

HERITAGE BILL 2017

Committee

Resumed from an earlier stage of the sitting. The Deputy Chair of Committees (Hon Dr Steve Thomas) in the chair; Hon Sue Ellery (Leader of the House) in charge of the bill.

Clause 14: Membership and proceedings —

Committee was interrupted after the amendment moved by Hon Alison Xamon had been partly considered.

Hon SUE ELLERY: I had already indicated that the government will not be supporting this amendment. I reiterate that we want the flexibility to canvass these things in the regulations. Indeed, there will be consultation on the regulations with relevant stakeholders. The existing clause already states “Regulations may provide for the following” including, at paragraph (b), “the term of office”. Firstly, that is the wrong place to put a cap, and, secondly, I do not think it goes beyond what the honourable member intended it to achieve, but in any event, including it in regulations is a better way to proceed. I give the government’s commitment that stakeholders will be consulted in the drafting of the regulations.

Hon ALISON XAMON: I am very pleased to hear that this issue is going to be given consideration when the regulations come out. I am comfortable with the idea that people will be consulted about their views and presumably, also, given an opportunity for some reflection about how terms may operate and what sort of limitation we should look at. To be clear, as the amendment before us deals with the concerns raised by Hon Donna Faragher, the fact that it has the word “consecutive” in it means that it is really talking only about five years in a row. It does not prohibit future terms if that were to occur, but it certainly suggests there would need to be a break of an unspecified period between those terms. As a form of drafting, if it was meant to limit for all time the period that people could be on the council to five years, it would simply state five years, not five consecutive years. In any event, if the government is not of a mind to support this amendment, I am pleased that the government is prepared to have this as part of its deliberations in further consultation around the regulations.

Hon DONNA FARAGHER: I am just working through what the member indicated about consecutive years. I accept the member’s point, but to me “must not exceed 5 consecutive years” still reads five years—one, two, three, four, five—and therefore the sixth year is consecutive again. I am sorry; I do not read it in the same way as the member, because after five years a person could reapply and it would be six, seven, eight years. That would be consecutive; they are not having a break. I think it limits the ability of the government of the day to extend someone’s tenure. I accept there will be some consultation, but I indicate that that is perhaps a better way to go at this stage, rather than this amendment.

Hon ALISON XAMON: Certainly, my interpretation is quite different. In any event, the government has already indicated, as has the opposition, that it will not be supporting this amendment. In that event, obviously I will still support my own amendment, but I am pleased that this issue will receive further consideration.

Amendment put and negatived.

Hon ALISON XAMON: I move —

Page 11, line 24 — To delete “interest;” and substitute —

interest, provided no member who has a conflict of interest in a matter may be present during any consideration or discussion of the matter or vote on the matter;

In the course of my contribution to the second reading debate, I spoke to the substantive concerns around this proposed amendment. I particularly referred to the declaration of interest policy, which was kindly given to the Greens by the government. It outlines how the current conflict of interest policy is managed. As I indicated, the Greens are concerned that this is not adequate. I am concerned because what has been proposed is that effectively the substance within this conflict of interest policy is what will inform the regulations around how we deal with conflict of interest. I do not think it is sufficient to declare a conflict of interest. When there is a conflict of interest, it is beholden for a person to remove themselves from the decision-making process in its entirety. Bear in mind that we already have a document that explains perceived conflict of interest and minor conflicts. My amendment identifies when there is a distinct and clear conflict of interest and is saying, “No; if you have that conflict, you cannot be present for the deliberations around this.” That seems to me to be the height of appropriate governance—a basic minimum requirement that I think the public would expect in the way that the Heritage Council manages its business. I am very concerned that someone who has an identified conflict of interest would simply declare it but then effectively remain involved with those decision-making processes. I do not believe that that is appropriate. I am attempting to make it quite clear that this is something that we consider to be of the utmost importance—very serious—and, as such, is worthy of being enshrined within legislation. I would have thought that at the very least this would have been incorporated within a policy. That is clearly not the case, so I cannot feel confident that

it will even end up in our regulations. As such, I am drawing it to members' attention. It is a very serious matter that we should consider incorporating within statute.

Hon SUE ELLERY: The government will not be supporting this amendment. I touched on the reasons for this in my second reading reply, but in any event, section 14(4) includes provision for regulations for the Heritage Council's governance. These have been developed in consultation with the Public Sector Commission to reflect contemporary governance practices. The Public Sector Commission sets standards for the managing of conflicts of interest to reflect community expectations. The Public Sector Commission may change those standards over time, but if they had already been hardwired into a piece of legislation, they would be difficult to change. Essentially, conflict of interest takes many forms, and the treatment of them needs to be appropriate. As I indicated in my second reading reply, the Public Sector Commission was very closely involved in the development of this bill and in particular with the governance arrangements. For those reasons, we do not think the honourable member's proposed amendment is necessary, and, indeed, it could be restrictive if the Public Sector Commission were to shift its guidelines on the handling of conflict of interest regulatory powers, which of course are a disallowable instrument and come before this house and, in any event, allow the flexibility to adjust if and when required. I think we would be in a different position if the Public Sector Commission had not been engaged in the development of these governance arrangements, but the Public Sector Commission was intimately engaged.

Hon ALISON XAMON: Maybe the minister can assist me to get a greater understanding of what has been proposed with the regulations. My understanding is that effectively the substance of what exists within the declaration of interest policy will be the basis of the formulation of the regulations around this area. Firstly, I want to confirm whether that is indeed the case. Secondly, is there any intention to potentially review that policy and perhaps tighten the way that we are managing conflicts of interest at the moment?

Hon SUE ELLERY: I am not really in a position to answer that question. I am happy to take it on notice and provide the honourable member with information when I can get it, but I am not being advised by the Public Sector Commission, so I am not in a position to tell the member what work the Public Sector Commission may or may not be doing in this area because I do not have those advisers here.

Hon DONNA FARAGHER: I have heard the minister indicate the involvement and consultation undertaken with the Public Sector Commissioner. Based on the advice that the minister has provided, we are comfortable with the way the clause is currently drafted and will not be supporting the amendment.

Hon ALISON XAMON: The concern that the Greens continue to have, and as informed by the stakeholders, is that without anything being enshrined within the legislation itself, the only guidance that we can work on in the way that the Heritage Council manages conflicts of interest is with its policy. As I have already indicated, the policy is currently inadequate. I am concerned that there may not be any scope to improve on that or to address the quite legitimate concerns from stakeholders about issues of conflict of interest, perceived or otherwise, by the Heritage Council. I am concerned that, without being able to receive any comfort on that, the only avenue we have is to try to at least tighten up these proceedings through changing the legislation itself. I understand that both the government and the opposition have indicated that they are not comfortable with tightening the declaration of interest and the conflict of interest matters within the legislation itself, but I am concerned that there is also no undertaking about whether we will be looking at improved provisions within the regulations. The minister is, of course, completely correct in that if they were enshrined within regulations, it is a disallowable instrument and hence can come back to the attention of this house, but we have received undertakings already that that will potentially be consultation around other areas of concern, such as limitation of terms. I would have thought that an area as essential as this would receive just as much, if not more, attention.

I appreciate that the minister managing this legislation in this chamber is not the Minister for Heritage. Nevertheless, I am in this chamber; I am not in the other place, so I am seeking some clarification about whether this government has any inclination to seek further feedback on whether these concerns can be addressed at least within the regulations.

Hon SUE ELLERY: Clause 14(4)(d) of the bill before us, brought by the government, provides that a set of regulations may provide for the disclosure, recording and management of members' conflicts of interest. It is specifically flagged within the scope of things about which regulations may be made, and I have already indicated that the government will be consulting on the drafting of the regulations.

Amendment put and negatived.

Clause put and passed.

Clause 15: Co-opted members and role of CEO —

Hon ALISON XAMON: Before I move the amendment standing in my name, I indicate that I have a second amendment to this clause as well. If the first amendment is unsuccessful, the second amendment will fall away and I will not be moving that second amendment. I move —

Page 12, line 11 — To insert after “regulations” —

or subsection (4) applies

Of course, that does not make sense on its own, so I will at least allude to the next amendment that is on the supplementary notice paper. The next amendment is attempting to insert a new subclause (4) that says —

Where a matter relates to a place that has cultural heritage significance on account of (but not solely on account of) its connection with Aboriginal tradition or culture, the Council shall under subsection (1) appoint a person in relation to that matter who has relevant specialised knowledge or experience of that connection and that person can vote on that matter.

Again, I referred to this amendment in the course of my second reading contribution. The purpose of this amendment is to ensure that, when an Aboriginal person is co-opted onto the Heritage Council to specifically provide expertise on a certain matter—for example, areas where there is huge cultural significance but there may also be other particular types of heritage significance—they will get a vote. Ordinarily, as I understand it, when we co-opt people onto the Heritage Council, it is fantastic that we utilise people’s expertise, and I applaud the co-option of additional people onto the Heritage Council to assist with deliberations and to ensure that wider perspectives and expertise are being contributed. However, I am concerned that we run the risk of being tokenistic by co-opting Aboriginal people for their specific expertise, particularly if we are dealing with issues of cultural heritage significance, but not affording them any type of vote. This amendment suggests that, when it is deemed appropriate to co-opt a person specifically to deal with cultural heritage significance issues, we will also ensure that they have a vote. It is not a matter of them simply being there to give advice and then potentially having that ignored, but also having their opinion matter by affording them a vote.

Hon SUE ELLERY: I indicate that the government will not be supporting these two amendments. Hon Alison Xamon is right; to understand the amendment before the committee right now, we need to read it alongside amendment 6/15. The effect would be to introduce a second tier of co-option, so we would have some members who would be co-opted without the capacity to vote and some members who would be co-opted with the capacity to vote. It is important for the chamber to note that, once the bill is passed, a new council will be formed. There is the capacity within that ongoing council to have at least one Indigenous member, and, indeed, I am advised that Indigenous people have been full standing members of the council in the past. We are not prepared to introduce a two-tiered system of co-option. Nevertheless, we note that the power to co-opt exists when particular expertise is sought, but we note that a new council will be formed, and there is the capacity to ensure that at least one Indigenous person is part of that council.

Hon DONNA FARAGHER: I also have some concerns with the notion of the ability to vote. The council is very clear: it is made up of nine persons, but there is an ability to co-opt. I would tend to agree with the minister that, in part, this could create a two-tiered system. Effectively, who is worthy of a vote and who is not, depending on the circumstance? Something may be put to the council that is extremely significant, for whatever reason, and requires a co-opted member with relevant expertise or whatever it may be—this is obviously a hypothetical situation—and that co-opted member may well strongly believe that they should have a vote as well, for whatever reason. We are not giving that power in this bill. I absolutely appreciate and understand the reasons the member is keen to include this provision, but I do not think that we can discount other situations in which someone would be co-opted for a specific purpose, who would also think that their vote matters. We would be creating a two-tiered system, and I am therefore inclined to support the government’s position—that is, to not support the amendment, notwithstanding the member’s intent.

Hon ALISON XAMON: I concur that part of the intent of this amendment is to elevate the voice of Aboriginal Australians within our heritage process. That is exactly what this amendment seeks to do. I suppose that the concern that the Greens have is that, far too often, we dismiss or overlook the importance of Aboriginal expertise and the Aboriginal voice. When consideration is being given to a heritage matter in which significant input is required to ensure that we are mindful and protective of Aboriginal heritage, we should ensure that we co-opt people and empower them accordingly. I do not shy away from the suggestion, which is accurate, that this amendment seeks to elevate the Aboriginal voice within that process. As such, I commend the amendment.

Amendment put and negatived.

Clause put and passed.

Clauses 16 to 40 put and passed.

Clause 41: Direction by Minister —

Hon DONNA FARAGHER: I raised in my second reading contribution an issue with clause 41(3)(b), which states that the Heritage Council must —

publish, in accordance with the regulations, an advertisement in relation to the direction and any statement of reasons.

I indicate that I support the intent of this clause, but I am intrigued to know why the primary legislation cannot stipulate the maximum period of time that the council effectively has to publish an advertisement in relation to a direction. I would, at first blush, suggest that it is not necessary to put that in the regulations. Surely it would take only a month, at most, to publish the direction and any statement of reasons. I am keen to know, first, why that cannot be included in the primary act.

Hon SUE ELLERY: I am advised that the policy intent of the process and the timing is that they will be published as soon as is practicable. There is no intent to hold them up, but the view was taken that the process provisions would be set out in the regulations. I am advised that it was seen as a significant step forward, given that the current bill is completely ambiguous on whether this could be done as well. Taking the leap of putting in the legislation a provision for decisions to be published was a significant step in itself, and the view was that the process, the form in which the direction is published and all those things should be worked out in the regulations. When I asked what we anticipated, I was advised that the policy intention is as soon as practicable after the direction is made.

Hon DONNA FARAGHER: We might pursue that a bit further. I refer to clause 41(3)(b), which states —

publish, in accordance with the regulations, an advertisement in relation to the direction and any statement of reasons.

Is this an advert in *The West Australian* or the local paper? Is this just on a website? I want to get some clarity on where it will be published.

Hon SUE ELLERY: That is canvassed in clause 164 on page 113 of the bill. It states, in part —

- (4) Regulations made in relation to the manner of publication of an advertisement may provide for the advertisement to be —
- (a) published in a newspaper circulating generally throughout the State; or
 - (b) published in another newspaper; or
 - (c) published on the Council's website; or
 - (d) published in another prescribed way.

The full gamut of options is there.

Hon DONNA FARAGHER: I fail to understand why we cannot have a period of time inserted here. I appreciate what the minister has said about “as soon as practicable”, but I would have thought that when the minister makes a direction, the minister will be presented with a document that outlines the direction, which he or she will sign, and a statement of reasons will accompany it. The minister will not sign off on something just because. In my view, why would that information not be available immediately? Therefore, having a one-month period is sufficient or, I suggest, more than sufficient.

I appreciate that this does not relate specifically to this legislation, but, for example, when I was Minister for Environment and I would make a decision on an environmental approval, I would sign the final document and at the time of the announcement, that would be published immediately on the relevant website. It was not in the local paper, but it was published on the relevant website immediately, because that was effectively the minister's statement of reasons. I appreciate that for all intents and purposes it probably would be as soon as practicable, but I do not see why we cannot stipulate a time period.

Hon SUE ELLERY: The honourable member realises that I am not the minister and I do not have Parliamentary Counsel sitting with me. However, the kind of language that is used in drafting land—for example, in clause 42 about three lines down—is “as soon as practicable”. Therefore, I am prepared to entertain an amendment that would add after “publish,” in clause 41(3)(b) “as soon as practicable,” so that it reads —

publish, as soon as practicable, in accordance with the regulations, an advertisement ...

That is standard drafting language. Not being the minister, I am not in a position to go further than that.

Hon DONNA FARAGHER: Would it be intended to specify a time period within the regulations?

Hon SUE ELLERY: I am advised, yes, indeed.

Hon DONNA FARAGHER: That is excellent news, minister. I am not sure how we can do this fairly quickly. I appreciate the amendment that the minister has suggested to insert “as soon as practicable,” after “publish,” so that clause 41(3)(b) reads —

publish, as soon as practicable, in accordance with the regulations ...

I have heard what the minister said. I support that amendment so long as there is a clear undertaking that the regulations will spell out the maximum time, if I can put it that way, that the Heritage Council has to publish a direction and any statement of reasons.

Hon SUE ELLERY: I have signed off on that amendment. The undertaking that I can give the honourable member is what I have just given her. I am advised that it is intended that the regulations will include a reference to the time frame within which those decisions referred to in clause 41, “Direction by Minister”, are published.

Hon DONNA FARAGHER: I thank the minister and I appreciate her entertaining and putting forward that amendment. I think that it is appropriate, because notwithstanding that the council will do it as soon as practicable, people will obviously take an interest in a direction that has been made by the minister and I think we need to give them some certainty about when they will be advised publicly of that direction and the statement of reasons. For that reason, we will support the amendment that the minister will move shortly and I appreciate her undertaking.

Hon SUE ELLERY: I move —

Page 27, line 19 — To insert after “publish,” —
as soon as practicable,

Amendment put and passed.

Clause, as amended, put and passed.

Hon SUE ELLERY: I think that we need to do some consequential amendments because of the amendment that we just passed. At clause 45(4)(b) on page 31 and also at clause 50(6)(b), members will see that there are similar requirements to publish, so we probably need to add the same wording. I will quickly do that.

The DEPUTY CHAIR (Hon Dr Steve Thomas): Can you add those and sign them, minister.

Clauses 42 to 44 put and passed.

The DEPUTY CHAIR: So members are aware, the paperwork will come back to you directly, but the amendment before the house will be: clause 44, page 30, line 10, to insert after “publish,” “as soon as practicable.” Sorry, members, it is page 31. It is clause 45, not 44; my apologies for that. That is why I was waiting for the paperwork.

Clause 45: Land description amendment direction by Minister —

Hon SUE ELLERY: I move —

Page 31, line 9 — To insert after “publish,” —
as soon as practicable,

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 46 to 49 put and passed.

Clause 50: Removal direction by Minister —

Hon SUE ELLERY: I move —

Page 35, line 16 — To insert after “publish,” —
as soon as practicable,

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 51 to 53 put and passed.

Clause 54: Notification of adoption, update or amendment —

Hon DONNA FARAGHER: I just indicate that I am having a quick read through the clauses to see whether there are any others. If I read clause 54(b) correctly, another consequential amendment might be required.

Hon Sue Ellery: This is not related to a minister’s direction; this is the council. The previous ones that we amended —

The DEPUTY CHAIR: Can I ask Hon Donna Faragher to stand because somebody has to be on their feet during the process.

Hon Sue Ellery: I will stand.

The DEPUTY CHAIR: I call the minister; thank you.

Extract from Hansard

[COUNCIL — Tuesday, 11 September 2018]

p5496a-5503a

Hon Sue Ellery; Hon Alison Xamon; Hon Donna Faragher

Hon SUE ELLERY: Can I ask the honourable member to perhaps reconsider? The amendments that we have made to date have been in respect of the ministerial directives, which I was happy to proceed with. I think if we now start going into the council as well, I will be stepping beyond the capacity that I have to amend on the run.

Hon DONNA FARAGHER: The minister has all the power whilst she sits there! I can see what the minister has said. So long as I again get an undertaking that within the regulations it would be “as soon as practicable” and that a time frame would be identified—that is not just with respect to clause 54, but others that relate only to the council—I will be happy with that.

Hon SUE ELLERY: I am able to give that undertaking in respect of publishing. The regs will set out the form, the format and the time line within which that needs to be done.

Clause put and passed.

Clauses 55 and 56 put and passed.

Clause 57: Continuing protection order —

Hon DONNA FARAGHER: I indicate that clause 57(4) again relates to “an advertisement in relation to the Minister’s determination and any statement of reasons”. I would put that there is an opportunity there to say “as soon as practicable”.

Hon SUE ELLERY: This is again about “the Council must publish”. I think to agree to a further amendment, I would be going beyond what I am able to do. During the last issue that we dealt with, I gave a blanket commitment that in respect of publishing, regulations will be drafted that will include form, format and the timing within which they need to be published.

Hon DONNA FARAGHER: I appreciate the minister’s response, and I know we should not really go back to a clause we have just dealt with, but clause 41 of the bill—so that we are clear—refers to “the Council must publish”. It is still “the Council must publish”; it is actually no different from what we are putting forward here.

Hon SUE ELLERY: I am sorry, but this is the danger of amending on the run. I am not in a position —

Hon Nick Goiran: You’ve already started that.

Hon SUE ELLERY: In response to a request to consider it.

Hon Nick Goiran: You said yes.

The DEPUTY CHAIR: Order, members! Minister.

Hon Nick Goiran: You could have said no; you’re good at that!

The DEPUTY CHAIR: Order, members! I expect the minister to be heard in silence at this point. I give the minister the call.

Hon SUE ELLERY: I am able to give an undertaking—this will be the third time I have done it—a blanket one, that regulations are going to be drafted. I give an undertaking on behalf of the government that they will include form, format and the timing within which the matters will need to be published and that it is the government’s intention that that be as soon as practicable.

Hon DONNA FARAGHER: I indicate to the minister that I have had a quick look and in my view this is the only other one that refers to the minister before we then go on to other matters. I would put to the minister that in order to finish this part of the bill and for consistency, it would be appropriate to insert “as soon as practicable”. I have accepted what the minister has indicated with respect to previous clauses when it relates only to council decisions effectively—I accept that—but this relates to minister’s determinations.

Hon SUE ELLERY: Noting the time, I might ask the Deputy Chair to report, and then, if there happens to be a dinner break, I will get the advisers to check so that I am not amending on the run.

The DEPUTY CHAIR: If I just noted the time and left the chair, you would not have to report at this point.

Hon SUE ELLERY: Okay. Can I ask that you leave the chair?

The DEPUTY CHAIR: You do not even have to ask, minister.

Hon SUE ELLERY: Thank you.

The DEPUTY CHAIR: Honourable members, noting the time, I shall leave the chair until the ringing of the bells.

Sitting suspended from 5.59 to 7.30 pm

Hon SUE ELLERY: Before the break we were having a discussion about whether it would be prudent to move an amendment to subclause (4) in exactly the same terms as the amendments the government had previously moved. I asked the advisers to check in the dinner break and, indeed, I will move an amendment in those terms.

I did ask the advisers to check the entire bill, so I foreshadow that there is one more amendment, which will be to clause 87(5). To save a bit of time, I will hand them both up now and perhaps they can both be photocopied. I move —

Page 41, line 6 — To insert after “publish,” —
as soon as practicable,

Hon DONNA FARAGHER: I thank the minister and her advisers, who obviously worked through the bill during their dinner break. I do think that, for consistency, the amendment is appropriate. I appreciate that the minister made the first amendment on the run and that it has precipitated some further ones, but if the bill is now consistent, that is a good outcome. I thank the minister; we will obviously support the amendment.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 58 to 86 put and passed.

Clause 87: Minister may modify planning instruments —

Hon SUE ELLERY: I move —

Page 62, line 25 — To insert after “publish,” —
as soon as practicable,

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 88 to 113 put and passed.

Clause 114: Appointment of inspectors —

Hon DONNA FARAGHER: This clause relates to the appointment of inspectors. This is perhaps more of a general question rather than anything else. How many inspectors do we have at this point in time?

Hon SUE ELLERY: None; that is what I am advised.

Hon DONNA FARAGHER: Can I check that? I do not believe this is a new provision. As I understand it, this is from the current act. My understanding is that the bill is essentially the same, but there are some revisions. If that is the case, why do we not have any inspectors?

Hon SUE ELLERY: I am told it is not a new provision. Neither of the advisers at the table can recall there being inspectors in the last 10 years. Who knew?

Hon DONNA FARAGHER: You learn something every day. What, then, is the purpose of an inspector, and why is this provision still in the legislation?

Hon SUE ELLERY: I am advised that the advisers cannot recall there being a specific need for inspectors. However, when the bill was being drafted, and during the last versions of consultation that occurred, it was determined that they wanted to retain that power in the event they needed assistance in carrying out investigations in the future. I am advised that consideration was given to whether they wanted to keep this provision, and it was determined that they did.

Hon DONNA FARAGHER: It is interesting. The powers of an investigator, and what investigators can and cannot do, are quite significant. I am not proposing an amendment. However, I note that clause 115 refers to police officers having the functions of inspectors. In that light, I would have thought we would leave it at that.

Hon Sue Ellery: It is curious.

Hon DONNA FARAGHER: It is curious, minister. I suppose that might be worth a question in a couple of years' time to see whether any inspectors have been appointed.

Hon Sue Ellery: I look forward to it!

Hon DONNA FARAGHER: The explanatory memorandum states under part 11, “Enforcement” —

These features have been substantially revised for clarity while retaining the essential substance of the original provisions in the current Act.

I presume that in part 11 there have been a number of administrative changes to improve clarity but nothing substantive has been changed from the current act.

Hon SUE ELLERY: Correct. I am told there is no policy change; it is just a tidying up and clarification of the provisions.

Clause put and passed.

Clauses 115 to 162 put and passed.

Clause 163: Notices and statutory notification —

Hon SUE ELLERY: I move —

Page 112, lines 9 and 10 — To delete “Western Australian Land Information Authority or another” and substitute —

Registrar of Titles, the Registrar of Deeds and Transfers, or another person or

I advise that in the course of the drafting, Landgate was consulted with a view to determining whether the proclamation regulations should include a provision under clause 163(3) to further define statutory notifications. Although Landgate agreed that the language of this clause is specific enough to deal with memorials and therefore proclamation regulations will not be necessary under this clause, Landgate’s advice was that the reference to the Western Australian Land Information Authority—that is, Landgate—as the agency to register, record or note matters on the land title documents is technically incorrect. This amendment seeks to correct that. Registration, recording and noting matters on titles or deeds is actually performed by the Registrar of Titles or the Registrar of Deeds, offices that are established by respectively the Transfer of Land Act 1893 and the Registration of Deeds Act 1856.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 164 put and passed.

Clause 165: Review of Act —

Hon DONNA FARAGHER: This clause relates to the review of the act. I indicate that I am obviously supportive of that. Subclause (1) states —

The Minister must carry out a review of the operation and effectiveness of this Act as soon as is practicable after the 10th anniversary of the commencement of this section.

I am not saying this does not happen in other circumstances. However, as a general rule, in the review clauses that I have seen, the period has been five years. Ten years seems to be quite a long time. I am keen to understand why that is the case.

Hon SUE ELLERY: I am advised this is a direct take from the Liberal government’s version of the bill that went before the house in 2016, which also referred to 10 years. It is unusual. I have not seen it before. However, I am advised that in respect of heritage matters—I hope no-one thinks I am insulting them—things do move slowly. Therefore, the view was that we would not be able to get a true picture of how things were progressing within a shorter period of time. As I said, I am advised that this is a direct take from the bill that the previous government presented to the house.

Hon DONNA FARAGHER: I hear what the minister has said, and I appreciate that this might well have been in the bill that was presented by the former government. I do not know why that was the case either. However, notwithstanding what the minister has said, a period of 10 years before a review is undertaken is a bit long, given the fact that this is a substantive piece of legislation that proposes to make a number of positive changes to the Heritage Act. Therefore, I am inclined to take the view that it should be five years.

Hon SUE ELLERY: I anticipated that might be the member’s view. Therefore, I make the point again that despite the fact that this clause was approved by the previous government and went through this house in June 2016 and August 2015, and was reflected in the 2015 exposure draft, I propose an amendment that would have the effect of deleting “10th” and substituting “5th”. I move —

Page 113, line 10 — To delete “10th” and substitute —

5th

Hon DONNA FARAGHER: The minister is being most accommodating tonight.

Hon Sue Ellery: You see, if you are nice to me, I will be nice to you. Perhaps you could talk to the guys who sit alongside you.

Extract from *Hansard*

[COUNCIL — Tuesday, 11 September 2018]

p5496a-5503a

Hon Sue Ellery; Hon Alison Xamon; Hon Donna Faragher

Hon DONNA FARAGHER: They are doing their job, as they do very well, minister. Notwithstanding that, I think that a five-year anniversary is more appropriate. Thank you, minister. We will obviously support that amendment.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 166 to 188 put and passed.

Title put and passed.

Report

Bill reported, with amendments, and, by leave, the report adopted.

As to Third Reading — Standing Orders Suspension — Motion

On motion without notice by **Hon Sue Ellery (Leader of the House)**, resolved with an absolute majority —

That so much of standing orders be suspended so as to enable the bill to be read a third time forthwith.

Third Reading

Bill read a third time, on motion by **Hon Sue Ellery (Leader of the House)**, and returned to the Assembly with amendments.