

**ABORIGINAL CULTURAL MATERIAL COMMITTEE — CONDEMNATION OF  
MINISTER FOR INDIGENOUS AFFAIRS**

*Matter of Public Interest*

**THE SPEAKER (Mr G.A. Woodhams):** Members, today I received within the prescribed time a letter from the Deputy Leader of the Opposition in the following terms —

“That this House condemns the Minister for Indigenous Affairs for rorting the process of appointing a new Chair of the Aboriginal Cultural Material Committee.”

Members, the matter appears to me to be in order. If at least five members will stand in support of the matter being discussed, it can proceed.

[At least five members rose in their places.]

**MR R.H. COOK (Kwinana — Deputy Leader of the Opposition)** [3.24 pm]: I move —

That this house condemns the Minister for Indigenous Affairs for rorting the process of appointing a new chair of the Aboriginal Cultural Material Committee.

Mr Speaker, we return again! Last week it was the Minister for Local Government who we confronted about the shoddy appointment process of a committee which lacked integrity and which, under further examination, may prove to be illegal and against the act. It is with some regret that I inform the house that we have witnessed a similar state of affairs in the Department of Indigenous Affairs. In a similar fashion, we have seen the Minister for Regional Development’s office undermine the integrity of public servants. There is now an entrenched pattern of behaviour amongst ministers’ officers of seeking to bully and to coerce, and to circumvent processes prescribed under statute for the appointment of people to particular committees, to achieve particular outcomes.

I speak today of the Aboriginal Cultural Material Committee. This is an important committee constituted under the Aboriginal Heritage Act. It is a committee that makes recommendations to the Minister for Indigenous Affairs, who is responsible for this act. It makes recommendations to the minister on heritage matters with regard to whether an act may be undertaken that may disturb a heritage site and the manner in which that might take place.

Many people are aware that the Aboriginal Cultural Material Committee has been struggling of late with a declining membership and that there was a need for some revitalisation. However, I do not think that anyone in the sector ever anticipated the level of revitalisation that the minister had in store. What we have seen over the course of a couple of months is a tawdry, highly organised conspiracy to bully and coerce the staff in the Department of Indigenous Affairs to produce a particular outcome. I do not use those words lightly, because it is a conspiracy. It is a conspiracy and a well-orchestrated plan to produce a particular political outcome, which, quite frankly, makes a mockery of the selection process.

The legislative requirements for appointing the membership of the ACMC are quite straightforward. Under the Aboriginal Heritage Act, the registrar, an appointed officer of the Department of Indigenous Affairs, is responsible for providing the minister with a list of appropriate names. Those people are, in part, prescribed by the act in relation to the expertise that they can bring to the process. Section 28 of the act provides for a list of names to be put to the minister, and the minister is then obliged to select a group of people for membership of the ACMC from that list of names. In this case, we have seen that the minister’s office has sought to circumvent the process to produce a particular outcome. This has been going on since the early months of this year as the minister’s office manoeuvred to orchestrate that particular outcome.

I will take the chamber through the time line of processes that have been undertaken. Rumbblings in the process started in early March. Conversations were going on between the minister’s officers and various members of the public and with the department about the need and the desire to change the membership of the committee. On 4 March, a letter, unsigned and undated, was sent from the minister’s office to each member of the ACMC. The unsigned letter raised issues about the membership of the ACMC and thanked the members for their time on the committee. The letter was interpreted by the committee members—they spoke to each other about it—as a letter of dismissal: “Thank you for your time. So long.” On 4 March, notices went out about the next meeting of the ACMC on 1 April. It must be remembered, of course, that at this point none of the members of the ACMC actually knew whether they were still on the committee. They were awaiting confirmation of their fate. Some of the members of the committee approached the minister’s office, or, indeed, approached the department, and asked, “What’s going on? Have we been sacked? Do we go to the meeting on 1 April?” I understand that the minister’s chief of staff phoned the members of the committee apologising for the letter, saying that they were not supposed to receive it and that a new letter would be sent out clarifying the state of affairs of their

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membership, but not saying what the new letter would inform them of. No letter was forthcoming. The meeting on 1 April was still to continue at this point.

On 26 March, almost out of the blue, an advertisement appeared in *The West Australian* calling for expressions of interest for membership of the ACMC. None of the committee members was given the courtesy of being told that this process was taking place. Like other members of the public, committee members simply had to be aware of it. It is worth noting that when expressions of interest for membership of the ACMC are invited, they are usually left open for a month or so, so that people can consult with their elders and make sure that there is some sort of cultural acknowledgement and that they have permission to go on this committee. It is rather disturbing to note that in this instance expressions of interest were open for just five days; they were open on a Thursday and closed on a Monday. It is conceivable that unless one had forward notice of the advertisement, one could have missed the expression of interest process. It is remarkable that some members of the public actually saw the advertisement and were able to act in such a short period. It would appear that some people were informed of the advertisement.

Around 4 April, the registrar for the Aboriginal Cultural Material Committee considered the expressions of interest. Consistent with section 28(4) of the act, the registrar submitted a list of names to the minister for consideration. It was disturbing to hear that that list of names was sent back: "It is an incorrect list. You've left names off it that we would like to see on the short list." In essence, it was an instruction to the registrar to include certain names on the list. One of those names was Mr Haydn Lowe, who is known to many members in this chamber. Mr Lowe's name was not included on the short list because he did not identify with the selection criteria; he did not bother. I wonder why he did not bother to direct his application to any of the selection criteria. Mr Lowe's name was not consistent with the plans that the minister's office had for this committee. Mr Lowe's name did not appear on the list.

I understand that on about 5 April, the minister's chief of staff went to the Director General of the Department of Indigenous Affairs to instruct him to make sure that the list was proper this time and that Mr Haydn Lowe's name appeared on the list. I understand that DIA sought legal advice from the State Solicitor's Office at this point. I understand that it was quite improper—indeed, contrary to the act—for the minister to instruct members of the public service about the make-up of that panel. Nevertheless, the minister's office pursued the matter. Further legal advice was sought. That legal advice, in addition to the original legal advice, once again suggested that it was improper for the minister's office to intervene in this process and that it was contrary to the act. Phone calls ensued. I think there was a deliberate phone call to Mr Haydn Lowe at this point. He was told that he should submit another expression of interest and was asked to kindly address the selection criteria. Mr Lowe duly did so. It is worth noting that no-one else was given the opportunity to resubmit their application. Other members of the public submitted their names for membership of the committee. They were never given the opportunity to put their names forward. Mr Lowe was the only person who was provided with that courtesy. Once again, Mr Lowe's name went forward with the requirement that his name be put on the list of names to be considered for membership of the ACMC.

There are some very disturbing trends in this process. There is a deliberate, concerted and orchestrated process that interfered with the membership of the committee. This process distorted the membership of the committee and made sure that the minister's handpicked person went on it. It is incumbent upon the minister to provide some clarity on the membership of the committee now that these allegations have surfaced. It is incumbent upon the minister to provide all documentation on the appointment of the committee. We would like to see correspondence to the minister, correspondence from the minister's office to the department and file notes on this matter and deliberations of the department on the appointment of Mr Lowe. It is apparent that there has been a deliberate attempt to interfere with the selection process to appoint Mr Lowe. We understand that arrangements were made for other names to go forward. We have documentation that suggests there was further interference from the minister's office in relation to these facts. I will be very pleased to see the minister table these documents so that we can clarify the situation.

The ACMC does a very important thing; it protects Indigenous culture from overzealous developers to ensure that the proper interests of Indigenous communities are taken into account. It also provides security to developers to ensure that they can develop their projects and have some confidence in the process. The minister's office has brought all that into question. It has compromised the process to achieve a particular political outcome. It is an abuse of process to benefit a political ally. It is an abuse of process to produce a political outcome so that the minister can have one of his political allies and mates in a \$500-a-day job as chair of the ACMC.

**Dr J.M. Woollard:** What section of the act did you refer to?

**Mr R.H. COOK:** Section 28.

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It is a contravention of the Aboriginal Heritage Act and it reinforces an emerging public sector culture of bullying public servants to produce particular outcomes. If it is shown that there has been some interference with records in the department, I daresay that it would constitute an interference with the State Records Act. More information on this issue will be brought to light. We will continue to hold the minister to account to ensure that the public and, most importantly, the Indigenous community can have confidence in the Aboriginal Cultural Material Committee as it is constituted under the heritage act.

**MR A.J. CARPENTER (Willagee)** [3.38 pm]: This is a scandal. It was probably to be anticipated once the member for Dawesville became a minister once again. It is not inconsistent with some of the activity that happened the last time he was the minister. In a nutshell, the circumstances are as follows. The Minister for Indigenous Affairs was unhappy with the Aboriginal Cultural Material Committee as it existed. There were reasons for that. There were some justifiable reasons why he would want the ACMC to perform better, but the minister's unhappiness at the ACMC was more personal than that. It went to some of the submissions that he made to the ACMC when he was acting as a consultant before he came back to Parliament. That is the truth of it. He was unhappy with the ACMC because it rejected some of his submissions. He wanted to replace the ACMC and appoint an ally as chairman of the ACMC, someone he could rely upon to make the right decision or the decision that he wanted. This is not the same circumstance in which we have argued about other government appointments to boards, panels, committees et cetera. I believe this is in clear breach of the Aboriginal Heritage Act. I invite people to read the Aboriginal Heritage Act, in particular part V, section 28. It directly relates to the formulation, activities and responsibilities of the Aboriginal Cultural Material Committee. In part, section 28(4) states that the committee —

... shall be appointed by the Minister from a panel of names submitted for the purposes of this Act by the Registrar.

The registrar provides the list of names to the minister and the minister is required to appoint from that list.

What happened in this circumstance was that the list of names submitted by the registrar did not include the preferred candidate of the minister. So the minister, through his office and through those who work in his office, sought to force the registrar to include Haydn Lowe on the list. The registrar, Pam Thorley—a long-term public servant of governments of both persuasions—sought legal advice from the State Solicitor's Office on what the minister was trying to force her to do. As I understand it, the legal advice was unequivocal—that the minister should not try to force her to include a person's name on the list. But by one means or another—the member for Kwinana has outlined the time line—Haydn Lowe's name was submitted to the minister and the minister appointed him as the chairman.

The importance of the chairman's role is also outlined in the Aboriginal Heritage Act. It is there for all to read. Section 39(1) of the act states —

The functions of the Committee are —

- (a) to evaluate on behalf of the community the importance of places and objects alleged to be associated with Aboriginal persons;
- (b) where appropriate, to record and preserve the traditional Aboriginal lore related to such places ...
- (c) to recommend to the Minister places and objects which, in the opinion of the Committee, are, or have been, of special significance to persons of Aboriginal descent and should be preserved, acquired and managed by the Minister;
- ...
- (e) to advise the Minister on any question referred to the Committee, and generally on any matter related to the objects and purposes of this Act;
- (ea) to perform the functions allocated to the Committee by this Act; and
- (f) to advise the Minister when requested to do so as to the apportionment and application of moneys available for the administration of this Act.

In evaluating the importance of places and objects, the committee shall have regard to a variety of issues. The key point about this section of the act is that it is the chairman's decision that prevails. The chairman's decision prevails when there are matters of controversy or matters of contest for the committee's deliberation. The chairman of the committee is the person who makes the recommendation to the minister. If the minister has a compliant chairman, he or she avoids the embarrassment of having the Aboriginal Cultural Material Committee make recommendations with which he disagrees. The minister has the power to override or to ignore the recommendations of the committee—indeed, that has been done on more than one occasion. That is the

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minister's prerogative. To avoid the political difficulties that can attend that outcome, in this case the minister sought to have a chairman he knew and who he knew would provide the recommendations he wanted. There is far more to this story than will be revealed in this Parliament today. There is far more to the relationships between the minister, people in his office and people in the department—including Haydn Lowe—than will be revealed in this Parliament today; but they will be revealed.

I think most people in Parliament who have been observing politics in Western Australia for a while understand the background from which Haydn Lowe emerges. He was appointed Director General of the Department of Indigenous Affairs by the now minister when the Court government was in power. He worked for the minister in the election campaign of 2001—a matter that attracted a lot of controversy as to whether it was appropriate for the head of the department to be working for the minister and in what circumstances he was working for the minister.

After Mr Lowe left Western Australia, he worked for a short time in the Northern Territory. He returned to Western Australia and worked as chief of staff to Paul Omodei when he was Leader of the Opposition. He is a political operator. It is because of that political allegiance that the minister wanted him to head up the ACMC. The Aboriginal Cultural Material Committee is supposed to provide independent advice about culturally sensitive sites around Western Australia. It is a very important role when we consider the scope and scale of resource activity in Western Australia and the impact it has on sites of significance for Aboriginal people and the need to find the balance between resource development and protection of Aboriginal sites. It is obvious how sensitive the role of the Aboriginal Cultural Material Committee is or can be. It is entirely inappropriate to push aside propriety and proper process, in the way that has been done here, to install a political mate and to ensure that the minister is going to get the decisions that he wants. Of course ministers like to get the decisions they want all the time, but that is not real life in government.

It is obvious, when we look at the time line of events, that the actions of the minister and his office towards the Registrar of Aboriginal Sites are totally improper and inappropriate. My understanding is that those actions have led to the person losing the position. It is scandalous that the minister has behaved in this way. It is not unexpected and it is starting to fit a pattern of behaviour that has been revealed in part over the past couple of weeks in this chamber. It is scandalous; it is undeniable. There is much more to this story and the relationships of the players involved than has been revealed in this Parliament today, but it will be revealed. One thing the minister has to understand is that when he does these sorts of things, they are ultimately revealed. He cannot stop people from speaking out in the end. He will be condemned for this action. It is totally inappropriate, it is improper, it has cost a good public servant her job, and it has installed a political ally in a position to which that person should never have been appointed.

**DR K.D. HAMES (Dawesville — Minister for Indigenous Affairs)** [3.48 pm]: I will trek through the history of this event and what has led us to this place. I became Minister for Indigenous Affairs in September 2008. In doing so, I reacquainted myself with the Department of Indigenous Affairs and the Aboriginal Cultural Material Committee process. Significant concerns about the operations of the Department of Indigenous Affairs were expressed to me in quite a detailed letter. The critique was quite harsh so I am not going to read out any more than a few small components of that as I do not want to cast any public reflections on the people there, all of whom, I am sure, have a very strong commitment to the preservation of Aboriginal heritage in this state. Nevertheless, through the department, presumably from persons involved, from the registrar, significant concerns were expressed about the operations of the committee. It was suggested that there needed to be a major reform of the process of operation and of the membership of that committee. I will quote from two components of that letter —

Clearly, there are issues with respect to the decision to appoint on a regional basis and a better option may be to re-appoint a committee on more equitable terms, taking more account of gender balance, balance of indigenous and non-indigenous members and balance of members with professional and academic skills as opposed to practical local expertise and knowledge.

Appointment of new members on the foregoing basis should enhance the ACMC's effectiveness and capacity to provide strategic advice on factors affecting the protection of Aboriginal heritage in WA. This is of critical importance given the Government's commitment to improving approval processes.

That was reflected in some of the issues that came before me as the minister. I will detail two of them to give members some idea of why I had concerns about some of the recommendations that were put forward by the committee. The first relates to applications by both BHP Billiton and Fortescue Metals Group for the dredging of Port Hedland harbour. The matter had been placed before the committee by both BHP and FMG, which were seeking to do further dredging of the harbour. They were planning significant expansion of their mining

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operations for which the harbour needed to be larger. Heritage approval was granted, and then a couple of Aboriginal people requested that further consultation be done involving themselves. The Aboriginal Cultural Material Committee required that to be done. That survey was done and a recommendation was then made by the ACMC that, on the basis of that area, the harbour being a site, further dredging of the harbour should not be allowed. In effect, it meant stopping the potential expansion plans of BHP and FMG that we now know will create significant employment opportunities within this state.

It is the minister's role to take those things into consideration. However, despite the main Aboriginal community having no concern about that and saying it was not a site, a couple said it was a site, and it was declared a site. I have no problem with it being declared a site. A recommendation then came back saying that it was inappropriate to dredge it—when it had been dredged 13 times since the early 1960s. That was one instance in which I was forced to overturn a decision.

**Mr R.H. Cook:** That's your job.

**Dr K.D. HAMES:** It is my job.

**Mr R.H. Cook:** You didn't have to accept the recommendation.

**Dr K.D. HAMES:** Nor did I.

The second issue related to a development in the mid-west where a mining company was seeking to do some exploratory drilling, and an Aboriginal group had been consulted. The ethnographic survey indicated to that committee that, despite the Aboriginal group in that area believing that the whole range and certain locations within that were sites, the consultation that had been paid for by the mining company did not provide enough information from the Aboriginal groups to enable the company to say it was a site. The mining company did not really want it to be a site because it meant that it would significantly affect its operation. However, the ACMC was saying that it would not accept it being a site, which was what the Aboriginal people wanted, until the mining company got more information from the Aboriginal people. The mining company therefore went to the Aboriginal people and the Aboriginal people said, "We're not providing any more information to you; that's our information." The ACMC therefore kept on deferring it. When the ACMC does not make a decision, I am not empowered to make a decision.

**Mr A.J. Carpenter:** Yes, you are.

**Dr K.D. HAMES:** No; I cannot overturn a decision unless it has been made.

**Mr A.J. Carpenter:** Yes, you can.

**Dr K.D. HAMES:** I cannot overturn a decision unless it comes to me. As long as the matter is deferred and no decision is made by the ACMC, I do not have the power to do anything about it.

**Mr A.J. Carpenter:** You do.

**Mr E.S. Ripper** interjected.

**Dr K.D. HAMES:** I am painting a picture; if the Leader of the Opposition does not mind, I have half an hour in which to do it.

**Mr E.S. Ripper:** Is your argument the reason you chose to make a political appointment?

**Dr K.D. HAMES:** This is a snapshot in the story; if the Leader of the Opposition is patient, he will get the story.

**Mr E.S. Ripper:** We want the truth.

**Dr K.D. HAMES:** It is the truth. I can give members details outside, but I do not want to name people publicly. There were two issues; namely, the Aboriginal group wanted it to be a site and the mining company did not, yet the mining company was being told that its application to do drilling could not be progressed until the matter was sorted out. I brought the Aboriginal group together with the mining company to try to resolve it.

The Director General of the Department of Indigenous Affairs, presumably through the registrar, specifically raised concerns with me about the operations of the ACMC and the way it was proceeding. I have just given members two examples of areas in which I felt there were difficulties and I wanted to get more done.

**Mr R.H. Cook** interjected.

**Dr K.D. HAMES:** No, they were not. Not only that, but I refer to how members of the ACMC are appointed. Part of that briefing note referred to how the former minister sought to appoint additional members to the ACMC. There was no advertising process and no sense of rigour undergone in making appointments. The note said that the previous minister wanted regional representation on the committee. There is nothing wrong with

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that, of course. It went on to say that a representative from the goldfields was recommended who had anthropological, archaeological and heritage expertise; however, that appointment was not made, and the reasons why were unclear. When the minister wanted someone, someone's curriculum vitae was provided as a recommendation. Another goldfields representative was suggested instead to the previous minister, with a detailed CV and supporting advice from the department. The member was not appointed.

**Mrs M.H. Roberts** interjected.

**Dr K.D. HAMES:** I acknowledge that she did not support it. That was the way the DIA was handling the process. If the member for Midland is saying that she did not ask for that advice or she did not tell them that it was incorrect to say that she wanted a representative from the goldfields —

**Mrs M.H. Roberts:** I didn't mention any individuals. I did not identify any individuals.

**The SPEAKER:** Order, member for Midland!

**Dr K.D. HAMES:** Nevertheless, those applications were made. In the process, we advertised for expressions of interest. I received a letter from the Department of Indigenous Affairs that contained two things—one was a list of the people who had applied for the membership. Separate to that was a list of, I think, five names of people whom the registrar recommended.

**Mr R.H. Cook:** Were five names enough?

**Dr K.D. HAMES:** Yes, it was, because in the lead-up to this there were sufficient members on the committee and sufficient to form a quorum, so there was no rush for me to do anything. Then there were a couple of resignations from the committee, so suddenly the committee was one member short of a quorum for that next meeting. We therefore wanted to move very quickly. The registrar had previously provided me with a list of names that I could choose from—not following the period of advertising. It contained perhaps 15 names; I have the list here somewhere of people she suggested would be suitable representatives on the committee. They came from ads we had run for the Aboriginal Affairs Advisory Council that we are about to appoint. Without advertising, the registrar had provided me with a list of names. I thought we should run an advertisement.

**Mr R.H. Cook:** Was Mr Lowe on that list?

**Dr K.D. HAMES:** No. That was from the Aboriginal Affairs Advisory Committee solely for Aboriginal people. At the recommendation of the director general, we decided we should advertise, which we did for five days because we were in a hurry to appoint people to that committee. When the list came in, I had assumed that, because all those names were on the list, I could choose from any of them. I chose three from the list that she had recommended and I wanted more Aboriginal people from the list that she had not recommended, not just Haydn Lowe. The member will know some of them; they are very well-respected Aboriginal people whose names were not on that list. When I indicated the particular people I wanted, including Haydn Lowe, the registrar got a legal opinion that said I could not choose from the ones who had applied; I could choose only from the ones she had recommended. My view was that Haydn Lowe was an extremely good person to be on the committee. I will explain why in a minute. I thought there was no reason Mr Lowe should not be on the committee on that recommendation. I therefore asked my staff to talk to the chief executive officer. I point out in response to the earlier question that none of my staff—I have checked since—had direct discussions with the registrar about this matter. It was all done—I have double-checked—through the director general. Therefore, the director general or his senior staff went back to the registrar and asked whether there was any good reason why Mr Lowe's name was not on the list. The reason that was put forward is that when Mr Lowe made his application and sent it by computer, the computer program sent his curriculum vitae and a blank application form, although he had filled in the application form; the completed form was not sent. The registrar went back to Mr Lowe and asked what happened. He said that he thought she had the application, so she asked him to send it again. The application form was still on the computer, so Mr Lowe pressed another button and sent it again. Therefore, the only issue that it did not meet the criteria was when his original application was sent, and the incomplete form and all of the CV went through. I think it would be quite reasonable that if someone applied for a position and the full application did not come through, one would go back and ask whether there had been some mistake with the computer. That is what was sent through; therefore, Mr Lowe's name was put through.

I was informed in the first letter which I got before I appointed anyone and which contained the list of recommendations that Mr Lowe had put forward a nomination for that committee. Therefore, the registrar herself gave me his name in that first list, prior to all those events, to say that he had nominated. Once the list of names came through to me, I did choose Haydn Lowe and I chose the three other people whom the registrar had recommended. Those names went to cabinet and were approved. Members opposite talk about Haydn Lowe. Haydn Lowe has certainly had, as was described by the former Premier, some association with our side of the

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house in more recent years. However, we can go through Mr Lowe's history as a public servant right back to 1982, when he was appointed chief executive officer of the intellectually handicapped division in the mental health section of the health department. He drafted legislation to create the Authority for Intellectually Handicapped Persons. That was in 1982. In 1986 he was appointed chief executive officer of the Authority for Intellectually Handicapped Persons. Still during the time of a Labor government—it was throughout Labor's time in government that he was given these roles within government—in 1992 he was appointed to draft legislation to create the Disability Services Commission to assume responsibility for all Western Australian disability services. In 1993 he was put in by the Liberal government as chief executive officer of the Disability Services Commission, as anyone in that position would be. Certainly, after that he spent time under me, but I had nothing to do with his appointment as my chief executive. I was asked whether there was an issue and I said, "No, there's not an issue"; his coming there had nothing to do with me. I have a great deal of respect for his ability. As the chief executive officer of the Department of Indigenous Affairs, Mr Lowe was on the Aboriginal Cultural Material Committee for three years. I wanted someone with leadership, an understanding of how section 18 applications work and a detailed, in-depth knowledge of the system to be on that committee and, in effect, to be chair of that committee. That is what happened. The opposition has come into this place and said that there is something wrong with that. However, this is not a public servant position we are appointing; this is a committee that provides advice to government, and it is very important that governments have that opportunity. There was an issue with the departure of the current chairman, and I apologise to him that he did not get a letter at the time thanking him for his service.

**Mr R.H. Cook** interjected.

**The DEPUTY SPEAKER:** Order, member for Kwinana!

**Dr K.D. HAMES:** That unfortunately was not my doing, and I have a briefing note from the legal officer from the Department of Indigenous Affairs—who happens to be a former Labor candidate—about the appointment of Mr Lowe as chairman of the Aboriginal Cultural Material Committee, which states —

It is my view that the appointment of Mr Lowe by the Minister for Indigenous Affairs was valid in that he was legitimately able to form —

**Mr R.H. Cook:** Would the minister be happy to table that advice?

**Dr K.D. HAMES:** No, because it is a legal opinion put forward by department staff about issues and I am not reading from it; I am just referring to it.

Several members interjected.

**The DEPUTY SPEAKER:** Order, member for Nollamara!

*Point of Order*

**Mr J.C. KOBELKE:** I am quite certain that the minister has quoted from an official letter or document and on that basis I seek to have him table that letter.

**Dr K.D. HAMES:** I think the member may be right. This is certainly a briefing note from Lorraine Allen, senior legal officer of the Department of Indigenous Affairs. I will table it when I have finished because I need to refer to it.

**The DEPUTY SPEAKER:** The minister will table it.

*Debate Resumed*

**Dr K.D. HAMES:** I am very happy with what —

Several members interjected.

**Dr K.D. HAMES:** I am not critical of that person at all. Let me say to members that it is very good that she has written this briefing note because it shows that there is no bias from that department in what is said to me about this issue, because the author is someone who formerly ran for Labor. Therefore, I am quite happy with what she said in this note. This briefing note refers to the appointment of Haydn Lowe as chairman, not to his appointment to the committee. I point out that it states —

The legal officer—

That is, Ms Allen —

was requested to draft a letter (for the Minister to sign) —

At my request, I might add —

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to thank Mr Ninyette for his contribution to the ACMC as Chairman. That request was made on Friday 15 May ...

On 20 May, I made an announcement in this Parliament in which I thanked the chairman. I made a brief ministerial statement on that issue in this house. I thanked Mr Ninyette for his contribution as chairman, and as soon as *Hansard* was available the registrar sent a copy to Mr Ninyette so that he was well aware of my thanks for his contribution. Therefore, the fact is that the letter I had asked for did not go out, and members can read for themselves why it did not go out when they read the explanation in the briefing note I table.

[See paper 993.]

**Dr K.D. HAMES:** I want to wind up my contribution to allow other members to have some time to talk about appointments made to certain committees under the Labor government. We have already heard from the Treasurer about some of the people on the opposition side. These are not people who have some allegiance to the Liberal or Labor Parties on the opposition side; they are people who have been members of Parliament, ministers in former Labor governments or Labor candidates in elections. In this list I have before me, there are 21 former Labor Party candidates—21! I will read out their names to the house. These are people who were either put on committees or appointed to specific areas of government. There are 21 of them.

Several members interjected.

**The DEPUTY SPEAKER:** Order!

**Dr K.D. HAMES:** There are 23 former members of Parliament, so this is not just about me; this is about the Labor Party and its claptrap about what should happen about people on this side of the house. Members opposite have one rule for themselves and a different rule for this side of the house!

Several members interjected.

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

**Dr K.D. HAMES:** I will go through those names. I will start with the Labor candidates. The candidate for Alfred Cove, Michael Kane; level 7.1, Minister MacTiernan's office. The candidate for Cottesloe, Owen Whittle—

Several members interjected.

**The DEPUTY SPEAKER:** Order, member for Bassendean!

**Dr K.D. HAMES:** Lorraine Craven, candidate for the seat of Moore; Jackie Ormsby, candidate for the seat of Murdoch—

Several members interjected.

**The DEPUTY SPEAKER:** Order, member for Bassendean!

Several members interjected.

**Dr K.D. HAMES:** I am getting to other spots.

Several members interjected.

**The DEPUTY SPEAKER:** Order! Members are drowning out the minister.

**Dr K.D. HAMES:** Nuala Keating for Murray; Ron Sao for Roe—

Several members interjected.

**The DEPUTY SPEAKER:** I call the member for Nollamara for the first time.

**Dr K.D. HAMES:** Daron Smith for Serpentine-Jarrahdale; Peter McKenzie for Warren-Blackwood—

Several members interjected.

**The DEPUTY SPEAKER:** Please sit down, minister. I call the member for Nollamara for the second time.

**Dr K.D. HAMES:** Where was I up to? Ursula Richards, O'Connor; Neil Roberts, Nedlands; Liam Costello, South Metropolitan Region; Darren West, Moore; Samantha Ogden, Ningaloo; Margaret Vincent, Mining and Pastoral Region; Ian Bishop, Stirling; Daniel Smith, South Perth; Nick Oaks, Warren-Blackwood; Emiliano Barzotto, East Metropolitan Region; and top of the list, of course, Mark Cuomo!

Let us go through the former members who have been appointed: Sharryn Jackson, Lois Anderson, Ian Taylor—

Several members interjected.

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**Dr K.D. HAMES:** Sorry; Lois Anderson was a candidate—my apologies. The list continues: Kevin Leahy, Clive Brown, John Cowdell, Diana Warnock, Kay Hallahan, Megan Anwyl, Jeff Carr, Michael Barnett, David Smith, Bob Pearce, Judyth Watson, Nick Catania, Malcolm Bryce, Yvonne Henderson, Ron Davies and Jackie McKiernan.

Several members interjected.

**Dr K.D. HAMES:** The point is that the government likes to choose people with expertise. I put Ian Taylor and Keith Wilson in that category. I would appoint them to any of the government's committees. In fact, I nominated a former Australian Labor Party member of this house to a committee of the federal Parliament to look into renal transplants; sadly, the federal Labor Party minister rejected him. The government appoints people of quality and expertise to its committees. My point is that Haydn Lowe has the requisite expertise and qualities, and does not have anything like the sorts of political allegiances of the people I have referred to who were appointed by the former Labor government to its committees or were employed in its departments. He does not have anything like those sorts of connections, yet the opposition seeks to criticise the government.

*Point of Order*

**Mr J.C. KOBELKE:** The minister purported to have an official list, and I ask him to table it, as he has quoted from it extensively.

**Dr K.D. HAMES:** It is not an official list. It has been put together by Liberal Party staff. I have read most of them. It is not an official list. Most members of the government have read it, and we refer to it often. The point is that —

**Mr J.C. KOBELKE:** I actually asked for the Deputy Speaker's ruling on what I believe is an official list; the minister certainly suggested that it was. On the basis of the current standing orders and precedence, if he was quoting from an official list, he is required to table it and there is no other option. His only potential way of getting out of tabling it is to contradict the impression he has created and say that he is quoting from notes. The document does not look like notes; it looks like an official list. In fact, his comment confirmed that it is an official list, because he said that it had been passed around and distributed. It is an official list, on which basis it must be tabled.

**Mr R.F. JOHNSON:** The minister said that it was not an official list, and that it did not come from any government department. It is a list that members of the Liberal Party are well acquainted with because it has been passed around. It is certainly not a document that the minister is required to table.

**The DEPUTY SPEAKER:** The minister has explained that the list is a private list; it is not an official document.

*Debate Resumed*

**Dr K.D. HAMES:** It is not an official document. I left out a few people. I left out Kevin Reynolds and Joe Bullock. There are a few I left out.

*Point of Order*

**Mrs M.H. ROBERTS:** On the point of order before the last one, the minister undertook to table a document to which he was referring. He said that he would table it when he had finished referring to it.

**The DEPUTY SPEAKER:** The document has been tabled.

*Debate Resumed*

**Dr K.D. HAMES:** I want to leave time to allow other members to comment. The reality is that there has been no impropriety. Everything was done by the book. If members wish to explore this matter further, they are welcome to, but the reality is that it is within the province of any government to choose the people it appoints to committees, and to recommend the people who it thinks will best serve its committees.

**MR J.M. FRANCIS (Jandakot)** [4.13 pm]: I will keep my contribution to this debate very short. The member for Kwinana raised a point about previous appointments. The point I want to make —

Several members interjected.

**The DEPUTY SPEAKER:** Members!

**Mr J.M. FRANCIS:** It is all very well to come into this house and raise issues about government appointments, but the person who was appointed to this job is clearly not a political operative and is clearly the best person for the job. There are a couple of individual examples from the previous government that I want to refer to. There is

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a game that we all like to play called “Who am I?” I will start with one: I was born on 12 February 1962 in Perth. I was ALP state president from 2005 to 2007; I was assistant secretary of the Australian Liquor, Hospitality and Miscellaneous Workers’ Union; I worked as chief of staff for Bob Kucera; and I was federal member for Hasluck from 2001 to 2004. In 2006 I was appointed —

Several members interjected.

**The DEPUTY SPEAKER:** Members!

**Mr J.M. FRANCIS:** I was appointed to a \$120 000-a-year job, running —

Several members interjected.

**Mr J.M. FRANCIS:** Members opposite all know whom I am talking about! Who is it? It is Sharryn Jackson. I raise this because the opposition wants to talk about political appointments. I refer to an article from *The West Australian*.

Several members interjected.

**The DEPUTY SPEAKER:** Member for Forrestfield and member for Nollamara, please quieten down.

**Mr J.M. FRANCIS:** I quote what the former Commissioner for Public Sector Standards, Maxine Murray, said about the appointment of Sharryn Jackson in an article that appeared in *The West Australian* of 15 November 2006. The article states —

The commissioner wishes to highlight a recent example where the provision of what could be perceived to be party political services by the policy office to government, and the effect this has on the overall neutrality of the Department of Premier and Cabinet.

The recent publicity concerning the appointment of the State President of the Australian Labor Party to the Director Community Cabinet Liaison Unit and the location of the unit within the policy office highlights this very issue.

Several members interjected.

**The DEPUTY SPEAKER:** Member for Cannington, I call you to order for the first time.

**Mr J.M. FRANCIS:** The article continues —

While it is laudable that the Director declared the potential for a conflict of interest following her election to the position of President of the Australian Labor Party, it is —

Several members interjected.

**The DEPUTY SPEAKER:** Member for Nollamara, I call you for the third time.

**Mr J.M. FRANCIS:** The article continues —

the Commissioner’s view that this did not go far enough.

I am reading directly from an article that appeared in *The West Australian* of 15 November 2006.

Several members interjected.

**Mr J.M. FRANCIS:** I did say so; if members were listening, they would have heard me refer to it at the start.

I will touch on another appointee of the previous government. He was the state member for Kalgoorlie from 1981 to 1996; he was leader of the state Parliamentary Labor Party in 1994; and he was Deputy Premier to Carmen Lawrence. His appointments included chairman of the Regional Development Council; chairman of the Pilbara Fund; chairman of the State Housing Commission; and director of the board of Keystart. He was finally dumped from the ALP in 2008. He is Ian Taylor.

I have one more example, and if the opposition can justify this appointment, I would be absolutely flabbergasted: John O’Connor, secretary of the Transport Workers Union. I would love to know what skills he had to be appointed to the board of Western Power.

**Mr E.S. Ripper:** He was an industrial relations commissioner! That’s what his skills were!

Several members interjected.

**The DEPUTY SPEAKER:** Members!

**Mr J.M. FRANCIS:** It is very easy for the pot to call the kettle black.

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In closing, I refer to the *Concise Oxford Dictionary* definition of the word “hypocrisy”. According to my notes, it is the “simulation of virtue or goodness; dissimulation, pretence”. The definition of “hypocrite”, according to my notes, is a “person guilty of hypocrisy; dissembler, pretender”. It sums up the opposition. The Labor Party side of this house is riddled with hypocrisy when it raises issues about the appointment of perfectly qualified and non-political people to government positions.

**MR J.C. KOBELKE (Balcatta)** [4.18 pm]: When government members reduce the debate to the level of accusing the opposition of having made more political appointments than the government has, it is obvious that the government is on very weak ground. The point is not whether appointments are political or how many have been made. The point is that this particular appointment was made outside the requirements of the statute. That is the issue. The motivation was to make a political appointment; the minister wanted a mate to fix things for him. In a moment I will say why it is totally contrary to the intent of the act. The examples given by the minister show how little the minister knows about his portfolio, which leaves me in some dismay given that he was a minister in the Court government. He seems not to have learned anything.

The point is that section 28 of the Aboriginal Heritage Act 1972 makes it very clear that the minister shall appoint —

from a panel of names submitted for the purposes of this Act by the Registrar.

The minister has not denied that the registrar submitted a list of names without Mr Haydn Lowe’s name on it. The minister’s excuse was that Mr Haydn Lowe had forgotten to fill in the application or had filled in only part of it. That is a pretty lame excuse. If it is true, why did the minister on two occasions seek legal advice if it is simply a matter that there was some clerical error? There is no other provision in the act that allows the registrar to consider an application until it is submitted. However, what happened was that the registrar considered the applications and judged them on whether they met the criteria for the appointment. Mr Haydn Lowe’s name was not on the list. The list then went to the minister. Following legal advice, it was confirmed that the minister could appoint only someone on that list. Because the minister had a political mate whom he wanted on the committee, he set about taking action that was contrary to the act. I will ask the minister to confirm what he said earlier, because I want to get the words absolutely clear. Is the minister saying that neither he nor anyone on his staff instructed the registrar to put Mr Haydn Lowe’s name on the list?

**Dr K.D. Hames:** Yes.

**Mr J.C. KOBELKE:** Absolutely did not instruct verbally?

**Dr K.D. Hames:** No.

**Mr J.C. KOBELKE:** Did not instruct in writing?

**Dr K.D. Hames:** No.

**Mr J.C. KOBELKE:** The minister is absolutely certain?

**Dr K.D. Hames:** Yes.

**Mr J.C. KOBELKE:** So how did his name get through to the minister?

**Dr K.D. Hames:** Because we spoke to the director general, as we should.

**Mr J.C. KOBELKE:** So the minister is saying that he did instruct the registrar but through the director general?

**Dr K.D. Hames:** We didn’t instruct the registrar. We discussed the issue with the director general.

**Mr J.C. KOBELKE:** The minister told the director general to instruct the registrar to put Mr Haydn Lowe’s name on the list; is that what the minister is saying?

**Dr K.D. Hames:** As I said in my speech, I asked the director general whether he could talk to the registrar. When I got that original list, it contained the name of Haydn Lowe as an applicant but not as a recommended person.

**Mr E.S. Ripper:** He was not recommended!

**Dr K.D. Hames:** So I went back to the director general and said, “Can you talk to the registrar to see why she hasn’t put Haydn Lowe’s name on the list.”

**Mr J.C. KOBELKE:** Did he come back and give the minister the reasons?

**Dr K.D. Hames:** No. I got a revised list that contained his name, from the registrar.

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**Mr J.C. KOBELKE:** So in fact the minister is saying that the director general did not do what he asked, because the minister asked him simply to give him the reasons why Mr Haydn Lowe was on the list of applicants but not on the recommended list that the minister could appoint from?

**Dr K.D. Hames:** Have you ever thought that perhaps the registrar looked at the reasons and talked to Mr Lowe to find out what had happened and felt then that he was suitable? Have you thought of that?

**Mr J.C. KOBELKE:** The minister has no idea as to how much pressure was put on the registrar to actually put Mr Haydn Lowe's name on the list; is that what the minister is telling this house?

**Dr K.D. Hames:** No. Why should I?

**Mr J.C. KOBELKE:** It is because the minister wanted Mr Haydn Lowe because he was a political mate of his.

**Dr K.D. Hames:** No.

**Mr J.C. KOBELKE:** Absolutely!

**Dr K.D. Hames:** No. I wanted him because I thought he was the best person for the job.

**Mr J.C. KOBELKE:** Yes, because he was a political mate.

**Dr K.D. Hames:** No.

**Mr J.C. KOBELKE:** This comes down to how the minister is seeking to undermine the Aboriginal Heritage Act, which contains provisions for the establishment of the Aboriginal Cultural Material Committee. The committee's role is to protect Aboriginal heritage.

**Dr K.D. Hames:** Yes.

**Mr J.C. KOBELKE:** Its role is not to look after the broader socioeconomic interests of the state.

**Dr K.D. Hames:** No.

**Mr J.C. KOBELKE:** That is the role of the minister.

**Dr K.D. Hames:** But he has a great understanding. He has been chief executive for four years. Do you not think he has a deep understanding of that?

**Mr J.C. KOBELKE:** The minister can make a decision contrary to the recommendations of the ACMC because of the broader community needs. However, this minister is seeking to bias and twist the operation of the ACMC so that it will look at broader political and socioeconomic issues. There is nothing in the Aboriginal Heritage Act that says that is the role of the ACMC. The minister, quite rightly, has the power to overturn the recommendations, to vary those recommendations or to put different conditions on the recommendations of the ACMC, whatever they may be. However, it is an absolute travesty to put a political stooge onto the ACMC so that the ACMC will take those broader considerations into account. The ACMC is for the protection of Aboriginal heritage, not to make sure that economic projects get up for the minister to take account of. What we see in this appointment is not just that it is political—we can argue backwards and forwards about political appointments—but also that the minister has sought to undermine the operation of the Aboriginal Heritage Act by having a stooge in Mr Haydn Lowe who will help the minister get recommendations that he wants. That is what we have seen in this appointment process. The minister did not have Mr Haydn Lowe's name on the list and the evidence so far is that Haydn Lowe did not put in an application that met the criteria; therefore, he should not have been on the list. The minister gave no evidence on that to the contrary. He had legal advice that that was the case, but he got people to go back and lean on the registrar to make sure that his name was on the list so that he could appoint him.

**Dr K.D. Hames:** I didn't say that. I didn't have legal advice on this issue.

**Mr J.C. KOBELKE:** We now know that there is a chair of the Aboriginal Cultural Material Committee who is not there to protect Aboriginal heritage; he is there to do the political bidding of his master the minister. That undermines the whole reason for the Aboriginal Heritage Act.

Several members interjected.

**Mr J.C. KOBELKE:** It has become absolutely clear that that is what this minister has done. The smokescreen, therefore, is to talk about the number of people politically connected who have been appointed by various governments. It is an absolute travesty.

**MR C.J. BARNETT (Cottesloe — Premier)** [4.25 pm]: The first point I make is to reiterate that Haydn Lowe is a long-term public servant who has served successive governments of different political persuasions. Since the early 1980s he has had a long career in the Western Australian public sector. He has been, obviously, the head of

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the Disability Services Commission and of the former Aboriginal affairs department. No-one could doubt his credentials as a public servant and no-one could doubt his knowledge in this area. Under the previous government —

**Mr E.S. Ripper:** He is a political appointee.

**Mr C.J. BARNETT:** A political appointment! What members opposite on their side of politics say about decent people in this community is, frankly, disgraceful. The Labor Party does not hesitate to lie in what it says to the media. It does not hesitate to lie, Mr Deputy Speaker.

*Withdrawal of Remark*

**Mr E.S. RIPPER:** I think the Premier used an unparliamentary term there when he looked across at this side of the chamber and accused members, who are on this side of the chamber and who do speak to the media, of lying.

**The DEPUTY SPEAKER:** Technically speaking, I suppose the Premier is talking about the Labor Party but it could be a reflection on members of the Labor Party.

**Mr J.M. FRANCIS:** Mr Deputy Speaker, the Premier did not refer to any particular member individually.

**Ms A.J.G. MacTiernan:** He referred to us all.

**Mr C.J. BARNETT:** I withdraw, if that was too close to the bone for members opposite. Clearly they were squirming in their seats and thinking, “Is it me they are talking about?”

**Mr W.J. JOHNSTON:** I understand the standing orders require members to withdraw unconditionally and not in a conditional way. The Premier said that if it is too close to the bone for members on this side of the chamber, then he withdraws. That is not an adequate withdrawal. He has to withdraw unconditionally.

**Mr R.F. JOHNSON:** Further to that point, the Premier did withdraw, even though many members of the chamber do not think he should have or needed to have done so.

**The DEPUTY SPEAKER:** Yes, he did withdraw it.

**Mr R.F. JOHNSON:** He went on to make other remarks after it but he kept it withdrawn.

**The DEPUTY SPEAKER:** The Premier can carry on. I understood him to have withdrawn.

**Mr C.J. BARNETT:** I withdraw the reference to the Labor Party.

*Debate Resumed*

**Mr C.J. BARNETT:** Haydn Lowe, with his credentials and his capacity to administer, provide guidance and chair this committee and with his knowledge of Aboriginal issues, heritage issues in particular, is clearly qualified for the role. Under the previous government the ACMC—perhaps it was a nice idea—sought to have representation from different regions of the state. It sounded good in theory but it did not work. Members of the committee were often unavailable and often it took three days to get them to meetings. There was a time when they could not get a quorum together. Basically, the ACMC under Labor had become dysfunctional and was not doing its job. So, why not get someone in there who can administer and chair the committee, and make it an effective body representing and protecting Indigenous issues, cultural sites and so on?

**Mr E.S. Ripper:** As long as you act according to law.

**Mr C.J. BARNETT:** Why not have a competent person to lead the committee? That is what we have got. As the minister explained, Haydn Lowe had put in an expression of interest; when it came back, he had not been recommended; the minister was not happy with the list; he sent it back; and it came back with a recommendation from the registrar that Haydn take on this role. I am very pleased he is there. What we will see now under this government and this minister is a functional ACMC that actually deals with the issue and identifies important heritage issues to ensure that the important heritage of this state is protected.

Members opposite can carry on as they do on a daily basis, but they should look at the credentials of the person involved—competent, qualified, ethical and doing a good job.

Question put and a division taken with the following result —

**Extract from Hansard**  
[ASSEMBLY - Tuesday, 16 June 2009]  
p5046b-5058a

Speaker; Mr Roger Cook; Mr Alan Carpenter; Dr Kim Hames; Mr John Kobelke; Deputy Speaker; Mr Rob Johnson; Mrs Michelle Roberts; Mr Joe Francis; Mr Colin Barnett; Mr Eric Ripper; Mr Bill Johnston

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Ayes (27)

Ms L.L. Baker  
Ms A.S. Carles  
Mr A.J. Carpenter  
Mr V.A. Catania  
Mr R.H. Cook  
Ms J.M. Freeman  
Mr J.N. Hyde

Mr W.J. Johnston  
Mr J.C. Kobelke  
Mr F.M. Logan  
Ms A.J.G. MacTiernan  
Mr M. McGowan  
Mr M.P. Murray  
Mr A.P. O’Gorman

Mr P. Papalia  
Mr J.R. Quigley  
Ms M.M. Quirk  
Mr E.S. Ripper  
Mrs M.H. Roberts  
Ms R. Saffioti  
Mr T.G. Stephens

Mr C.J. Tallentire  
Mr A.J. Waddell  
Mr P.B. Watson  
Mr M.P. Whitely  
Mr B.S. Wyatt  
Mr D.A. Templeman (*Teller*)

Noes (30)

Mr P. Abetz  
Mr F.A. Alban  
Mr C.J. Barnett  
Mr I.C. Blayney  
Mr J.J.M. Bowler  
Mr I.M. Britza  
Mr T.R. Buswell  
Mr G.M. Castrilli

Dr E. Constable  
Mr M.J. Cowper  
Mr J.H.D. Day  
Mr J.M. Francis  
Mr B.J. Grylls  
Dr K.D. Hames  
Mrs L.M. Harvey  
Mr A.P. Jacob

Dr G.G. Jacobs  
Mr R.F. Johnson  
Mr A. Krsticevic  
Mr W.R. Marmion  
Mr P.T. Miles  
Ms A.R. Mitchell  
Dr M.D. Nahan  
Mr C.C. Porter

Mr D.T. Redman  
Mr A.J. Simpson  
Mr M.W. Sutherland  
Mr T.K. Waldron  
Dr J.M. Woollard  
Mr J.E. McGrath (*Teller*)

Question thus negatived.