important to a lot of Western Australians and I think it is inherently valued. As has already been said, the Aboriginal Heritage Act has not changed substantially in the 48 years that it has been in operation, having been amended only twice in that time. Over its long history, the act has imposed virtually no impediment to development or mining in WA, and it has long been recognised as being incredibly insufficient in protecting Aboriginal heritage.

The failure to prioritise this very well recognised need for change has led us to the current situation in which we have experienced loss. Unfortunately, we are continuing to lose precious Aboriginal heritage, and we know that other sites are at risk right now. A range of problems have been identified with this act. I note that the minister talked about some of the issues with the act that the government is hoping to canvass in a bill that we will hopefully see before the expiry of this term of government. The act does not provide adequate consultation, there is no acknowledgement of the concept of self-determination and it fails to mandate the consultation of Aboriginal custodians regarding Aboriginal cultural heritage. The enforcement provisions are woefully inadequate, with prosecutions for offences needing to occur within too narrow a time frame. I think the special defence of "lack of knowledge" is particularly problematic because it means that it is a defence for a person to prove that they simply did not know something. Every member would recognise that we cannot have those sorts of provisions within legislation such as this. Concerns about the inadequate penalties that have long been in this legislation have already been raised. Overall, the act offers quite ineffective protections, and is insufficient. There is a significant backlog of sites to be assessed to determine whether they will be considered an Aboriginal site and placed on the register. There is also a lack of transparency, and decisions are not published.

Regarding the Aboriginal Cultural Material Committee, Hon Peter Collier referred to the sheer volume of information that that very small entity is expected to make its way through. I know that that is a genuine concern. A concern has also been raised with me about the poor quality and standard of reports that are often presented to the ACMC, which makes the decision-making of that body difficult. Another concern has been around the ethical and professional

capability of the consultants who often provide those reports. A small pool of people have this expertise within WA and they often need to go between working for mining companies and providing these reports. The concern is that they will have a conflict of interest as they will want to make sure that they maintain their long-term job prospects, so that is a challenge that will have to be addressed.

The role and function of the ACMC is to assess sites and make recommendations. The recommendations of the ACMC are not open to third party appeal. As I have said, only the proponents can appeal and there is no ability for a review by Aboriginal people. The lack of public consultation under the act before decisions are taken on applications to destroy sites or heritage values is problematic. The act also contains no provisions for the repatriation of Aboriginal remains. There are a range of other concerns. We need to always remember that Aboriginal people are the most appropriate decision-makers about their own heritage, in accordance with their traditional customs and beliefs. Our legislation needs to recognise this as well. I think it is a serious failing that the current act does not do that.

I remind members that we have broader international obligations around this as well. Free prior informed consent and the right to protect sacred sites are actually enshrined within the United Nations Declaration on the Rights of Indigenous Peoples. Article 25 refers to —

> … the right to maintain and strengthen their distinctive, spiritual relationship with their traditionally owned or otherwise occupied and used lands …

Article 26 reads —

> States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

Article 31 reads —

> … the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions …

It continues —

> In conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.

These are international expectations of how we will deal with First Nation people and their sites. Frankly, Australia, and Western Australia in particular, is failing.

We need to remember that it is not only about legislation. The act is one thing, but if the culture of the agency and the government does not change, then ultimately it will not be effective. A very high proportion of applications to impact on Aboriginal heritage sites are being approved, and it is considered to be normal for this to occur. I think that needs to change. It should only ever be in exceptional circumstances that approvals are given to destroy or negatively impact on heritage sites. We will never see broader community acceptance of cultural values if our legislation allows for those values to be trumped by every other short-term economic or political consideration. Time and again we read reports and inquiry recommendations that acknowledge the importance of connection to country and to cultural healing in addressing Aboriginal suicide and closing gaps in health, education and justice. I will quote from the government's statement of intent on Aboriginal youth suicide, which states —

> Acknowledging the vital role of culture in ensuring the long-term wellbeing of Aboriginal children and young people …

It is specifically recognised that maintaining a connection to land and culture is a critical part of our First Nation peoples' wellbeing. The government has said that it will develop a statewide cultural framework that focuses on cultural programs that will enhance wellbeing, reinforce cultural identity and build resilience. The government also talks about encouraging reconciliation and understanding by promoting broader Aboriginal culture, yet here we are talking about the destruction of Aboriginal heritage. I think it is appalling that we do not seem to value culture appropriately and we acknowledge it only when it suits us, yet when heritage and culture stand in the way of big business and money, we far too often see clearing and demolition permits being handed out.

I note that the review of the Aboriginal Heritage Act has been ongoing since 2017, following an earlier review in 2014. I understand that drafting is still underway, but there is huge concern that we cannot wait until that bill comes through. I want to relay to the house that it has been conveyed to me that until such time as we have a new and appropriate Aboriginal Heritage Act, traditional owners are seeking a moratorium on all section 18 assessments. They want that halted right now. There is a genuine concern to make sure that those cannot proceed. We need to commit to national standards as a matter of priority and ensure that these processes are captured by any development agenda that is progressed.

Traditional owners have, effectively, lost trust in the process and have lost trust in industry to do the right thing. That is a problem for industry, but it is also a problem for the broader Western Australian community. Most importantly, it is a problem for First Nation people. We have to do a better job on this. This has been hanging around for a very long time. We cannot keep getting distressed every time another valuable site is lost forever. We need to ensure that we have some short-term plans in place to halt the destruction now. Like everybody else, I look forward to finally seeing a new act, but we will also have to look at the culture around how we value Aboriginal sacred sites.

HON ROBIN CHAPPLE (Mining and Pastoral) [2.53 pm] — in reply: I want to thank everybody for their contributions today. I like these sorts of debates, because they are not arguments and I think it is very productive for this house. I thank Hon Jacqui Boydell. Her comments about having some legal oversight at a state level are really important. We must never devolve our responsibilities. I thought that was very good. Hon Peter Collier, the Leader of the Opposition, knows that I am one for facts and figures. In 2013, 1 102 sites were in fact assessed by the Aboriginal Cultural Material Committee, so the member was quite correct. Of those, 126 were deemed to be Aboriginal sites and 966 were deemed not to be. I am just following up on what the member said. I thank Hon Stephen Dawson. There are a couple of things that the minister cannot respond to, but I would like to say that when the bill comes, I hope that it will be a green bill so it will be out for some community review. Part of the problem to date has been that nobody has been able to work out —

Hon Stephen Dawson: I can't confirm that, but the intention is to do further consultation before it is brought on.

Hon ROBIN CHAPPLE: I really enjoyed the point about knowledge holders. That is very fundamental. In this day and age, with a large number of people moving around the country and the interchange between family groups and native title parties, quite often the knowledge holder may not be the person who is the native title claimant. I have come across that several times, both in the Kimberley and in the Pilbara. The idea of knowledge holders is, I think, really substantive. If we devolve responsibility to people and Aboriginal groups in the community, it will be really important to address the existing Indigenous land use agreements and contracts, and the right to negotiate. I will come to that in a minute.

The minister talked about Murujuga, which he knows I am incredibly passionate about. There is a problem with Murujuga; that is, the traditional owners of Murujuga cannot object to any development in the 57 per cent of the land that is open for industrial development. Clause 4.8 of the Burrup and Maitland Industrial Estates Agreement states —

> On and from the Satisfaction Date, the Contracting Parties agree that the Contracting Parties will not, in their capacity as owners of the Burrup Non-Industrial Land, lodge or cause to be lodged any objection to development proposals intended to occur on land within the Industrial Estate.

Unfortunately, they signed off on that, so they are hamstrung. If there is an archaeological face dating back 45 000 or 50 000 years, they cannot object to its destruction. That is really important and I wanted to make that point.

I thank Hon Diane Evers very much indeed. One thing that is a bit of a misnomer is that we have been talking about a cave that is 46 000 years old, but it is actually 42 000 years old. I have read the site reports. The media quite often gets it a little bit wrong!

Hon Stephen Dawson: It is a long time nonetheless!

Hon ROBIN CHAPPLE: Absolutely! The problem with that cave is that they were going to do a second dig. We know that the caves at the Queens development go back 60 000 years, so there is a really good chance that if they had had the opportunity to do that second dig at Juukan 1 and Juukan 2—or Brock-21 or Brock-20—we might have pushed back the date even further. They were alerted to the impending destruction by the Department of Mines, Industry Regulation and Safety. They alerted Hon Ken Wyatt about the impending destruction at a federal level and, indeed, they alerted the department about the impending destruction. That did not seem to have much effect. Again, I thank Hon Colin Tincknell for his contribution.

I want to move on, but, gosh, I will not have much time, will I? I think I may have to make a member's statement. I want to make the point that the contracts currently prohibit traditional owners from making any negative comment about development on their land.

Question put and passed.