

ABORIGINAL HERITAGE LEGISLATION AMENDMENT AND REPEAL BILL 2023

Consideration in Detail

Resumed from an earlier stage of the sitting.

Clause 4: Act amended —

Debate was interrupted after the clause had been partly considered.

Ms M.J. DAVIES: Can I confirm that clauses 4, 5, 6 and 7 are all related to timing of how certain parts of the bill come into play? If they are not material, I will not waste any time on them. My interpretation is that it is a timing factor and that we could get to clause 9, which is where I think we could talk about transition regulations.

Dr A.D. BUTI: It is helpful to consider clauses 4 to 7 together. Clause 7 will insert proposed section 4C into the 1972 act. That proposed section provides that sections 4A and 4B, which limit the operations of the 1972 act currently, upon the commencement of the 2021 act, do not apply to the transitional provisions in part 9 or the transitional regulations made for the purpose of proposed section 71(2) or any other provisions of part 9. Clauses 5 and 6 will amend sections 4A and 4B, so they are subject to proposed section 4C. The purpose of these amendments, which all come into effect the day after royal assent, is to allow for transitional regulations to be made before the improved 1972 act comes into effect as may be necessary. During this time, the 1972 act will otherwise continue to have limited operation. Later in the bill, clause 12 will delete sections 4A to 4C. This clause will come into effect at a later time fixed by proclamation, and is to ensure that the 1972 act is no longer of limited operation.

Ms M.J. DAVIES: I just want to be clear because I have some questions about the transitional regulations. My reading was that it was best to ask them at clause 9, but it sounds like I could potentially ask them in debate on this clause. I do not want to be inefficient with the chamber's time. Do clauses 4 to 7 pertain to transitional regulations or not?

Dr A.D. BUTI: Basically, they are there to ensure transitional regulations can be made if necessary before the enhanced 1972 act comes into effect.

Ms M.J. DAVIES: Will the transitional regulations enliven the provisions before us or is the minister referring to additional transitional regulations?

Dr A.D. BUTI: Part 9 of the bill will allow those regulations to become operational.

Clause put and passed.

Clauses 5 to 8 put and passed.

Clause 9: Act amended —

Ms M.J. DAVIES: As I said, I have no interest in delaying the consideration of this bill any more than we need to. I might need clarification during debate on other clauses, just because of those transitional and timing factors. I do not want to miss the chance, although it might be better for the minister if I do, to ask questions on the additional documents that the government provided. I acknowledge that the government has provided the opposition with a copy of the transitional regulations, the regulations that will be associated with the bill, the fees structure and the policy documents and guidelines.

I understand that clause 9 relates to where the transitional provisions for the Aboriginal Heritage Legislation Amendment and Repeal Act 2023 will be enlivened.

Dr A.D. BUTI: Is the member referring to clause 8? I do not mind going back to it if she is. Clause 9 relates to amending the act.

Ms M.J. DAVIES: I guess I am. My apologies.

The DEPUTY SPEAKER: We cannot go back, but you can answer the questions.

Dr A.D. Buti: I will try to answer the questions.

Ms M.J. DAVIES: I refer to clause 8, "Part 9 inserted". That is my mistake. I tripped up. How are we going to do that?

Dr A.D. Buti: The clause has been passed but the member can ask her question. We are on clause 9, but the member may still ask her question.

Ms M.J. DAVIES: I thank the minister. My apologies.

A whole new section will be inserted. We have some questions on the transitional regulations.

Dr A.D. Buti: The regulations will be inserted after section 68 of the act.

Ms M.J. DAVIES: I refer to clause 8 on page 5 of the bill, which relates to the insertion of part 9, which will include sections 69, 70 and 71. That is where I am at. Is that clear?

Dr A.D. Buti: Yes. The member has the marked-up version. It will be section 68 in the actual act. We are discussing the bill.

Ms M.J. DAVIES: This is the only time we will talk about the transitional regulations. I had some questions about permits. What happens when permits have been approved? I am not sure that any were approved. Some applications were made. Can the minister explain how the timing of those applications work and provide some clarity around what happens when an Aboriginal cultural heritage permit is approved? A section 18 application might be approved while we are debating this legislation. Is there any risk—this is the nub of the question—that new information will be required at that transition point and the process will change? Will the landowner or the project proponent be required to do anything in addition to what they have already done if they are on track to get approval?

Dr A.D. BUTI: Until the repeal of the 2021 act and the enlivened 1972 act, the operation under the 2021 act will remain. Any permits that have been approved, or any other approvals, will automatically transfer. There will be a section 18 notice. The whole premise behind part 9 and the transitional provisions is to ensure that we save any of those approvals and allow their transfer under the enlivened and improved 1972 act. That is why part 9 will be inserted. Importantly, particularly for many of the member's constituents, part 9 will not allow the government to re-enact any of the regulations related to the 2021 act. These are purely transitional provisions that are necessary to ensure that anything that has been approved can be transferred and then they become a section 18 notice under the 1972 act, but it will not allow for the continuation of the 2021 regulations.

Ms M.J. DAVIES: Further to that, the regulations deal with things like remediation or something required by the department relating to enforcement, for example. These regulations essentially allow whatever direction has been provided by the department, the council or the committee to be continued. I understand that not all matters will be completed at the time of proclamation.

Dr A.D. BUTI: It saves those matters that are in transition. It is not a general provision such that everything that happened under the 2021 act will continue under the amended 1972 act. It relates to those things that need to transition, such as consent, approvals or negotiations leading to an approval. They will be carried over into the 1972 act.

Ms M.J. DAVIES: When we were given a briefing on these transitional provisions, I made a note but I am not sure that I captured it correctly. Perhaps the minister can clarify a matter. Some of the defences under the 2021 act will be continued. My note says that they will continue for only 12 months from the repeal date, so they are time limited.

Dr A.D. Buti: Basically, you want to know whether some of those defences continue.

Ms M.J. DAVIES: I presume it relates to running afoul of somebody who has damaged or destroyed an Aboriginal cultural heritage site. I want to be clear about which act and which regulations the government will be dealing with. That is the nub of it. There are quite significant penalties in the 2021 act and they will revert to the lesser penalty and no imprisonment in the 2023 legislation.

Dr A.D. BUTI: Part 7 of the Aboriginal Heritage (Transitional Provisions) Regulations 2023 refers to the defences to certain charges and their application.

Section 98(d) of the Aboriginal Cultural Heritage Act provides a defence for situations in which an activity that harmed Aboriginal cultural heritage was carried out —

by a person in an emergency situation for the purpose of preventing, or minimising, loss of life, prejudice to the safety, or harm to the health, of people ...

In order for the defence to be available, the act constituting the offence must have been done during the period of one year beginning on repeal day. Secondly, the act must be part of an emergency activity. Regulation 29(4) states —

An activity is an emergency activity if it is carried out in an emergency situation for the purpose of preventing or minimising 1 or more of the following —

- (a) loss of life of people;
- (b) prejudice to the safety of people;
- (c) harm to the health of people.

Thirdly, the emergency activity must be substantially commenced before the repeal day. This is referred to as the “substantial commencement condition”. The substantial commencement condition can also be met if one or more of the activities can reasonably be regarded as part of the response to an emergency situation. In that case, the response to an emergency situation and not to each individual emergency activity constituting the response to an emergency situation needs to be substantially commenced prior to repeal day.

They are the emergency activity defences under section 98(d) of the Aboriginal Cultural Heritage Act 2021. Another defence under section 98(a) is for a situation in which a person has conducted due diligence, concluded there is no risk of harm for Aboriginal cultural heritage and then taken all reasonable steps to avoid or minimise the risk of harm to the Aboriginal cultural heritage. Section 109 provides a defence for exempt activities and section 110 provides a defence for tier 1 activities that may harm Aboriginal cultural heritage.

I should also say that, as the Premier said, unless someone has wilfully and deliberately gone out to damage Aboriginal cultural heritage under the 2021 act, it is a light-touch preference. We are pretty confident that has not happened. The defences under the 2021 act will continue during the transitional period, but we will also look at individual cases if the harm was not done deliberately and some attempt was made to undertake due diligence, which is a defence, anyway.

Ms M.J. DAVIES: There is also a section in those transitional regulations that refers to the recovery and charging of fees by former local Aboriginal cultural heritage services for services provided before the repeal day and the funding of those fees. Could the minister step us through how that might work? There are three LACHS in existence at the moment. There may well be people engaging with those LACHS to progress their projects. I seek to understand how that will work practically.

Dr A.D. BUTI: It is a relevant question. The act is still in operation; we have only three LACHS, so it is unlikely that it will be utilised, but we never know. It is part of the law, so it is a fair question.

Regulation 5 of the Aboriginal Heritage (Transitional Provisions) Regulations 2023 looks at the recovery of fees by LACHS. Regulations 5(1) and (2) authorise for LACHS, notwithstanding that they are designated to cease to have effect under the proposed changes and the repeal of the 2021 act, to be able to recover fees for services provided before the repeal day under section 49 of the 2021 act on or after repeal day as though that section had not been repealed. The regulations also provide that former LACH services may recover any unpaid amount as a debt due in a court of competent jurisdiction. That is consistent with section 49(4) of the 2021 act. There are also issues with regard to the ability to charge fees under section 49 of the 2021 act. There is that ability, but, as I say, it is unlikely that it is going to be utilised when we have only three LACHS. But in the normal course, a LACH service or a non-LACH service would be able to charge for its services.

Ms M.J. DAVIES: I thank the minister. Part 9 of the transitional provisions regulations also allows for the transference of information and documents from the Aboriginal cultural heritage directory to a register under section 38 of the Aboriginal Heritage Act 1972. There was a new system created under the 2021 act, as I recall, and everything was being loaded into that. Just so that I am clear, we are now going back to the old register, which will have sites that have not been assessed, so not everything that is on the 2021 site will be transferred back into the register, or have I misunderstood the briefing?

Dr A.D. BUTI: The member is correct. Regulation 33 of the transitional regulations deals with that. The regulation provides how information under the 2021 directory can be transferred back to the directory under the 1972 act. That information will be transferred under section 38 of the 1972 act. To the extent that information and documents are of a kind that can be recorded in a register maintained under section 38, they must be transferred to, and recorded in, the register on repeal day. That refers to section 38 of the Aboriginal Heritage Act 1972, which states —

The Registrar shall, so far as practicable, maintain, in such manner and form as the Minister may determine, a register of —

- (a) all protected areas;
- (b) all Aboriginal cultural material; and
- (c) all other places and objects to which this Act applies,

whether within the State or elsewhere.

Ms M.J. DAVIES: I thank the minister. There was some discussion when we were going through the 2021 act about the accuracy of the register and how easy or otherwise it would be for landowners to understand their obligations. Is there any difference between what was being proposed and what we are going back to? If someone is interested and needs to ensure they will not disturb Aboriginal cultural heritage, will it be definitive on that register or will there still be areas that are ill-defined? As I understand it, some of the information was old, and so perhaps the mapping technology has not kept pace. I guess it would be good to understand how clear it will be on the new register, and whether there will be any work going forward to make sure that that is as accurate as possible.

Dr A.D. BUTI: That is one of the main purposes of the survey program that the government will engage in over the next 10 years. Hopefully, we will get to the stage in 10 years' time whereby a large portion of the state will have been surveyed. But as long as the landowner or the proponent of the activity searches the register and then speaks to the department, the department will say whether they need to consult a traditional owner or not, and they will have the defence of not knowingly damaging Aboriginal cultural heritage.

Ms M.J. DAVIES: That is really important not only from a lot of our landowners' perspectives, but also I imagine for every organisation. I think one challenge we had during the 2021 debate was although bigger organisations had the capacity to go through that process, individual landowners would find that process more difficult. I will paraphrase what the minister has just said, and he can tell me whether I have it right. If someone has checked the register and called the department, that is their due diligence and provides an appropriate defence going forward, and the register will be updated over the course of the coming 10 years with additional sites added to that.

Dr A.D. BUTI: That is right, but, as the member knows, it is also if they could not reasonably be expected to know. There will be some Aboriginal cultural heritage that is, for cultural reasons, kept secret, so obviously a person will not know about it. That is the defence—it is, basically, if they have unknowingly damaged or could not be expected to know. As the member for North West Central mentioned yesterday, her family basically knows where the Aboriginal cultural heritage is on the pastoral station where they have lived for a long time. Everyone should do their best to ensure they have done what they should do to ensure they do not damage Aboriginal cultural heritage. If they look at the register and ring the department, if the department tells them it thinks there is Aboriginal cultural heritage, they would then need to go through the process. It is a defence if they have not knowingly damaged Aboriginal cultural heritage or they could not reasonably be expected to know. That is the defence. That has always been the case and will remain the case.

Ms M.J. DAVIES: Will the department put that advice in writing to a person who is contacting them? With due respect, there is an abundance of caution in cases like this, obviously. The minister can imagine that people in the department could start to say, "There's none on the register and we don't see any, but, if you wanted to be very cautious, it would be appropriate to contact local Aboriginal groups or knowledge holders." Then we may well find ourselves back where we were under the provisions of the 2021 act. The clarity that particularly farming communities and pastoralists are after is that they have to do steps 1, 2 and 3, although we start with the premise that nobody wants to do it unknowingly.

Dr A.D. BUTI: Landowners should look at section 62 of the act and the guidelines, but the department will provide in writing whether they have to engage in a section 18 process.

Ms M.J. DAVIES: My question is: for the protection of the department, given that it will be providing the advice, will it be more likely to give that advice than not? It may end up as a catch-all to say people should do it anyway.

Dr A.D. BUTI: Is it to do a section 18?

Ms M.J. DAVIES: No, that people should go and talk to Aboriginal groups.

Dr A.D. BUTI: No. As the surveys become more prevalent, we will have greater detail. If the survey says there is no Aboriginal cultural heritage, the advice will not be to go to speak to traditional owners because there will not be any Aboriginal cultural heritage.

Ms M.J. DAVIES: Because the minister raised the issue of the survey program, can he provide some advice? He said in his second reading speech that there will be consultation on priorities, but does he have a view on where it will start? Will it be in highly populated areas? I cannot imagine it will start in the backblocks of my electorate. There was good clarity in his second reading speech about if someone needs to go down that pathway; for example, if Mr Smith from Kalannie decides he needs to go down that pathway, he will be able to apply for funding to do that.

Dr A.D. BUTI: There is no funding but the department will do it. It has not been determined exactly because there has to be further consultation, but we are looking at metropolitan areas, the south west and the goldfields. It is not the Pilbara or the Kimberley necessarily because mining companies are mainly responsible for looking after those areas, especially in the Pilbara. They tend to be the priority areas, but that is not set in stone. For landowners, if they are eligible—not in the mining and construction industries—they can come to the department for a section 18. As part of the section 18 consent, the department can engage in the cultural heritage survey.

Mr R.S. LOVE: I have a question on clause 8. I believe we are still talking to it, even though we have passed it.

Dr A.D. Buti: We've actually passed it but I'm being nice. I don't want to stay on it forever, though.

Mr R.S. LOVE: We have been given a bit of leeway to ask about clause 8, yes. No, we will not stay on it forever. I refer to page 7 of the bill. Paragraph (d) reads —

provide for proceedings and remedies that might have been commenced by, or available to or against, a specified person or body to be commenced by, or to be available to or against, another specified person or body;

Does that reflect only the change in the body from the government's point of view? For instance, if a local Aboriginal cultural heritage service no longer exists, a prescribed body now has that responsibility, or if a committee no longer exists, it is replaced by another committee? Otherwise, is it also about the parties outside that scenario; and, if so, could the minister provide some explanation about what sort of bodies they may be?

Dr A.D. BUTI: I am not quite sure what the member is asking.

Mr R.S. LOVE: I refer to proposed section 71(3)(d) on page 7. We are talking about lines 9 and 10. In what circumstance would there be another specified person or body? Does it simply refer to changes from a committee structure to another committee or is it to do with the fact that there were LACHS, but they are no longer? I want to get an understanding of what that refers to.

Dr A.D. BUTI: Because I gave liberty for us to discuss this, can the member please give me liberty to get back to him with that information? I need to provide some clarification and I will when I have the information.

Mr R.S. LOVE: Okay. Further, proposed paragraph (e), immediately following it, reads —

provide for the transfer of, or the creation of interests in, specified property, rights or liabilities;

Could the minister explain what that provision is about? In what circumstances would there be a transfer of or the creation of interests in specified property, rights or liabilities caused by the transition from the 2021 act back to the 1972 act?

Dr A.D. BUTI: I will get back to the member soon.

Clause put and passed.

Clause 10: Long title replaced —

Ms M.J. DAVIES: I have just a couple of questions on this. Is it customary for the long title of an act to be changed when we are just amending an act? I am not familiar with that process. Could the minister explain why that form of words has been selected, instead of the words that were part of the original Aboriginal Heritage Act?

Dr A.D. BUTI: I am not sure whether it is common, but basically the purpose behind it is that it will clearly reflect the purpose of the 1972 act, which is to protect Aboriginal cultural heritage, not on behalf of the community, but just to protect Aboriginal cultural heritage for everyone. It is not like it is a service being done by the state. That is why.

Ms M.J. DAVIES: The proposed long title specifically states —

... preservation of places and objects customarily used by or traditional to the original inhabitants of Australia ...

It refers to places and objects. I asked a question earlier about the fact that section 5(b) of the 1972 act has been interpreted in the past to be around intangible or mythological definitions of Aboriginal cultural heritage. Is this an accurate definition of what the act was and is now going to be about, in the minister's view?

Dr A.D. BUTI: As the member can see, it is a minimal change. It is a modernisation of the language. It is a summary of what the legislation will do—that is, preserve places and objects of cultural heritage to Aboriginal people.

Mr R.S. LOVE: I am not sure that it is a minor change of the wording; it is completely different. The original wording of the long title to the 1972 act was —

An Act to provide for the determination of certain applications made, and notices given, under this Act before transition day and for related purposes.

That long title will be removed. I have a couple of questions about this. Clause 10, at lines 24 and 25 of the bill, refers to the original inhabitants of Australia or their descendants. It then goes on to say “or associated therewith”. Can the minister explain what the phrase “or associated therewith” means and what it refers to?

Dr A.D. BUTI: I really do not think we should be spending too much time on this, but opposition members are entitled to ask questions. These words more clearly reflect the intention of the legislation, which is to protect Aboriginal cultural heritage and not the heritage of anyone else. It is to protect the heritage of Aboriginal people. This term is not unusual.

Modernised language used in not just acts but also normal literature refers to original inhabitants and their descendants or associated therewith. That term is used because sensitivity is often attached to determining Aboriginal identity. Nothing is being hidden; this is just to protect Aboriginal cultural heritage. The view is that this language is used in modern times.

Mr R.S. LOVE: With respect, the long title is at the heart of an act as it virtually gives the objects of an act. The proposed long title includes the term “or associated therewith”. Is it associated with the descendants of Aboriginal people or is it associated with the preservation of places and objects? In other words, are we getting back to mythology and the like? What does it mean? It is a fair enough question.

Dr A.D. BUTI: I am just saying that this is all about protecting Aboriginal cultural heritage.

Mr R.S. LOVE: Can the minister not explain what the phrase “or associated therewith” is referring to?

Dr A.D. BUTI: I explained that “associated therewith” is all about the issue of inhabitants and their descendants. It captures them globally without the need to get into the technicality of identity. The legislation will protect Aboriginal cultural heritage. The definition in section 5 of the act that we have had since 1972 has not caused any problems.

Mr R.S. LOVE: The proposed long title talks specifically about the preservation of places and objects customarily used. How does that intersect with the original wording “to provide for the determination of certain applications made, and notices given”? In other words, do the new provisions contemplate the making of an order that could potentially damage places and objects customarily used by or traditional to the original inhabitants of Australia?

Dr A.D. BUTI: These words are not new; they were in the original 1972 act, which also included the words “on behalf of the community”. It is the original long title, apart from that small removal. The long title that the Leader of the Opposition has been referring to came later. This was actually the original long title.

Mr R.S. LOVE: I thank the minister for that clarification. I go back to how we will contemplate making determinations that could lead to damage of Aboriginal cultural heritage, given the long title of the bill. I assume that the wording that we are replacing was put in the act because there had to be reference to the fact that determinations could be made that could lead to the damage of cultural material. That wording is now being taken away. I do not understand the purpose of the act anymore, because it is about not just preservation but also determinations on how to manage, use, intersect with and perhaps even damage Aboriginal cultural materials.

Dr A.D. BUTI: The act is all about protecting Aboriginal cultural heritage. That is why the section 18 process will still allow for the damage of Aboriginal cultural heritage if it is approved. The Leader of the Opposition can continue to ask questions and I will try to answer them as best as I can. These words were utilised originally in the 1972 act, but also included the words “on behalf of the community”. That is what it is. There is nothing sinister. It is all about protecting Aboriginal cultural heritage, which we have done since 1972.

Clause put and passed.

Clause 11: Section 4 amended —

Ms M.J. DAVIES: This clause will delete the definitions for “Committee”, “Director” and “transition day” and inserts a new definition of “Committee” to mean —

... the Aboriginal Cultural Heritage Committee established under section 28(1);

Is that correct?

Dr A.D. BUTI: Yes.

Ms M.J. DAVIES: Can the minister advise why the definition of “Director” will be deleted? It is a technical question more than anything.

Dr A.D. BUTI: The definition of “Director” refers to the director of the WA Museum. The defined term will fall away as it is used only in section 29, “Ex-officio members”, which will be deleted and replaced by new provisions dealing with the committee. The committee will not have the director of the Museum as an ex officio member.

Ms M.J. DAVIES: I thank the minister. So I am clear, the Aboriginal Cultural Material Committee had an ex officio representative from the Museum, but that was no longer the case for the council under the 2021 act, which will become the committee under the 2023 act.

Dr A.D. BUTI: The director was an ex officio member of the Aboriginal Cultural Material Committee. The director will not be on the new Aboriginal Cultural Heritage Committee. The 11 members of the current Aboriginal Cultural Heritage Council will transfer across to the Aboriginal Cultural Heritage Committee.

Ms M.J. DAVIES: We have had a bit of discussion around the membership of the committee/council. An explanation was provided during the second reading debate around the fact that committee members will be skills based. What was the rationale for not specifically including some of those ex officio appointments in addition to the new committee structure? Is there capacity for them to be included down the track?

Dr A.D. BUTI: When we appointed the members of the Aboriginal Cultural Heritage Council, there was an expressions of interest process. We did not just pick people. It is skills based. The only requirement is that the council has Aboriginal co-chairs and, if possible, has a majority of Aboriginal representatives, but it is still skills based. The thought was that the director of the WA Museum was no longer needed and that time had passed on from that period.

Ms M.J. DAVIES: I might wait until we deal with part 5 of the bill when we will have more opportunity to discuss that. I thank the minister for confirming why the definition of “director” is being deleted. That was the only question I had on clause 11. It looks to me that the rest of it deals with timing issues. Perhaps the minister can confirm that my interpretation of that is correct.

Do not worry, minister; that question will not make sense. We are still on clause 11. My understanding is that with subclause (3), we are just removing a semicolon and replacing it with a full stop. There are things that are being deleted, so it is just tidying it up. Can the minister just clarify that?

Dr A.D. Buti: Yes.

Clause put and passed.

Clause 12: Sections 4A to 4C deleted —

Ms M.J. DAVIES: This is the clause that I was referring to. This is about the timing. There is an amendment to insert proposed section 4C, but there is also one to delete it down the track. I presume it is another amendment in relation to transitions. Can the minister explain what effect clause 12 will have?

Dr A.D. BUTI: Basically, we brought this up before. Proposed section 4C is to be inserted by clause 7 of the bill to provide that sections 4A and 4B do not apply to the power to make transitional regulations or any transitional regulation or any other provisions made under new part 9. Once all the provisions of the bill have come into operation, the arrangements under proposed sections 4A to 4C will no longer be required and those sections can be deleted.

Ms M.J. DAVIES: This is quite unusual, is it not, minister? It is not just me. We have things being inserted and also being deleted by the same bill. It is an unusual set of circumstances.

Dr A.D. BUTI: I do not disagree.

Clause put and passed.

New clause 12A —

Dr A.D. BUTI: I think we have agreement to do something that is even more unusual. I move —

That consideration of proposed new clause 12A be postponed until after consideration of clause 19.

Mr R.S. LOVE: I seek a bit of clarity. Is it normal to jump forwards and backwards? I am wondering whether we have to suspend standing orders, because normally we cannot go backwards. We are jumping all over the shop. I am wondering how that will proceed. Is a suspension of the standing orders of the house required?

The DEPUTY SPEAKER: No. This approach is how we deal with what you are querying. When we were going backwards and forwards before, that was because there was a misunderstanding about the numbering of the clauses, whereas this is the correct way to address this situation.

Mr R.S. LOVE: It is not because this bill has been put together and then re-amended and the government did not really understand what it was doing. Is what we are doing normal practice? I have been in this place for a few years and I have never seen it before.

The DEPUTY SPEAKER: Member, I am advised that this is the way to handle this situation.

Dr A.D. BUTI: We reached an agreement with the opposition yesterday and we would love to maintain that spirit. I will give the member a brief explanation. New clause 12A seeks to amend section 17 and is consequential to proposed section 18B to be inserted by clause 14 of the bill. New section 18B will provide for section 18 consents to be transferred on a change of ownership of the land. The amendment proposed to section 17 of the act will make it clear that the consent of the minister is given under section 18(3)(a). That is why I am seeking to postpone consideration of this new clause until after consideration of clause 19.

The DEPUTY SPEAKER: Just further to that, standing order 180 says that a clause, or a clause that has been amended, may be postponed. We can do it.

Mr R.S. Love: Thank you for the clarity.

Further consideration of the new clause postponed, on motion by Dr A.D. Buti (Minister for Aboriginal Affairs).

[See page 4955.]

Clause 13: Section 18 amended —

Ms M.J. DAVIES: Obviously, section 18 is the crux of the old act, the new act and everything in between. We are essentially returning to the 1972 act and the process for securing consent to destroy or remove Aboriginal cultural heritage via a section 18 application. I understand that that will be considered by the Aboriginal Cultural Heritage Committee instead of the Aboriginal Cultural Material Committee, as the powers and composition will be transferred over from the 2021 act. Under the revised bill going forward, when a section 18 application is made for a project by a landowner, will it still be the project proponent's responsibility to secure consent for the area required and will that allow all contractors and subcontractors to proceed under the conditions of that consent? Just for clarity, there was some question about the 2021 version of the application for permits and whether everyone who was going to be involved in the particular area would have to go through that process. Will this just be for the

project or will it involve the landowner? Who will be responsible for securing the section 18 consent? Once it is done, will it be done?

Dr A.D. BUTI: Once it is done, it will be done—and it will be the landowner.

Ms M.J. DAVIES: The landowner can be different sometimes from the project proponent. Will it be the person proposing to carry out the work? What responsibility will there be for those two to interact and how will that be dealt with?

Dr A.D. BUTI: Section 18(1) of the act states —

For the purposes of this section, the expression ***the owner of any land*** includes a lessee from the Crown, and the holder of any mining tenement or mining privilege, or of any right or privilege under the *Petroleum and Geothermal Energy Resources Act 1967*...

A person is also included as an owner of the land for the purposes of this section if they have rights under the Dampier to Bunbury Pipeline Act or if they have authority under section 7 of the Petroleum Pipelines Act to enter upon the land. The “owner” may not always refer to the legal owner.

Debate interrupted, pursuant to standing orders.

[Continued on page 4925.]