HERITAGE BILL 2017

Second Reading

Resumed from 27 June.

HON DONNA FARAGHER (East Metropolitan) [2.13 pm]: I rise to speak on the Heritage Bill 2017, and indicate that I am the lead speaker for the opposition on this bill. At the outset, the opposition strongly supports the passage of this bill. I indicate to the house that it is essentially the same bill that was introduced under the former Liberal–National government by the former Minister for Heritage, Hon Albert Jacob, and I want to acknowledge the role he played in getting this legislation developed and introduced into Parliament. I also want to recognise Hon John Castrilli, again a former minister, who very much started the original development of this legislation. I will go through some of the time line of that.

The bill before us has been recognised by many people as well overdue. I want to refer to the explanatory memorandum. It states —

> Western Australia was the last Australian state to enact legislation to recognise and protect non-Aboriginal cultural heritage places. The current Act was written at a time when legislators responded to the community's demands for the protection of its heritage places amid the demolition of a significant proportion of Perth's built heritage in the name of progress.
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> Almost as soon as it came into operation over 26 years ago, the current Act was found to have many flaws and shortcomings that created obstacles to its effectiveness: complex and redundant assessment and consultation processes, inflexible development referral requirements, countless ambiguities and arcane language that is hard to comprehend and expensive to administer. With its origins in the 1970s and 80s, the current Act is notable for the hard-to-interpret phrasing that reflects the statute drafting style of the day and its rigid, adversarial approach to heritage management.

I think that encapsulates the challenges that the current act delivers for us as parliamentarians, for governments to administer and for the community to be able to work through.

There is no doubt that our heritage is incredibly important, and it is not one-dimensional. Of course, this bill addresses the management of our state's cultural heritage. I want to indicate that, as a member for the East Metropolitan Region, there are a number of important heritage areas in that region. We have areas such as Mt Lawley and Inglewood. We have Kalamunda and Serpentine–Jarrahdale. We also have Guildford, where my electorate office is located, and next door is, of course, Midland. Because we are talking about heritage and we do not often get to talk about these things, I will take a couple of liberties before I get into the essence of the bill. Guildford is an incredibly important heritage precinct in our state. A few years ago, I had the occasion to read a book entitled *The Swan Valley: a perspective in time and place* by Dorothy B. Robinson. In another debate in the Parliament, I read some aspects from the book about how Guildford was effectively created. In the context of the debate we have today, I want to reflect on that material. The book says, in part —

> Guildford is situated near the head of the navigable portion of the Swan River. The Swan River to All Saints Church, Middle Swan, is a salt-water estuary, subject to tides as well as acting as a channel for runoff waters …
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> Guildford, because of its clay loan soils and its proximity to the navigable Swan River, was a natural choice for an early agricultural settlement. Captain Stirling, then Lieutenant–Governor, selected for his own use as a country resort and farm, a piece of land lying between the Swan and Helena Rivers. He named his estate "Woodbridge", after his wife's childhood home in England. When the Avon Valley, beyond the Darling Range, was discovered in 1830, it was immediately opened for settlement, eventually to become one of the most important agricultural and pastoral regions in the Colony.
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> At first there was but one line of transport between Fremantle, Perth and Guildford—the river. Some roads were built, but they were not entirely satisfactory. In the early 1830's, a road was made from Perth to Guildford on the right bank of the river, passing through Maylands, but for years the sandy ground made heavy going for the laden vehicles, so mostly it was river transport that was used. A causeway across the Swan River at Perth was completed in 1843, and from then on a road along the left bank of the river through Belmont became the usual land route to follow.
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> A road to Upper Swan connected to Guildford, turning north where Midland now stands. A road to York was completed in 1835 and to Toodyay in 1841, though at this stage these roads were little more than

> bush tracks, In the 1850's, better roads were constructed with the aid of convicts who were brought from England to help develop the Colony
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> Thus Guildford became the centre of a road network linking the agricultural areas via the river with Perth and Fremantle
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> Until the 1880's, Guildford was a flourishing market town and river port, with warehouses and wharves and many stores and hotels. Teamsters brought down loads of wheat and oats, hides, skins and tallow, and timber and sandalwood, and went back to the country loaded with clothes and clothing materials, stores, hardware and household goods, and implements for use on the farms.

Today, people visiting the Guildford heritage precinct will see many aspects of Guildford's heritage still on show. Near Stirling Square is the Colonial Gaol, which was recently partly refurbished, and the Guildford Mechanics' Institute, where just last week I held a function in support of Parkerville Children and Youth Care. There are also the well-known sugar gum trees that were planted in honour of Queen Victoria's diamond jubilee in 1897.

As Dorothy Robinson observes in her book, there are a number of well-known homes in the area, such as Woodbridge House, Earlsferry House and Fairholme. As many people will know, Guildford Grammar School and its Chapel of St Mary and St George make a distinctive eastern entrance to Guildford. Of course, there is also Guildford Primary School. I was speaking to someone about Guildford Primary School just the other day, and they were a little surprised to learn that it is the oldest government-sponsored education institution still in operation in WA; I think it is the third oldest in the country. It has operated continuously since 1838, and a number of heritage buildings remain on site. Woodbridge Primary School also has a couple of heritage buildings; it was formerly the West Midland Primary School, which my mum attended. There are a number of buildings in both Guildford and Midland that have significant heritage value.

While I am on my feet, I want to recognise the Swan Guildford Historical Society, of which I am one of the patrons, and particularly its president, Celia Miller, and the committee members. They have a very strong commitment to the heritage of Guildford and surrounding areas and to expanding the community's knowledge of the importance of Guildford. I want to commend the society for recently securing additional funding, through the City of Swan, to expand its school education program and its general tour program for the local community and for visitors from Perth, interstate and overseas who come to see what Guildford has to offer.

To return to the Heritage Bill 2017, as I understand it the current act was not subject to any substantive changes until around March 2011, when legislation was passed to significantly increase the maximum penalties applicable for unauthorised damage to and destruction of heritage places. However, those changes did not address many other longstanding issues that had been raised with regard to the operation of the act. Both the Minister for Heritage and the shadow minister have indicated that heritage legislation should be open, transparent and simple to operate and understand; I think we would all agree with that. Importantly, it should reflect best practice in the recognition and protection of heritage places.

There is no doubt that a fairly long and extensive history of consultation has brought us to the point of now debating this bill in the house. The legislation dates back to 2011. There have been three rounds of consultation encompassing a discussion paper, a consultation paper, an exposure draft bill and the 2016 bill that was introduced by then minister Albert Jacob. Of course, that bill had not been passed before Parliament was prorogued, so we now come to the bill before us.

As I understand it, the review of the Heritage of Western Australia Act 1990 initially involved, as I have said, two phases of community consultation in 2011, and then further consultation on an exposure draft bill in 2015. The first consultation paper was released by the then heritage minister, John Castrilli, and it outlined a number of key issues on which the government sought advice, including the objectives of the act; the effectiveness and role of the Heritage Council; the processes for entering places on the state Register of Heritage Places; incentives for owners; and the management of heritage places, including maintenance.

I have gone through a very helpful information paper that was put out at the time of the 2015 bill. It identified that during the consultation more than 100 submissions were received from government agencies, local government authorities, industry, professional peak bodies, interest groups and individuals. As a result of that initial consultation a discussion paper was released later that year that included a series of proposals for what a new heritage act should do. A further 80 submissions were received in response to that discussion paper. In response to those submissions, along with various stakeholder meetings, an exposure draft Heritage Bill 2015 was tabled in Parliament. Again, that went out for some significant consultation. In response to that consultation, the final bill—if I can put it that way—was introduced in 2016. I understand that a lot of the content of that bill was similar, albeit added on, to that which appeared in the exposure draft.

As I mentioned, this bill is essentially the 2016 bill, albeit with some minor administrative amendments. Notwithstanding that, there are a couple of issues I want to comment on—the first being the registration process. As I understand it, part 3 of the bill brings into place a simplified process for entering places on the state Register of Heritage Places. Under the current act, there is a two-step process for registration. A place is firstly assessed and public consultation undertaken, then the place is entered on the state register on an interim basis. A similar process is then followed to make the register entry permanent.

It has been put that the overall process under the current legislation is confusing, costly and takes a lot of time. Therefore, part 3 of this bill introduces a simplified and more transparent single assessment and consultation process that will culminate in a heritage place's permanent entry on the state register. In situations in which a place is recommended for inclusion on the register, the Heritage Council will review the place by considering its cultural heritage significance; consulting the owners of the place; undertaking public consultation; and, if appropriate, making a recommendation to the minister for inclusion on the state register. Proposed section 38 sets out the considerations the Heritage Council must take when determining whether a place has cultural heritage significance.

Key to the legislation is, of course, openness and transparency in the processes that are undertaken. To achieve this, I want to refer to clause 41 of the Heritage Bill 2017. It requires that the Heritage Council of Western Australia and ministerial decisions on the state register be published. I want to refer specifically to clause 41(3)(b), because I have a question for the minister. It states that the council must —

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

Although I agree with that and because we are unfortunately referring to regulations, which the Parliament has not seen, and the regulations may well stipulate this, my question to the minister is: why is a time frame not stipulated for when an advert must be published? I would have thought it would be a fairly quick process to place an advert. I am keen to understand why the primary legislation does not stipulate a time frame of not less than one or two months—whatever it may be—for when the advert must be published. I am also keen to understand in what form the advert must appear. For example, will it be in *The West Australian* or the local paper where the issue is most relevant? I am keen to get an understanding from the minister why this is not stipulated in the primary legislation as opposed to the regulations. We might go into Committee of the Whole if I do not get an answer to that.

Part 4 of the bill deals with protection orders and includes, amongst other things, the procedures for issuing protection orders, their contents and enforcement. A new feature is included at division 2 of part 4 to introduce repair orders. Essentially, this has been a source of contention for some time and I think this remedies a longstanding issue. A new provision is created to ensure that demolition by neglect can be avoided. I want to refer to both clauses 64 and 65(1). Clause 64 states —

> (1) This section applies if —
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> (a) a registered place suffers from neglect of a prescribed kind or extent; and
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> (b) the Council considers that, as a consequence of the neglect, works are required to prevent irreversible deterioration to the place.
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> (2) The Council may give a notice to the owner or occupier of the place stating that, unless works specified in the notice are completed by a date specified in the notice, the Council will advise the Minister to make a repair order in relation to the place.
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> (3) A repair notice must include any prescribed details.

Subclause (4) then refers to the regulations, which, of course, we are yet to see.

Clause 65, which I think is the important part, states —

> (1) Subject to subsections (2) and (3), the Minister may make an order under this section in relation to a registered place (a repair order) requiring the owner or occupier of the place to undertake specified works for any or all of the following purposes —
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> (a) protecting the place from damage or deterioration due to fire, weather or other causes;
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> (b) securing the place from intrusion or vandalism;
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> (c) maintaining or repairing the place to remedy or prevent serious or irreparable damage or deterioration from any cause.

As I indicated, I think this provision in particular will be welcomed by the community. Certainly, having my electorate office in Guildford means that I am very conscious and reminded often of the Guildford Hotel, which has now been beautifully restored. However, I think we would all know—and everyone who has travelled back and forth through Guildford over many years saw lots of socks around the walls—there was significant concern

from members of the community and other people, for many years, about whether the hotel would be redeveloped or left to effectively languish and get to a point at which it would need to be demolished. Obviously, that did not occur and the Guildford Hotel has been restored to its former glory, but this mechanism, which was not previously in the legislation, will give some comfort to the community that when a building or otherwise is damaged, for whatever reason, there is an ability for such an order to be made. It may be to secure the place from vandalism or, importantly, to protect it from damage or deterioration due to fire, weather or other causes. I think that is an important part of this bill and one I certainly support quite strongly.

Regarding penalties, the bill does not change the maximum fines applicable. The fine is up to $1 million for those who deliberately seek to damage heritage places. I recall that those particular elements were introduced as part of the 2011 legislation. The fines are identified in clauses 129 and 130. Clause 131 states that the onus of proof is on the owner of a place.

Regarding heritage inventories, I want to refer to the explanatory memorandum. It quite clearly identifies the reasons for some of the changes made in the bill. It states —

> Section 45 of the current Act requires each local government to compile and maintain an "inventory" (commonly known as a Municipal Heritage Inventory) of buildings in its district that are or may be of cultural heritage significance. Section 45 is unclear as to the purposes of such inventories, leading to widespread misunderstanding among local governments and confusion and concern in communities.
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> Part 8 retains the substance of section 45. Unlike the current Act, Part 8 will clear up ambiguities about the scope of such inventories, which are renamed "surveys" to reflect their purpose as a survey of community heritage resources to assist local governments. In particular, a survey made under Part 8 is to include "places" rather than just "buildings" as under the current Act. This has been a source of confusion under the current Act.

Other areas in the bill deal with development referrals, incentives for owners and movable heritage. I will indicate now that I have one question about the constitution of the council, which is outlined early on in the legislation. Some concerns were raised about whether it should be stipulated that a local government representative be on the council. My understanding from reading the bill is that there are a number of aspects to take into account regarding who can be considered, but clause 14(3)(b) indicates —

> demonstrated knowledge, experience, skills or qualifications in one or more of the following fields —
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> (i) archaeology;
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> (ii) architecture;
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> (iii) construction;
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> (iv) engineering;
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> (v) governance;
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> (vi) heritage conservation or interpretation;
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> (vii) history;
>
> (viii) landscape architecture;
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> (ix) local government;
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> (x) property ownership, development or marketing;
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> (xi) urban and regional planning;
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> (xii) any other field prescribed for the purposes of this subsection.

I think the minister's response will be that each and every qualification that a member of a board needs to have does not necessarily have to be prescribed. That is not necessarily misaligned to the position the former government took regarding the composition of committees and boards. For example, we do not need to say that there must be a member of the local government or someone with a development aspect who therefore represents an association relevant to that; I presume that we want to try to broaden the scope. But I recognise some concerns in and around local government because, obviously, from a day-to-day perspective, local governments will deal with a great deal of the carriage of this legislation. I just want some clarification that although we may not stipulate that a local government representative must be on the board, there would be recognition that it would be highly desirable to have on the board someone with local government experience, whether that is someone who is currently serving as a councillor, or has done so prior or whatever it may be. I am interested to hear the minister's response to that.

As I said, the opposition supports this bill. As I have indicated, if I had been sitting on the other side of the house—I remember that I represented the Minister for Heritage—I would have been introducing almost the exact same bill. I do not intend to delay the passage of the legislation. I have a couple of questions that we can probably deal with fairly quickly in the Committee of the Whole stage. I understand that there is a supplementary notice paper with one amendment that the government seeks to move. But I just want to end on a note that was in the "2015 Heritage Bill (Exposure Draft): Information Paper" dated August 2015. This is a good summary about why we need to have contemporary legislation that meets the needs of the community and recognises the importance of cultural heritage. It states —

> The focus of heritage legislation is to promote the identification, recognition and protection of those special places that tell the story of the State's history and development. About 1,350 such places of outstanding cultural heritage value to all Western Australians have been entered in the State Register since 1990, representing about 0.01% of the land mass of Western Australia.

It is for those reasons that this legislation is important and that the opposition will support the passage of this legislation.

HON TIM CLIFFORD (East Metropolitan) [2.42 pm]: I rise as the lead speaker for the Greens on the Heritage Bill 2017. I also note that we support the bill. The bill will replace the Heritage of Western Australia Act 1990. It is a mixed bag containing some very welcome improvements and of course some significant weaknesses. I welcome the opportunity to respond to this bill, which has been in development for several years, and I acknowledge that it lapsed under the previous thirty-ninth parliamentary term. My colleague and former member Hon Lynn MacLaren had quite a bit to say on this bill. She had quite a few submissions and I will be touching on a couple of those points today.

I want to clarify a couple of points that have been raised with me about the Greens' approach to infill. We believe that it is possible to achieve infill as well as protection of our heritage. It goes without saying that this goes along with our open green spaces policy. That is a bit of a misconception; they are both as equally important. In our #designperth policy, we highlight that we need to both preserve our heritage and continue to work to do so. One of the reasons that we support this bill is its breadth. It will apply to not only single buildings but also whole areas or places, whether they are next door to each other or owned by the same person. This is quite important. It means that this bill will allow for an expansion so that it covers places such as the town of Guildford. It is really important for places like Guildford, which, fortunately, has kept many of its original buildings and town layout and is now a significant tourist attraction in the East Metropolitan Region. It tells the story of our colonial heritage, so it needs protecting, given that it was established in 1829.

The PRESIDENT: Members, I am just going to say that there is a lot of chat in the chamber. I am finding it really hard to hear Hon Tim Clifford and I am sure Hansard is struggling. If you need to have a conversation, you may want to step outside or you may want to hold it for a while.

Hon TIM CLIFFORD: Thank you, Madam President.

Going back to Guildford and looking at the importance of its colonial history, dating right back to 1829, when it was one of the first three towns established in the state, the bill recognises that the whole is greater than the sum of its parts. It will also apply to things including, for example, archaeological remains, furniture and objects, gardens and parks, trees in or adjacent to man-made settings, and, as was discussed in the other place, this can encompass urban art. This brings to mind: can any old thing be included? No; to be included in the state register, it is required to have cultural heritage significance. This means it can be of aesthetic, historic, scientific, social or spiritual value for individuals or groups within Western Australia. It can be embodied in a place itself in any of its fabric, setting, use, associations, meanings, records, related places and related objects.

The bill will allow for a more open process for the public to identify and list heritage places. It will introduce better processes for entry on the register. The Greens support increased consultation and opening up the processes to the public, which are lacking in the 1990 act. The bill will allow any person to nominate a place, or the Heritage Council can consider a place of its own volition. If the council deems that a place is warranted for further consideration, it will then consult with the owners and the public and recommend to the minister that the place be entered into the register. We support that. At this point, further public consultation will occur and there will be no issues when the registration occurs. This is an improvement and we support this aspect of the bill in broadening consultation with the public, allowing for more engagement with different groups and community members.

Regarding the interim list, one thing I will be watching out for is the way that currently interim-listed places are handled. Under clause 178, transitional and currently registered places will be taken to be registered, with a two-year grace period to consider whether they will be eligible for registration. If this time frame is not met, they are liable to be removed. This has dire consequences. Removal from the register means that the place cannot be

re-registered for five years unless the council gets an order from the Supreme Court. I have been informed that this time frame is achievable and I will be periodically checking in with the government to ensure that this is the case. We really need to keep an eye on the interim list. This bill also contains better processes for the removal of registered entries. The process for removal from the register now includes an additional step that each house of Parliament must approve and authorise a ministerial direction to remove a register entry. This parliamentary oversight is welcomed.

I welcome the increased checks and balances that this bill will bring. It has a bigger, better toolbox for preventing damage to heritage places. The Greens have been asking for these measures to be put in place for a long time. A particular strength of this bill is the introduction of a new option, called a repair order, to address issues previously raised about demolition by neglect. This ensures that any damage can be remedied and enforced under the law. We also welcome the option to compulsorily acquire registered places that have been subject to demolition by neglect. This means that an owner cannot just allow a property to degrade to the point at which it loses its heritage value.

Another key benefit in this bill is the opportunity to claim restitution for damage, using the restoration order, under which a convicted person must make restitution. A prohibition order can prevent work taking place at the heritage site for up to 10 years and require a person to prevent further damage, with a penalty of a fine of $50 000 a day. That is welcomed. The bill includes provision for protection orders, which prohibit entry of people and vehicles, or detrimental activity. This provision also includes the ability to make a stop work order to prevent any works from continuing. Contravention of a protection order carries a fine, as was mentioned earlier, of $1 million, or a one-year prison sentence.

Another aspect of the bill that we support is the review clause. As with other bills introduced into the Council, the Greens fully support the option of a review. Continuous improvement can only happen when the review occurs. We welcome the formal inclusion in the bill of a provision for a 10-year review. That is not to say that we should wait 10 years before reviewing the legislation. We will be in constant consultation with different groups in the community to ensure that the bill does what it says it is going to do. We welcomed the opportunity to contribute to the review of this bill over recent months, and I again acknowledge important work done by Hon Lynn MacLaren in this place in her submission on the previous bill, which has informed the make-up of this one. I have consulted with many stakeholders, and while I acknowledge the benefits within this bill, I would like to put on the record some concerns that I hope will help the government to inform its policy and implementation. I hope that any improvements highlighted during this debate will be taken on board and contribute to improving the bill.

That brings me to a few issues that we have concerns with, beginning with the objectives under clause 3. The preamble to the bill makes mention of due regard for the rights of property owners, and I wish to highlight the competing interests in preserving our heritage. These interests come from different places, whether they be developers, mining companies or tourism operators. It is in the interests of developers to pay attention to heritage issues, but this does not necessarily happen. Hon Lynn MacLaren advocated for additional objectives in the bill, so that these competing interests could be better managed and balanced to ensure an appropriate level of protection for the assets. The government has attempted to take this into account by encouraging a partnership approach, but I do not think it has gone far enough. The bill needs to include stronger language, such as a requirement to ensure protection of a site, making sure that developers and the like adhere to the requirements. The bill in its current form includes a requirement to promote understanding and appreciation, recognise the importance, encourage and facilitate, but it does not anywhere ensure protection while allowing for appropriate change. This is the kind of language I like to see, so that developers and other interests do not ride roughshod over our culture, heritage and history. The three heritage jetties in Carnarvon, Busselton and Esperance, which were subject to a motion in the other place, demonstrate this. I understand that they are all heritage listed, and all owned by the state. Two are managed by local government and the third is managed by volunteers, but no amount of promotion, recognition or encouragement are stopping them from falling to bits. It is important that we strengthen the language, because it does matter. When money and developers are in play, they will not take the least profitable option; they will always try to find ways around the wording. We need to look at how we frame things and how we can strengthen them.

The Greens have a particular view on what constitutes heritage, and I am disappointed at the exclusion of some forms of heritage from this bill. The different sorts of heritage are: natural, which is trees, landscapes and views; built, which is significant buildings; Aboriginal; movable, such as documents or steam locomotives; maritime; and intangible, which is songs and language. Including these things in the register would heighten the importance of how they are perceived by the public. A lot more value would be placed on these things if they were able to be registered. The Greens see heritage as the environment, objects and places that we inherit from the past and pass on to future generations. It is inseparable from our culture as a way of understanding the living world. Therefore, the Greens want holistic umbrella legislation providing protection for all the different forms of heritage in planning decisions. We are not going to be able to do heritage properly until it is embedded in our normal processes. It is

important that heritage such as the Dampier rock art and our forests be included in our heritage legislation. I go back to the point that this bill is not umbrella legislation. Although we have been given reasons for this, I will still register my disappointment that this bill does not go quite far enough. To reiterate, the bill does not include Aboriginal heritage places, forms of heritage that are the responsibility of other agencies, such as libraries and museums, and places that are made up of only natural environments, such as views and landscapes. If this bill were broader umbrella legislation, we would have departments working more cohesively together, having to discuss things that we classify as heritage, and recognising the importance of these things.

One area of this bill that is of particular concern to me is its lack of protection for big, significant trees, which is very disappointing. It covers only trees in or adjacent to man-made settings, under clause 39. As I have mentioned before in this place, we need to understand that Perth is rapidly losing its large tree canopy, which is having a range of negative impacts, including on human health, and increasing urban heat. We hoped that this bill would be broadened to include trees that are not adjacent to man-made settings, but that has not happened. In heritage precincts such as Guildford and Midland, if we are looking to protect only the trees adjacent to man-made buildings that have been classified as heritage, this does not take into account the trees around the corner that might have been there since the establishment of the settlement. They must have equal importance, because in some of these places we cannot have one without the other.

I also note the omission of movable heritage such as collections of documents, trains, aircraft, ships and machinery, which is, in our opinion, an oversight. These collections and objects are a crucial part of Australian history. They represent our history and our identity. In many cases the buildings of our early settlers were transient, and what remains is machinery. Recently, I spoke to a constituent whose father said that a lot of the farming equipment on their property was still serviceable even though it dated from the turn of the last century. They have restored the machinery because they saw it as being very significant to the area, having been used over different periods.

Intangible heritage such as songs, ceremonies, oral traditions, language and folklore are also omitted from the bill. The Greens are strong on this issue. The way that we tell our stories is equally important and we had hoped that this would be included. Nonetheless, I recognise that the inclusion of all these forms of heritage in the state Register of Heritage Places will be a long-term project and I acknowledge that in the meantime there is a pressing need for improvement in the way we protect places.

I refer to the secrecy of consultation and submissions about entries in the register, which are under part 3. The Greens have always valued transparency and accountability and we believe that this bill does not go far enough in ensuring this. In the briefing, I asked the government whether the details of consultation and submissions would be made publicly accessible in some other way. My understanding is that the answer is no because the government's policy position is that the owner of the property should be able to express their views privately and the government fears that fewer people would make submissions if they were published. The government suggested to me that people who make submissions will not even be asked whether they consent to their submissions being made publicly available. I urge the minister to look at this matter. I am not satisfied with the process.

I acknowledge that some things obviously merit being kept confidential, but that should be the exception, rather than the rule. There is a strong public interest in transparency because it helps to keep decision-makers accountable to the WA public. Our freedom of information laws and parliamentary and court processes reflect this principle. It is disappointing to see such a low value being placed on it in this case. At the end of the day, in a lot of the debates in the public sphere over buildings and places that people would like to see put on the register, a lot of people want to understand why people made those decisions, what the owner of the proposed building said about that property and why they might have objected to it being put on the register. Putting all these things out in the open would be an important step to ensure that a lot more trust is put in the processes we use to heritage list places and properties around the state.

The bill's powers are diminished in that there is only one tool in the toolbox to ensure heritage agreements. Part 7, "Heritage agreements", binds the council or public authority or landowner to put in place appropriate conservation activities to ensure that heritage values are maintained. This is a binding contract. Under the bill, heritage agreements are enforceable by the State Administrative Tribunal. I understand from the briefing that this is the only remedy that will be used in the event of damage or neglect, rather than the other tools in the toolbox. Therefore, a great deal will be dependent on the content of the heritage agreements.

That brings me to local heritage surveys under part 8. The bill does not require that a local government ever review or update its survey. Not even a once-off review is required to ensure that a survey is updated to include all the kinds of places defined by the bill. The bill contains no restraints on removing a place from the survey. This goes back to the lack of requirements. What is the point of having a survey if there is no requirement to go through those processes? A local government might say that it does not see any need to update its survey or to continue to look at its processes for what it will put on its local heritage survey.

Under part 9, there is also limited protection of state government heritage. We understand that the state owns about one-third of registered places. Apparently, there is no obligation for state government agencies to identify, protect or conserve their heritage assets. Page 37 of the "Review of the Heritage of Western Australia Act 1990: Discussion Paper" states that state agencies often avoid heritage issues by saying that heritage is not their core business. Again, this part of the bill is an example of the limited objects of the bill to identify, document, and facilitate the conservation of heritage places, but not to ensure their protection.

Again, I refer to the three heritage jetties at Carnarvon, Busselton and Esperance that are basically being demolished by neglect. The disposal of heritage-listed assets held by the state will be covered by only regulations, not the act. I would have preferred to see this mandated by the bill and not left to regulations. If a state heritage asset is sold, a well-considered heritage agreement should be in place to ensure that its protection is continued. I ask the minister: which state heritage assets will the government dispose of in this term by sale, or by lease for 10 years or more, or by demolishing part or all of its structures?

In summary, I commend all the people who took part in drafting this bill, which allows important precincts such as Guildford to be listed on the heritage register. I am looking forward to less talk and more action in progressing Guildford, as the public is calling out for this place to be listed as soon as possible. I am literally bombarded with requests from people to see what is happening with it. They want to know. We should really get moving and ensure that we can protect this place and get it on the register.

It is a welcome relief to see the bill include elements that will absolutely prevent demolition by neglect. I am particularly impressed with the greater accountabilities and the ability to enforce the legislation via fines and imprisonment. The Greens have a much broader and comprehensive definition of heritage and although we are disappointed with the omissions from the bill, we also recognise that these changes are required and are a step in the right direction. There is always room for improvement, and I look forward to working with the government to monitor the legislation and its implementation so that we can see how the issues that I mentioned before unfold. I am looking forward to holding the government to account in how this legislation is implemented. I will continue to listen to the community groups that are monitoring this, because we need to get a move on and we need to ensure that the bill acts in the way that it has been proposed.

In closing, we need to understand that heritage not only is about buildings, but also encompasses the environment, objects and places that we inherit from the past, for us to pass on to future generations. We need to understand that it is inseparable from our culture as a way of understanding our world. By ensuring the protection of our heritage, we ensure the preservation of culture and identity for all Australians and, in doing so, a future for all.

HON JACQUI BOYDELL (Mining and Pastoral — Deputy Leader of the Nationals WA) [3.08 pm]: I rise to indicate the National Party's support for the Heritage Bill 2017. In doing so, I want to highlight a couple of areas that Hon Tim Clifford spoke about earlier that are important to the National Party and my colleagues and I—that is, the state of the three heritage jetties along our Western Australian coastline in Busselton, Esperance and my home town of Carnarvon. Obviously, from a tourism and heritage perspective, One Mile Jetty in Carnarvon has been a major drawcard for tourism in the Gascoyne region. It is exceptionally beloved by the people of the Gascoyne, but, unfortunately, it has fallen into disrepair. It is a much treasured landmark to the people of Western Australia. The Carnarvon community is still trying to work through how it can find a way to reopen One Mile Jetty to both local residents and tourists who visit the area. Unfortunately, the jetty has been closed for a number of months—it is going on to 12 months now—and as a result it is falling into some disrepair. It is a very sad state of affairs. The National Party considered moving some amendments to this bill to try to highlight some safety aspects for those heritage jetties and to give some confidence to the communities that they would be forever looked after and protected by the state government, which I am sure has every interest in wanting to see the longevity of those three jetties continue because they are iconic landmarks to the people of Western Australia. Heritage sites need to be at the forefront of state government consideration. Lots of funding is required to keep those massive assets open and functional, and safe for the people who use them. They are very important assets to the people of Western Australia, not just to local residents but also to the larger population of Western Australia.

There has been a lot of community commentary about the Esperance tanker jetty, which unfortunately fell into disrepair as well. I think the Shire of Esperance has managed this issue very delicately. It has been a very sensitive issue for the people of the region. I think it was a week ago that the shire handed down a report that has now given the community some confidence to move forward, that they are going to have their aspirations to hold on to the heritage of the Esperance tanker jetty. They also see something that can be reflected in a new community commodity that can be enjoyed. The heritage and design of that new jetty certainly captures the heritage of the old tanker jetty. That is a great thing. It has been a very difficult, sensitive process for the Shire of Esperance, the community of Esperance and the outlying regions because they have used the tanker jetty over a long time.

The state government can assist local communities to manage these ageing assets. It requires a lot of maintenance and certainly ongoing funding to continue their operation, either in a tourism or a heritage sense. It is exceptionally

important to the people of those communities. I want to highlight that there are some very unique circumstances around how we manage the three heritage jetties along the Western Australian coast. They are at risk. They require a lot of love and attention. They are important assets to the people of Western Australia. In a heritage sense, I well and truly support this bill but would highlight that those areas, which are very difficult for local government and small communities to manage, require some real priority of government funding. Having said that, I indicate the National Party's support for the bill.

HON RICK MAZZA (Agricultural) [3.13 pm]: I rise to make some comments on the Heritage Bill 2017. I indicate from the outset that the crossbench will support this bill. This bill will replace the Heritage of Western Australia Act 1990. It has been nearly 30 years since the original act. As mentioned earlier, one of the key changes is that buildings can be protected from demolition by neglect, which we have seen in the past in a couple of locations. Orders can now be made to stabilise certain buildings. I have been advised by the advisers that those stabilisation orders are about maintaining the integrity of the building as it stands so that there is no further deterioration. It is not necessarily a restoration order; it is basically to stabilise it until such time as the economic circumstances of the owner allows them to restore it, or there may be other avenues to restore that particular building. It is interesting to note that there are about 1 400 heritage-listed properties throughout Western Australia. About half of those are in country Western Australia, such as Katanning Post Shop and also the old Esperance Fish Cannery. Locations around country Western Australia are heritage listed. This bill seeks to expand some of the locations that will be heritage listed, such as areas rather than just buildings.

I am a little concerned about a couple of issues. The advice I received this morning is that any property that is 60 years of age or older needs to go to the Heritage Council of Western Australia for assessment to determine whether it should be heritage listed. In saying that, the council's makeup will also change. It will no longer be a stakeholder-type council; it will be based on skills and there will be a certain process to determine who will sit on that council. My understanding is that any buildings over 60 years old are to be referred to the council for assessment. It was indicated that about one per cent of those properties will probably be listed. What I am worried about is that this is generally when a property is sold. The real estate agent has to determine whether the property is over 60 years old and then have it referred to the council. Unfortunately, as has happened over a fair number of different issues that affect titles, it is not listed or registered on the title. Like environmentally sensitive areas, issues to do with native title or whatever, it is not registered on the title; a separate search has to be done to determine whether there is a possibility of some heritage effect. If it is heritage listed, there is a memorial on the title, but in this case there is not. I am concerned that some properties could slip through the net—they may not be identified, and on-sold. It is quite possible that the new owner might have ambitions to turn that property into residential or commercial units and then find, when the application is put in to Planning for development approval and to the local shire council, that they will be knocked back on heritage requirements, in which case they could be severely disadvantaged. I would encourage the government to look at some of these issues with the Torrens title system to ensure that when people deal with those titles, they have a good understanding of what impediments and encumbrances are on the title and not just hope that people will be able to pick that up.

As I said, the crossbench indicates that it will support the bill. I have noted that penalties will increase from $5 000 to $1 million, which is a significant increase, and gives some indication of the importance of heritage-listed sites these days compared with what they were 30 years ago. I know that there has been extensive consultation with many interest groups about the development of this bill and that the previous government, just before Parliament prorogued, intended this to come to Parliament. It is good to see that it is now here and we will see it passed.

HON ALISON XAMON (North Metropolitan) [3.18 pm]: I rise to make a few comments about the Heritage Bill 2017. As has been mentioned by my colleague Hon Tim Clifford, who is the Greens' spokesperson for heritage and who has primary carriage of this bill, the Greens will support this bill. As the spokesperson for integrity of government, I thought it was important that I rise to raise some concerns that still remain within the bill. I have a proposed series of amendments on the supplementary notice paper, which members have hopefully received copies of, so I will speak to some of the concerns to give some background about the thinking behind these particular amendments. As mentioned by my colleague, the Greens absolutely support the tightening of heritage legislation and, as such, we recognise this is a welcome contribution because it is certainly an improvement on the current state of play around heritage, although it would have been good to see far more extensive consideration of what constitutes heritage. We still have a lot more to do around a range of areas, particularly looking at the heritage of recognised trees, for example, as well as Aboriginal heritage.

I want to relay to members the principal concerns in stakeholder feedback about integrity issues that were relayed to the Greens during our consultation on the Heritage Bill 2017. Effectively, that feedback constitutes two concerns. First, the bill gives the Heritage Council of Western Australia potentially conflicting powers and functions for heritage property, including the provision of paid heritage services; various regulation functions, including advising the minister; and issues of ownership and management. Second, decisions made by the

Heritage Council will have the potential to affect the work prospects and therefore the income of council members' companies or the companies that they work for. This will create a challenge to ensure that the Heritage Council's decisions are not tainted by members' conflicts of interest, real or perceived.

I will talk a little more about the conflicting functions and powers of the Heritage Council as a whole. Proposed section 17 sets out the Heritage Council's functions and proposed section 18 sets out its powers. They are a mix of hands-off regulatory activities and hands-on management and provision of service activities under which the Heritage Council can work directly on a heritage project for profit and also advise the minister or the decision-making authority on that project. The council can own, manage or develop a heritage property and it can also advise the minister or the decision-making authority on that property. The Greens say—the stakeholders we spoke to most certainly agree—that this will compromise the Heritage Council because it will give it the ability to advise the minister about its own property and projects, which means that decision-making will not be impartial. It will potentially put the Heritage Council in competition with the private sector if it provides for-profit heritage services. Clause 19 permits the Heritage Council to delegate any of its functions when appropriate, yet it has not done so, as I understand it, and the bill does not require it to delegate in such situations. A question for the minister is: is my understanding of this is correct or incorrect?

One stakeholder of a particular heritage development advised the Greens of a situation in which the Heritage Council considered and supported the development proposal for a property that it owned. A member of the Heritage Council sat on the local council's planning committee and voted to approve the development. I understand that in 2016, the now Minister for Heritage, who at the time was the shadow Minister for Heritage, raised these very same concerns. The Greens likewise raised these concerns at the briefing. I note that they were also raised in the other place. I also note the government's multifaceted responses to these concerns and I will use this opportunity to address those responses.

One government response is that the Heritage Council acts for the Crown in the public interest. With respect, that is a very poor argument. A conflict of interest is a conflict of interest, whether it occurs in the public or private sphere. A conflict of interest in either sphere is not okay because it can make processes and decisions self-interested instead of ensuring that decisions are impartial.

The second argument that has been put is that the process will be transparent. Again, I respond by saying that that is a very poor argument because it effectively mistakes transparency for integrity. There is no doubt at all that transparency is an integral part of integrity, but on its own it is simply not sufficient. Merely disclosing a conflict of interest does not stop self-interest. The purpose of an agency disclosing a conflict of interest is to ensure that the customer has the choice of avoiding it by going to a different agency. In the world of legal and financial services, this is a very real option, but the Heritage Council is not one of many Western Australian heritage councils. If the Heritage Council is conflicted, there is nowhere else to go.

Another argument made by the government is that the Heritage Council does not give approvals; rather, it advises the regulator on approvals. This argument is pure political sophistry and it is a little bit cute. Clients instruct lawyers, but should we facilitate lawyers giving self-interested advice to inform that decision? Investors make financial decisions, but should we facilitate financial advisers giving self-interested advice to inform that decision? Of course we should not—we know that—and neither should we facilitate self-interested advice from the Heritage Council.

The fourth argument put forward is that Victoria's equivalent law gives the Heritage Council of Victoria a similar mix of functions. I note that this claim has been disputed by the National Trust, which has made it clear that no other Australian state or territory mixes its management and regulatory functions. It also stated that England has deliberately split management and regulatory functions between different organisations. In any case, I note that in other contexts in Western Australia, the government has chosen to split management and regulation functions between different bodies. I refer, for example, to the division of responsibilities between the Department of Biodiversity, Conservation and Attractions; the Department of Water and Environmental Regulation; and the Forest Products Commission.

It has also been said that the Public Sector Commissioner has been consulted. The appearance or perception of conflict is recognised by the government, but it is not a real conflict of interest because the Public Sector Commissioner is an independent umpire who provides detailed guidance on how to manage it. I ask the minister to explain for the record in as much detail as possible exactly how the so-called appearance of a conflict of interest between the management and regulation functions of the Heritage Council is currently being managed. Solving this problem goes beyond the scope of any amendment that I can offer the chamber for its consideration. It involves consideration of the responsibilities of other bodies and also the budget. I can only ask the minister to take notice of the problem and point to clause 19's delegation provisions as one possible means of avoiding future conflict between the Heritage Council's functions.

I will speak a little bit about the conflicts of interest of members of the Heritage Council. I have been talking about conflicts of interest for the Heritage Council as a whole, but individual council members can also have conflicts

of interest. The Heritage Council faces a particular challenge in that there is only a relatively small pool of local heritage experts from which to choose its members. What is even more challenging is that some members of that group currently work together in partnerships or companies, which is symptomatic of Western Australia. A further challenge is that members of the group employ each other as needed on their projects. For example, a heritage property developer might hire a heritage architect or engineer. These ongoing relationships strongly increase the likelihood of conflicts of interest. A Heritage Council member who does not support someone else's heritage project might miss out, or fear that they will miss out, on getting work on that person's next heritage project.

I note that the Heritage Council of Western Australia has a declaration of interest policy, and I understand that this is intended to form the basis for regulations that are going to be made under clause 14. I thank the government for providing the Greens with a copy. I understand that it is also on the website. The policy requires members who have a direct or indirect pecuniary interest or a proximity interest—that is, they neighbour the land under consideration—to disclose the interest, to absent themselves during consideration or discussion of the matter and not to vote on the matter. The policy requires members who have an impartiality interest to declare it, but they may continue to participate in consideration, discussion and voting on the matter unless they cannot set the interests aside and make a merit-based decision. An impartiality interest is defined inclusively and includes kinship, friendship, partnership, membership of an association, association with any decision-making process relating to the matter, previous work associated with the matter and a declared position on the matter. If a member declares an interest, but the interest appears to be minor or not adequately made, and that is not defined, the Heritage Council can decide whether to allow the member to be present; and, if so, whether they take part in consideration; and, if so, whether they may vote. Frankly, that policy is insufficient to deliver impartial decision-making in the context of the challenges faced by the Heritage Council that I have outlined.

I have two particular concerns about the policy. Firstly, a person with an impartiality interest is by definition not impartial. That person should therefore not participate in decision-making, whether or not they think they can set that interest aside, because we know that bias can operate subconsciously as well as consciously. Secondly, I do not agree that it is appropriate to have an exception that allows the Heritage Council to permit a member who has a conflict of interest, perceived to be minor or inadequately made, to participate. I reiterate that the context is a small interrelated and income-related community. One way of decreasing the chance of conflict of interest and therefore protecting the impartiality of the Heritage Council's processes is to appoint only Heritage Council members whose income is not dependent on other people's heritage projects—for example, heritage experts who are now retired or who work in the academic or government sector. I note that the Guildford Association, which other members have already spoken about, strongly advocate for this idea. I acknowledge that the modern trend is to appoint people according to their knowledge, skills and experience, rather than according to the sector they come from, and that in itself is not problematic, but given the risk to impartiality posed by drawing too many members from a small pool of working commercial heritage experts, I suggest that in this case there is considerable merit in drawing members from outside the commercial pool when practicable. The policy really should be changed to ensure that Heritage Council members who have any kind of conflict of interest cannot participate in decision-making, and I strongly urge the minister to ensure that in changes made in the regulations when they are gazetted that the Heritage Council's processes are as properly impartial as they need to be. As my colleague Hon Tim Clifford has already said, the Greens will be looking at this very closely. Another way of decreasing the chance of conflict of interest and thereby protecting the impartiality of the Heritage Council's processes is to broaden the fields of expertise from which members can be drawn. The transitional provisions of the bill say that the current Heritage Council members will continue to serve, and I understand from the briefing that their terms are up to five years, but I have seen no provision prohibiting reappointment for consecutive terms.

In December last year, the fields of the members of the Heritage Council, the register committee and the development committee that assist the Heritage Council were checked and it was found that there were quite a number of property experts and architects. Clause 14 permits the minister to nominate a more balanced membership, and it is certainly hoped that that is going to happen. A list of 11 fields is provided and the minister can also nominate a person from any other field that is prescribed. One field I would particularly like to see prescribed is heritage tourism. Given the government's current efforts regarding tourism, I am surprised that has not been put on this list, because we have been told that this is a priority area for the government. The Guildford Association is also advocating for the following further fields it would like to see specified or prescribed in the bill. Firstly there is structural engineering, and I note that both engineering and construction are included in the list already, but the Guildford Association points out that the preponderance of WA heritage that is built structures merit structural expertise specifically. Secondly, there is urban geography—that is, a person with expertise in topography who knows why a community is sited where it is and in the way it is. This is particularly relevant to historic towns like Guildford, New Norcia or York. Thirdly, there is movable heritage—that is, people with archival or curatorial experience. Although the bill does not apply to movable heritage itself, the definition of place includes such items if they are historically or physically associated with

the relevant land. Fourthly, there is horticulture. Landscape architecture is already on the list, but both the Guildford Association and John Viska, the chair of the WA branch of the Australian Garden History Society, stress that horticulture is about plants more than design, and a horticulturalist knows how a plant will behave at a particular location, its pruning and maintenance needs, and how to ensure a heritage garden can survive and not lose cultural heritage significance through lack of horticultural knowledge. Given that the definition of "place" in clause 7 includes gardens, human-made parks or sites and trees in or adjacent to human-made settings, this inclusion also has merit.

The bill also contains provision for co-opted members without voting rights, unless authorised to vote under the regulations, to be appointed by the Heritage Council. I note that co-option may be for a set period or set matters. This enables local Aboriginal people to be involved in Heritage Council work on matters that relate to their country. Although clause 9 excludes places that are of cultural heritage significance solely because of their Aboriginal connections, some places are of cultural heritage significance as defined to both Aboriginal and non-Aboriginal people. Indeed, clause 5 specifically recognises that a place may have diverse values for a whole range of different groups. Again, the Guildford Association has cited as an example the St Vincent's aged-care facility in Swan Street, Guildford, where the place, in addition to having early colonial period historical significance, also includes a floodway, indigenous vegetation and the Wagyl's resting place, which are of significance to the local Noongar people. I understand that currently consultation happens if Aboriginal cultural values are identified or if the place is an area where Aboriginal cultural values are known to exist, such as the Swan River. But consultation is not the same as formal co-option or a vote, so I urge the Heritage Council to use the co-option powers in the bill to appoint local Aboriginal people for matters that relate to their country. I also strongly urge the government when it drafts the regulations to ensure that an Aboriginal person who is co-opted has voting rights as well.

The Guildford Association has also strongly advocated for a standing co-option with voting rights in relevant matters of a local person with demonstrated heritage knowledge or experience. The thinking behind this is that in historical towns such as Guildford, which contain a number of heritage places, each heritage place is linked to the others as part of a set. Changes to one heritage place can therefore reduce the cultural heritage significance of not only that place, but the whole set. Therefore, the Heritage Council would benefit from the expertise of a local person who can identify those links. The definition of "cultural heritage significance" in clause 5 is consistent with its definition in the standard Australian Burra Charter. The Burra Charter and its accompanying practice note, "Understanding and assessing cultural significance", make it clear that the concept includes the setting—including views to and from the place—and its relationship with other places. However, the Greens are advised that the government's interpretation is that the relationship between different heritage places cannot be considered unless the area has already been registered as a heritage precinct under the local planning scheme, such as Fremantle's West End, or Guildford, if it manages to successfully become a heritage town. If this understanding is correct, I ask the minister to please clarify, because it is a matter of considerable concern to the Guildford Association.

We have a number of amendments on the supplementary notice paper through which we can discuss some of the issues that I have raised, and I ask members to consider them. Having said that, I again indicate—as has already been well indicated by my colleague Hon Tim Clifford—that the Greens will support this bill. We recognise that it is a step in the right direction. We think it could have been a lot better, but at this point we are happy to accept any improvements that will go some of the way towards ensuring that we protect our heritage.

HON SUE ELLERY (South Metropolitan — Leader of the House) [3.41 pm] — in reply: I thank members for their contributions to the second reading debate on the Heritage Bill 2017 and for their expressions of support for the legislation. I will touch on some of the issues that members raised in their contributions. There is a technical amendment standing in my name on the supplementary notice paper and I also note that there are further amendments in the name of Hon Alison Xamon, so we will be going into Committee of the Whole House. If there are any matters I do not canvass in my reply to the second reading debate, we can discuss them during the committee stage.

Hon Donna Faragher touched on the issue of regulations setting out certain provisions instead of being prescribed in the legislation. Obviously, that provides greater flexibility and reflects that things change over time. It is a reflection of the recognition that emerged during the consultation that the existing provisions are limited in their flexibility to meet changing community expectations on heritage matters. Of course, they will be subject to disallowance in this place if the house is of that view.

The most critical change, in a policy sense, is to repair orders; the honourable member also touched on this. It was certainly the most sought-after reform to come out of the consultation. They can be issued only to an owner to secure and maintain a relevant property; they cannot be misused to force an owner to completely restore a property. It is about preserving and maintaining the status quo, not about compelling owners to go beyond the status quo.

A submission on the 2015 exposure draft bill expressed concern about the meaning of the phrase "undue hardship" in respect of repair orders. The concern was that anyone could claim undue hardship and so avoid a repair order. Clause 65(2)(b) provides that a minister is not to make a repair order unless, amongst other things, they consider

that the order is unlikely to cause undue hardship to the person to whom the order is directed. The intent is to ensure that a repair order is not issued to someone who truly lacks the financial means to undertake repairs. For example, if a repair order was under consideration for a rundown registered place owned by a large multinational property development corporation, that corporation might have a hard time convincing someone that a repair order might impose undue hardship. On the other hand, the owner might be a retired pensioner whose only property is the house in which they live, which happens to be on the state Register of Heritage Places and is in need of repair. For them, undue hardship might well be a real possibility. In those cases, the Heritage Council would need to consider the other options available to it, including grants. I also make the point that undue hardship is a well-known legal phrase that appears in a variety of statutes and means exactly what it says. In addition, clause 69 empowers the State Administrative Tribunal to review repair orders, and SAT is well placed to determine whether a repair order will create undue hardship.

Hon Donna Faragher also referred to multiple inventories. Part 8 retains the substance of section 45 of the current act—which requires local governments to identify buildings in their districts that are or may become of cultural heritage significance—and improves on it. The improvements include a more appropriate name—local heritage survey—rather than the current act's description of them as inventories. That more accurately reflects the purpose—that is, a survey of local heritage.

Further, part 8 requires the survey to include "places"; the current act requires only that it include buildings. Guidelines to be prepared by the council will assist local governments to identify places for inclusion in their surveys, as well as how often surveys should be reviewed or updated. The current act requires an update every four years, but imposes no penalty for failure to do so. The decision was taken to recommend, rather than require, a particular review interval in the guidelines, and to rely on community preferences and sentiment to drive the review update rather than having an enforceable statutory requirement.

Part 8 also recognises the difference between a local heritage survey, which is not intended to have any legal weight in planning decisions, and a heritage list, prepared and maintained under a local planning scheme, which is meant to provide statutory planning control along with the rest of a local planning scheme. The different purposes of these two lists have been an endless source of confusion under the current act. A local heritage survey is intended to be, first and foremost, a community resource, identifying places and buildings that contribute to the district's heritage and therefore its identity without also creating legal burdens and constraints on the owners of such places. Every local government in WA has completed a municipal inventory under section 45 of the current act, and these will be grandfathered—I should say "grandparented"—under the Heritage Bill 2017's transitional provisions, which are set out in part 14.

I turn now to the composition of the Heritage Council; I think the member's issue was with clause 14. The current act sets out a number of rules for the conduct of members of the Heritage Council, such as grounds for removing members and handling conflicts of interest and the like. In the 26 years since this legislation was enacted in 1990, the Public Sector Commission has issued a number of guidelines to assist boards and commissions such as the Heritage Council to understand and apply contemporary best practices.

Hon Tim Clifford raised his disappointment with the scope of what constitutes heritage, and also issues around Aboriginal heritage. Clause 9(b) makes it clear that the new legislation will not apply to places the cultural heritage significance of which arise solely from Aboriginal traditional culture. Western Australia already has another act to handle those places—the Aboriginal Heritage Act 1972—and having two acts to cover exactly the same ground would make no sense. However, like the current act, the new act will apply to places that exhibit both Aboriginal and non-Aboriginal cultural heritage significance. Many, if not most, heritage places in Australia possess both non-Aboriginal and Aboriginal heritage values. Such places have been included in the Register of Heritage Places and will continue to be included. For example, the Pinjarra massacre site in Pinjarra was entered on the register in 2006. Other sites with both Aboriginal and non-Aboriginal heritage significance are under assessment. The Heritage Bill does not change this state of affairs; it simply clarifies what may not be obvious under the current act. Wherever Aboriginal heritage values are apparent in a place under consideration for register entry, under the current act, the State Heritage Office consults with relevant stakeholders, just as it always has regarding proposed registration.

Regarding natural heritage, the new act similarly will apply to places of both cultural and natural heritage significance. The key is that the place must have cultural heritage significance. Paragraph (a) of clause 9 excludes only those places where heritage significance arises solely from the natural environment.

Hon Rick Mazza raised an issue about properties that are over 60 years old and was concerned that they need to be referred to the Heritage Council of Western Australia for consideration for the register. This applies only to state-owned property. Part 9 of the bill indicates that not all properties over 60 years old are affected.

Hon Tim Clifford also raised an issue about the coverage of the act. The Heritage Bill has been designed to protect places of cultural heritage significance without interfering with other legislation that is in place to protect places

that have solely environmental value—Aboriginal heritage, shipwrecks, museum collections, state records and the like. There was not widespread support for the notion of providing umbrella legislation for all forms of heritage throughout the three rounds of consultation that took place. Transparency is significantly enhanced by ensuring that the advice of the Heritage Council is published with the minister's decision, so that is an important step forward. Part 7, "Heritage agreements", is not the only means to achieve good conservation outcomes. For example, conditions of development or repair orders can achieve that. Part 8, "Local heritage surveys", is intended to be a record of places of local heritage interest. Local heritage lists, as part of the local planning scheme, provide a statutory means for local governments to protect local heritage places. Part 9, about the disposal of state property, brings into statute a well-established policy to ensure that the heritage values of a place to be sold or demolished are assessed and protected through to the disposal process.

Hon Alison Xamon flagged some things that I think are reflected in the amendments she has on the supplementary notice paper. With respect to conflicts of interest, the power of the Heritage Council to own, conserve and redevelop property—for example, the warders' cottages in Fremantle—while at the same time fulfilling its advisory role to decision-makers who must approve such conservation and redevelopment, does not constitute what the Public Sector Commission defines as a true conflict of interest. According to the Public Sector Commission, which was engaged in the working up of this bill, a conflict of interest is a situation arising from a conflict between the performance of a public duty and private or personal interests. The council is clearly performing a public duty when it advises a decision-maker on the heritage aspects of a planning application or building permit application for a registered heritage place. No private or personal interests are involved. Individual members of the council did not personally benefit from the council's temporary ownership of the warders' cottages and their restoration and resale. Further, the Public Sector Commission was consulted on the drafting of virtually every aspect of part 2 of the bill that is before us today and made many suggestions, but it never raised the issue of conflict of interest in the way described by Hon Alison Xamon. The Heritage Council's powers are the same as the provisions in the current act. Conflicts of interest between public and personal or private interests are managed by declaration-of-interest guidelines that are published on the Heritage Council's website. That has been reviewed by the Public Sector Commissioner and is considered appropriate for the purposes of the council.

I will flag that the government is not moved to support the amendments proposed by Hon Alison Xamon. We can talk about them when we go into Committee of the Whole, but essentially, we will argue that those matters can be and will be included in the regulations. They are incorporated in the public sector guidelines, and conflict of interest treatments need to be appropriate. Not every case requires exclusion from consideration, but we can talk about that when we get into committee.

With those comments, I again thank members for their contributions and their indications of support. I commend the bill to the house.

Question put and passed.

Bill read a second time.

Committee

The Deputy Chair of Committees (Hon Martin Aldridge) in the chair; Hon Sue Ellery (Leader of the House) in charge of the bill.

Clauses 1 to 8 put and passed.

Clause 9: Places to which Act does not apply —

Hon ROBIN CHAPPLE: Clause 9 states —

> This Act does not apply to a place —
>
> (a) that comprises only the natural environment; or
>
> (b) that has cultural heritage significance solely on account of its connection with Aboriginal tradition or culture.

At the moment, the Aboriginal Heritage Act is being reviewed and there have been a large number of submissions. Within those submissions and in general discussions it has been touted that there might at some stage be an amalgamation of the Heritage Act and the Aboriginal Heritage Act. Have there been any discussions at all with the department in these areas?

Hon SUE ELLERY: No.

Clause put and passed.

Clauses 10 to 13 put and passed.

Clause 14: Membership and proceedings —

Hon ALISON XAMON: As I already spoke about in my second reading contribution, I propose the following amendment. I move —

Page 11, lines 14 to 15 — To delete the lines and substitute —

(xii) heritage tourism;

(xiii) structural engineering;

(xiv) horticulture;

(xv) urban geography;

(xvi) moveable heritage

(xvii) any other field prescribed for the purposes of this subsection.

The rationale for this amendment is to ensure that a whole range of other areas are considered when we are talking about the make-up of the Heritage Council. As has already been mentioned, heritage tourism should be considered as a potential area of expertise and tourism is an area that this government has said it wants to prioritise. It would seem that it would be useful to get expertise on that. Likewise, structural engineering, as has already been mentioned, particularly with Perth's built heritage, can be a very useful expertise to have access to. Horticulture, for the reasons I already outlined, is different from landscape architecture. Very often, plantings, particularly those that were put in at the time of settlement, will require unique care and maintenance, particularly if there is likely to be an impact on plants. It is really important to have that expertise so that we do not inadvertently end up killing the very thing that we are trying to save. Likewise, I include urban geography and moveable heritage for the reasons that I outlined in my second reading contribution. It is important to ensure that we are able to potentially gain a broader range of expertise so that we are as best informed as we can be.

Hon DONNA FARAGHER: I appreciate that the bill has come on straight up and that Hon Alison Xamon would normally have provided me with a bit more notice of this amendment. I will be interested to hear what the minister says. I understand the intent of what the honourable member is putting forward, but on first reading, other areas of expertise, skills and qualifications are not listed in clause 14, and I see that the current clause does not preclude other fields from being prescribed, so some of the issues that the honourable member has raised can be included. Obviously, that would need to be prescribed and that is not in the primary legislation and I accept that, but I suppose at the same time there may well be in the future other areas of expertise that were not considered at the time of the passage of this legislation. I appreciate that the member's amendment reflects that in the last part, but I think that is generic enough to encompass the concerns that the member has raised.

I also seek some further advice from the minister on the way I read clause 15. I appreciate that we are getting ahead of ourselves, but for the purposes of what we are discussing now, there is an ability for a member to be co-opted, but I am not quite sure about the process for that. If I take, for example, the point that Hon Alison Xamon made about horticulture, I know that in Guildford, there are heritage roses that are of a great deal of significance to members of the community. I presume that if something was relevant to those roses, or another part of Western Australia where this might be relevant, the council would be able to co-opt somebody with the relevant expertise to deal with heritage roses, for example. I am looking at the two mechanisms by which an expert who is not listed in the primary legislation, if I can put it that way, can be either added to the council or co-opted under certain circumstances. I would appreciate that advice, because if I am satisfied that those mechanisms are available, I foreshadow that we would be unlikely to support the amendment.

Hon SUE ELLERY: Hon Donna Faragher is quite right. Firstly, clause 14(3)(b)(xii), states, "any other field prescribed for the purposes of this subsection." That really is a catch-all to enable the Heritage Council to get the right mix of skills that it needs. Then, as Hon Donna Faragher pointed out, when we read clause 14 at the same time as clause 15, we see that, indeed, for a specific purpose on a specific matter, such as heritage roses, or for a specific period, either of which has to be set out in the instrument that appoints them, the council can co-opt people for that purpose, including, for example, if there was a matter related to Aboriginal cultural heritage that the council wanted advice on. We are seeking to make this legislation as flexible as we can. Certainly, one of the issues that was raised in consultation and one of the views that was expressed was that there needed to be the capacity to be fairly nimble as time changes. I am not a heritage expert, but at some point in the future, people with digital or graffiti expertise may be required for particular purposes. I hope that has not caused an apoplexy amongst heritage people who might be watching at the moment, but there needs to be a degree of flexibility in the capacity to be nimble. Having the catch-all phrase means that when the council considers that it needs that particular expertise, it can get it.

Hon DONNA FARAGHER: Can I seek some clarification from the minister? I apologise that I do not have the substantive act in front of me, but I am presuming that the current act already allows for co-opted members. The minister may need to take this question on notice, but her advisers may be able to assist her in this regard. I am keen to understand whether it has been the practice in the past of the council to have co-opted members for specific purposes. That would help in giving some comfort that, in fact, the provisions are actually utilised when they are needed, and a co-opted member is requested for a specific purpose. I am keen to know whether this provision is regularly utilised, and I seek confirmation that this is included in the current act.

Hon SUE ELLERY: It is in the current act. I am looking at the Heritage of Western Australia Act 1990, part 3, division 5, section 23, "Co-opted members and consultation". Section 23(1) reads —

> The Council may appoint, subject to the consent of the Minister, any person having specialized knowledge or experience relevant to the purposes of this Act to be a co-opted member for such period, or in relation to such matters, as the Council may specify in the instrument of appointment.

I am advised that five co-opted members are currently on the council, and this provision has been regularly used.

Hon ALISON XAMON: I will explain a bit more about the motivation for trying to extend this provision. I will also respond to Hon Donna Faragher. The bill was brought on for debate quite suddenly, and there was not much notice that it was coming on, so I had not had the opportunity to circulate the amendments within the necessary time frame. I apologise for that, but if there had been more notice that the bill was coming on for debate, I certainly would have been able to do that. Nevertheless, I will go back to the amendment standing in my name. As I mentioned in my second reading contribution, and as has been raised with me as a concern by stakeholders, one of the problems is that at the moment the Heritage Council has a preponderance of property experts and architects and yet, as has already been contemplated, it is intended that expertise be drawn from a broad range of people. Representing stakeholders in this place, I have been hoping, by extending the number of provisions, to effectively flag that we need a broad range of experts from a wide range of fields to ensure that when we make decisions around heritage, people are as well-informed as they can be. It is absolutely the case that the bill before us allows for "any other field prescribed for the purposes of this subsection", and I have lifted that provision and added it to the end of my amendment precisely for the reason that has been articulated. We do not want to lose the capacity to bring in any expert deemed relevant. The minister's example of a graffiti heritage expert is actually a very pertinent one, bearing in mind that we are distinguishing between tagging, which is not heritage, and graffiti, which very well could be. I think about the heritage listing being applied to a lot of the Banksy graffiti, for example, in England. It is quite foreseeable that these sorts of areas may be considered fields prescribed for the purposes of this subsection. Again, the reason for this is to ensure that people are aware that we rely on a lot of people from a lot of areas to provide us with the necessary knowledge and expertise. This amendment flags that. I acknowledge that "any other field prescribed for the purposes of this subsection" effectively enables exactly the experts I have suggested be prescribed to be co-opted or brought in. That is effectively the purpose of this amendment. We need to ensure that the Heritage Bill reflects the fact that we are reliant on a broad range of experts. Drawing only from a very narrow number of fields is a problem in ensuring that we are getting proper advice.

Hon DONNA FARAGHER: I thank the minister for her response. Just for interest, she mentioned that there are currently five co-opted members. Can the minister tell me the purposes for which they have been co-opted?

Hon SUE ELLERY: With respect to the five co-opted people, three advise the register committee, so they are historians and academic architects. The other two advise the development committee, and they are involved in property development and engineering.

Hon DONNA FARAGHER: I thank the minister. I do not intend to delay too much longer, but I think, based on what the minister has indicated, I am comfortable that there is enough scope within clauses 14 and 15 to deal with other skills and qualifications, and suitably qualified people to deal with specific issues of heritage. The examples just provided by the minister about co-opted members highlights that. A couple of those categories are not even mentioned in the skill sets identified at clause 14(3)(b) or, indeed, in Hon Alison Xamon's proposed amendment. Therein lie the challenges of trying to prescribe everything. With that, I indicate that the opposition will not support the amendment.

Amendment put and negatived.

Hon ALISON XAMON: I move —

> Page 11, line 19 — To insert after "office" —
>
> (which must not exceed 5 consecutive years)

As I indicated in my second reading contribution, at the moment there does not appear to be any limitation on the length of time someone can sit on the Heritage Council. I have already indicated that that raises concerns about potential conflicts of interest, and how they are managed, particularly if some people, as I understand, have been

sitting on the Heritage Council for extended periods. I recognise that in a state such as Western Australia there may be a relatively small pool of expertise, although we have just identified a range of people on whom we could be drawing for expertise. I am proposing that we start looking at putting a cap on the way the terms operate. This does not mean that, once someone has done five years, they cannot come back again, but it is about limiting the way in which the terms are managed—ideally, they are staggered within the membership itself—so that if someone comes on, they cannot be there for more than five years without a break.

I think that ensuring a reasonable turnover of members is really integral to good management, because it will not only get fresh ideas and new perspectives, but also help to manage the concerns around conflicts of interest. Again, stakeholders have put this to me as a necessary and important amendment that we need to start looking at. Quite serious concerns have been raised with me around people who are on the Heritage Council and apparently never get off, and what that means in terms of not being able to ensure that new people can come in with their thoughts, perspectives and ideas. Also, if someone has been able to consolidate themselves into that position for quite some time, potentially there are concerns around how decisions are being made and relationships are being managed.

Hon DONNA FARAGHER: I have jumped up because perhaps the minister can respond as part of her answer. I accept what Hon Alison Xamon says about the need for renewal. Certainly, when I was a minister across a variety of portfolios—all ministers get put before them—there are many boards and committees. We tried to reduce a few of them, but, certainly, within each portfolio, there are many boards and committees. Perhaps some of it is determined by legislation that stipulates how long those terms may be, but, as a general rule, I have seen through experience that membership of most boards and committees will come up for renewal. There will be contracts for three or five years, as a general rule, and therein lies an opportunity. When those contracts, if I can put it that way, come up, the minister can seek either to renew and put on a new person or two, or three or four, or to extend the contract for another three years. Perhaps the minister could indicate, as part of her response, the current process with the Heritage Council. Is it on the basis of a three or five-year contract? In saying that, I appreciate that if it is not in the legislation, that can be changed, but what is the current process?

Hon SUE ELLERY: I start by indicating that the government will not be supporting the amendment. Clause 14(4) states that "Regulations may provide for the following" and then lists a range of things, including the term of office. The head of power sets the term of office. We think adding a cap in there is not the place to do it and, in any event, we want to retain the discretion to have a mix of terms of office. The current practice, for example, is that we have a mix of appointments of between two and four years. All of them currently require the approval of the Governor, and that will continue. Indeed, I understand the practice is and has been—I think across both governments—to have a mix of terms of office. Some members will be on two-year terms; some will be on four. That ensures that we have the opportunity to get new blood, if that is what we need to do, or to keep experienced members on the board, if that is what we need to do. It gives us the opportunity to mix and match as required.

I make one final point. This may well be the bill with the most extensive period of consultation that has ever occurred; there were three rounds of consultation, starting in 2011. I am advised that in those rounds of consultation, a problem with the terms of office of council members was never identified.

Hon ALISON XAMON: In response to the last comment made by the minister, I assure the minister that this issue has been raised with the Greens and that is one of the reasons it is being raised in this chamber now. Minister, I was hoping that I could receive some advice. What is the longest term of any of the members who are currently sitting on the Heritage Council? The minister has described a process of renewal that, as I have been advised, is not necessarily being reflected in practice.

Hon SUE ELLERY: A couple of points need to be made. To put it in some context, the current membership of the Heritage Council has been extended several times to take account of the fact that this bill was in the process of being developed and consulted on in various forms. We have been in an extraordinary period since 2011, when the consultation on a new bill began, and a series of extensions have been granted. In the current membership, the shortest period is about eight months. The longest period is 20 years. That is one person. No-one else has more than 10 years. The bulk are around six years. Two are 18 months and the balance of the rest is around six years.

Hon ALISON XAMON: I thank the minister for that advice. It is consistent with the concerns that have been raised with me and particularly the idea that someone can sit on the Heritage Council for 20 years in a row. I suppose that this advice emphasises precisely why this amendment has been moved. Five years is a pretty good and reasonable time for members to know what they are doing and to work with their colleagues, but at the same time ensure a reasonable turnover of expertise and individuals. I want to be very clear that I do not know the individual involved who has been there for 20 years, so in no way am I casting aspersions on that person. I suggest that, potentially, they have been there for that long because they are considered to have quite a degree of expertise that is worthy of contribution. I make that very clear even though we do not know whom we are talking about.

Taking the personalities out and coming back to the issue of the amendment in front of us, I think that the minister's advice really helps to inform that the process of renewal that was described by the minister, which would certainly be optimal, is not the practice. That is the concern. This is why it is being suggested that, as we finally have the Heritage Bill in front of us and are trying to enshrine some better processes, part of a better process is to ensure that we have limits on consecutive terms. I want to be very clear that that does not prohibit someone who has been very valuable from coming back on. It means that we ensure people have a break around that and other people are perhaps contemplated for membership during that period. As such, I confirm that I think that the information provided has simply reinforced the need for this amendment.

Hon DONNA FARAGHER: I appreciate what Hon Alison Xamon is saying, but my concern relates to the way that the amendment is actually worded. Although the member said it would not stop a member who has done their five years from reapplying, the amendment is fairly blunt—it says "which must not exceed 5 consecutive years". The way I read that, in normal language, it is no more than five.

Hon Sue Ellery: As in no extensions.

Hon DONNA FARAGHER: Yes; that is, no extensions. Thank you, minister. That is the way I read it. From what I am hearing from the member, that is not her intent, but if I were to read that part of the legislation without hearing what the member said, I would read that as saying "five consecutive years—that's it; you're off; you can't reapply".

Committee interrupted, pursuant to standing orders.

[Continued on page 5496.]