

Dr David Honey; Ms Mia Davies; Ms Libby Mettam; Mr Shane Love; Mr Vincent Catania; Acting Speaker; Mr Peter Rundle; Dr Tony Buti; Deputy Speaker; Ms Divina D'Anna; Mr Bill Johnston

ABORIGINAL CULTURAL HERITAGE BILL 2021
ABORIGINAL CULTURAL HERITAGE AMENDMENT BILL 2021

Second Reading — Cognate Debate

Resumed from an earlier stage of the sitting.

DR D.J. HONEY (Cottesloe — Leader of the Liberal Party) [8.00 pm]: I did not think I had quite that much time left; perhaps I could talk for a long time about this.

The ACTING SPEAKER (Mr D.A.E. Scaife): Member, it is one minute and 53 seconds.

Dr D.J. HONEY: Thank you very much; I am grateful for that.

This is a very significant bill. As I have pointed out before, there are very substantial penalties under this bill and very substantial control. We will do our best to go through consideration in detail and consider these matters. Given that we were here until 11 o'clock last night and now it looks like we are heading into another late evening, that adds a degree of difficulty, but this process should not be happening. I will reinforce a point I made at the start of this debate; that is, this process should not be happening. We are not getting feedback or input from people across the state of Western Australia. I went through this bill in a bit more detail whilst other matters were before the house, and it has very dramatic potential impacts on the ability for people to use land. People could incur very significant personal penalties and very significant penalties as companies. As I said, I am not worried about the big organisations; I am worried about ordinary householders, the ordinary hobby farmer and the ordinary market gardener who will be impacted by this. Many tens of thousands of householders in this state, if not more, will fall under the purview of this Aboriginal Cultural Heritage Bill. I am not sure how many members here have read this bill, but when they read it, they will realise it is quite profound. It is inappropriate to jam this bill through this Parliament in this way. It does no service in terms of understanding whether this bill meets the needs or whether there will be unintended consequences, and it does no service to the government.

MS M.J. DAVIES (Central Wheatbelt — Leader of the Opposition) [8.04 pm]: I rise to speak on the Aboriginal Cultural Heritage Bill 2021 and the Aboriginal Cultural Heritage Amendment Bill 2021. I listened with interest as the Premier today urged the opposition and me, as the Leader of the Opposition, to resist making or trying to score cheap political points. The great hypocrisy and irony was that he was doing exactly that on a matter that is incredibly serious and sensitive and needs a degree of bipartisanship attached to it. The way the government has gone about it and the way the Premier performed in this house today has put paid to us being able to offer that bipartisan support, because we have been given no opportunity to consider this in a way that the opposition should be afforded. The Premier is the master of the cheap political shot. We have sat here all year watching him do exactly that.

There is no question that the opposition agrees that the current legislation is no longer fit for purpose when we talk about Aboriginal cultural heritage. In the previous Parliament, the then Leader of the Opposition, the shadow minister, others on this side of the chamber and I urged the government to include the opposition in the consultation and conversations on the bill. We have a strong desire to get this right—absolutely. I want to be very clear when I say that this government's arrogance and disdain for our Parliament is why I will not accept criticism from the Premier or any other government member who will speak on this bill over the course of the next however many hours we will be here, because the way the government introduced the legislation has sullied any genuine offer to take a bipartisan approach. I do not intend to play into the grubby tactics of this government, and they are grubby. It is grubby, it is disrespectful, it is arrogant and it has been deceitful about a bill that will have far-reaching ramifications. The legislation needed to be treated sensitively and seriously.

Unfortunately, over the last year since the government won that enormous majority, a pattern has emerged in the way legislation has been brought to our house. The Premier could have taken the high road when it came to bringing this bill to the Parliament. He could have acknowledged the power in the numbers of the Labor Party and resisted the urge to abuse those numbers. If it is indeed so urgent, as we have been told today, why was it not introduced earlier? Given that the government controls the parliamentary agenda, the resources that apply to the legislative agenda and the consultation process that was undertaken over the course of the last five years on this bill, and it knows that there is a set number of weeks for us to debate legislation, why was this bill briefed to the opposition yesterday and then read in and declared urgent today when it is such an important piece of legislation? There is absolutely no risk of it not passing in whatever form this government chooses it to pass because it has the numbers. There is absolutely no risk.

Mr V.A. Catania: It was only the overview it presented to us yesterday.

Ms M.J. DAVIES: I was not there yesterday; I was unwell so I was not able to attend. I am reliably told —

Dr D.J. Honey: You didn't miss much.

Dr David Honey; Ms Mia Davies; Ms Libby Mettam; Mr Shane Love; Mr Vincent Catania; Acting Speaker; Mr Peter Rundle; Dr Tony Buti; Deputy Speaker; Ms Divina D'Anna; Mr Bill Johnston

Ms M.J. DAVIES: The member for Cottesloe said that I did not miss much. It is even more disappointing that we were not briefed in detail on a bill that I could use as a doorstep in my office. It is heavy enough and thick enough, with enough clauses, for me to use as a doorstep!

No sensible person who looks back on this could ever assume that we, as the opposition, could have done our job properly and consulted stakeholder groups and read the legislation in detail. Regardless of whether or not we agree with the policy of the bill or how it has been brought to Parliament, part of the job of members in this chamber and in the Legislative Council is to make sure that the clauses will do what the government says they will do. That is the role of a parliamentarian. I do not think that any sensible person who was presented with a bill that looks like half a tree—we are supporting the softwood plantation just in printing this legislation, let alone the explanatory memorandum —

Dr D.J. Honey: This is all hardwood!

Ms M.J. DAVIES: It is a ridiculous notion to think that we could do this properly and with the diligence that is required. We will give it our best effort, but let us make no mistake: this government has sullied the way that the bill has been introduced. There are members in this place—I suspect the member for Kimberley and others have a significant footprint of projects or activities that will be impacted—who would like to see this bill dealt with in a way that means we can all move forward on the same page. We cannot do that—not with the way that it has been introduced to Parliament. That is on this government. That is on the Premier. My question to the government is: why did it not afford the legislation the respect it deserves and allow the normal parliamentary processes to play out?

Other members who have spoken have said that similar disrespect was shown for this place and its processes as recently as this morning, when the Constitutional and Electoral Legislation Amendment (Electoral Equality) Bill 2021 was passed. We saw that bill pushed through this house, with debate being gagged, even after the Premier denied that the issue was on the agenda, and no opportunity for us to send it to a committee. I suspect that the government would deny the same request if it were made by the opposition about this piece of legislation. It is disrespectful. It is disrespectful to the people who have put an enormous amount of effort into creating the bill. Over a hundred changes have been made to the draft legislation that we saw when the former member for Victoria Park Hon Ben Wyatt left Parliament and handed it over.

I have to ask whether the government is so concerned with the outcome and what is in the bill that it is simply trying to avoid scrutiny and push it through Parliament. If the government is absolutely rock solid on what is in this bill, why not let it go through the normal processes of Parliament and allow us to digest what is in the bill, consult with and take advice from not only stakeholders but also our constituents, and make sure that we deal with it in a respectful way? There is absolutely no risk that this bill will fail to pass in the form in which the government wants it to pass—I want to be really clear about that—because the government has the numbers.

Whatever the Premier said during question time today, when he went through the history of this bill being brought to Parliament, was completely irrelevant. We all know that whatever is in the bill will go through unchanged, because that is how this government operates. It is not entertaining amendments. It will not consider any advice. It thinks the bill is perfect. That is the height of arrogance. The disingenuous statement by the Premier during question time that the government needed to make sure that the bill passed was ridiculous and deceitful. The government controls the agenda of Parliament. The government controls the numbers in Parliament. The way it has behaved with this bill makes it absolutely clear that every single government member has a great disdain for parliamentary process and convention. The government has thrown out the rule book. The Premier's hubris has grown so great that he thinks he does not need any of these conventions to apply to him or his government. How arrogant that he does not believe a committee is worthwhile. We saw that with the electoral reform debate. It is overt disdain for the Parliament and the parliamentary process. The normal process would have been to brief the opposition, read in the bill, let it sit for three parliamentary weeks and then have the debate in a considered way. That would have required a bit of planning, so whoever is in charge of the legislative agenda has either failed or done it deliberately, both of which reflect very poorly on this Labor government.

Labor's process, from what I can tell, is to manipulate and to confect some disingenuous reason for urgency or as justification. We saw that with the electoral reform bill. The Premier denied again and again that electoral reform was on the agenda, so the government needed some confected and indignant reason for why we suddenly had legislation in front of the Parliament that was at complete odds with what the Premier had said prior to the election. A ridiculous premise was constructed to do exactly what the Premier denied he would do. There was no opportunity for the public to have its say on electoral reform, and the government gagged debate in the house and refused to send the bill to a committee, showing utter contempt for this place and the Legislative Council.

It is not a good start to the next three years. During the electoral reform debate, we wondered what would be next and how the government would use its numbers. It did not take very long. Even behind the scenes, while this legislation was being talked about, I probably—I will not be caught again—naively said that I could not imagine that on such an important issue the government would play politics and ram through the legislation. I could not conceive that the

Dr David Honey; Ms Mia Davies; Ms Libby Mettam; Mr Shane Love; Mr Vincent Catania; Acting Speaker; Mr Peter Rundle; Dr Tony Buti; Deputy Speaker; Ms Divina D'Anna; Mr Bill Johnston

government would be so arrogant to do that, yet here we are about to sit in this chamber and deal with an enormous piece of legislation with some serious ramifications for all stakeholders involved. It just beggars belief.

I want to be very clear that any adverse or unintended consequences that come about or arise from this appalling management of the bill will be on the shoulders of the minister responsible, the Premier and this government—that rests with you. When there are unintended consequences—there will be because poor legislation gets outed eventually when there is a lack of scrutiny and no ability for the opposition to go through it appropriately—that will rest on the shoulders and the conscience of every Labor member of Parliament. Any clause that does not deliver on the government's intent or reflect the conversations it has had with stakeholders, or leaves stakeholders stranded, let down or out of pocket—or worse a repeat of Juukan Gorge or something of that nature—will rest on the shoulders of this Premier, the minister and Labor MPs. I hope every single MP sitting in the Labor Party caucus has read this bill from front to back, because if the opposition is not given the opportunity to do that, we need to know that every single government MP is doing their job. I hope you know what you are voting for. I hope you had a chance to ask considered questions of the minister and the opportunity to discuss the detail with key stakeholders and ask them to share their views, because the opposition has not been afforded that opportunity. It is not just about turning up and being a number in this house; members of Parliament have a job to get legislation right. When it is this serious, all members should be doing their job properly. We have been afforded no professional courtesy. We have been given no chance to speak with our constituents, seek advice from stakeholders or even consider this legislation in our party room. We were not given that opportunity.

I can say absolutely hand on heart that if we had done this in government, we would have been howled down by indignant MPs sitting opposite. The fact that the government does this with a rubber stamp of a Legislative Council is appalling. The opposition has been supportive of changing this outdated legislation that we now rely on. There is absolutely no question that we recognise that the status quo can no longer exist and is no longer appropriate. Every stakeholder engaged in the process recognises that. We are also cognisant of the fact that in very difficult circumstances, with legislation like this, not everyone is going to agree.

I am bitterly disappointed—an emotion that I am getting very used to standing on this side of the house and watching this government in full flight—that the government has chosen to sully this important legislation by playing politics. I have no interest in playing into those politics or entertaining or exacerbating the arrogance and hubris that will ultimately be the downfall of a government that has the numbers and, I think, the trust of Western Australians, but only when it uses those numbers appropriately—when it uses them judiciously and does not overstep the mark. With this piece of legislation, the government has not just overstepped the mark; it has pole-vaulted, long-jumped, whatever analogy you like, right over it. The legislation had better be perfect, because the government's handling of it says that it does not need or welcome scrutiny, and to me that says the government thinks the legislation is beyond criticism and scrutiny. I am very, very concerned about what we are likely to see over the course of the next three years if the government is prepared to go down this path for something that could have had bipartisan support. I look forward to hearing from members opposite to make sure I understand that they have done the job in caucus of reading that legislation, understand what they are voting for and are not blindly trusting a Premier who I think has let the numbers and the adoration he has experienced for the last nine months go to his head. Some things need to be beyond that. We are members of Parliament and this is an important issue. I think the government has let a whole raft of people down on a very, very sensitive and serious matter.

MS L. METTAM (Vasse — Deputy Leader of the Liberal Party) [8.21 pm]: I rise to make additional comments on this Aboriginal Cultural Heritage Bill 2021 and back up comments made by the opposition lead speaker on the bill, the member for North West Central, the leader of the opposition alliance and the Leader of the Liberal Party. The arrogance of the Premier and the McGowan Labor government knows no bounds. The government rushing through such an important and significant piece of legislation in such a way, again trying to avoid proper scrutiny, illustrates its arrogance. As the Leader of the Opposition has stated, we have all been asking what is next from the government, after it rammed through the electoral reform bill, which removes and diminishes regional representation. Here we are just one day later dealing with significant legislation without any opportunity to have a party room discussion, without a proper briefing and without any time to properly scrutinise or read the bill. My understanding is that when we were given some notice of it yesterday, we barely had a fact sheet or a working document. We had a very bare amount of information for legislation that looms so large.

It has been stated that this bill sets out to achieve something we support—that is, a new way of protecting Aboriginal cultural heritage. That certainly has merit. We also support the fact that this bill sets out to update legislation that is about 50 years old, but what an extraordinary approach to do that. What an extraordinary way to rush this bill through without any consideration of not just the conventions of Parliament, but also what the opposition represents. Each member in this house represents our communities—metropolitan and regional. Of course, our members in the upper house represent all areas of this state. The role of the opposition is not just to represent our own electorates, but also, as a function of a good democracy, to ensure scrutiny of bills that come before the house. The public expect

Dr David Honey; Ms Mia Davies; Ms Libby Mettam; Mr Shane Love; Mr Vincent Catania; Acting Speaker; Mr Peter Rundle; Dr Tony Buti; Deputy Speaker; Ms Divina D'Anna; Mr Bill Johnston

this of us. They expect questions to be raised. They expect, whether an individual is Labor, Liberal, Greens or whatever that an opposition will hold a government to account, particularly a government that is so drunk on power. Since the March election, we have seen a Premier and a government with an arrogance that knows no bounds, that is drunk on power and that has taken extraordinary steps to divert proper scrutiny and proper process. We ask why.

We acknowledge the need for better protection for Aboriginal cultural heritage. The Liberal–National opposition consistently supported this issue in the fortieth Parliament and certainly in this Parliament. Comments were made in the last Parliament by the former leader of the Liberal opposition that we would work together collaboratively on such a bill. Apparently this bill has been four years in the making. This raises the question of why this legislation will be forced through at the eleventh hour to stymie any proper opportunity for the opposition to be able to communicate and consult with our communities and to understand this bill.

This bill is significant for Aboriginal cultural heritage. I have touched on improving the framework for Aboriginal cultural heritage. Aboriginal cultural heritage in Australia is very rich, dating back 60 000 years or more. It is important that we update a bill that is so outdated and that contains serious flaws.

The ACTING SPEAKER (Ms M.M. Quirk): Ministers Kelly and Sanderson, you will be aware that the member for Vasse is softly spoken and that perhaps your conversation is a little loud and is drowning her out.

Ms L. METTAM: The bill is obviously flawed. We saw the tragic incident that occurred at Juukan Gorge, which has caused a great deal of distress. I understand this bill sets out to address that. I have heard much commentary about whether the legislation presented to us will avert future incidents. But we have not been able to determine this and discuss those issues with the communities that have raised concerns.

The opposition's lead speaker on this bill, the member for North West Central, also raised concerns that he has heard from many Aboriginal groups, while significantly more groups are just not aware of this bill. The bill has implications for not only Indigenous communities but also landowners. This bill has planted the seeds of uncertainty for landowners who own properties of more than 1 100 square metres. As the member for Cottesloe has already stated, the bill has the potential to affect a significant number of properties in this state.

This is a new standard for the government. It is certainly a new standard for this Premier to ensure that such important pieces of legislation are rushed through.

It is important that the Aboriginal Cultural Heritage Bill 2021 is as good as it can be. It is important that such legislation meets the needs of the state and the community and protects Aboriginal cultural heritage, as outlined in the second reading speech. The goals are certainly worthy, including setting up a system with levels in response to different uses of lands. Over 100 clauses of this bill were amended in the last sitting block. It is significant and it is important. There are significant implications not only if the government has it wrong, but also for individuals if they get it wrong or misunderstand the implications. Hefty fines for not only individuals, but also bodies corporate of up to \$10 million and imprisonment are attached to this proposed legislation. These are obviously very serious matters. It promises to stop another Juukan Gorge situation. We certainly hope it will achieve that important goal. Since the principal bill was drafted under the last government, 100 changes have been made. As the Premier stated in Parliament today, the government will not seek any amendments. The Premier is obviously not interested in the opposition's opinion and the feedback we are getting from our communities. We can only assume that the Premier believes this government has done its due diligence and that the bill is perfect. If it is not, as the Leader of the Opposition has stated, the proposed legislation will have far-reaching implications. The bill promises much. All of the unintended outcomes will fall on the shoulders of this government.

I will finish where I began, which is to express my dismay at the government's approach to important matters such as this. We have seen it already in the bypass and/or removal of regional representation. We are now seeing it again with very worthy and important pieces of proposed legislation. I back the comments made by my colleagues in the opposition. It is not just an insult to Parliament and the opposition; it is also an insult to the broader community of Western Australia that the government has found it appropriate to take such an approach to such important pieces of legislation. I will leave my comments there. I look forward to listening to other members in this place.

MR R.S. LOVE (Moore — Deputy Leader of the Opposition) [8.34 pm]: I, too, would like to speak to the Aboriginal Cultural Heritage Bill 2021, which is being discussed cognately with the Aboriginal Cultural Heritage Amendment Bill 2021, which is on the financial situation. As we know, the need for these bills was highlighted very starkly by the destruction of a truly ancient site in the Juukan Gorge.

I remember when the Taliban exploded the buddhas in Afghanistan and the outrage around the world that those monuments, which were thousands of years old, had been destroyed, yet here in Western Australia a monument that was 45 000 or some multiple tens of thousands of years old—who knows and how can we know?—was destroyed under the legislation that existed on 24 May 2020. That, more starkly than any other matter, showed the need for appropriate legislation to protect Aboriginal heritage in our state. We know that 50 years ago our state had

Dr David Honey; Ms Mia Davies; Ms Libby Mettam; Mr Shane Love; Mr Vincent Catania; Acting Speaker; Mr Peter Rundle; Dr Tony Buti; Deputy Speaker; Ms Divina D'Anna; Mr Bill Johnston

been a leader in developing legislation to protect Aboriginal heritage. We were one of the first states to adopt such legislation. It was considered a game changer at the time. However, over the years it became viewed as a mechanism for allowing the destruction of Aboriginal heritage rather than its protection. Following the incident at Juukan Gorge, the federal Parliament conducted a review, headed by Warren Entsch, that looked at a range of issues.

The minister is giggling. I do not know what I am saying that is so funny. I am talking about a fairly serious matter. A member interjected.

Point of Order

Mr V.A. CATANIA: The member for Bassendean, who has been here for a while, should know that he cannot interject when he is not in his seat. If you can direct him to sit in his seat and perhaps be quiet and listen to the member for Moore.

The ACTING SPEAKER (Ms M.M. Quirk): We do not need to have a dialogue across the chamber. There is no point of order. I am sure that the minister is mindful that he is not in his seat.

Debate Resumed

Mr R.S. LOVE: This is a very serious matter. Both sides of the house want legislation put in place that recognises and protects Aboriginal heritage in a workable framework so that the state's economic opportunities can be realised. I think we should all be on the same page. I do not think it should be a matter of one side being against the other. Unfortunately, that side seems to turn everything into an adversarial contest, whereas on our side we are willing to work with the government. It is very difficult to work with the government when the amount of information in the bills, the explanatory memorandum and associated documents was provided to us only yesterday afternoon.

Mr M. Hughes interjected.

The ACTING SPEAKER: Member for Kalamunda, we do not need to hear from you.

Mr R.S. LOVE: Excuse me, but there are long-established processes in place in Parliament, created over hundreds of years, in which there is respect for both sides of the Parliament.

Mr M. Hughes interjected.

The ACTING SPEAKER: Member for Kalamunda!

Mr R.S. LOVE: Whether in government or opposition, we have respect for the processes of Parliament.

Mr V.A. Catania interjected.

The ACTING SPEAKER: Member for North West Central, we do not need to hear from you either.

Mr R.S. LOVE: One of those processes allows the opposition—the other side—a number of weeks to access the documents they will be debating. Generally speaking, it is three weeks under our standing orders, unless there is an urgent reason. Today, we had a motion to proclaim these bills urgent when there is no urgency to get them through Parliament in a few weeks. This discussion has been going on for years. This side of the house has been given very little information from the government about the discussion. Today, the Premier and others said that there was some support in 2020 for proposed bills that looked a bit like these ones but not quite because there have been 100-plus changes since then. The discussion was that Hon Terry Redman and Mr Zak Kirkup agreed that it was a good thing. Members should look around. Where are they? They are not here. There needs to be an understanding that corporate knowledge has been diminished.

Dr A.D. Buti: You're right there.

Mr R.S. LOVE: It is a fact of life. Terry Redman is not here. I wish he was, but he is not. Zak Kirkup is not here. I wish he was, but he is not.

Ms S. Winton interjected.

Mr R.S. LOVE: This is not a joke.

Several members interjected.

The ACTING SPEAKER: Members!

Mr R.S. LOVE: Those people who may have been intimately involved in the discussion in 2020 are not here. In 2020, I was not responsible for this area. The member for North West Central was probably not responsible for this area. Members have to understand that we start again in a new Parliament. In the new Parliament, we were given this

Dr David Honey; Ms Mia Davies; Ms Libby Mettam; Mr Shane Love; Mr Vincent Catania; Acting Speaker; Mr Peter Rundle; Dr Tony Buti; Deputy Speaker; Ms Divina D'Anna; Mr Bill Johnston

information to digest in a few hours, at a time when the Leader of the Liberal Party and I were considering another matter during consideration in detail until 11 o'clock last night.

How on earth can the government expect us to digest all this information in that length of time? It is obscene for the government to put the legislation forward as urgent. There was absolutely no need for the government to declare this legislation urgent. We could have looked at this legislation, digested it and discussed it with key stakeholders, Aboriginal communities, landowners, miners and infrastructure providers—a whole range of people. We have not had that opportunity. I genuinely did not see this bill until yesterday. I had not seen consultation drafts or anything else until yesterday. That was the first time it was made available to me. Why does this legislation have to be rushed through in this length of time? I would have thought a reasonable process would be to read the legislation into the house and let it sit until the new year for further discussion. Let us go back to our communities, the stakeholders and the Aboriginal communities and discuss it.

People representing corporations and communities with Aboriginal interests have emailed me. People within my electorate are unhappy with this bill. Aboriginal people are unhappy with this bill. It has been implied that private landowners will be unhappy with this bill. I have had no ability in the time I have to discuss this legislation with anybody. I cannot talk to those Aboriginal communities, landowners, farming groups, mining groups or anybody else because there is no time. We are discussing it tonight. We will be going through some of the clauses in these bills tonight. Truly, I do not understand why the government would do that. Maybe during his summing up, the minister representing the Minister for Aboriginal Affairs could explain to the house why this legislation had to be considered in this way. It is disrespectful to not only us, but also to our communities and the people who are vitally interested in this—the Aboriginal people, the mining companies and the farmers, who might not even know it exists.

Parliament has standing orders. Those standing orders generally require that when a bill is introduced, it goes on the notice paper, it is read into Parliament and it sits there for three weeks so members can go away, understand what is in the bill, discuss the measures with members of their community and then come back and make considered decisions and have considered discussions.

We will go through the consideration in detail stage tonight and I will be wholly relying upon the member for North West Central because he has been looking at the bill. That is all he has been doing today.

Ms S. Winton interjected.

The ACTING SPEAKER: Member for Wanneroo!

Mr R.S. LOVE: In all honesty, I cannot even contemplate trying to understand the implications of everything in this documentation in the time I have been given. Frankly, I cannot. All I can do is look at some of the high-level discussions around this matter and make a contribution on that. I am not the key speaker in this area; that is the member for North West Central, but even he has not been provided with the opportunity to understand everything that is in this bill to go through that. We were given a briefing by members of the minister's department and advisers at which we were still not furnished with the bill. That was yesterday. We were given a series of PowerPoint-type slides that outlined what may or may not happen and discussed the fact that a lot of regulation would have to be drawn up. I remind members that in pretty much most Parliaments, since time immemorial, the government has controlled the lower house. Both houses of Parliament can move a disallowance motion against a regulation under their standing orders, but because the government controls the numbers in the lower house, it virtually never happens in the lower house. It occasionally happens in the upper house because a group of crossbenchers, together with the main opposition of the day, if everyone is aligned, can overrule a decision of government. That is why we have a house of review. Members opposite clearly do not understand the difference between the two, given what happened last night, but that will not happen in this case.

Regulations will be drawn up, and there will not be any oversight over those either. Certainly, not a lot of information about what will be contained in those regulations was given yesterday. Those regulations go to how people will be able to conduct their business in Western Australia after this becomes law, which it inevitably will.

The ACTING SPEAKER: Member for Vasse and member for Cottesloe, I imagine the member for Moore might find your chatter somewhat distracting.

Mr R.S. LOVE: I always appreciate the contributions of the member for Vasse, but I thank you for your ruling.

Let us go back to when this all began, in a way. As we know, back on that fateful day on 24 May 2020, there was an explosion of the very ancient caves at Juukan Gorge and a loss of culture ensued. I can understand a little of the loss of those custodians, but I cannot fully appreciate that loss. That is just something that is immeasurable. It was not a loss for just Aboriginal people. To lose something that ancient is a loss for humanity. We need to ensure that those sorts of things do not happen in the future, but we are being told that this legislation will not prevent it from happening. That came through in the briefing we had yesterday. There is no guarantee that it cannot happen again under this legislation. That is a concern, I must say, that I have.

Dr David Honey; Ms Mia Davies; Ms Libby Mettam; Mr Shane Love; Mr Vincent Catania; Acting Speaker; Mr Peter Rundle; Dr Tony Buti; Deputy Speaker; Ms Divina D'Anna; Mr Bill Johnston

The other concern I have is that we will set up a process whereby it is incumbent upon everybody who wants to do something in the state to ensure that they carry out due diligence to see that they are not damaging Aboriginal cultural heritage, but without any clear guidelines for how that can be achieved. It is a no-win situation. It is like a blind person stumbling around in the dark. There are no clear guidelines on where to go. That is what worries me about what has been presented to the opposition. I do not want to see constituents of mine who are farmers, miners or, in the case of local government, road builders unknowingly interfering with other constituents of mine, who are traditional custodians of ancient Aboriginal sites, because they are unaware of how to go about the process of due diligence. It is not explained sufficiently —

Dr A.D. Buti: It is.

Mr R.S. LOVE: It certainly was not explained to me in the briefing how that process will be defined or how significant sites will be identified and how that will be done in a meaningful sense. For instance, people will go about their operations on a farm and will not have been told whether ploughing a paddock or deep ripping it next year will be exempt from some of the provisions of the principal bill. Even with the best will in the world, I do not know how people will know how to go forward safely without exposing themselves to extreme penalties. The penalties in the principal bill include a \$10 million fine for a corporation and a \$1 million fine for an individual, and five years' jail.

[Member's time extended.]

Mr R.S. LOVE: There are real worries for people in these bills. In a way, the language mirrors language in other oil and gas exploration legislation that tries to reduce risk and do things that are reasonably practicable. Some organisations understand that language, but the average landowner does not understand it because they do not share the experience that engineers and HR experts have in large corporations, for instance in safety, when talking about reducing things to the lowest risk as far as practicable. People in those industries understand that language and how things work. But I am not sure that the people who are going to get caught up in this will know how it will work, and that raises some flags for me. Bear in mind, as the member for North West Central said, we are not opposing or supporting the bills at this stage because we have not been given a decent opportunity to interrogate what is in them. The principal bill is huge. It has huge implications for people.

A federal parliamentary committee investigated the circumstances around Juukan Gorge. I have here a critique done by Norton Rose Fulbright in October this year—so it is quite recent—on the report *A way forward: Final report into the destruction of Indigenous heritage sites at Juukan Gorge*. A quote from the report is mentioned in this publication, but I am sure it is from the actual report. It states —

“It is time for the legislative frameworks to catch up to the nation that now understands its Aboriginal and Torres Strait Islander heritage in a way that it perhaps never has before. It is time to get rid of the multiple, complex and confusing legislative regimes referencing Aboriginal and Torres Strait Island heritage—particularly those that cover this heritage as part of the environment, harking back to a time when, offensively, Aboriginal and Torres Strait Islander people were classified as ‘flora and fauna’ It is time to recognise and protect the Aboriginal and Torres Strait Islander past, present and future cultural heritage as a unique and valuable part of our nation.”

I am sure we all agree with those sentiments, but I am not sure that this bill gets to the nub of that. I have not had time to interrogate the bill fully myself. I am entirely reliant upon the good work of the member for North West Central in doing so, simply because we would normally have three weeks to interrogate this bill. That is what the Parliament is about. It is about actually giving people time to go back to their communities and to go backwards and forwards and say, “This is what we think it means. What do you think? What are your concerns? Tell us what you think.” We have had none of that. We have had hours, not weeks, in the middle of a frenetic parliamentary week, in which we have already pushed through legislation into the late evening last night and with the other place sitting until the early hours of the morning, all on the basis of supposedly important legislation. We spent all last night talking about bikie insignias and whether they should be covered over, but actually that is small beer compared with the important matters that are being discussed in this legislation, in which we are talking about heritage that is tens and tens of thousands of years old and its interaction with the economic development and wealth of this state. The government has wasted our time talking about bikie insignia when it could have been honest, introduced this bill in an appropriate way and allowed us to fully consider and discuss it in an appropriate way. I cannot and will not try to go through this bill clause by clause based on having had it in my hand for a couple of hours. That is disgraceful. Every one of the government members sitting here must realise how disgraceful that is. We have genuinely not had access to this legislation, we have not been involved in the consultations that the government has had with the community, we have been deliberately shut out of any information about this bill in all the time it has been developed, and yet here we are, looking at this bill. We know the imperative. The imperative comes from the *A way forward* report. We can condense it down to three key findings of that report.

The ACTING SPEAKER: Member, for the purposes of *Hansard*, you might want to give the name of that report.

Dr David Honey; Ms Mia Davies; Ms Libby Mettam; Mr Shane Love; Mr Vincent Catania; Acting Speaker; Mr Peter Rundle; Dr Tony Buti; Deputy Speaker; Ms Divina D'Anna; Mr Bill Johnston

Mr R.S. LOVE: I have an article here titled “A Way Forward, Juukan Gorge Final Report”. It is a critique of the commonwealth government’s report by Norton Rose Fulbright. I will provide it to *Hansard* at the end of this discussion. This article suggested there were three key findings in the report. The first is that there should be a national framework. The article states —

The Australian Parliament should legislate for an overarching Commonwealth legislative framework based on the protection of Heritage, rather than its destruction, and in-line with the principles set out in section 7 of the Report. State and territory legislation should also be required to meet these principles.

What we have here is a rush to get something in place to appease the commonwealth. That is what we are doing here. The government is seeking to appease the federal government and its report. The report asks the state government to put in place legislation; if it does not, the commonwealth will come in and legislate over the top of it. That is the reason for this rush. But that does not obviate the government’s responsibility to ensure that members of Parliament who are going to discuss the bill have a decent opportunity to look at the bill. I am pretty sure that the commonwealth Parliament is not going to come and legislate over the top in the next few weeks. There is no reason we cannot have an opportunity to look at this bill in some detail and go back to our Aboriginal, farming, mining and infrastructure-providing constituents and talk about these matters. I am not taking anyone’s side here. I want to see a good outcome. I want to see Aboriginal heritage protected, but I want to see it protected under a framework that actually works for us all. That is all I want, but I have no idea what is in this bill. I am relying entirely on the member for North West Central to carry us through this.

Several members interjected.

Mr R.S. LOVE: I will expect the minister representing the Minister for Aboriginal Affairs to explain every clause of this bill as we go through.

Dr A.D. Buti interjected.

Mr R.S. LOVE: Well, I will be calling for it. If the minister does not, I will, because we have not had an opportunity to interrogate this bill, so it is the minister’s responsibility to explain it all the way through.

Dr A.D. Buti interjected.

Mr R.S. LOVE: I will speak now. The minister can speak all he likes in reply.

Dr D.J. Honey: Call him three times!

The ACTING SPEAKER: Member for Cottesloe, I do not need your advice, thanks very much.

Mr R.S. LOVE: The other matters that the authors of the article on the report thought were of great importance included heritage standards. The article states —

The Commonwealth, state and territory governments should endorse a set of standards that set best practice in the management of Heritage sites and objects and the development of cultural heritage management plans.

I have no problem with that. With regard to economic benefits, the article states —

The economic benefits of protecting and celebrating Heritage sites should be promoted ...

I will be interested to hear the minister explain how these objectives in the report will be achieved, because from what I can see, if the state government cannot do these things, the commonwealth government will perhaps go over its head and ensure that it does. This is typical of this government in so many ways. It is disregarding processes that have been built up over generations to ensure that we have considered debate that leads to good outcomes for the whole of Western Australia. Instead of that, the government today said, “We’ve been consulting on this bill for years; it’s not new. Hon Ben Wyatt put a bill forward and Terry Redman and Zak Kirkup were happy with it. Maybe they were, but they are not here now. I do not know that Terry and Zak thought or what they knew, but we do not have that knowledge. It is impossible for us to consider this bill without that corporate knowledge. Given that there have been more than 100 changes to the bill since that time, I would have thought a few weeks to consider and discuss the bill and to respect the process would not have been too much to expect.

One thing I know from dealing with people from an Aboriginal background is that they value respect. They like to be respected and they like their processes to be respected. They like discussions that are not rushed, but the government has put in place a rushed discussion and has shown no respect for the opposition, for Aboriginal people or for other users of land in Western Australia because it is trying to rush through within a few hours a debate and discussion that should take weeks if not months. What for? Is it for a headline grab before Christmas? Perhaps the government knows something I do not know about commonwealth government legislation that is primed and ready to go, but I do not think it does. I think this is just a ridiculous push by the government to put this bill through before Christmas for its own political ends. It has no regard for the better interests of the Indigenous people of Western Australia or the better interests of all the people of Western Australia. It is absolutely disgraceful that it is trying to do this in this manner, and I think it should be condemned for it.

Dr David Honey; Ms Mia Davies; Ms Libby Mettam; Mr Shane Love; Mr Vincent Catania; Acting Speaker; Mr Peter Rundle; Dr Tony Buti; Deputy Speaker; Ms Divina D'Anna; Mr Bill Johnston

MR P.J. RUNDLE (Roe) [9.04 pm]: I certainly rise to agree in general with some of the member for Moore's comments and those of the member for North West Central today. I thought some of his comments were appropriate.

I have to say that I have been in here for only five years as the member for Roe, but it is a disappointing day. To me, it is the second sign of democracy being hijacked by this government. The first time was due to the Constitutional and Electoral Legislation Amendment (Electoral Equality) Bill. The process for that was an absolute disgrace. The Minister for Electoral Affairs came in here on the first or second day of the new sitting and decided to change the whole program and implanted his Ministerial Expert Committee on Electoral Reform comprising people who already had their ideas on electoral reform, and he proceeded to basically wipe regional representation from the upper house. That was a terrible hijacking of democracy. This example is almost as bad, if not worse. I think one or two government members spoke on the electoral reform debate. I remember the contribution of the member for Bunbury, who said there was no point to the upper house and it did not contribute anything anyway. I disagree with the member for Bunbury; the upper house is important. He is obviously retiring because I would have thought that that will finish his future in the party. That was the first example.

I am looking forward to the contribution of the member for Kimberley. It appears to me that everyone has been gagged again. We are allowed to have one speaker out of the 53 members opposite—one speaker—because we have to ram this legislation through before Parliament rises for the year. It is a hijacking of democracy. I thought the member for North West Central put it very well today when he said that the Premier is now the big kid in the sandpit kicking sand over everyone. He comes in here every day in question time abusing people left, right and centre, giving people a spray, and I include in that his effort yesterday. I notice there was an article in *The West Australian* online about him calling people deranged and the like.

Point of Order

Dr A.D. BUTI: On the issue of relevance, Mr Deputy Speaker, we have been very tolerant. The member for Roe has not mentioned the bill once and is going on with nothing to do with the bill.

The DEPUTY SPEAKER: There is no point of order. The member has the ability to respond to comments that have been previously made regarding this. Carry on, member for Roe.

Debate Resumed

Mr P.J. RUNDLE: Thank you, Deputy Speaker. I like the Minister for Lands' allegiance to the Premier, but it has been disappointing when schoolchildren have been in the gallery to see some of the displays from the Premier over the last few days and weeks. Once again, this is a demonstration that everyone opposite has to toe the line. I believe that there will be only one speaker out of 53 Labor Party members talking about one of our most important bills—the Aboriginal Cultural Heritage Bill 2021.

I have to agree with the member for Moore that it is almost impossible to comment because we have not had time. I know the member for Moore is putting a lot of pressure on the member for North West Central with the amount of research he has had to do in a very short space of time, and we are very much relying on the member for North West Central, but it is unfair and it is not right. As the member for Moore said, we had about a 45-minute briefing of the overview before we had even seen the bill and before we were bumped out of the room by a meeting of the upper house Labor Party caucus. We could not even finish that briefing before we got booted out of the room. That is a demonstration of the hijacking of democracy.

I am not sure what consultation there has been because I have not had a chance to talk to anyone. We have heard all these figures. We heard the Premier quote them today—175 workshops, 380 submissions and 35 locations. There were supposedly 1 500 people involved, but what is the breakdown of those people? The opposition was certainly not in any of those categories, because we have had absolutely no consultation. It is a real disappointment to me. I would love to have spoken to some of the elders in my communities of Katanning, Gnowangerup, Kojonup, Esperance and the like. I have had no opportunity whatsoever, so I have no idea, except for a few little points.

When I woke up this morning, the first thing I heard about was the late night sitting to pass the electoral reform legislation and the Leader of the Opposition commenting that regional representation had been ripped out. That was spot on. The next thing I heard was Dr Hannah McGlade from Curtin University expressing her disappointment at this whole process and saying that she did not believe the current bill was up to scratch. The Minister for Aboriginal Affairs will have the final say when traditional owners and mining companies cannot agree. These are some of the quotes in the ABC article by Rhiannon Shine. The author also referred to Dorinda Cox, the new Greens senator, whom I met a few weeks ago when she was sworn in in the Legislative Council. Her family is also originally from Kojonup. I had a quick chat to her that day. I would like to have spoken to her about this as well. She is calling for 100 per cent of the new Aboriginal Cultural Heritage Council to be First Nations people and for the removal of the minister's final say in circumstances in which traditional owners and mining companies cannot agree. She said that under the bill, the minister's ability to approve the destruction of cultural heritage when parties cannot reach

Dr David Honey; Ms Mia Davies; Ms Libby Mettam; Mr Shane Love; Mr Vincent Catania; Acting Speaker; Mr Peter Rundle; Dr Tony Buti; Deputy Speaker; Ms Divina D'Anna; Mr Bill Johnston

agreement does not meet the principle of free, prior and informed consent. She said that there is still a lot of mistrust and trauma after the Juukan caves were destroyed. She is also concerned about the new laws. They are examples of people from my electorate and close to my home town I would like to have spoken to. I would love to have had the opportunity to engage with them after I had read the mountain of paper that none of us have had time to read. It is a sad day.

There is one thing that I would like to ask the minister, and no doubt we will be able to do that in consideration in detail. I am really concerned about how this will affect not only many of my farming constituents, but also landholders of properties over 1 100 square metres. What are the implications? We see that there are four tiers. Tier 1 activities might be things like metal detecting and weed control. Tier 2 activities might be digging the ground with hand tools. People who want to do work on country would have to let Aboriginal people know before they applied for a permit. If I want to dig a trench to put in a piece of pipe on my farm, will I need an Aboriginal cultural heritage permit for a tier 2 activity? If I want to build another dam on my farm, will that be a tier 3 activity? It seems to me that if an activity involves digging the ground with machines—like drilling and mining—for which I need a bulldozer and a drill to drill through to check for any groundwater or the like, I will need a plan that has been agreed to by the Aboriginal cultural heritage service and the minister—the whole package. I imagine my constituents will be asking me these questions. To be honest, I would like to have had time to consult with them on the bill.

I find it quite disturbing that just about every piece of legislation, such as the Animal Welfare and Trespass Legislation Amendment Bill 2021, appears to include the power to enter places. A pattern seems to be developing with this government. Every time it puts up a piece of legislation, it adds at the end powers of inspection. We have the animal welfare bill coming up for debate and the member for Cottesloe was worried about the union powers of inspection in the Industrial Relations Legislation Amendment Bill 2021. In this bill, division 3, clause 231, “Power to enter places”, states —

- (1) For inspection purposes an inspector may do any of the following —
 - (a) ... at any time enter a place that is not a dwelling;
 - (b) at any time enter a dwelling with the informed consent of an occupier of the dwelling;

If an inspector does not get consent, they can potentially seek that consent by warrant.

A pattern is developing with this government of not consulting and not talking to the opposition. Okay; I do not expect the government to give us 12 months of consultation, but I do expect it to show some courtesy and at least give us a chance to go through the bill, rather than give us a 35-minute briefing on some sort of overview.

Ms M.J. Davies: They only need to follow the rules. We’re not asking for anything special.

Mr P.J. RUNDLE: That is right. It is an abuse of the parliamentary process, as far as I am concerned, but we will no doubt see this happen in times ahead. I think the people of Western Australia are starting to scratch their heads and say, “What have we done?”

I do not think I need to go on too much longer. The member for Kimberley’s contribution will be very interesting. I am looking forward to it. I am interested to hear her comments about the people she represents and whether she agrees with the Kimberley Land Council. Hopefully, she has had more of an opportunity to look at this bill than the member for North West Central and I have had.

As I said, Deputy Speaker, for me, it is more about the opportunity to get feedback from some of the traditional owners in my neck of the woods. I would love to have spoken to Dwayne Reynolds from the Esperance Tjaltjraak Native Title Aboriginal Corporation, Robbie Miniter from Gnowangerup and Dorinda Cox from Kojonup.

Dr A.D. Buti: Why didn’t you?

Mr P.J. RUNDLE: We had not even seen the bill. How could I talk to someone about something I did not know anything about?

Mr V.A. Catania interjected.

The DEPUTY SPEAKER: Member for North West Central!

Mr P.J. RUNDLE: How could I speak to someone about something I did not know anything about? How could I ask intelligent questions when I have not even had the chance —

Ms S. Winton interjected.

Mr P.J. RUNDLE: What a disgrace.

Mr V.A. Catania interjected.

The DEPUTY SPEAKER: Member for North West Central!

Dr David Honey; Ms Mia Davies; Ms Libby Mettam; Mr Shane Love; Mr Vincent Catania; Acting Speaker; Mr Peter Rundle; Dr Tony Buti; Deputy Speaker; Ms Divina D'Anna; Mr Bill Johnston

Mr P.J. RUNDLE: Let us hear a contribution from the member for Wanneroo. Instead of yelling and shouting, let us hear a considered contribution about the Aboriginal Cultural Heritage Bill 2021. My main emphasis is that there has been a lack of consultation and that a pattern is developing, which we saw with the electoral reform bill and now with the Aboriginal Cultural Heritage Bill. The pattern developing here is like the one I mentioned the other week in the forestry scenario: cut first, consult later. The pattern is still developing. I look forward to the contribution from the member for Kimberley, and I would be more than happy to listen to the contribution of any other of the 53 members sitting opposite us.

MS D.G. D'ANNA (Kimberley) [9.20 pm]: Before I start, I would like to acknowledge the traditional owners of the land on which we are gathered today, the Whadjuk people of the Noongar nation, their leaders, past, present and emerging. Today I rise in this place to speak on an important piece of legislation for Aboriginal people across the state, the Aboriginal Cultural Heritage Bill 2021.

Firstly, let this place remember it was the previous Liberal–National government that continuously reduced protection of Aboriginal heritage and culture through reinterpreting definitions in the Aboriginal Heritage Act to minimise the number of new sites. This meant that over 1 000 sites were blocked from gaining protection. It is pretty easy to stand up and say we should close the gap, but let us remember that actions speak louder than words.

For almost 50 years, we have been operating under the 1972 Aboriginal Heritage Act. It is important to remind ourselves of where we were and where we are today—to remind ourselves of how far we have come and how hard Aboriginal people have fought for recognition and rights for our mob. Nineteen seventy-two is the year the Tent Embassy was established outside Parliament House in Canberra, the year that the Whitlam government was elected and the White Australia policy abolished after being in place for over 60 years. With this, self-determination was adopted as a policy for Indigenous people. Nineteen seventy-two was a year marked by sweeping changes by a Labor government. We also have to remember moments in history that had not happened yet when the 1972 act was drafted. After years of struggle and lobbying, Vincent Lingiari was given back his land by Australian Prime Minister Gough Whitlam.

Nineteen seventy-six, the year I was born I might add, is the year the Aboriginal Land Rights (Northern Territory) Act was passed. This was the first legislation in Australia that enabled Aboriginal people to claim land rights for country where traditional ownership could be proven. Uluru, a significant place, recognised as an icon for physical Aboriginal culture across the world and more recently associated with the Uluru Statement from the Heart that called for voice, treaty and truth, had not yet been handed back to traditional owners. That actually happened in 1985. Twenty years after the 1972 act was passed through this place was the Mabo decision by the High Court of Australia, in which it overturned terra nullius and recognised traditional ownership through native title.

I understand that at the time of its introduction, the 1972 bill was widely recognised as the most comprehensive piece of Aboriginal heritage legislation in Australia, but now we are living in a different time. Now is a time for a new act. What highlighted this was something quite recent. In 2020, a mining company destroyed two 46 000-year-old sites in the Juukan Gorge to extract \$135 million worth of iron ore. Is \$135 million worth the permanent destruction of a people's culture? Is \$135 million worth what the experts are calling one of the worst cases of the destruction of an archaeological site in recent memory?

What breaks my heart and the hearts of so many Indigenous and non-Indigenous Western Australians is that this blasting was legal. That is right. It was legal under what we currently know as a section 18 exemption under the Aboriginal Heritage Act 1972. As the world looked at Western Australia and saw a mining company blow up Juukan Gorge with the consent of the state government, I felt shocked, I felt sad and I felt angry. How could this be allowed to happen? How could this be legal? As the *Never again: Inquiry into the destruction of 46,000 year old caves at the Juukan Gorge in the Pilbara region of Western Australia—interim report* highlighted, there were a lot of things that contributed to the destruction of the shelters. The Puutu Kunti Kurrama and Pinikura peoples faced a perfect storm with no support or protection from anywhere. They were let down by Rio Tinto, the Western Australian government, the Australian government, their own lawyers and native title law. The report also mentioned that the Western Australian legislation that enabled the destruction of Juukan Gorge is woefully out of date and poorly administered.

Then, closer to home, in the East Kimberley, a company damaged the snake dreaming, which manifested in the granite that they dug up, chopped up and shipped to China—"intangible heritage", as it was referred to. I note that one of the members opposite could not understand what intangible heritage meant. Traditional owners were worried that the area was close to men's and women's sites along the creek. The death of a senior Aboriginal man soon after is believed by his family to be linked to the damage to the snake dreaming. This is an example of how seriously Aboriginal people take their cultural heritage. Although the minister at the time had declined the section 18 application, it did not stop the permanent damage that was done. This shows the weakness of this old, 1972 act. This should not have happened. Damage cannot be undone. Damage is permanent. Once destroyed, it is gone forever, and no law can undo what has been done to something that had existed for thousands of years. There were no consequences

Dr David Honey; Ms Mia Davies; Ms Libby Mettam; Mr Shane Love; Mr Vincent Catania; Acting Speaker; Mr Peter Rundle; Dr Tony Buti; Deputy Speaker; Ms Divina D'Anna; Mr Bill Johnston

for the destruction of this culture. This is just one example of the importance of and need for new offences, penalties and stronger enforcement options.

At a recent gathering of traditional owners from across the Kimberley, I had the privilege to catch up with many of the mobs that had come together to talk about many things and to express their concern, and were calling to ensure that Aboriginal cultural heritage is protected for future generations. The theme of this gathering was “Culture is Now”. There is no better time to protect the oldest living heritage and culture in the world. This reminded me of the privileges and honours I have experienced in my life, going out on country with traditional owners from many groups across the Kimberley. I have seen special places and heard some of the stories spoken with pride and a strong connectedness to places, songs and dances that our old people and knowledge holders have shared to not only pass them on to the next generations, but also make sure that the importance and relevance of their culture and heritage is protected and managed—by them.

I remember a story of hurt felt by a group of traditional owners, a story about some visitors to a beautiful area along the Kimberley coast, a place that I have visited. It is a place that is not mine to share but is important to acknowledge. This place was important to the traditional owners because it was a burial site of their ancestors. To outsiders, it was bones in a cave. These people visited this place, not accompanied by the local people. These visitors took photographs of the bones at the back of the cave, but they were too far back to get a good photo. They moved the bones forward for a better photo and then moved them back. This was disrespectful and unacceptable. It is just one of the stories that I know of. Imagine how many other stories like this are out there. This shows how an impact on cultural heritage can be enormous, even if the activity is not mining or exploration, but digging a hole in your backyard or just going for a bushwalk out the back.

I acknowledge that people are concerned that the principal bill may not have gone far enough. There is always more to do, but the Aboriginal Cultural Heritage Bill 2021 has progressed further than the 1972 act. It is a step closer to finding a balance between heritage protection and economic benefit. In recognition of the complexity of this balancing exercise, the principal bill includes a review clause of the operation and effectiveness of the act, in five years or less, and then every five years after that. This will allow us to keep working on improving legislative protections for cultural heritage. I am looking forward to seeing a strong commitment by the government going forward in the co-design process of the regulations and details of the implementation of these new bills. It will put local traditional owners and knowledge holders of the area at the table when discussing possible impacts on their culture and heritage.

Over the past years, we have been fighting for recognition and rights. Now Aboriginal people will be at the centre of the decision-making process. Traditional owners from their country will be given control and autonomy over protecting their country and their stories. They will participate in their own self-determination and economic futures. They will have a voice in the management of our culture and heritage.

For us Aboriginal people, culture underpins all of who we are. It comes in many forms. It gives our lives structure, meaning and purpose. It guides how we live and work with each other, and with our surrounds. Culture ties us to our ancestors and makes us feel like we belong. It makes us feel connected to our country. It makes us feel connected to the generations that have come before and that will come after us. Culture builds our self-worth and our resilience. Culture heals us when we are in times of darkness. Culture makes us us.

While I am here in this place, and going forward, I will continue to advocate as an Aboriginal woman from the Kimberley and as a member of the Parliament of Western Australia. I would like to put members opposite on notice: do not underestimate me or speak on my behalf. Thank you, Deputy Speaker.

DR A.D. BUTI (Armadale — Minister for Finance) [9.35 pm] — in reply: I commence by congratulating the member for Kimberley for one of the most powerful speeches I have heard in my 11 years in Parliament. She made a very valid point when she said to the opposition, “Don’t tell me what I should say or what I should think.” A number of times in their response, opposition members kept saying that they were looking forward to hearing what the member for Kimberley had to say and what her people had to say. She told members what she thinks of these bills and she told members what these bills do, so I think they now know what the member for Kimberley’s position is, and that is to support the bills before the house.

Several members interjected.

The DEPUTY SPEAKER: Order, members!

Dr A.D. BUTI: Before I respond in a more methodical way to the contribution of the opposition, I want to make some general points.

Ms L. Mettam interjected.

The DEPUTY SPEAKER: Order, Deputy Leader of the Liberal Party!

Dr David Honey; Ms Mia Davies; Ms Libby Mettam; Mr Shane Love; Mr Vincent Catania; Acting Speaker; Mr Peter Rundle; Dr Tony Buti; Deputy Speaker; Ms Divina D'Anna; Mr Bill Johnston

Dr A.D. BUTI: As a member of the Labor Party, I will never be told by a conservative how Aboriginal people should be treated or how their rights should be protected.

Dr D.J. Honey: We won't be told by you, either.

Dr A.D. BUTI: I beg your pardon, member for Cottesloe.

Dr D.J. Honey: We won't be told by you, either. We will interrogate this bill properly.

Dr A.D. BUTI: The member said that he does not know about it.

I will go back to Richard Court, who tried to wipe out native title in Western Australia.

Several members interjected.

The DEPUTY SPEAKER: Order, Leader of the Liberal Party!

Dr A.D. BUTI: When we had the most important legal decision in Australian jurisprudential history—the Mabo decision and the Keating government's enactment of the Native Title Act—what did Richard Court's conservatives try to do? They tried to wipe it out. It was challenged in the High Court and what was the result? It was 7–0. Even the dissenting judge in the Mabo decision, Justice Dawson, voted against the WA legislation. Do not try to tell us how to protect Aboriginal rights in Western Australia. Member for Cottesloe, shake your head because that is all you know what to do because you know nothing.

Dr D.J. Honey: You are offensive for no reason.

Point of Order

Mr W.J. JOHNSTON: The member for Cottesloe has been interjecting continuously since the minister has been on his feet. He has been on his feet for only 120 seconds and the member for Cottesloe has not stopped talking once.

Dr D.J. Honey: That is not true.

The DEPUTY SPEAKER: It is close to the truth, but you are not the only one who has been talking for that 120 seconds. If the minister could be heard in silence, that would be greatly appreciated.

Debate Resumed

Dr A.D. BUTI: The current federal conservative government is trying to make it harder for Indigenous people to vote by bringing in a bogus ID requirement straight out of the Trump playbook. That is where it comes from. We have not heard one dissenting voice by members of the opposition criticising their federal colleagues.

Going back to the history of the Aboriginal Heritage Act 1972, when Dr Hames was the Minister for Indigenous Affairs back in 2014, he sought to bring in amendments to the 1972 act. It is really interesting what he sought to do. We had the Aboriginal Cultural Material Committee, but there was no requirement for that committee to have Aboriginal membership and there was no requirement to consult with Aboriginal people before granting a section 18 exemption—none at all. No consultation was required. The CEO of the department had increased powers under the proposed legislation put up by Dr Hames. What do we have in front of us today? The Aboriginal Cultural Heritage Bill is the most progressive in Australia. The bill provides increased, important and massive consultation with Indigenous people and majority membership of Aboriginal people on the bodies that will determine the protection of Aboriginal culture in Western Australia. What did we hear from the opposition? Criticism, criticism and criticism. It was hard to understand whether the member for North West Central was supporting or opposing the legislation. One minute he was talking about the legislation not providing enough protection for Aboriginal people and the next minute he was talking about the problems with native title and developers. He has a history of this. During estimates this year, he was asking me questions during the Planning, Lands and Heritage section of the budget. When talking about native title, he said —

I want some clarity on this. This is often a major problem in regional Western Australia. It inhibits the growth of any regional town. I am not against native title—do not get me wrong—but when the cost of building in the regions is in the order of 40 to 50 per cent higher than in Perth and the banks make it difficult to get a loan, because the evidence is not often there in the regions, trying to acquire land owned by the state will often end up costing double what it would normally cost in Perth because of the native title settlement requirements ...

Further on, he stated —

At some point there needs to be that line in the sand so we get development and jobs.

Just forget about native title! He stands up in this place pretending that he is protecting Aboriginal people.

Several members interjected.

The DEPUTY SPEAKER: Members!

Mr V.A. Catania interjected.

Dr David Honey; Ms Mia Davies; Ms Libby Mettam; Mr Shane Love; Mr Vincent Catania; Acting Speaker; Mr Peter Rundle; Dr Tony Buti; Deputy Speaker; Ms Divina D'Anna; Mr Bill Johnston

The DEPUTY SPEAKER: Member for North West Central!

Dr A.D. BUTI: The member for Landsdale provided me with an article titled “Negotiating Cultural Heritage? Aboriginal–Mining Company Agreements in Australia”. One of the central theses of the article is that one of the strongest ways to protect Aboriginal culture is by creating equality and increased engagement between Aboriginal people and non-Aboriginal people in discussing what needs to be protected. As we go through this legislation clause by clause, the opposition will come to realise that that is what it does. It provides for an increased consultation process between Aboriginal people and proponents, such as mining companies et cetera. That is what it does.

Mr V.A. Catania interjected.

The DEPUTY SPEAKER: Member for North West Central!

Dr A.D. BUTI: I will now turn to some of the issues that were raised by opposition members in their second reading contributions. I want to address this issue of so-called lack of consultation that was very strongly put by the member for Roe. He has had time to consult people over the last couple of years, but he decided not to by the sound of it. There has been extensive consultation over the last four years. It has not been done over the past two months; it has occurred over the past four years. We have had over 175 stakeholder meetings, and information sessions and workshops have been held over 35 locations throughout the state. The minister and his aides have travelled far and wide to regional and remote locations to consult with all stakeholders, including those in Albany, Carnarvon, Leonora, Meekatharra, Northam, Roebourne and Warburton. Information sessions were held, which were open to all interested stakeholders. Consultation has been undertaken with landowner representative groups. The member for Cottesloe seemed to be obsessed with landowners. He hardly mentioned Indigenous people. The legislation is about protecting Aboriginal culture. He was just going on about landowners. His constituents in Cottesloe probably have holiday homes in various parts of Western Australia.

In 2020 and 2021 alone, at least 12 meetings were held with WA local government associations, including the Western Australian Local Government Association zone, and regional local government authorities from across Western Australia, including some from the Kimberley, the Murchison, the Pilbara, the Gascoyne and the south west. I think the member for Cottesloe has walked out of the chamber, but he spoke about the south west. There was consultation in the south west.

The Pastoralists and Graziers Association was also consulted. I quote from its submission on the consultation draft —

... it is the PGA’s view that the Review of the *Aboriginal Heritage Act 1972*, has met the best practice standards for Phases 1 and 2 and largely met them for Phase 3.

Its qualifier for largely meeting best practice standards as part of phase 3 was the five-week consultation period in late 2020, but, of course, progress has been made since then.

I think the member for North West Central mentioned Slim Parker. There has been extensive consultation and engagement with Aboriginal groups and elders, including Slim Parker, as well as other stakeholders, since the release of the consultation draft. The amendments made to the bill since the consultation draft were the subject of the information sessions held with key stakeholders in August 2021, and these amendments have been publicly available since these information sessions. There has been so much consultation. The former Minister for Aboriginal Affairs Hon Ben Wyatt said he was receiving criticism: people were saying, “You’re consulting, you’re consulting. How about bringing on the act?” He went, if anything, overboard with consultation.

Critics of the bill say that it will not prevent a scenario similar to Juukan from occurring. This is simply not true. These new laws will absolutely deliver better protection of cultural heritage in Western Australia. The government welcomed the recommendations from the federal Joint Standing Committee on Northern Australia’s *A way forward: Final report into the destruction of Indigenous heritage sites at Juukan Gorge*. This government is of the view that the bill strongly aligns with the standards and principles set out in the report and includes many measures to prevent a Juukan Gorge scenario from happening again. The member for Moore wanted to know about that.

The Juukan Gorge incident was a result of flaws in the 1972 act, which we are seeking to address, including the ability to allow the destruction of an Aboriginal site prior to knowing its significance, as well as not having legislated mechanisms in place to manage harm to a site once it is established that the site may have a higher significance, and the inability for the minister to intervene. The bill before the house removes the controversial section 18 approvals process under the Aboriginal Heritage Act 1972, which the 2014 edition by the conservative government did not try to do; it actually made it worse. The bill focuses on agreement-making with traditional owners to ensure that Aboriginal people will be able to negotiate outcomes for projects and opportunities on their lands. That is what this bill is about. It is about negotiations with Aboriginal people. Why would members criticise that? I have no idea.

The bill embeds the principles of free, prior and informed consent, as set out in the United Nations Declaration on the Rights of Indigenous Peoples, in its agreement-making process. “Informed consent” is defined in the bill as

Dr David Honey; Ms Mia Davies; Ms Libby Mettam; Mr Shane Love; Mr Vincent Catania; Acting Speaker; Mr Peter Rundle; Dr Tony Buti; Deputy Speaker; Ms Divina D'Anna; Mr Bill Johnston

consent that is given voluntarily, without any coercion, intimidation or manipulation, and includes full and proper disclosure by the proponent of the method and other feasible alternative methods for carrying out their proposed activities. Once passed, this will be the only legislation in this country that includes a requirement for informed consent. That is why it will be the most progressive piece of legislation in this country.

The bill also includes a clause to limit the circumventing or contracting out of provisions of the proposed act by contractual terms in private agreements between proponents and Aboriginal groups, which are sometimes referred to as gag clauses. Although never expressly contemplated in the Native Title Act 1993, or the 1972 act, nothing had prevented these clauses from being included in agreements between prescribed bodies corporate and proponents. We are removing the ability to use these gag clauses. One of Hon Robin Chapple's greatest criticisms when he was a member of the other place was that after the agreements were made, Aboriginal people were not able to speak out. That will be removed by this legislation. That is a very good thing. I know the member for North West Central is nodding his head; I am sure he agrees that it is.

These gag clauses, which in the case of Juukan were negotiated by the land council of that region as the legal representative, meant that traditional owners were not allowed to speak about their heritage concerns without the permission of the proponent. That is absolutely appalling. The reforms we are debating today mean that proponents will no longer be able to insert gag clauses into agreements with traditional owners. The new law will also ensure that previous gag clauses will have no effect. This is another significant step forward and it will mean traditional owners can once again speak their truth about the places that should never be touched. People, like the member for Kimberley, will be able to speak the truth and protect their cultural heritage.

Under the bill, traditional owners will be able to apply to have areas containing Aboriginal cultural heritage of outstanding significance protected. Protected areas will have the highest protection under the law. Both houses of Parliament will be required to approve the repealing of a protected area or any amendments to reduce the size of a protected area. As suggested by the member for North West Central, these areas cannot be identified and declared before the new legislation comes into effect. That is why the former member for Victoria Park, the former Minister for Aboriginal Affairs, could not understand why members of the opposition criticised the bill and were saying that they were seeking to protect Aboriginal culture.

Declaring protected areas under the 1972 act will likely trigger future act provisions under the Native Title Act 1993, given that the exclusive right to their occupation and use is vested in the Minister for Aboriginal Affairs. This is what the bill seeks to address. Future protected areas declared under the bill will no longer be vested with the minister.

Concerns were raised about the minister's final approval of Aboriginal cultural heritage management plans. This cannot be compared with the minister's approval of a section 18 consent under the 1972 act. They are completely different tools and the consideration when making a decision about a section 18 consent is not comparable. Decisions on ACH management plans will not come to the minister for authorisation, except as a last resort when agreement cannot be reached. Ministerial decision-making will occur only when parties cannot reach agreement and after the Aboriginal Cultural Heritage Council has attempted to mediate an agreement between the parties. Remember, the council will have majority Aboriginal representation. The council will be able to recommend authorisation of a plan to the minister only if a plan provides that the proposed activities manage to avoid or minimise harm to heritage. The council will only be able to recommend something that is obviously going to protect Aboriginal sites. The minister's decision to approve a plan must be made on the same grounds as well as in the interests of the state, which will include the social and economic benefit to Aboriginal people and the interests of future generations. Currently, a section 18 consent can only consent to destroy or impact Aboriginal cultural heritage. There is currently no requirement for harm to heritage to be avoided or minimised.

Local Aboriginal cultural heritage services will be established across the state to coordinate consultation with local traditional owners and ensure that they have an active role in negotiating the cultural heritage implications of new land use proposals before any proposed activity commences. LACHS are a direct response to feedback received during consultation with Aboriginal people that decision-making should be decentralised and in the hands of the local people with local knowledge. Surely that is a good thing. LACHS will be able to charge a fee for service for services provided in connection with their functions. These fees must be reasonable and will need to be in accordance with the fee schedule endorsed by the council. Fees that LACHS can charge may include some costs associated with undertaking consultation. The council will issue LACHS fee guidelines that will be subjected to consultation, which is set out in the bill.

The appointment of a LACH service to undertake a formal role in facilitating consultation and agreements on ACH management plans in the area of designation will encourage and support the pursuit of self-determination by traditional owners across the state, which aligns with the government's recently released Aboriginal empowerment strategy and the Closing the Gap implementation plan. LACHS will provide a platform for local groups to engage in on-ground heritage management activities, which should lead to economic opportunities and jobs not currently

Dr David Honey; Ms Mia Davies; Ms Libby Mettam; Mr Shane Love; Mr Vincent Catania; Acting Speaker; Mr Peter Rundle; Dr Tony Buti; Deputy Speaker; Ms Divina D'Anna; Mr Bill Johnston

available in many regions. The \$10 million allocated for LACHS will help to build capacity for these groups before the new laws become operational. I think the member for North West Central wanted some information about that. The bill will allow for further funding to be provided to LACHS on top of the fees they may charge for services related to the performance of their functions. The bill also includes the ability for the government to recover costs associated with the administration of the new legislation, including the costs of the Aboriginal Cultural Heritage Council in performing its functions. These fees will be set out in the regulations. These fees may be tiered based on the means of the proponent and fees may also be waived. This flexibility will account for big miners and other land users.

In response to the calls to include the power for Aboriginal people to say no, this is dealt with in the bill. The local Aboriginal cultural heritage services management plan will set out the agreed rules for a project and proponent. The plan will articulate the places that cannot be touched, the places where activities can occur and areas where there might need to be further conversations and investigations. I think that might address part of what the member for Moore was seeking information on.

Whilst we are still on the right to say no, I note that when the opposition introduced its Aboriginal Heritage Amendment Bill in 2014, the bill did not provide any improvements for the protection of Aboriginal heritage. As I alluded to before, it actually gave the Aboriginal department CEO greater power. It also did not require Aboriginal people to be consulted. I mean, that is just truly amazing. It did not require Aboriginal people to be consulted over their own heritage and it made it easier to deregister Aboriginal sites. Importantly, it perpetuated inequity by maintaining rights of review for proponents but not for Aboriginal people, so non-Aboriginal people had a right of review or appeal but Aboriginal people did not. The opposition's bill was also heavily criticised because it provided the CEO of the department with the authority to declare that areas of the state did not contain heritage, therefore allowing proponents to proceed without the need for any investigations. These declarations were also not subject to any right of review. The proposed reforms in the bill put forward by the former Liberal-National government would have resulted in the perpetuation of a system under which Aboriginal people are given no role in the management or decision-making of their own heritage and authority for important decisions is conferred in a single public servant to fast-track approvals at the expense of heritage protection without a right of review for decisions.

The opposition's claim that a new system is being imposed on landowners is not correct, member for Cottesloe. I would like to address the concerns raised about the impacts the process of the bill will have on all landowners with lots larger than 1 100 square metres. The Aboriginal Heritage Act 1972 is silent on lot sizes. As such, currently, any activity on any parcel of land that, when undertaken, alters, damages, destroys or conceals an Aboriginal site is an offence and as such would require section 80 consent to lawfully proceed. There are no exempt activities in the 1972 act. I say to the member for Cottesloe that before he utters or says things, he should know what he is talking about. He always stands up with a sense of authority that he knows things. He was completely wrong on that point. Most of his contribution was about landowners, and he was wrong.

Dr D.J. Honey: We will go through it in consideration in detail.

Dr A.D. BUTI: You can go through it clause by clause, but you were wrong.

Dr D.J. Honey: No, I'm completely right.

Dr A.D. BUTI: Unbelievable! I have just told him why he is wrong. You are just amazing! The member for Cottesloe is one of those people who, when it is not raining outside, will say, "It's raining." When he is told that it is not raining outside, he says, "I said it's raining; therefore, it's raining." You are unbelievable! You are the Rip Van Winkle of WA politics. You fell asleep when colour television came to Australia in 1975 and Sir Charles Court was in power, and you woke up just after the state election to WhatsApp messages and "The Clan" and the fact that the Labor Party is now the natural party of the western suburbs!

Just because approvals for such activities have not been sought in the past does not excuse the fact that approvals should have been sought. The lack of adherence to the regulatory requirements has resulted in large parts of the state having been developed at the expense of Aboriginal people's cultural heritage without any due regard for that heritage or the impacts on relevant communities. This bill is an improvement because it makes it clear that any activities associated with residential development on lots smaller than 1 100 square metres will not require an approval to proceed as such activities will be exempt activities. Victoria also has exemptions for lots that do not exceed 1 100 square metres, so the member for Cottesloe is wrong.

This new legislation is about taking a balanced approach to Aboriginal heritage management and endeavouring to reach agreement on avoiding or minimising harm to Aboriginal cultural heritage. The bill allows for further exempt activities to be prescribed by regulations, which will be the subject of co-design with traditional owners and other stakeholders, such as landholders. The member for North West Central asked a valid question about co-design; there will be a co-design process for the regulations.

Dr David Honey; Ms Mia Davies; Ms Libby Mettam; Mr Shane Love; Mr Vincent Catania; Acting Speaker; Mr Peter Rundle; Dr Tony Buti; Deputy Speaker; Ms Divina D'Anna; Mr Bill Johnston

It is important that, given past widespread destruction of heritage, mechanisms are put in place to protect heritage while also permitting land use. Under the proposed system, greater clarity will be provided as to when and where approvals will be required. Approval will be required only in situations in which Aboriginal cultural heritage may be harmed by tier 2 or tier 3 activity. Proponents will be responsible for undertaking due diligence so they can better understand how their activities are likely to impact on Aboriginal cultural heritage, thus creating a better appreciation and early consideration of Aboriginal cultural heritage in project planning.

The ACH management code, which will be subject to co-design, will set out the required process that will need to be followed to assist the proponent in completing the assessment. Through the co-design process, the government will work with all stakeholders to determine the categorisation of tier 1, tier 2 and tier 3 activities. It is through the co-design process that all stakeholders will have an opportunity to have input into the development of the supporting guidelines and activity categories. These guidelines will need to be endorsed by the Aboriginal Cultural Heritage Council.

A key criticism of the 1972 act relates to the difficulty in interpreting the definition of “Aboriginal site”. Consultation with traditional owners confirmed that a broader definition is required to capture the diverse aspects of cultural heritage that Aboriginal people want recognised and protected, and to reflect modern concepts of cultural heritage. The definition in the bill draws from the principles set out in the Australia ICOMOS Charter for Places of Cultural Significance, or Burra Charter, of 2013 and related practice notes, and as such uses modern principles for defining Aboriginal cultural heritage. It incorporates tangible and intangible elements that are important to Aboriginal people and are recognised through cultural values, whether social, spiritual, historical, scientific or aesthetic, as part of Aboriginal tradition. It also includes Aboriginal places, objects and ancestral remains and recognition of the interconnectedness between culture and landscapes.

I could not be more proud to have listened to the speech by the member for Kimberley tonight, and I could not be more proud to have brought this legislation into this place. This will be the most progressive cultural heritage legislation in the country, and it will finally put traditional owners at the heart of decision-making about the management and protection of their heritage.

Question put and passed.

Bill (Aboriginal Cultural Heritage Bill 2021) read a second time.

[Leave denied to proceed forthwith to third reading.]