LAND AND PUBLIC WORKS LEGISLATION AMENDMENT BILL 2022

Second Reading

Resumed from 23 February.

HON NEIL THOMSON (Mining and Pastoral) [2.41 pm]: I rise as the lead speaker on behalf of the opposition to speak on the Land and Public Works Legislation Amendment Bill. I note that the opposition will not be opposing this bill. The bill contains some elements that we support, and it will result in some good reforms. However, some elements of the bill raise concerns and deserve further interrogation. This bill also raises some potential missed opportunities. In saying that, I acknowledge that the Land Administration Act has had a long and difficult history. The Land Administration Act is very interesting. I can say that with some confidence, because I have either had it read to me fully or have read it myself from end to end. That occurred some years ago when I was working for the Northern Australia Indigenous Reference Group, which at the time was chaired by Peter Yu, whom some members would know. My wife and I were doing some consulting for that group, and in order to pass the time while we were driving from Broome to Darwin, my wife read out the act in its full black and white text. It was surprising to find that that legislation contains some interesting pearls of wisdom.

The important point is that the existing legislation grants the Minister for Lands a lot of powers. To some extent, those powers are not always exercised as well as they might be. That is no particular criticism of the current Minister for Lands, Hon John Carey, in the other place. I think he is having a reasonable go at these things. I also want to acknowledge the minister's office for its response to my member's statement the other night about the Foote family, who were facing eviction from their property. The turnaround time in responding to my member's statement was a good example of bipartisanship and was a credit to the minister's office.

In making my second reading contribution, I will raise a number of aspects of the bill. I will outline some of the challenges in the crown land space, in particular the management of crown land and dealing with the rights of people and the opportunities that exist on crown land. I will also give a few examples and outline in broad terms what we support and what we do not support. The office of Minister Jackie Jarvis has also contacted me today. I hope to draw out some of that and raise some questions going forward, in the name of providing better information to the community.

I expect that this bill will pass in its entirety. I say that notwithstanding that an amendment has been proposed by another member in this place. It is important that the opposition raises issues and puts on the record some of the opportunities that might exist, and also some of our concerns, so that when things happen going forward and stakeholders raise concerns, we will be able to refer to *Hansard* and point out how where there might be an opportunity for reconsideration at a future date.

I have worked in the land administration space for some years in both my public sector and consultancy roles. The interface between those two roles was probably more pronounced in the Aboriginal affairs space. I will give some examples, without identifying particular people, and present some of the challenges that we see. The number one challenge is to ensure that the Department of Planning, Lands and Heritage is adequately resourced to perform its role as the manager of crown land. The bill refers to delegations. I hope those delegations will enable better and more rapid decision-making going forward. I am concerned that some of the decisions that are made by local governments to enable economic development, home ownership, land release and the provision of homestead lots for Aboriginal communities in remote areas take an inordinate length of time. I say that from experience. I will not go into specifics, but I know of more than one family who had built their own home on the rangelands, whether that be on a pastoral lease or on a reserve or traditional land, and had had either tacit or formal consent from the native title holder, but then found it inordinately difficult to go through the crown land system and obtain an excision from the pastoral lease for a semirural lot of maybe a few hectares for curtilage and to ensure that access would always be available. I am talking about locations in the Kimberley. They sought security so that they could get insurance on their property and provide continuity in the future and enable their house to be passed on to their family or whatever. Certainly in one example, they are still waiting after five or six years. It can be quite challenging for families with limited resources to step through the process in the Land Administration Act 1997. I would like to see a process built into this amending legislation to enable that to occur more seamlessly.

A lot of work was done by the Indigenous task force that was put together by former Prime Minister Tony Abbott. It looked at the possibility of developing an office of township leasing in WA, like they have in the Northern Territory. Although I am not saying that that is the silver bullet, it is the sort of opportunity that we might have been able to step through. I have other friends, clients and associates who have, over the years, quite legitimately sought to develop larger lots of land and secure some form of state tenure over a reserve or unallocated crown land and, again, they had either tacit or formal approval from the native title body, the traditional owners, through either a formal Indigenous land use agreement or written consent, but they found it difficult to progress their application because of the complexity of the multi-layered "Sarah Lee cake of approvals" in this state's crown land system. It is extraordinarily difficult to do this. The time delays in getting through the processes can give effect to other risks within the

decision-making process. Without identifying a particular case, after a proposal is put forward, there is some sort of formal or verbal approval from the native title body. The application is made but the process takes too long because the department sits on resourcing matters and also because of some of the complexities and the general risk adversity of the state in granting forms of tenure. That could be leasehold, freehold, under section 79 of the Land Administration Act or section 83 of the Land Administration Act, which provides for Aboriginal tenure, which, unfortunately, is not utilised to the extent it could be. Because of those delays, there might be changes within the prescribed body corporate and a new process has to start again with the proponent, who might also be a traditional owner. The delays create more risk because the passage of time creates a range of matters around risk and assessment and there are more opportunities for failure within the approvals system. It can be incredibly complex, and that is huge challenge.

What we are finding within the land administration system is that if someone is significantly resourced—they have the capacity to access lawyers on tap, they are able to promote themselves and they have access to a minister—they are able to get the tenure changes through. Sometimes they do this with a great degree of difficulty, but at least they have the resources to go through the complex native title process, which is overlaid by the complex state crown land process. Often the two do not tie together very well. That is one of the points I want to make about the work of people like Peter Yu, a Yawuru man, and Wayne Bergmann, who did a significant amount of work to provide opportunities to better align our state system and create fungibility around native title, which is not a registered interest in the sense of a registered title within the Land Administration Act or registered in the crown land system, but is obviously dealt with in federal legislation, which confers rights and entitlements on traditional owners. That creates incredible complexity, which, I think, needs root-and-branch reform going forward. I would be much more supportive if something of that nature was contemplated by the state as we move forward.

Notwithstanding the challenges within the Land Administration Act, in the pastoralist sector—I refer to Aboriginal pastoralists who have exclusive possession native title held over their Aboriginal pastoral lease or non-Indigenous pastoralists who hold the lease and operate within a non-exclusive possession arrangement—there has been a commitment over many decades to work towards a better solution and get capacity in the system so that we can do more with the section 93 pastoral lease provisions to make sure that those pastoral leases are utilised to get more economic outcomes for pastoralists on the ground. We have seen the evolution of diversification permits. It is important to make the distinction between diversification permits and the proposed diversification leases because it is easy to confuse the two. I am sure that all members in this place understand the difference but for those watching, it is vital to recognise that the diversification permit process—we welcome some of the changes that will affect those—has been a regulatory tool that has allowed for some improvement in the economic use of land when there are opportunities; for example, the development of a pastoral system through the use of irrigated agriculture and tourism. In partnership with pastoralists, DPIRD and a range of not-for-profit bodies, such as the Conservation Council of Western Australia and others, undertook work on human-induced regeneration for carbon farming. Prior to the announcement by the minister in 2021 when we looked at moving forward with this proposal, there was quite a long and torturous process to get to the point of being able to undertake carbon farming, under certain conditions, on pastoral leases. I point people to the DPIRD website and the section that is headed "Carbon Farming on Pastoral Lease Lands—Human Induced Regeneration". It contains a fairly useful interactive map and outlines the conditions for what is required. For example, we know that this has become the major income generator for many pastoralists who are based in the Gascoyne region. Some of those areas have suffered long-term drought and destocking over many years because of challenges around sheep and the economics of running goats on those properties. Those properties were not necessarily suitable for cattle, particularly when there was long-term drought. Some of those properties are now almost wholly utilised for, or certainly a major proportion of their income is derived from, carbon farming. In some respects, that is a good thing. It is certainly good for the environment in terms of carbon mitigation. However, it does raise some challenges going forward into the future about the management of those lands once the maximum carbon bank is achieved.

The point is that work was being done. Again, in a general sense, I probably would have liked to have seen more work done to try to expand the capacity around what diversification leases could achieve. As I said, we welcome the proposed changes to diversification leases—not leases, sorry; I must get this right. We have got to be clear. For the sake of *Hansard*, I meant diversification permits. I make that correction. We welcome the expansion of diversification permits and the capacity to do more with them. I think that would have been a good thing. What we have seen is the capacity for diversification leases to deal with a major bugbear of pastoralists. Those diversification permits are now able to be transferred upon the sale of a pastoral lease. I think that is an important thing. It was a frustration for those pastoralists who had made investments going forward, when they would find that upon the sale of their pastoral lease, they would have to start again. That obviously created a massive red-tape headache and also limited the market and the good work that was being done there.

In a general sense, I note that the Pastoralists and Graziers Association of Western Australia has supported the reforms. It is no doubt happy with some of those things. We are as well. We certainly support some of the reforms related to pastoral leases, particularly the opportunity to extend pastoral leases for some of them nearing termination.

There was work done previously and there was a desire not to have them all on a 99 same year expiry. The challenge, of course, is that over time a lease may end up with 15 or 16 years left. I have dealt with a client, an Aboriginal client, who had a lease that had only 18 years left on it. That created some challenges in terms of the economic potential of that lease and the uncertainty going forward. The lessee will now be able to seek an extension from the minister to get an additional 50 years. I think that is something we support. Again, the portability of those diversification permits and the extensions of leases going forward is something that we support.

In a general sense on the state of pastoral lease reforms, we think there has been some progress made. I have heard some concerns about matters relating to the accreditation processes and the scheme that will be put in place. I have also heard concerns about the possible challenges of how the management plans might play out and go forward in relation to the Pastoral Lands Board. The concept of management plans is to be enshrined. However, I think in the general sense, there was an acceptance that those concerns can be managed. I do not think that was the major concern for us. It certainly was not one of the reasons we chose to not oppose this bill, as opposed to supporting this bill. I think on the pastoral side, there is certainly a need for the modification of mechanisms around evaluation. We will no doubt play that out in some of the discussion going forward during the clause-by-clause assessment.

We have had some bill shock from some of the matters that have come up relating to pastoral lease rates. I know that the government has actually stepped back from that. There was a sale of a pastoral lease that went for an extraordinarily high amount. I think one of the big cashed-up players was involved. That kind of affected everyone's evaluation. That spilled out into some of the rates as well. In fact, I know that in my region there is a bit of consternation around that. However, I know that was sort of addressed by the minister going forward. The government actually did largely address those concerns, at least. It is not always pleasing to everyone going forward, but at least that was dealt with. On the pastoral side, we are happy with some of the changes that have occurred. We support those changes, such as portability and all the things that I have mentioned.

However, the challenge, of course, is that we would have liked to have maybe seen a greater emphasis on driving a little bit more diversity in what those leases can be used for. There is probably a reason for that. I want to get to this point about the diversification of leases. I will be clear now: diversification of leases. We are going to talk about those and the new provision. They are going to be difficult to set up; they are not going to be easy. If the government thinks this is a panacea for the renewable energy industry, it may be. I could be wrong. Maybe it will be if a cashed-up proponent that has plenty of resources to make sure that all the red-tape hurdles are dealt with going forward and there are pastoralists who are prepared to have parts of their estate excised in order to set up a diversification lease, or if the government can identify some unallocated crown land that is otherwise not encumbered and can form an agreement with traditional owners through an ILUA. Sorry, for *Hansard* I will just clarify that. If the government can set up an Indigenous land use agreement, that may be a way forward for that proponent. Maybe it will be.

I am hoping that I am getting it right. For the sake of *Hansard*, I might be mixing up sections 93 and 91. However, I am pretty sure section 91 deals with licences. What we have seen now is a bit of a land grab going on with the profits à prendre provisions within the Land Administration Act. It has been a little while since I have asked a question about that. It was probably about a year ago. There was a bit of a rush. We saw the former minister, Hon Alannah MacTiernan—I hope she is enjoying her well-earned retirement—as very much an enthusiastic supporter of the hydrogen and renewable energy proposals. We saw some rather large profits à prendre licences being issued without, I think, the requisite due diligence. I think the intent of the licences when they were initially set up was to do things like beekeeping or harvesting sandalwood or whatever, not to set up vast swathes of land for the provision of hydrogen. But the world changes and we move on. I got the assurance from my questions that it was all non-exclusive. I also note that there were not any other overlapping licences offered to other hydrogen proponents. It might have been non-exclusive for other things, but certainly there seemed to be a bit of a land grab, probably on the scale of the Oklahoma land rush in which hundreds of thousands of hectares were dished out with very little oversight. That, I think, is an issue.

We now have this proposal, and I guess that is why we have the diversification lease proposal. I am not sure that diversification leases will be the panacea we seek, but again, maybe they will be. Members may recall that a previous Liberal government proposed a rangelands reform model. That was never progressed and, quite frankly, I think this legislation is very similar; diversification leases do not look very different from that. I know how the public service works; I spent nearly 30 years of my life there, and I think many of those same public servants are probably advising the minister on the process of this alternative form of tenure that has ended up with the label "diversification lease". It remains to be seen.

I have spoken to more than one land council across my region on this matter and there is a feeling that diversification leases may not be the ideal mechanism for these proposals. That is also felt by people within the industry who are looking to expand the renewable energy sector in our vast crown land estate. I return to my question about what stopped the government from looking at a bit of coexistence within the pastoral lease system for the rollout of renewable energy. I have heard from the Minister for Agriculture and Food that shade is an excellent thing for cattle, so a few solar panels might be an excellent thing within the pastoral lease sector. That could have been an opportunity

to look at integrating perhaps a three-way arrangement with traditional owners, pastoralists and proponents on pastoral leases; we are talking about industrial-scale renewable energy developments without revoking or excising parts of the pastoral lease estate and moving into so-called diversification leases.

I am probably a little cynical about the potential. The question is: how many of those diversification leases will be on the books in 10 years' time? That will be a test of the success of this reform. Good on the Minister for Lands for having a go, in that regard. Again, the opposition is not particularly opposed to the diversification lease component, although we will seek a little more clarification. I read *Hansard* from the other place and I saw some interesting comments from the minister in relation to what those diversification leases could be used for, and they did not correspond to my understanding of what I was advised by the department. Maybe there have been some changes, or maybe some advice has been given. For the minister's information, I am talking specifically about the matter of intensive agriculture, for example, and whether diversification leases would be an appropriate vehicle for that. I am not so sure, from the advice we got from the department in the various briefings I have had, that that was accurately portrayed in the other place when it was discussed. We will get to that when we get to Committee of the Whole, but I am just putting that issue on notice.

Another issue that I want to put on notice relates to the level of transparency and contestability around the issuing of diversification leases. I understand that contestability probably is not the model we need if, for example, a native title body is seeking a diversification lease on native title lands on which there is either an agreement with an existing interest holder or there are no other conflicting interests. I understand that it would not be appropriate to have contestability in that case. I also understand that contestability might not be an appropriate requirement in situations in which there is an agreement to go through the process of revoking a pastoral lease and converting it into a diversification lease. We need to be rigorous around transparency and market-based processes when proponents are coming in with offers to undertake significant developments in the future. That is something we will examine in more detail during Committee of the Whole, and look at how it might have been improved.

I return to the component of the Land and Public Works Legislation Amendment Bill 2022 that the opposition is probably least enamoured of. Some members may have read my op-ed in the *Farm Weekly* in which I tried to work out who is on the naughty and nice lists for Christmas. This bill came out just before Christmas, and I thought, "Well, people get a bit bored." As I said, I read the Land Administration Act in the car from Broome to Darwin, so go figure. I can see Hon Dan Caddy shaking his head! The point is that this portfolio is a hard sell, and I have some sympathy for Minister Carey. It is a hard sell to get a headline on that, because it is heavy on technical detail, but it does make a difference to the way we live. I gave members a couple of examples of families that I have dealt with over the years who are trying to get security around their houses so that they can get insurance, for example. In places like Kalgoorlie, where there is a shortage of land, the whole town is tied up in the challenges around DevelopmentWA basically drip-feeding land into the market. There are also challenges around mineralisation under the Mining Act and freeing all that up so that we can actually get sensible urban development around regional towns and clear land so we can go forward. Everyone has had a go at this, but there was an opportunity to come back here.

In my op-ed, I put local governments on the naughty list for Christmas. There is a bit of a pattern with this minister. It surprises me, because Minister Carey has in the past been a stalwart and defender of local government, particularly with regard to the terrible impact of development assessment panels, as evidenced by some of his media releases back in 2015. He was so incensed about those things, but now he is part of a government that is stripping away the powers of local governments bit by bit—chipping away and taking their powers away. I think that is where we have some concerns, particularly around the provisions for reserve changes. I will touch on a couple of aspects for a moment. No doubt, we will go into it in much more detail, but a couple of aspects raise some matters that are worthy of discussion.

Section 50 of the Land Administration Act is the only specific section I will raise in this debate, because we will get down to the detail of each clause during the Committee of the Whole. Clause 23 amends section 50. There is a bit of a change. I suspect that this change has come from the history lessons the Labor Party has learnt over the years about some of its decisions. I do not know the exact detail, but I think of the conflict that might have occurred with the City of Subiaco about Subiaco Oval and moving that reserve into the hands of the Western Australian Football Commission—the group that manages the Australian Football League in Western Australia. That was transferred across. There were great expectations for the rebuild of that oval. We had that review, which obviously ended up in the dustbin of history, thank goodness, and we were going to create our new stadium at Subiaco. There was also a review that proposed to do it at East Perth power station, which is another matter still under consideration under the Land Administration Act, I am sure. Some of the challenges for that site have come to the fore recently. But fortunately, with the foresight and vision of the Barnett government, we saw that incredible asset, Perth Stadium. It was then rebranded as Optus Stadium for $1 million and we saw that incredible asset —

Hon Darren West: It was $50 million.

Hon NEIL THOMSON: Was it $50 million? Okay, I got the correction, thank you.

We saw that stadium built, which was a great outcome for the state of Western Australia. I am sure we all own it now, but the point was that we had to pay compensation, I believe, in order to revert the land at Subiaco, in its long, torturous history, which I am sure the people of Subiaco, former mayors and councillors will be able to give members in chapter and verse. They probably all receive emails. Anyhow, in terms of how that all happened, of course DevelopmentWA is now doing some rather intensive development there, which is fine, but it certainly has been a long, torturous history. There are legitimate concerns about that development, but we know that that was a torturous process. I am thinking maybe that is in the DNA of the Labor Party. We have seen some things happen recently, with the idea of a hot springs development on the river foreshore. Almost every week it seems there is a new proposal where a bit of reserve land is being nibbled away for a new development in the western suburbs. I know my colleague David Honey, MLA, in the other place, has raised these things on many occasions, because he is an incredibly hardworking member. That is David Honey, in the other place. I will get the title right, and make sure I do not get any objections or points of order from the other side. He is a very fine member who is making those concerns very clear about the opportunity to take land and nibble away at some of our incredible reserve land. Some of it has some amazing natural features on it, which are important of course for our environment, but there is understandably some land that members of the development sector are eyeing off for opportunities for development.

I am not anti-development, because I think the right development in the right place with the right consent and the right engagement, particularly with our local communities, is important. But we will see two changes to the Land Administration Act, to section 50 under clause 23. The first change is the revocation of a reserve in its entirety. There seems to be a bit of cleaning up going on with the powers that exist around that. The act currently reads at section 50(1) —

> …
>
> (a) agrees that its management order should be revoked; or
>
> (b) does not comply with its management order or with a management plan which applies to its managed reserve or does not submit a management plan in compliance with a request made under section 49(2) …

That is in the act, and my understanding is that the change proposes —

> does not comply with its management order or with a plan approved under section 49(4) that applies to its managed reserve or does not submit a plan in compliance with a request made under section 49(2) …

That is a major change, because it means that in order for the management order holder to retain that reserve, they have to comply with a management request under section 49(2), which means a local government cannot just go away, create a management plan and say, "We've got a management plan; that is the rule now." Of course the minister would probably find that a bit frustrating, because there will be all sorts of potential legal ramifications going on, as the minister would seek to take on that reserve in whole.

The pastoral excision component is also a concern. We had that in Kalgoorlie, with lot 350, for example. Rather unsavoury comments were made by certain members of Parliament—I will not go into that—about the capacity of the City of Kalgoorlie–Boulder to deliver on lot 350. They basically said that the City of Kalgoorlie–Boulder was not doing its job, and the government would do a lot better. The city effectively said, "Here, take the management order; have it!", and away the government took it. The state still has not done anything with lot 350. It is great to see Lynas going ahead over the road, but there is concern about that lot regarding its strategic use going forward. Under these proposed changes in the bill, that is an example whereby if the City of Kalgoorlie–Boulder did not say, "Just take it; I am sick and tired of all of this concern you have been raising about the capacity to deal with it", notwithstanding the attempts by the City of Kalgoorlie–Boulder to deal with it, and legitimately so while trying to do a good job, the state or minister will have the power to say, "I will have that." I think that a lot of local governments will say, "Take the lot and go for it." It is those excisions that worry some in the local government sector, and I am surprised in some ways that the Western Australian Local Government Association has not been active on this issue. I know that after some of my discussions with members of WALGA, there is concern. A soft concern is probably in place, but it is those pastoral excisions of those reserves without the consent of the management order holder that are somewhat problematic. Under section 155 of the Planning and Development Act, when there is a subdivision, local governments do not get any choice; they have to take on a management order.

Talk to the City of Swan. It has received scores of these reserves in communities like Ellenbrook, for example, where developers did or are doing a great job. The developer LWP Group did a great job and built fantastic gold-plated parks and gardens and things. The City of Swan had no choice but to take those on, and considerable costs associated with the management of those reserves going forward will impact the ratepayers of that community. These are down in the detail—the concerns of the local governments and how they have to manage things going forward. They do not have a choice. They have to receive them. Under this legislation, the state government will be able to say it is going to take part or all of a reserve and the local government will not have any say in that. I think that the ability to take a part might potentially lead to a bit of cherrypicking by the state.

I read the comments by Hon John Carey and there was a suggestion that management orders are not interests in land. I can say they definitely are. It is my experience, and I would say that of anyone who has worked in this space, that management orders treat the land almost as though it is freehold. If management orders are structured right, they confer significant powers on the holder of that management order to lease, sublease or, depending on the terms and conditions of that management order, develop a significant economic opportunity or community asset.

I spent three years of my life in the realm of the Aboriginal Lands Trust, which is a statutory body that has a degree of independence and reports to the Minister for Aboriginal Affairs. It controls 90 per cent of its lands through management orders. Reserves are controlled through management orders under the Aboriginal Affairs Planning Authority Act. I am certain that that body would not be very excited to hear the Minister for Lands say, "Well, we can excise a piece without a conference with or the agreement of the management order holder." Those members of the Aboriginal Lands Trust are proud members and would say, "Well, we need to be conferred with. There needs to be conference, consultation and agreement." One hopes that the minister will do that; I assume that will occur. I know that an ongoing process of divestment is underway. Notwithstanding that, on my last look at it only a few weeks ago, not a lot had been achieved yet. I would be the first to congratulate the government if it had been. I wish the government would get on with the process and move forward with a bit more haste and success.

I go back to the point about management orders and local government. Local governments, in particular, end up with a situation in which they have to receive reserves. They have no choice under the Planning and Development Act; when a developer completes a subdivision, the local government has to receive reserves, as well as all the assets and liabilities associated with them. The local government then goes through the process of making decisions to continue to develop, enhance and maintain that asset, including developing community-based economic opportunities on those assets. We should not focus only on the western suburbs. I am talking about the big local governments throughout our city and regional local governments, which I have been more engaged with in recent times. Those local governments play a very important role. Once this bill is passed, there will be a capacity for those assets to be, effectively, taken away and the local governments will not have any say.

There will be some discussion—again by means of warning and part of the process of making sure we work in collaboration to get a better understanding—about the process of compensation for local governments. The definition of public authorities, I think they are, seems to exclude local governments or government authorities. That might be a small compensatory measure. I can imagine some local government officer spending time and giving advice to council about a development proposal on a reserve and saying, "Well, we will have to put this on the risk register because that asset may be taken away and stripped by the state without consent." That seems to be part of the pattern of this state government's engagement with local governments.

As part of that, in the broader context, we see the same old kind of comments roll out around planning reforms. People talk about recalcitrant local governments. Some of the commentary, particularly by the Minister for Transport; Planning, is that local governments have not kept their schemes up to date and therefore—I am paraphrasing here—they cannot be trusted with complete control of their schemes in the sense that we must have the state development assessment unit, for example, come in and override those processes. But yet again we see the same pattern in relation to the Land Administration Act. That is our main concern.

The changes to the Public Works Act seem quite minor and administrative and matters of definitions. I do not think we have any problem with those changes. We will look at that as we go through committee but probably in no great detail.

As I said, I think the hype of this bill may not meet the expectations of those proponents. I refer to some of the early press releases that came out, such as the press release of 18 November 2021, for example, which listed dot points. It said that the state government would unlock land for renewable energy and economic diversification. It drove a bit of a perception within the sector—I talk to the sector quite broadly—that it was all about hydrogen and renewable energy. The first dot point states —

- Exciting new large-scale carbon "farming opportunities on Crown and pastoral land

We do not necessarily see any great improvement in pastoral land opportunities, so that already exists within the scheme. The next dot point states —

- Removing red tape to aid in the fight against climate change

I am not sure that we will see that because diversification leases are not necessarily going to provide that red tape reduction. The next dot point is —

- Will facilitate important renewable energy projects in regional WA

Let us hope so. It continues —

- Unlocking economic opportunities for Native Title holders

I am only repeating what I am told, but sometimes native title bodies feel like they are being spoken to rather than consulted with. That issue has been raised with me. As I said, I think that there was probably more opportunity within this reform to get greater alignment with the native title system and create that fungibility with the sort of work that, as I said, people like Peter Yu over many years have been promoting to try to get outcomes for his community, particularly where there is exclusive possession.

The final dot point states —

- Another key step in Western Australia's transition to net zero emissions …

We hope all these things can be achieved with this reform. We hope so, but often the devil is in the detail, which we will go through, hopefully, with some level of forensic scrutiny during the committee stage. We hope that we can see the outcomes going forward. As we say, we are not opposing this bill but we will raise those issues, which are important to be recorded for posterity in *Hansard*, as we go forward and test the outcome of the bill in future years as we see things happening on the ground.

HON WILSON TUCKER (Mining and Pastoral) [3.39 pm]: Several concerns about the Land and Public Works Legislation Amendment Bill 2022 have been raised with me. I am basically echoing the concerns of pastoralists and also conservation groups. The main concern the conservation groups had was that they were not certain whether they could continue the activities they are currently performing under the existing regime once this bill comes into effect and that, essentially, the pastoral leases that they are operating under now would be in jeopardy in the future. Obviously, that would present problems for the people working in those conservation groups and for attracting investment if the investors were not sure whether the conservation groups could continue into the future.

The pastoralists probably took a more cynical view. I think sometimes a bit of cynicism around the government's intentions and motivations is probably healthy. The pastoralists were concerned that this bill was essentially a land grab to secure land for hydrogen production. I think we can all agree that solar farms for hydrogen production are a good thing for this state. However, there certainly is a tension, considering the sheer amount of land that will be needed to greenlight these future hydrogen projects into the future, and we need to assure farmers that they can continue with their farming practices and work on the land that they love, and hand down their farms to future generations. The larger question they had on this bill was whether it struck the right balance between the conservation groups, the pastoralists and industry.

I have had discussions behind the chair about this bill. I thank the advisers for their time for the briefing on the bill and also for the discussions that we have had leading up to today and also including today. The concerns that I had and that I raised on behalf of the conservation groups and pastoralists have actually been met. I am satisfied that the conservation groups have been assured that they can continue under the new regime and that the pastoralists will have some flexibility to make the decision themselves on whether they want to switch over to the diversification lease regime, and that if they continue with the activities that they are performing under the new regime, their entire pastoral estate will not be in jeopardy if they do not comply with one of the diversification lease requirements under the new regime that they will experience because of this bill.

I had a number of amendments that I was going to move for this bill at the applicable clauses, but those amendments are no longer required. I think the fact that they are listed but that I am now, in a sense, delisting them is a reflection of the eleventh-hour discussions that were had between conservation groups and the minister up until today. It was at the eleventh hour when they were given some assurances. Therefore," those amendments are no longer required and I will not move them. I will support the passage of this bill and I thank the advisers and the minister for the discussions held behind the chair regarding this bill.

HON DR STEVE THOMAS (South West — Leader of the Opposition) [3.44 pm]: I do not propose to give a long address on the Land and Public Works Legislation Amendment Bill 2022, but I thought that it was worth making just a few comments. Land tenure, particularly around pastoral leases in Western Australia, has had a long and difficult history. I think that would be the best way to describe it. There has been a very long attempt to define the role of pastoral leases and manage what occurs on those pastoral leases. It has not been a particularly easy history in the slightest. Let us put aside for a minute the attempts and arguments about converting pastoral leases in particular to freehold tenure, which, in itself, was such a problematic exercise that the government effectively gave up on that part way into its first term. It is very difficult, but I will come back to some things I have said in this Parliament before about pastoral leases. The first is that no matter what land tenure is put in place, I think it is really difficult for government to prescribe in detail what should and should not be allowed to be conducted on the land. In particular, governments get in trouble when they start to prescribe what has to be conducted on that land. I am old enough to remember that pastoral leases in the east and north, for example. required the running of stock. That was its primary goal and function. The only question mark was whether people ran small or large stock—whether they effectively ran sheep or cattle. Without knowing it, they were probably running a fair few goats, several camels and a number of feral horses, among other things, and some native animals too. But pastoral leases were required to run, effectively, small stock or large stock. I never understood, and it has never been effectively explained to me, why the government

would specifically prescribe what a lessee has to do on the land they are managing. I can understand the government prescribing what people cannot do, because I take the view—I think many others do too—that the only obligation that is really on us in relation to land is that we should be handing over the land we have management to the next generation in as good a state, or a better state, as we received it. Ideally, if every generation made it better, that would be the perfect outcome, but it is difficult to do because there are invasive species and all sorts of other things. But at the very least, if someone hands it over in a similar or, ideally, a better state, that is a good outcome.

I can understand why a government would prescribe things that people could not do on that land. The Pastoral Lands Board has always had oversight of pastoral leases. For example, if someone was overstocking, they would be notified and be expected to do something about it. Those properties that have very little control often end up in an overstocking situation if they are not mustered, and suddenly there are mass deaths of cattle or sheep. When the dry years come along, there are all sorts of problems. We have seen some good examples, particularly a couple of years ago, when there were significant deaths because the stations were not managed well. It is not the easiest thing to do, but I have never understood why we required people to run small stock or large stock on pastoral leases, for example. This becomes a problem. I have always taken the view that my goal is to try to minimise the level of the government's control and imposition on what people do in their daily lives. I think that is a really good thing to aim for.

In largely supporting the intent of what the government is trying to do here, I wonder sometimes why we do not go a little bit further. Some pastoralists struggle to make a profit by running sheep or cattle, but others do very well out of it, particularly those in the northern pastoral region around the Kimberley. Some of them have done remarkably well running cattle in some years. It is very dependent on the right markets and particularly what the live export market is doing. Sometimes they do very well. However, further south, plenty of stations really struggle to turn a profit, whether they are running small or large stock. I have never understood the convoluted process that the managers of those lands have had to go through to try to do something else. If tourism is a better market for someone than trying to grow sheep in a very arid lease area, why is the government making it so difficult? Why do they have to go through a whole pile of processes? I think this comes back to what we are looking at. We are coming from a position in which someone who has a pastoral lease, for example, has to effectively get an exemption from running traditional pastoral lease activities of raising sheep and cattle so that they can possibly run tourism activities. The good thing is that they will hopefully get a pastoral diversification lease, and that process will become much simpler. I wonder whether there is an opportunity to go even further than that. Surely, the control that exists over what people can do on pastoral and other forms of leasehold land makes it more difficult rather than easier for them to survive, make a profit and be happy in the very widespread community in which they live. If conservation is someone's thing and they can provide for their family while doing those activities, why do they have to go through a long process of having to get government permission to do so? If someone can make a profit out of tourism as they go around, why do they have to go through a longwinded government process to get permission to do so? It has never made sense to me that we make life difficult for people who live in areas that in many cases are difficult to live in in the first place. There will be opportunities out there. There is absolutely no doubt that the carbon market that will eventually exist around the world will present opportunities to some of those people.

I think that the two previous speakers both raised some good points on the driving force of the government to use hydrogen to almost weaponise the change in these areas. There is no doubt that the former Minister for Hydrogen Industry had an absolute passion to drive the hydrogen process. I think that hydrogen will play a significant but not overwhelming role in the energy mix in Western Australia in the future. I think it has a part to play in domestic energy. I think that the export market for hydrogen exists, but it is a much more competitive market than people think. It will not just be a lay-down misère for the people of Western Australia to get rich from. It will be a competitive market, because the chemistry in hydrogen production is a pretty simple chemical process; it simply requires energy. People are right that there is plenty of solar capacity in Western Australia, but there is plenty of solar capacity floating around elsewhere, as well.

On 16 and 17 November last year, I asked a couple of questions about this in Parliament. I had been alerted to the proposal to put a hydrogen project on Murchison House station, which is north of Geraldton, because the former Minister for Hydrogen Industry had granted lead agency service status to a particular company—Murchison Hydrogen Renewables. Obviously, that company seemed to be in a favoured position, but, as it turns out, as indicated in the answers to my questions, it was only one of four proponents that put in proposals for the use of that land. In my view, the government examining those various proposals and giving lead agency status to a proposal on that area of land is an example of the government picking and choosing winners. It was picking favourites on that particular piece of land. There were other proposals for that land; for example, there was a mineral sands extraction proposal for that land. Yes, perhaps we want a hydrogen industry and we want to be able to create the renewable energy for that, but access to mineral sands is also critical to the state of Western Australia. Those minerals are in high demand. They are critical for the future of many industries. I thought that to simply pick one over the other was unusual. I always say that it is incredibly dangerous for a government to pick winners and losers and not go through due process to give everybody a fair shake.

In that question on 16 November 2022, I asked whether the mineral resources were there, and the answer was "yes". I asked what other proposals exist, and the answer was —

> … there are four applications for exploration licences and one application for a mining lease located within the Murchison Hydrogen Renewables project area.

I asked —

> Has the location been the focus of any action in the Warden's Court?

The answer was "yes", so there were objections in the Warden's Court as at November last year.

It is undoubtedly the case that this sort of diversification needs to be looked at, but I am concerned at the favouritism that is potentially playing out. The previous minister had a very strong fixation, let us say, on hydrogen above all other things. I am hoping that that will change with the change of minister. I am not even sure who has hydrogen in their portfolio. The Minister for State Development, Jobs and Trade, Hon Roger Cook, perhaps has hydrogen now. I think that he will probably take a more balanced approach to hydrogen and its potential; it will be interesting to see how he goes in that portfolio. Certainly, he has not approached it with the same degree of extreme activity that the previous minister did, so I like to think that he is taking a more stable and balanced approach—that he will assess all the options that are available in issues like this, particularly at that station, and look for the best outcome for not just one group, but, ultimately, the state of Western Australia. I hope that will be the case. I hope that he will take all the options into consideration before he ultimately picks a winner and a loser, or, in this case, a winner and three losers. Hopefully, he will not simply put hydrogen above all things, because although it is important, it is not the only player in the resources or energy sectors. I would urge him to have a significant look at that.

I return to the wider aspects of the bill. In my view, it would be good to see almost a reversal of the current system, under which the government defines things that people should be doing on leasehold land in Western Australia, and then, for everything else, people have to find an exemption. I have always been of the view that we should reverse that. The government should define the things that people cannot do in these areas, and then, if someone is not doing something that damages the environment or the land into the future, the assumption should be that the land managers make those choices themselves. If tourism is the best opportunity for a land manager to turn a profit, I do not see why they should have to raise sheep or cattle, particularly in areas in which the animals frequently struggle. It would be good to see something of a reversal of that process. It is not really in this bill, although the diversification leases will give more freedom than has previously existed. There has been a very slow, almost glacial change in this regard, whereby more freedoms have slowly been allowed to the land managers in those regions. It would be great to see it take a really big jump, but I think that is too much. The argument is that it is very hard to take everybody along.

Before I finish, the previous speaker, Hon Wilson Tucker, raised concerns from conservationists, who said that they are concerned that they would not be able to do the things that they think they should be doing, and from pastoralists, who are concerned that they do not think that they would be able to do the things that they should be doing. That is a really good example of the kind of mess that we have got into in leasehold tenure in Western Australia. Everybody is so concerned about being prevented from doing the things that they think they should be doing, rather than being supported and encouraged. That is why I would like to see planning and land use in this area go towards encouraging people to use the great diversity of regional Western Australia to grow and deliver all the things that might actually be of benefit, be they in areas of tourism, culture or, ultimately, energy production. Government should be doing its very best to get out of the way rather than micromanaging and making people go to it cap in hand every time they want to do something a bit different. The intent of the bill before us is to go a few steps along that path. That is a reasonable thing to do. I suspect the bill could go further if that were done carefully. I suspect that ultimately we will be back here in one, three, five or 10 years and have a similar debate about what can be done on pastoral land in Western Australia. This is a glacially slow, small-step by small-step process. Dare I say it will probably need something to push it hard along the deregulation pathway, which is where I hope it will eventually get to.

HON JACKIE JARVIS (South West — Minister for Agriculture and Food) [4.00 pm] — in reply: The Land and Public Works Legislation Amendment Bill 2022 seeks to introduce a new form of non-exclusive leasehold tenure known as a diversification lease to allow for a more diverse range of land uses on the crown land estate.

I will go straight into my response to the issues raised so that we can move forward with the bill. I thank Hon Neil Thomson for his contribution to the second reading debate and also for confirming the opposition's support for the bill.

Hon Neil Thomson: For not opposing it.

Hon JACKIE JARVIS: Sorry, for not opposing, which is apparently different from support. I note that the opposition is not opposing the bill. I thank Hon Neil Thomson for acknowledging the engagement that he has had with the office of the Minister for Lands, Hon John Carey, on the issues he has raised. It is worth going over some

of the points that the member made so that we can put the responses on the record. The member talked about the time frames for applications for crown land and the process of dealing with the Department of Planning, Lands and Heritage. The Department of Planning, Lands and Heritage works hard to administer land across Western Australia. The reality is that issues like native title are complex and take time to resolve. I think everyone would agree that it is critical that the Department of Planning, Lands and Heritage undertakes due diligence to ensure that all interest holders are consulted before tenure is granted. I want to make it absolutely clear that this bill will not amend the Native Title Act 1997.

The honourable member also raised concerns about the time frames for decision-making by local governments. The government acknowledges that local governments need to make timely decisions, and that will be implemented in the bill by a standardised 42-day time frame within which the relevant local government must provide a response, otherwise it will be deemed that the local government is in support. This time frame will ensure that local governments will generally be able to hold at least one council meeting in order to provide a response.

The member also talked about diversification leases versus diversification permits. The new category of diversification lease will encourage greater utilisation of crown land, assist to diversify the state's economy, facilitate increased investment in pastoralism, and unlock greater economic opportunities for Aboriginal people. A diversification lease will be non-exclusive. It can be granted for a number of uses, which will provide new opportunities for pastoralists to diversify from pastoral activities. That also goes to the point that was made by Hon Dr Steve Thomas about why people who want to operate a tourism business on a pastoral lease are being made to run cattle on that lease. Up until now, pastoral leases have been confined to being used only for pastoral purposes and certain ancillary uses. Diversification leases will provide opportunities for the renewables sector, pastoralists and native title parties to coexist and co-partner in an exciting new sector in Western Australia. I thank Hon Neil Thomson for acknowledging the benefits of these pastoral lease reforms, and in particular the ability to extend pastoral leases for up to 50 years. I also note that the proposed changes have the support of the Pastoralists and Graziers Association of Western Australia.

With regard to pastoral lease rent, the key is to provide greater certainty for pastoralists. Hon Neil Thomson referred to the need to reduce the risk of bill shock. This bill will change the pastoral lease methodology to reduce volatility, improve transparency and provide pastoralists with sufficient notice of a change to their rent. The changes to the rent review methodology have been discussed in detail with key groups. This legislation will provide a more predictable and transparent CPI rent methodology. Six months' notice must be provided for all rent changes, instead of the current zero day's notice, thus giving pastoralists greater transparency and predictability.

Hon Neil Thomson also mentioned section 91 licences. The member's point about land grabs was slightly confusing. Section 91 licences are not about a land grab. They are non-exclusive licences that are used mainly to allow temporary access to land in order to undertake feasibility studies for solar and wind or other low-impact activities. I hope that provides some clarity.

Diversification leases have been designed to enable broad-scale multiple and varied uses of the crown estate. Intensive agriculture is not a broad-scale use and will require the grant of an exclusive lease under section 98 of the Land Administration Act. A diversification lease is designed to be similar to a pastoral lease. It will enable a statutory right of access for Aboriginal people. It also will not extinguish native title rights and interests.

The member mentioned his concern that the process for obtaining a diversification lease will be onerous. The member should note that when we are dealing with diversification leases, we are dealing with significant areas of land that the state needs to ensure will be used for their highest and best use. The member also spoke about Subiaco Oval and the old East Perth power station. I have been advised that those issues are not directly related to the topics in this bill. That applies also to a number of the other planning issues that the member raised.

I turn now to management orders in relation to public reserves and the impact on local government authorities. The member referred to Tawarri hot springs. I understand that was the subject of a parliamentary process and that the member did not raise an objection at that time. I want to clarify that significant changes to class A reserves will still be required to go through a parliamentary process and be laid before both houses of Parliament. It is difficult to see how this will result in a lower level of transparency and accountability. The member mentioned on several occasions that he believes this bill will give the Minister for Lands the opportunity to gain significant power at the expense of local governments and other groups that manage crown land. I am advised that will not be the case. The bill will allow the Minister for Lands to revoke a management order for a public work. The Minister for Lands already has the ability to revoke a management order in the public interest. It is also important to note that this land belongs to the people of Western Australia. It is not appropriate that a management order can be used to veto development that is required for public works.

I also want to provide some context around the commentary from Hon Wilson Tucker, who is now away from the chamber on urgent parliamentary business. The member advised me earlier today that he had some concerns about the bill and had prepared an amendment that is listed on supplementary notice paper 94. I believe that Hon Wilson Tucker

has now stated that based on the advice provided to him, he will not be proceeding with that amendment. Just to provide some detail, the Minister for Lands met with the Australian Land Conservation Alliance this morning to clarify various matters relating to diversification leases. The diversification leases that will be established by this bill will allow conservation groups to establish diversification leases for the purpose of conservation.

Under a diversification lease, there will be no requirement to run stock on that land. Pastoral leases exist for the purpose of grazing stock. Under a diversification lease, there will be no need for a conservation group to seek a new pastoral permit when they have the option of a diversification lease. I thank Hon Wilson Tucker for his comments. I appreciate his interest in ensuring that diversification leases will work for a wide range of potential users, including conservation groups and pastoralists. I reiterate that a conservation group that obtains a diversification lease will not be required to run stock on the land.

I will move on to the comments made by Hon Dr Steve Thomas. He raised issues about the purpose for which the land will be used and how the uses of land will be identified at the point at which a pastoral lease is established. Of course, pastoral leases exist on crown land. The state must have a strong interest in ensuring that crown land is managed well. There are other interest holders in crown land, including potential mining and native title interests. It is important that those interest holders have a voice in the process of establishing a lease. It is also important that interest holders work together to find the best possible way to use crown land for broad public benefit.

The diversification leases introduced by the bill will provide for land to be used for a greater range of purposes. The bill will open up the possibility of diversification leases for a wide range of suitable uses. I make the point that the potential hydrogen industry is only one possible use; there are a range of possible uses around tourism, pastoral uses, cultural uses, carbon farming, other renewables and potential future industries. The point is that diversification leases will be as open as possible to ensure suitable future uses.

With that, I commend the bill to the house.

Question put and passed.

Bill read a second time.

Committee

The Deputy Chair of Committees (Hon Sandra Carr) in the chair; Hon Jackie Jarvis (Minister for Agriculture and Food) in charge of the bill.

Clause 1: Short title —

Hon NEIL THOMSON: By way of navigating, my proposal for clause 1 is to go through some of the comments made by the minister during her second reading reply. There are a couple of matters that I would like to interrogate further and I want to discuss some of the comments made in the other place, which drew my attention. I also want to look at some of the frequently asked questions on the bill, which are on the Department of Planning, Lands and Heritage website. By way of a warning, there will be a bit of overlap with some of the clauses, but I will try to avoid overlap once we get into the specific clauses. Given the complexity of the bill, that is probably the only way that I can deal with it.

I want to pick up on a couple of matters mentioned by Hon Jackie Jarvis, representing the Minister for Lands, particularly her comments about Tawarri. I am certainly aware that that was tabled in the chamber and although it was referred to various stages in the discussions in both chambers in terms of an exemplar, the issue is about looking at the future and some of the potential excisions that might occur. Once this bill is passed, what does the government anticipate will be the scope, scale and number of excisions sought?

Hon JACKIE JARVIS: The member asked about the number and scale and referred to a particular example. My understanding is that in that example, the local government authority approached the government and requested the excision so that it could lease land to the developer, which, I guess, points to the fact that we cannot determine when an LGA may approach the government. I am not sure that the example the member provided is relevant. I can confirm that consent is required from the management body for all reserve actions. The member asked about the number and scale—we do not know.

Hon NEIL THOMSON: Does the minister anticipate that the changes that will be made to the legislation will result in any difference at all in what proposals will be presented? Are there any proposals in the wings that are being held up because they require the legislative amendment contained in clause 23? I raise that simply because it was referred to in the minister's second reading speech. Are there any proposals that cannot progress because of the provisions in the act?

Hon JACKIE JARVIS: I do not have information to hand about what proposals may or may not be in the wind; we are not here to discuss individual cases. I think I have answered the question, in the sense of: how long is a piece of string? We cannot give advice on who may wish to use excisions into the future; how would we know?

The advisers and I do not have any information on any proposals waiting in the wings and we certainly will not be discussing any individual cases at this stage.

Hon NEIL THOMSON: I assume there was a reason for this amendment, as there is for all amendments. It takes time to work up these amendments, so I assume there would have been at least one example from the past that we could refer to in which there was a difficult local government and the state government was unable to progress an excision from a reserve because it did not receive the consent of a management order holder. This provision improves that situation for the minister, at least.

I want to make a comment. The minister said there is already the ability to revoke management orders for public works, and that is absolutely understood, but this is a much broader provision. This allows the minister to partially revoke a management order without the consent of the management order holder and it also clarifies the legal grounds with regard to the complete revocation of a management order, the requirements around management plans, and the need to conform with a management plan within the context of the expectations of the minister. Can the minister give one example or even an acknowledgement that there has been a situation that motivated the minister and the department to put up this proposed amendment? Would the minister be so kind as to provide a particular example, or at least acknowledge that there has been a situation that created a need for this amendment?

Hon JACKIE JARVIS: We are adding revocation for public work. The Land and Public Works Legislation Amendment Bill 2022 includes a power to revoke a management order when it is necessary for public work. "Public work" is a defined term, and this inclusion will remove the current uncertainty around the public interest test. Instead of the public interest test, we are going to a defined term of "public work" to provide clarity when a management order may be revoked. There is a public work list in the bill, so the member can refer to that.

Hon NEIL THOMSON: I thank the minister. I appreciate that, because I will be able to come back and clarify that point when we get to clause 23. I will not proceed on that line of questioning now, and I appreciate the advice the minister has given me.

In her second reading speech, the minister talked about the potential uses for diversification leases and listed off a few of them. In my contribution to the second reading debate, I mentioned the lack of clarity around the potential uses for diversification leases. The Minister for Lands made a comment about that—which I found a little perplexing—in response to a question in the other place from Peter Rundle, MLA; I am just seeing whether I can find it.

For the sake of clarity, my question is: will horticultural activities be able to be carried out on a diversification lease?

Hon JACKIE JARVIS: The member asked whether horticulture could be one of the prescribed uses. It certainly could be; however, there are lots of different scales of horticulture, as the member knows and as I know, as someone who has worked in horticulture for longer than I care to mention. We are talking about the broadscale use of land. Generally, horticulture might not fit that description, but I am certainly not discounting it. Horticulture could be one of those uses, where there is broadscale use of the land; it would be a very large horticultural development.

Hon NEIL THOMSON: Thank you. I found the passage in *Hansard* of Minister Carey's reply. It sort of provides some direction; he said that the intention is that a diversification lease would be broadscale. I would suggest that a highly intensive use of that is what the minister was referring to in answer to a question from my colleague Peter Rundle, MLA. It would fall under a different lease application. I guess the challenge is with "broadscale" definitions. Would an irrigated grazing proposal be considered broadscale enough under this definition?

Committee interrupted, pursuant to standing orders.

[Continued on page 785.]