

Hon Neil Thomson; Hon Stephen Dawson; Hon Colin De Grussa; Hon Tjorn Sibma; Hon Peter Collier; Hon Dr
Brad Pettitt; Hon Wilson Tucker

ABORIGINAL CULTURAL HERITAGE BILL 2021

Committee

The Deputy Chair of Committees (Hon Jackie Jarvis) in the chair; Hon Stephen Dawson (Minister for Aboriginal Affairs) in charge of the bill.

Clause 1: Short title —

The DEPUTY CHAIR (Hon Jackie Jarvis): Members, we will commence with the Aboriginal Cultural Heritage Bill 2021. Please note supplementary notice paper 56, issue 1.

Hon NEIL THOMSON: During the initial stages of discussion on clause 1, I would like to focus on the issue of consultation. We heard an explanation from the minister about the process of the green bill and the four or five years of consultation undertaken since the government's initial commitment. However, I think there is some significant flaw in that discussion, which leads to the target of my interrogation at this stage. The concern is not so much that a bill was not provided to the community in 2020. I think the issue here is the 2021 bill, which has 100 amendments—the complexity of it and the time to digest it. As I mentioned in my contribution to the second reading debate, there has been a level of contention across the community about this. My question in the first instance is: who has the government consulted with? The minister mentioned 380 submissions, and I do not expect the minister to list all 380, but I would like a much more fulsome explanation of the categories of who was consulted with.

Hon STEPHEN DAWSON: I just say at the outset that apparently I referred to my chief of staff as Hon Darren West. He is not my chief of staff and never will be, can I say! No disrespect to the honourable member, because he does a fine job in here as the hardest working farmer in the Parliament. My chief of staff is Darren Forster, and I want to thank Darren for his work. He has been involved in the briefings for many opposition members, so I think they probably picked that up.

I turn to who we have consulted with over time. We have had Aboriginal heritage workshops all over the state—the great southern, the Kimberley, the wheatbelt, the Pilbara, the goldfields, Esperance, Perth and Peel, the Gascoyne, and the midwest—essentially every region of the state. We have had sessions with the Yamatji Marlpa Aboriginal Corporation Indigenous land use agreement traditional owner negotiation team. We have had community workshops across the state—so, again, the great southern, the midwest, the Pilbara, the wheatbelt, the Kimberley, Perth and Peel, and the Gascoyne.

In the phase 3 process of the bill, we consulted the Western Australian Local Government Association, the Kariyarra Aboriginal Corporation, the Karla Nyiyaparli Aboriginal Corporation, the Murujuga Aboriginal Corporation, the Yamatji Marlpa Aboriginal Corporation, the Chamber of Minerals and Energy of Western Australia, the Association of Mining and Exploration Companies, the Wintawari Guruma Aboriginal Corporation, the National Native Title Tribunal, the Kimberley Land Council, the Nyamba Buru Yawuru Aboriginal Corporation, Native Title Services Goldfields, the Amalgamated Prospectors and Leaseholders Association of Western Australia, Central Desert Native Title Services, the South West Aboriginal Land and Sea Council, the Pastoralists and Graziers Association, the Banjima Native Title Aboriginal Corporation, the Environmental Protection Authority board, Cement Concrete and Aggregates Australia, the Ngadju Native Title Aboriginal Corporation, the Yindjibarndi Aboriginal Corporation, the Yamatji Marlpa Aboriginal Corporation—again—and the Aboriginal Cultural Material Committee. We had WALGA meetings in the south metro zone, the Peel zone and the east metro zone. We consulted with the National Indigenous Australians Agency. Again, there were further consultations in WALGA zones—country, great eastern, Avon–Midland, northern country and the Gascoyne. There were further consultations in the metro area. We had WALGA in the Murchison, the Pilbara, the south west, Peel and the Kimberley.

After that we had the Chamber of Minerals and Energy, the National Native Title Tribunal; the Department of Mines, Industry Regulation and Safety; the Association of Mining and Exploration Companies; Central Desert Native Title Services—so Central Desert, again; the Aboriginal Legal Service; the Aboriginal Lands Trust; the Yindjibarndi Aboriginal Corporation; the Nyamba Buru Yawuru Aboriginal Corporation; the Shire of Broome; the National Native Title Tribunal; Rio Tinto; the Puutu Kunti Kurrama and Pinikura Aboriginal Corporation; the Robe River Kuruma Aboriginal Corporation; the Yamatji Marlpa Aboriginal Corporation; the Yindjibarndi Aboriginal Corporation; the Wintawari Guruma Aboriginal Corporation, again; the Department of Water and Environmental Regulation; Yamatji Marlpa, again; the Aboriginal Advisory Council of WA; the Aboriginal Legal Service, again; the University of Western Australia; the Australian Association of Consulting Archaeologists; the Association of Mining and Exploration Companies, again; Fortescue Metals Group; BHP; and the Amalgamated Prospectors and Leaseholders Association, again.

We consulted with the State Administrative Tribunal; the South West Aboriginal Land and Sea Council, again; the Aboriginal Cultural Material Committee, again; the Chamber of Minerals and Energy, again; and the

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Anthropological Society of Western Australia. We consulted further with the State Administrative Tribunal; the Pastoralists and Graziers Association, again; and Main Roads Western Australia. We consulted with goldfields families. We consulted with the Western Australian Museum and select heritage professionals. We have done other groups a second time. We consulted again in August this year with 13 representative bodies and prescribed bodies corporate and three other organisations one day. The next day we had 14 representative bodies and PBCs and six other organisations. We addressed some on-country bush meetings. We consulted Horizon Power, Roy Hill, the Environmental Protection Authority, and the South West Aboriginal Land and Sea Council directors. We had on-country meetings in Carnarvon. We consulted with the Urban Development Institute of Australia and the Department of Mines, Industry Regulation and Safety. We have consulted, honourable member; we have consulted a lot.

Hon COLIN de GRUSSA: The minister referred to the phase 3 consultation process. I want to get this clear in my mind. Obviously, there have been various iterations of the bill over time. Was the phase 3 consultation process that the minister referred to for the bill that we have before us, which is 56-1? If it was not, when was this bill consulted on and was it consulted on as widely as the previous iterations?

Hon STEPHEN DAWSON: The member is correct that the stage 3 consultation process has been the most recent consultation process. A draft bill was put out in September last year. Following that, feedback was given to the state on the bill before us. As the member knows, the normal course of action for the government is to draft a bill that then goes to cabinet and then to Parliament. In this case, we put out a green bill for public comment. As a result of that public comment process, we made 100 changes to the bill before us now. We held sessions on 18 and 19 August this year, which we invited prescribed bodies corporate and organisations to attend. From memory, the Pastoralists and Graziers Association and other organisations, and representatives from the Chamber of Minerals and Energy and the Association of Mining and Exploration Companies, were all in the room and were given copies of the amendments that were to be made to the bill. I could not present them with a bill because it had not been to cabinet, but we gave them the amendments. They had the draft bill and we told them that they were the changes that would be made to the draft bill. They had the draft bill and the changes but the amendments were not in the bill because the bill had not been to cabinet. We certainly consulted on the changes that were made.

Hon TJORN SIBMA: Looking forward, which happens to be the title of the last page of the briefing we received, when considering the implementation of the bill, I am interested to know, because this was mentioned at the briefing, about the overriding task force to comprise government, industry and Aboriginal groups that will drive this process. I want to know what the nomenclature will be of that overriding task force and what the membership of that group is likely to be.

Hon STEPHEN DAWSON: It will be called the Aboriginal Cultural Heritage Bill co-design task force. The member will now know what it is called when he asks me parliamentary questions about it in the future.

Hon Tjorn Sibma: Thank you. You have helped me out already.

Hon STEPHEN DAWSON: I know where the honourable member is going; that is fine.

The membership is likely to be an Aboriginal man and an Aboriginal woman, a representative of industry and a representative of government. It will be a small group of four people to lead where we are going. Sitting under that will be a lot more consultation. We have committed, for example, to hold consultation sessions on the land of the prescribed bodies corporate in regional and remote Western Australia. I have certainly committed to holding sessions with groups like the Western Australian Farmers Federation and the PGA. The task force will have an important overarching view of where we will go to from here and there will be layers underneath that group involving who we will talk to. I cannot remember whose contribution it was today—it might have been Hon Dr Steve Thomas, who is away on urgent parliamentary business—but we will need to bring the community along with us, including all the stakeholders. We have committed to holding sessions with the stakeholders about the things that are relevant to them.

Hon TJORN SIBMA: As a quick follow-up to that, the minister has identified that the tight four-person group will have an overarching coordination role. I assume that the industry referred to will be the mining industry, presumably from the production side of mining rather than the exploration side. Will there also be a role for the agricultural industry as an addition to that industry representation?

Hon STEPHEN DAWSON: The vast majority of the organisations that will have contact with the bill—certainly the vast majority of organisations that have to deal with section 18s now, which will not be there in the future—will be from the mining industry and the state government. Main Roads is one of the biggest proponents that access section 18s. They are two groups that have had, and certainly will have moving forward, the most interaction with this bill. They will be at that high level. There will be other advisory structures and other stakeholder events at the next level down, as we had in August this year when anybody who wanted to be there was at the session. We will have all-in sessions, but we are also committed to industry-specific sessions to feed into the process.

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Hon PETER COLLIER: I raised this issue in my second reading contribution, but I do not think the minister addressed it in his response. I was complimentary about the consultation component. I do not have an issue with that. To be perfectly honest, I think the consultation was quite adequate, but with one glaring omission. Of course, that is pretty much irrelevant at the moment, and that was made clear during the consultation phase of this bill. The opposition was not consulted, and, although I appreciate that, I am disappointed because, quite frankly, an issue like this needs bipartisan support. We cannot have an issue as significant as Aboriginal heritage not having bipartisan support. Having said that, did the minister at any stage consult any of the other parties?

Hon STEPHEN DAWSON: I have not spoken to the other parties in the lead-up to the bill—since the bill went to cabinet and came to Parliament. I cannot comment for the previous minister. I am told that the previous minister had bipartisan support for the bill. My understanding is that there may well have been a conversation with the former Leader of the Opposition in the other place in the lead-up to the draft bill or around the draft bill going out for comment. However, in terms of the bill before us now and my part of the journey, I have consulted with a range of stakeholders, but it has been only since the bill went to Parliament that I have spoken to people.

The DEPUTY CHAIR: Members, I will go to Hon Peter Collier to finish his line of questioning and then I note that Hon Dr Brad Pettitt also has a question.

Hon PETER COLLIER: I am just on the same theme. Rather than deviate all over the place, I am trying to stick with the consultation component as the theme, if we can, to help the advisers and the minister.

The minister's answer is disappointing. Having said that—I am trying to be helpful, and I am from Her Majesty's loyal opposition so I am here to assist—I mentioned the next stage as we move forward, particularly the formulation of the regulations and the implementation of this bill in practice. That will be the proof of the pudding. We have to put out all the little bushfires about no consultation. Can I please have a comprehensive explanation—as comprehensive as the minister possibly can—of how he will definitely stop all those gaps in consultation in that process?

Hon Stephen Dawson: Yes, I thought I responded to that in my response, and to Hon Neil Thomson.

Hon PETER COLLIER: I have sat and listened to every word the minister said. Are there some workshops in January on that process?

Hon Stephen Dawson: I haven't got workshops. You ask your question and I will respond.

Hon PETER COLLIER: Okay. I have had another email just now about lack of consultation since that stage. Mind you, it is not as a result of the minister's speech, but from someone who has just come in late to the party. I am going to get these, and so are all of us, including the minister's crew. The government is going to be getting this. I would like to go out and say that I am really supportive of this bill and that there has been comprehensive consultation. As I said, consultation becomes clichéd after a while. It is said that there has been no consultation, but there has been. The minister has made that quite clear. I trust the minister. I am very mindful that there has been consultation; the minister does not have to convince me. However, as the minister knows, knowledge is power. I want something that says that although people might feel disaffected as a direct result of them feeling they were ignored during the formulation of the bill, in the pivotal component of the construction of the regulations, this is how they can contribute; this is how they can be part of the process. I want to be able to have that in my back pocket, so I cannot sit back and say, "Sneaky government, it doesn't consult; it is doing this by stealth." I want to be able to say, "I have to be honest: I think this is a good piece of legislation. Firstly, I think it will protect Aboriginal heritage; secondly, it will provide for a seamless decision-making process; and, thirdly, it will not stymie development, particularly in the mining sector. If you really want to be part of it, this is how you can become actively involved." As I said, if we can have that on the public record so I can use that as ammunition, it will be very helpful. I am not trying to stymie or elongate the debate; I genuinely want to know.

Hon STEPHEN DAWSON: I appreciate the timing and the member's participation in the debate thus far; I know where he is coming from. Perhaps I did not make it clear: I will give that regulatory co-designed task force my thoughts, which is what I suggested to Hon Tjorn Sibma, about how it should look, but it will be up to that task force to plot the course. I want it to have sessions. I will not dictate to that task force exactly how the process will work. I heard from some of the land councils in particular early on that they would have liked a co-design process from the very beginning. I will not comment on what has occurred over the past three years; I will comment on my time here and as the Minister for Aboriginal Affairs. I have committed to a co-design process going forward, but I will not give land councils their marching orders; I will suggest what they should do.

I turn to the session that the member received emails about in January. That is an organisation out in the community that wants to organise something to get players together and have a conversation. That is not a state-sanctioned thing. The state-sanctioned process will start with the appointment—hopefully very soon—of the people on the co-design task force. They will have a conversation about what the next 12 months in particular will look like. I am not telling them what to do. If the member wants to be involved in the process at any stage, I welcome his involvement.

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Hon Peter Collier: I haven't been at this point. I'm not precious; don't get me wrong.

Hon STEPHEN DAWSON: Genuinely, if the member wants to be involved in the process or consultation going forward, I would welcome that. As a former minister, he has lots to give and lots of experience of some of the pitfalls in the area.

The reference group will design that co-design process. I will outline the elements. In fact, I have written to people to ask them to be involved and suggest that they might like to nominate to be on that co-design task force. I have suggested the types of things they will need to do, but I will leave it up to that task force. Its members will come back to me about a process that ensures that what we do is delivered in an inclusive and culturally appropriate way for Aboriginal people and takes into consideration the concerns of the various stakeholders who might have an interest in the bill.

Hon PETER COLLIER: I thank the minister for those comments; I appreciate his response. I hope what he just told me does not raise more issues than it resolves. As I said, I wish I had as much confidence in the task force as does the minister. I am not saying I do not, because we do not even know who the members of the task force will be at this stage. All I am saying is that we are giving that task force a massive responsibility. Even though we were on opposite sides of the chamber 10 minutes ago with the crossbench, it is obviously getting the same messages that I am getting, that Hon Neil Thomson is getting and that all our crew are getting: the single most significant criticism we are constantly getting relates to lack of consultation.

As I said, I will not go over everything I said before. Suffice to say, I am pleased that the minister will not sit there as a minister and direct the task force to follow a particular path. That would be entirely inappropriate.

Hon Stephen Dawson: I have to guide them.

Hon PETER COLLIER: Absolutely. As I said, I have been in the minister's seat; I know what it is like. When a minister says something, their views have to be taken into consideration. I am sure that the minister will say that it is really important that we do not leave anyone alienated, that we empower everyone in this process, particularly Aboriginal people, so when it comes down to it, the land councils in particular, which are very active in this space, cannot use that as an excuse to say that this is a bill for the mining industry or big industry.

If the task force does that and is as comprehensive in its information gathering as possible, this thing might just work. There is no need to respond to that. If the minister could do that with the task force on a nudge and a wink and let it know that he would like it to be as comprehensive as possible, that would help everyone.

Hon STEPHEN DAWSON: That will certainly be its marching orders. The bill before us will provide the legal framework and the foundation for the new heritage regime—so, the architecture. The regulations will put into practice how it will work. Some key things will need to be done by the task force. One of those is the Aboriginal cultural heritage management code. That will include the due diligence process that proponents will need to undertake to ensure that their activities do not harm Aboriginal cultural heritage. There will be an Aboriginal cultural heritage management plan template, which will include the minimum level of information processes that will be required to be included in the management plans. There will also be activity categories and time frames. They will be included in the regulations, and they will detail the different types of activities that occur in Western Australia and the level of authorisation required for each activity, as well as time frames for consultation and negotiation purposes. A lot of the regulations will be kind of run-of-the-mill stuff that various stakeholders will not have any interest in, but there will be some key ones. We know from correspondence that the member and I have both received, or that we have all received, that there are threshold issues that people will have a key view on. Those issues will be the most important for the task force to focus on.

Hon Dr BRAD PETTITT: I also have a few questions around the consultation process. The first follows on from Hon Colin de Grussa's question about who was consulted with. The minister responded with quite a comprehensive list. Is the minister able to tell me who on that list publicly supported the bill in its current form?

Hon STEPHEN DAWSON: I do not have a list, honourable member. The submissions that were received on the draft bill are all publicly available on the dplh.wa.gov.au website. In terms of who supported the whole bill, there are people like Michael Woodley from Yindjibarndi, who has a great deal of knowledge and experience in dealing with section 18 applications and has been very vocal on the bill and his support for it. Another person is Gail Reynolds-Adamson from Esperance Tjaltjraak Native Title Aboriginal Corporation, who has been supportive of the bill, and Rob Green from Kariyarra Aboriginal Corporation. These are some of the people who come to mind and whom I have spoken to who have said that time is long overdue for a new Aboriginal cultural heritage bill and that they are supportive of the bill before us. There are organisations that are happy with elements of the bill. There are other organisations that are happy with none of the bill. As the member pointed out, there are other people who say that this bill is no better than the 1972 piece of legislation, to which I took offence.

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Hon Dr BRAD PETTITT: I have a couple of slightly related questions. I am interested to know whether there was any follow-up consultation with key stakeholders after the report of the Juukan Gorge inquiry was delivered to the federal Parliament.

Hon STEPHEN DAWSON: The consultation was ongoing, right up until the legislation went to Parliament a few weeks ago. We continued to consult up until a few weeks ago on the detail of the bill, and we are now continuing to have conversations about the next part, which is the regulation phase.

Hon Dr BRAD PETTITT: The minister has not answered my question. My question is around the specifics of the Juukan Gorge inquiry. Were there any specific consultations on the outcomes of that inquiry with the key stakeholders between that inquiry report coming down in the federal Parliament and this bill being put into the lower house?

Hon STEPHEN DAWSON: I make the point that the Juukan inquiry was an inquiry of the federal Parliament. The federal Parliament can look into whatever issue it wants, and it did that. Our understanding is that the bill before us certainly takes into consideration many of the recommendations that were made by the Juukan inquiry. Recommendation 3 included —

These minimum standards would be developed as part of a co-design process but consideration should be given to the inclusion of the following:

- a definition of cultural heritage recognising both tangible and intangible heritage

The bill before us includes an updated definition of “Aboriginal cultural heritage” and refers to “tangible and intangible heritage”. The recommendation continues —

- a process by which cultural heritage sites will be mapped, which includes a record of past destruction of cultural heritage sites (with adequate safeguards to protect secret information and ensure traditional owner control of their information on any database)

The bill before us establishes a new directory whereby Aboriginal people can put forward a record of their cultural heritage. There is a range of things. I certainly believe that the recommendations made by the committee in its Juukan inquiry line up with what is in the bill before us. That report went further and referred to what the commonwealth government should do and, obviously, that is in the commonwealth government’s bailiwick. As Hon Peter Collier mentioned, it can do what it wants in response to the bill, but I am certainly happy that the bill lines up with the recommendations that have been made.

Hon Dr BRAD PETTITT: I will point out that, of course, the Juukan inquiry report has a specific section on Western Australian legislation. To say it is merely a federal report for the federal Parliament is misplaced, when it clearly had a specific section on WA legislation and what needs to happen here in WA. The committee made some very clear recommendations in the Juukan inquiry that have not made their way through to this legislation, including about the right of Aboriginal people to say no. My question is: were key stakeholders consulted and engaged with about the recommendations that are not reflected in the 2021 version of the bill; and, if not, why not?

Hon STEPHEN DAWSON: The federal government can make rules or laws about any issue it wants to. The Western Australian government retains the right to make rules about the stuff that we are responsible for. When the federal committee reported, it just so happened that various things lined up with the bill before us. The federal government has to respond to the federal committee’s report. It is not my role as a state minister to respond to a federal parliamentary committee’s report. We have a separation of powers. The federal Parliament can respond to and do whatever it wants. The bill before us was in progress before the events at Juukan Gorge and, as a result of Juukan, we have had some learnings and we have incorporated those learnings in the bill. I am confident that if this bill passes, we should not see another tragedy like Juukan happen again.

Hon NEIL THOMSON: To a certain degree, the minister has glossed over the level of support. I think it is important to be specific about the issue of support. I would like to start with land councils. The Kimberley Land Council has been particularly vocal on the steps of Parliament, as the minister knows, and we have seen correspondence from Anthony Watson, the chair, and other matters relating to this matter have been raised in the media. How does the minister explain the vehement resistance to this bill by groups like the Kimberley Land Council? It is all very well to say that we have the discussion here in this place and if no-one is happy, obviously, we have got somewhere in the middle. I find it quite stunning. From my reading, these people are obviously engaged in this process very closely. We have seen their reaction put forward in very strong terms. We have seen the disdain, I would say, of the government in not supporting the recommendation, even to at least referring it to the committee. How does the minister explain the opposition and resistance from the Kimberley Land Council?

Hon STEPHEN DAWSON: The Kimberley Land Council is welcome to have its view, as are other organisations. It is not for me to explain the council’s concern. I have certainly not glossed over anything. I have received the same emails as the member has and Hon Peter Collier has. I have not glossed over the fact that there are people

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out there who are not happy with the bill, but I make the point again that governments of all persuasions have tried to update 49-year-old legislation for the past 30 years, and it got too hard for all of them. It got too hard because stakeholders were not onside, whatever side of the coin they were on.

I have a different view, in that I want to get legislation passed that rights the wrongs from the 1972 act. That is because I have to live with the 1972 act, and practically, on a daily basis, I have to make decisions under section 18 of that act—decisions that at times I find unpalatable and that I do not think a minister should have to make; it should not get to that. I want consultation to happen. I want transparency in the process. I am happy for the Kimberley Land Council, or anybody else, to have issues with the bill, but I will be able to sleep at night if this bill passes, because it will enable Aboriginal cultural heritage to be protected.

Some land councils and native title representative bodies are not happy because this bill changes their business model. Instead of native title rep bodies making decisions, this bill will change the power. It will put the power in prescribed bodies corporate or in local people at the grassroots. It changes from a high body up there to people on the ground who have local knowledge. Some groups are unhappy about that. At one stage some archaeologists commented that they were not happy with the bill. Instead of proponents going to archaeologists, as they currently do, and asking them to give them a hand to try to get a project through, the bill will require proponents to go to Aboriginal people, to the traditional owners of the land, and they will decide who they engage with. Rather than a traditional owner getting \$500 a day for working on a heritage survey, the power and the decision-making goes to Aboriginal people on the ground. Some people are not happy with an imbalance. Certainly, I am happy for the KLC to have a different view. Equally, over the last few months, I have had the opportunity to sit down with the KLC many times, and I said to KLC people that I want them involved in the next part of the process, which is the co-design of the regulations. I hope they will come onboard and participate in that.

Hon NEIL THOMSON: It is troubling. The minister implied that the land councils have a business model that will somehow be undermined by this process. I propose to go into this in a bit more detail on later clauses. The Kimberley is a very good example to start with. In my estimation, the Kimberley has 24 or even 26 PBCs—correct me, please, if I have that number wrong. The minister implied that under this bill each of those bodies will have first right of refusal to establish up as a local Aboriginal cultural heritage service. I find the minister's assertion stunning that somehow this will undermine the land council model. At the end of the day, I suggest that when all is said and done, the land councils will continue to play a critical role in coordinating the LACHS processes and will probably need to provide some sort of oversight, because we know the challenges for a lot of these prescribed bodies corporate to deliver services they are supposed to deliver. As I said, I will go into this in more detail later in the bill, but I would like the minister to comment on that if he could, please, because I find that assertion wrong. The Yamatji Marlpa Aboriginal Corporation has commented on this, and my assessment is that it does not support the bill. That was certainly the case when I went to Yule River recently. The group that assembled there were very strongly opposed to what was being put forward, even though they had not been provided with the bill. Could the minister comment on that, please?

Hon STEPHEN DAWSON: Yule River is in Kariyarra country, and of course the Kariyarra Aboriginal Corporation has said it is in favour of this bill. I make that point. I will not comment on every group that has said it has an issue with this bill. I go back to the member's earlier comment. I certainly did not say that the KLC was upset because of its business model. I did not refer to the KLC; I said that I had heard that a number of native title rep bodies were unhappy because this will disrupt their business model. I also make the point that I have not had contact, and I do not think anybody else here has had contact, with prescribed bodies corporate to say that they are not happy with the legislation. They recognise that this will change the system—that it will give them the power with their hard-fought native title lands. Many have waited tens or —

Hon Dr Brad Pettitt interjected.

The DEPUTY CHAIR: Members, the minister has the call. You will have the opportunity to ask your question.

Hon STEPHEN DAWSON: The prescribed bodies corporate have not written to any of us in this place to say that they are not happy with the bill. They have not.

Hon Dr Brad Pettitt interjected.

Hon STEPHEN DAWSON: Hon Dr Brad Pettitt will have his chance in a second; I am on my feet.

The DEPUTY CHAIR: Minister, you have the call. I ask that you perhaps do not respond to interjections. Hon Dr Brad Pettitt can ask a question in due course.

Hon STEPHEN DAWSON: Thank you, deputy chair. I hope honourable members do not make unruly interjections. I will certainly try not to respond to any.

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PBCs have not written to us to say that they are not happy with the bill. People who risk losing out under this bill have been vocal. That is not to say, though, that a native title representative body could not be a LACH service under this bill. It could be. It is not to say that a PBC or a LACH service will not get a native title rep body to do the whole of the work for it or, indeed, elements of the work. That will also be able to happen under this bill. Honourable member, yes, there are organisations out there that are not happy with the bill before us. That is their right. I am proceeding with this bill because it will right a wrong. It needs to happen. The honourable member can keep raising that whoever is not happy with it—I agree; I have had the same correspondence—but I am not going to enter into it. They are entitled to their opinion. I have a piece of legislation before the Parliament at the moment and I think it is good legislation, so I will keep proceeding with it.

Hon NEIL THOMSON: It is all very well for the minister to say that he has not had PBCs contact him to oppose the bill. I know how this works as well. The names I have seen attached to certain correspondence are of members of PBCs. On a matter of such importance, the land councils play a critical role, particularly in terms of the capacity to engage. I think this goes to the heart of the problem with consultation. How many PBCs have written to the minister in support of this bill?

Hon STEPHEN DAWSON: I do not propose to spend too much time on this, so I will not answer any more questions; I will move on. I have had conversations with representatives of PBCs who have said to me that they support this legislation. Some of them have appeared in the media to say that they support the legislation.

Hon NEIL THOMSON: Again, it is all very well for the minister to say that he is not going to have a conversation about it. There are in the order of 70 PBCs or determined native title bodies in Western Australia. Given the incredible role and responsibility in terms of the opt-in process to be a LACH service, I would have thought there would have been a systematic process to ascertain the views of those PBCs. The minister said that he will not enter into this discussion, but on the other hand, he said that he will not explain to me why he is getting a reaction from the land councils. That is having it both ways. Is he getting a strong position in support from the PBCs? The role of the opposition is to ascertain the level of support. It is a fair question. Given that the minister has not agreed for the bill to go to committee, I think it is only fair —

Hon Stephen Dawson: This is in committee now.

Hon NEIL THOMSON: To a standing committee, I should say. You did not agree to the bill going to a standing committee. That would have been the honourable thing to do.

Hon Stephen Dawson: Are you saying I am dishonourable, honourable member?

Hon NEIL THOMSON: No.

Hon Stephen Dawson: I would be very careful about casting aspersions. I would be careful with your words.

Hon NEIL THOMSON: I was not speaking about the minister personally; I said that it would have been honourable for the government to do that. The minister can get all worked up about it, but I want an answer in committee from the minister on how many of the 70-odd PBCs have actually written to him in support of this legislation.

Hon STEPHEN DAWSON: The honourable member has been around politics and government for a long time, so he would know that people generally write to us only when they are unhappy. That is what we have seen. We have seen lots of correspondence, and I have quoted from them, from PBCs or leaders who have said that they support this legislation. Other PBCs, as I referred to earlier, have attended briefing sessions, including as late as August this year. They came along to us. They got the documents, they got the draft bill and they got the changes and they did not write to me afterwards to say that they were unhappy with the bill. That is the end of it.

Hon Neil Thomson: List a few more.

Hon STEPHEN DAWSON: No; I am not going to get into it. I have told the honourable member who has been consulted. He obviously has had people contact him who are not happy. That is fine. I have acknowledged that there are people who are not happy. I am not going to get into it any further.

The DEPUTY CHAIR: Members, there are a number of members seeking the call. Hon Wilson Tucker, were you still seeking the call? I call Hon Wilson Tucker, whom I had promised would go next.

Hon WILSON TUCKER: Thank you, deputy chair. My line of questioning has largely been answered by Hon Neil Thomson's and Hon Dr Brad Pettitt's questions about the feedback that the minister has been provided with by prescribed bodies corporate; therefore, I think I will take a slightly different tack. In his opening remarks, the minister mentioned that a number of PBCs are native title representatives and that land councils have been consulted about this bill. My question is: does the minister have a comprehensive list of all the PBCs, native title representatives and land councils in WA; and, of that list, who has been consulted as part of this bill?

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Hon STEPHEN DAWSON: I do not have a list of the PBCs with me because PBCs are actually organisations established under the Native Title Act and really fall under the feds. But what this legislation does, for the first time, is to align us with the Native Title Act. In terms of whom we have consulted with, I have given those to the chamber, so they will be available in *Hansard*.

Hon TJORN SIBMA: Minister, I have a completely different area of focus. I think we risk getting stuck in a feedback loop, so to speak, when talking about consultation. Bearing in mind that we have reached agreement about when we may have dealt with the bill, I just want to refer to some elements that are right at the back end of the bill, in part 16, concerning the implications of the bill for other acts. My focus is more in the environmental portfolio domain, and, obviously, I acknowledge that you were the previous minister in that space. Now that we have a significant reform of the Aboriginal Heritage Act—I might put the question this way, as a question for government: is there a need to proceed with the Conservation and Land Management Amendment Bill, which seeks to insert the preservation of Aboriginal cultural heritage as a conservation purpose? Basically, I think that the need has been satisfied or will be satisfied with the passage of this far more expansive—and, I would say, superior—bill, in terms of its focus.

The second issue relates to some guidance notes that the Environmental Protection Authority uses when it assesses proposals for environmental approval. The EPA subjected a proposal to a social surrounds test, which I think was designed to complement or basically gap-fill the holes in the 1972 heritage act that we are attempting to remediate here. I am just trying to get a sense of whether those kinds of guidance notes that the EPA uses—the policy thrust of the CALM amendment bill, which is yet to come into this house—still need to be persevered with, or whether they now become, in essence, superfluous in the policy and regulatory sense.

Hon STEPHEN DAWSON: Thanks, honourable member. I might tackle the second question first. The member was away from the chamber on urgent parliamentary business when I gave the elements of my second reading speech in reply, but I am happy to go over it again. First of all, the EPA has been consulted throughout the review process and the development of the bill. In its submission to the consultation bill, the EPA said that for direct impacts it supports the bill being the primary legislation dealing with the protection of Aboriginal cultural heritage.

It also supports the removal of unnecessary duplication in the environmental impact assessment process where there are legislative overlaps between the bill and the Environmental Protection Act. The EPA also supports the amendment to the Environmental Protection Act 1986 for the removal of the constraints that currently restrict the Minister for Aboriginal Affairs from making decisions on Aboriginal cultural heritage during environmental issues. I think that answer addresses the member's second question.

To answer the member's first question, my advice is that the CALM act changes are for a different purpose. Clause 343 of this bill will amend the Conservation and Land Management Act by replacing references to the Aboriginal Heritage Act in sections 3, 4 and 5 of the CALM act with references to the proposed act, so it does amend elements of the act.

Hon Tjorn Sibma: Only with reference to—all right.

Hon STEPHEN DAWSON: Only with reference to this. My advisers tell me that elements of the CALM act are about retesting. The bill before us does not tackle that issue.

Hon NEIL THOMSON: It seems to me that the further north we go, the less support there is for this bill. That is my assessment. Look, I have no idea, because I have not been given satisfactory answers so far. I ask a simple question: would it be fair to say that there is broader support for this bill in the south west of the state than there is in the Kimberley, for example?

Hon STEPHEN DAWSON: No, I cannot even say that. I think there are elements of angst about this bill across the state; equally, there are elements of support for the bill across the state. At one stage, I heard second-hand that one group was saying, "This is too Noongar focused", or something. This bill is not about Noongar people or Yamatji people or anybody; it is about the protection of Aboriginal cultural heritage, full stop. Certainly, from what I have heard, I do not think that the further north we get, the more concerns we hear about the bill. Some people have said that they are not happy with elements of the bill—for example, the minister retaining the right to have a final say if it gets to that; other people have strong views about what should go to the State Administrative Tribunal and what should not. They tend to be the main issues of concern that have been raised, and, for some, they are line-in-the-sand issues. While those provisions are in the bill, they will not support it. Some would begrudgingly say, "So much of this bill looks great, but these are threshold issues for us." But these are the decisions that the government has made, and the decisions that we made are reflected in the bill before us.

Hon NEIL THOMSON: It is very hard to assess in the time frame that we have. I gave my position in my second reading contribution. If I were to sum up my assessment, it is that we have support from the mining sector.

Hon Stephen Dawson: Say that again; do we have support from the mining sector?

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Hon NEIL THOMSON: I am summing up my assessment in response to the minister's answer, because I want to follow up with another question. There seems to be broad support from the mining sector. In the minister's list, there seems to be quite intensive consultation with the mining sector, and I am not disputing that. I said at the outset of my second reading contribution that this is not an easy task. I acknowledge that again: this is not an easy task. But as a member of the opposition, this troubles me. My colleague Hon Peter Collier was the former minister and also had to deal with this challenging issue. He knows more closely and intimately than I do the difficulties in trying to manage a bill in this place. It seems to me that the resistance is more determined in those areas where, say, mining might be a greater thing than in an agricultural area where a greater proportion of freehold land may exist. Again, I am not making a judgement on this position. I do not want to have words put into my mouth either, because the problem is I actually do not know. I have not been in the minister's shoes through this process. We have been given very little information. We just see what we see in the media. We just get the emails. It has been very difficult to make a proper assessment of what is going on. But then we see an article in the *National Indigenous Times*. There have been many of those, and I am sure the minister has read many.

People have appealed to the United Nations. I understand that politics will be involved and people will make representation when they can, but this seems extraordinary. In September a group of prominent First Nations people, in a review of the bill in collaboration with the Environmental Defenders Office, made formal requests to a United Nations committee on the elimination of racial discrimination arguing that it was incompatible with Australia's international obligations on racial discrimination. I am not making a judgement on this but the people named here—Mr Parker, Kado Muir, Anne Poelina, Clayton Lewis and Dr Hannah McGlade—note that the bill does not adequately address the structural and historical issues and inequalities, which, in the past, have underwritten the contemporary destruction of cultural heritage in WA.

I will not go on, but the fact is there seems to be very intensive opposition from those who live north of the twenty-sixth parallel. Please correct me if I am wrong. The minister named two prescribed bodies corporate, or members of PBCs, who the minister said in our discussion supported the legislation. I am not convinced that there is widespread support. I acknowledge all the difficulty and challenges in trying to get this bill through but I think this is why the opposition earlier sought to refer the bill to the Standing Committee on Legislation. Can the minister explain this level of intensity?

Hon STEPHEN DAWSON: Again, I cannot honourable member; I cannot second-guess what organisations are not happy with this bill. In relation to the twenty-sixth parallel, I make the point again: the Kariyarra, the traditional owners of the land around Port Hedland, are in favour of this. North of the twenty-sixth parallel, there is the Yindjibarndi Aboriginal Corporation or WMYAC—or Wirlu—Murra Yindjibarndi may be the correct name; anyway, by saying Yindjibarndi I am not being disrespectful, I do not have the name in front of me—but around Roebourne, for example, so big swathes of land in the Pilbara. Two organisations in the Pilbara have had years and years of dealing with section 18s. I am told there have been at least 1 500 section 18s over the last 30 years. In the Kimberley, there have been about 40 section 18s out of the 1 500. The vast majority of the section 18s are in the Pilbara. The organisations in the Pilbara have to deal with section 18s very, very frequently. They are the ones who have been most vocal in saying the legislation needs to change and the legislation before us is good legislation and the sooner it changes, the better.

Hon NEIL THOMSON: That is fascinating. To some extent it seems counterintuitive—I guess it depends on our perspective—that we have opposition from the Kimberley Land Corporation, which has not had to deal with too many section 18s, yet there is support from groups who have had to deal with section 18s. That may be a reason, but I guess we are trying to ascertain why there is opposition. I think the minister mentioned three distinct PBCs and north of the twenty-sixth parallel, who knows, I would have thought there were 35, maybe more. Certainly, as I say, those land councils as overarching groups do not seem to be supportive. I am not saying they control them but they are all distinct bodies within the groups. I acknowledge the complexity of the polity within the First Nations, as it should be.

I want to change tack slightly here. In relation to consultation, the minister gave a list of organisations that were contacted. I have received a letter dated 8 December from the WA Law Society. Was the Law Society consulted in this project?

Hon STEPHEN DAWSON: I am told yes it was, and it put in a submission as part of the process last year.

Hon NEIL THOMSON: Is the minister aware of the Law Society of Western Australia's recommendations in its most recent correspondence? Has the minister seen this correspondence?

Hon Stephen Dawson: Do you want to table it and I will have a look?

Hon NEIL THOMSON: It is the only copy I have and I would like to ask a few questions on it.

The DEPUTY CHAIR (Hon Jackie Jarvis): Member, are you seeking leave to table that document?

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Hon NEIL THOMSON: I will come back to that. I do not expect the minister to respond to every matter raised in the letter, because there a number of recommendations. The minister can take some time to assess the letter to see whether he is aware of the general push of it, because I think a few comments are pertinent and maybe could be picked up later during the committee's consideration of the bill. I want to go through the letter.

The DEPUTY CHAIR: Member, for the benefit of *Hansard*, as we have referred to the letter a number of times, it might be worth seeking leave to table it.

Hon NEIL THOMSON: So, we will table it.

Hon Peter Collier: Why don't you sit down and I will table it.

Hon NEIL THOMSON: Okay.

Hon PETER COLLIER: I seek leave to table a letter from the Law Society of WA.

[Leave granted. See paper [982](#).]

Hon NEIL THOMSON: A number of issues are raised in the letter from the Law Society and we will be able to detail some of them when we consider further clauses of the bill, but I think the status of the local Aboriginal cultural heritage services is pertinent now. The Law Society raises the idea that the services will effectively be a statutory body and proposes a number of amendments to the roles of the minister and the government. Obviously, very good legal minds have been involved in the consideration of these matters and the society has probably received representations from its members. I am sure many members of the society practise their craft with either land councils or prescribed bodies corporate. Is the minister aware of these detailed recommendations?

Hon STEPHEN DAWSON: No, I was not aware of the letter until the member brought it to my attention today. I note that it is dated 8 December. I think Hon Peter Collier said that he received it today, 9 December. I have been at Parliament House but my office has not seen it yet.

I note that the Law Society acknowledges —

... the Government's consultation process in which it has engaged since 2018 in pursuit of the object of presenting to Parliament proposed legislation to better protect Aboriginal cultural heritage ... in the State of Western Australia.

That consultation process has resulted in a complex piece of proposed legislation, in the form of the *Aboriginal Cultural Heritage Bill 2021* (the Bill) with some significant improvements upon the current *Aboriginal Heritage Act 1972* ...

Significant improvements in the 2020 and 2021 versions of the *Aboriginal Cultural Heritage Bill*, compared to the Act include structured local Indigenous involvement, stop activity orders, prohibition orders and remediation orders, and the capacity to vary decisions if new information comes to light.

The letter goes on to say —

There have also been some significant improvements to the 2020 consultation draft of the Bill made in the Bill ...

It then lists a couple of things.

That is my first look at the first page of the letter. I thank the Law Society for bringing this information to my attention. I note that the Law Society suggests some amendments at particular clauses so I suggest that we leave the conversation about those particular clauses until we get to them. That way, because the letter has only come in, I can send my advisers away to look at the suggestions and we can deal with the issues when we get to the appropriate clause.

Hon NEIL THOMSON: I think that that is very reasonable. I appreciate that we will be able to examine them as we consider further clauses. But I think it highlights the problem that the 2021 bills were released into the public domain at lightning speed. There was a lack of respect shown to this house and the other house when these bills were thrown into the other place without waiting for the serious minds of the Law Society to put their thoughts forward about the latest draft. No doubt they were consulted on the 2020 bill. This highlights again the point that I have made throughout the debate. I am trying to grapple with this, too. We do not have the resources of the agencies or the State Solicitor's Office; we are here with the minister attempting to create good legislation, something that will do exactly what the Law Society outlines—improve the 1972 Aboriginal Heritage Act. It would have been sensible and efficient to have had a gap between the release of the final bills and the consideration of the houses of Parliament by referring the bills to the Standing Committee on Legislation. Therefore, I take the minister's word that he will consider the Law Society's letter. Maybe the minister's people will come back with advice on the recommendations of the Law Society and we will see where the government stands on them, because some improvements can be made. It is never too late. We have time. No doubt we will have time next week to consider the further 352 clauses.

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No doubt, people out there who are watching and listening will be able to provide information through either the opposition or the government on any specific issue that could possibly save a lot of grief in the future.

I want to change tack, though, to the issue of consultation with that broad sector of 50 000 landowners in the peri-urban area who will be affected by the legislation. We do not know yet how they will be affected because we do not know how the regulations will pan out and what the expectations for due diligence will be. That will be covered under later clauses, but in terms of consultation, will the minister write to every landowner in Western Australia who owns 1 100 square metres or more of land asking them about their views on the regulations?

Hon STEPHEN DAWSON: No, I will not. As I indicated, we have a process to work through with the co-design task force on what the next phases of the process will look like. There will certainly be an opportunity for all stakeholders to have their say as part of that process.

Hon NEIL THOMSON: How is the minister going to inform those landowners about their new obligations?

Hon STEPHEN DAWSON: That will form part of the decision-making of the Aboriginal Cultural Heritage Council. Our intention is to work with peak bodies and organisations. They will advertise some of the meetings and events that will take place over the next 12 months at least. As with any legislation or regulation, people will get a chance to make comments when appropriate. Because it is appropriate in this case, as I indicated, we will consult with key stakeholders to make sure that the regulations that we end up landing on work for as many people as possible, noting, of course, that different organisations will have different views on and will want different things from the regulations. Different Aboriginal organisations may want different things out of the regulations based on where they live in the state and their potential interaction with the laws. At the end of the day, we will have to take all those things into consideration and make sure that we have the best regulations to help protect Aboriginal cultural heritage that the state can work with.

Hon NEIL THOMSON: It is true that different people have different expectations and want different things. There is no doubt about that. This is a complex piece of legislation.

Hon Stephen Dawson: It's a complex world, honourable member.

Hon NEIL THOMSON: It is a very complex world. I understand that, and our job is to unpack complexity and try to deal with it so that it is at least workable. Part of the problem for the 50 000 landowners is that many of them own less than five acres, to use the old term. We have been going back to imperial measurements in our discussion, so we are talking about quarter-acre or half-acre blocks—I am not sure—but it is 1 100 square metres. A lot of people are going to be affected who do not even know that they are going to be affected. I again flag for further debate in the detailed stages of each clause that there really has to be much more involvement of those people in respect of how this legislation is going to impact on them and how they will be equipped to deal with it. Perhaps local government will be involved. The minister talked about his engagement with the Western Australian Local Government Association; maybe local government will play a role.

The minister did not respond to the comment I made in my contribution to the second reading debate about how people interface with the approvals process. At the moment, if people want to build or dig something, it usually falls under the Building Act or the Environmental Protection Act. There is usually a known pathway for them to follow and to tick all the boxes. The minister knows that that in itself can be problematic, because people do not always know and can fall foul of those processes. This legislation should not create a situation in which people fall foul of new regulations and responsibilities because they do not know about them. The minister has said that he will not write to the 50 000 landowners. What will he do to reach out to those 50 000 landowners? I will put this in multiple parts, so the minister can answer my questions all together. There are plumbing or drainage contractors who are not part of Main Roads. We have talked about agencies, but I am talking about someone with a backhoe who does plumbing, for example. Electricians have to put cables in the ground across blocks that are larger than 1 100 square metres. How is the minister going to reach out to those people so that they at least know what their obligations are, let alone have a chance to have any input into this process?

Hon STEPHEN DAWSON: I make the point that there have been restrictions in place on land across the state since 1972. There are people out there now who may or may not know that those restrictions are in place, but they do exist and they are in law. People with landholdings of less than 1 100 square metres are exempt from this legislation, but for others the law is essentially the same and they will be affected by the legislation before us. The member mentioned concreters, and they have been involved in the process. They made a submission and they were consulted as part of the draft bill. My commitment is to make sure that as many organisations that need to know about this legislation, will know about it. We have worked with WALGA already, and I spoke about the various WALGA zone meetings that included consultation as part of the journey to get to where we are. We remain committed to working with WALGA as we enter the next phase of the process. We want as many Western Australians as possible to know about this legislation. This is landmark legislation. As I said, this is the most progressive legislation of its

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kind in this country, and probably in the world. We will be singing from as high as possible to tell people about this legislation and to encourage them to participate, if they want to participate.

Hon NEIL THOMSON: I have heard that argument. It is a good argument to put, but I do not agree that it is a relevant argument. This bill will codify in a very prescriptive way a focus on ground disturbance, which is another matter I will raise at a later time. It will very strongly codify an approvals process that will require people to undertake or at least seek approval when they are in those tier 2 categories and beyond. I thank the minister. If the minister is going to make this well known, I hope that the debate of this place brings it to the fore and that people start to think that it is relevant to them. Maybe they will take note of what is going on and actually get involved. I hope that the regulation process is as broad as possible so the minister follows up on his “singing from the rafters” or whatever when developing the regulations, particularly those categories of activities. I want to move on and talk about funding, because it is a critical issue.

Hon Peter Collier interjected.

Hon NEIL THOMSON: Yes; please, go on.

Hon PETER COLLIER: I forgot to mention this when I asked my first questions. I understand there was some dissent in the various goldfields groups. That is what I have been told. I would be interested to know, firstly, what groups consultation was held with, and, secondly—I am just saying what I have heard—whether there was any dissent within the groups in the goldfields. If so, what was that centred around?

Hon STEPHEN DAWSON: Central Desert Native Title Services, which represents many of the prescribed body corporates in the goldfields, has been involved in an alliance with Yamatji Marlpa Aboriginal Corporation, the South West Aboriginal Land and Sea Council, and maybe one other organisation.

Hon Peter Collier: Goldfields?

Hon STEPHEN DAWSON: Native Title Services Goldfields and Central Desert Native Title Services look after the communities out there. Collectively, their general issues are related to the power of veto—a minister not having the final say—and the second issue related to wanting certain things to be able to be taken to the State Administrative Tribunal, particularly a minister’s final decision.

Hon Peter Collier: Which organisation?

Hon STEPHEN DAWSON: They both signed the same letter, because the letter came from the group. I am not aware of any other particular PBCs from the goldfields that have written to us. I think it has just been those native title representative bodies.

Hon PETER COLLIER: And the veto?

Hon STEPHEN DAWSON: The veto was one of those issues.

Hon NEIL THOMSON: Can I clarify that point, please. Did the South West Aboriginal Land and Sea Council support this bill?

Hon Stephen Dawson: Honourable member, I said that already.

Hon NEIL THOMSON: The minister has not. Has it supported it?

Hon Stephen Dawson: I said it has been vocal about elements of the bill.

Hon NEIL THOMSON: That was clarifying the point that I was unclear about. I have not yet come across one land council across Western Australia that supports the bill.

Hon Stephen Dawson: There are two land councils and the others are native title representative bodies that do not have land council in their name.

Hon NEIL THOMSON: On the issue of funding, \$10 million has been allocated for the establishment of these local Aboriginal cultural heritage services. How will that be allocated across 64 or more local Aboriginal cultural heritage services?

Hon STEPHEN DAWSON: First of all, we do not know how many LACHS there will be. That has not been worked out yet; it will be worked out later in the piece. That \$10 million is an amount in the budget. It is an in globo amount. It will help with capacity building, for example for LACHS. There has been no further dilution of what that would look like. It is a total amount of the budget at this stage to help start the process, noting, of course, that we are only starting the journey. We have the co-design of the regulatory process to do next. That will then determine what the next parts of the process look like. This is just to start us off.

Committee interrupted, pursuant to standing orders.

[Continued on page 6309.]

Extract from *Hansard*

[COUNCIL — Thursday, 9 December 2021]

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Hon Neil Thomson; Hon Stephen Dawson; Hon Colin De Grussa; Hon Tjorn Sibma; Hon Peter Collier; Hon Dr
Brad Pettitt; Hon Wilson Tucker
