ABORIGINAL HERITAGE LEGISLATION AMENDMENT AND REPEAL BILL 2023

Second Reading

Resumed from an earlier stage of the sitting.

MS M.J. DAVIES (Central Wheatbelt) [3.54 pm]: Before I go any further, the Minister for Training mentioned John Henchy during question time. I want to add my condolences and appreciation for him. I crossed paths with Mr Henchy on a number of occasions throughout my parliamentary career. He was well respected by both sides of Parliament. He had an enduring commitment to the agricultural sector and machinery training. He was always a welcome face in the meetings and industry events that he attended. To his friends and family, I pass on my regards and condolences.

I have seven minutes to finish my contribution to the second reading debate on the Aboriginal Heritage Legislation Amendment and Repeal Bill 2023. Just before question time, I finished by saying that the opposition has no desire to drag its feet on this legislation. We will apparently sit late tonight and tomorrow to get through this bill. It is disappointing that the standing orders of the house have to be changed to accommodate the management, or mismanagement, of legislation. That is what it is; it is mismanagement. We were subjected to an appalling process for the 2021 act and now we are back and the government is extending our sitting hours to get through this bill. I am sure that the government will say that we have a desire to see the repeal go through. I foreshadowed earlier that the opposition was prepared to, and will, move an amendment at the end of the second reading debate to split the bill and offer the government the opportunity to deal with the repeal. That is how serious we are about making sure that the 2021 legislation and all its associated regulations and functions will be pulled back. We want that done immediately.

In my view, it is pretty shameless politicking to merge the repeal and the amendments into the one bill. It should be seen for what it is—a government strategy so that if the opposition is not convinced by the amendments that have been put forward or why some have been left out, or with the explanations that are provided and we cannot support them, we will be seen to not be supporting the repeal mechanisms in the bill. It is smart politics, but it is trickery and sleight of hand, considering we are offering the government the opportunity to deal with the repeal. We have been up-front about that. We have pointed out that it has been a less than smooth pathway to create the new amendment bill, with additional amendments that the minister will move from the floor, as well as the regulations and the guidelines that have been provided to us. Essentially, industry will have the opportunity to provide feedback on them, so they may well not be the final version of what will relate to the legislation going forward.

I will finish on that note and advise again that at the end of the second reading debate, before we move to consideration in detail, I will move a motion to split the bill to give the government the opportunity to progress immediately with the repeal of the 2021 act. I put on the record once more that the opposition—the Liberal and Nationals WA Parties—would like to see the repeal of all the regulations and functions associated with the 2021 act under its current guise because they are hanging over the community of Western Australia as we speak. They are still in play. We would like to see them repealed as soon as possible. I point out that that could be done very easily, and we will move that motion. In question time, the Premier indicated that the government will not support that motion.

When we progress to consideration in detail, we will attempt to provide all the feedback that we have received from organisations like the Association of Mining and Exploration Companies, the Chamber of Minerals and Energy, the Yamatji Marlpa Aboriginal Corporation and other Aboriginal corporations that have spoken to us, WAFarmers, and the Pastoralists and Graziers Association in our assessment of the legislation. This is round 2 for the government and no-one can say that it covered itself in glory in round 1. As I said earlier, I point to the fact that nobody should be surprised if we do not rush headlong to support this version of the bill with open arms from the outset, because we have been through a pretty unpalatable process, as has the community. We want clarity and certainty for the sectors and people involved. Most importantly, we want to make sure that the outcome of this process is that Aboriginal cultural heritage is protected, and that can be done by everyone understanding their obligations very clearly. It is preferable that those obligations are within a legislative and regulatory framework as opposed to policy and guidelines, which this government favours time and again. Those can be changed and cause confusion in the community. That is the position of this opposition at this time. I look forward to the minister answering the questions raised during the second reading debate. I take the process seriously, and I hope the minister and his advisers will be able to shine some light and provide clarity on the issues I raised during my second reading contribution. With that, other members would like to contribute to the debate on this bill and so I will sit and allow them to do that forthwith.

DR D.J. HONEY (Cottesloe) [4.01 pm]: I thank the member for Central Wheatbelt for her excellent contribution to this debate on the Aboriginal Heritage Legislation Amendment and Repeal Bill 2023. I am both pleased and disappointed to see this bill before the house. I am disappointed because if the government had handled the first bill properly and there had been proper consultation instead of the process that was gone through to ram the bill

through this house in one day, with the concerns of the opposition simply ignored, we would not be in the position now of this bill to repeal the 2021 act appearing so soon after the regulations were promulgated. I am, obviously, happy to see this bill before the house because repealing the 2021 act was imperative due to the distress and confusion it caused in the community. At the outset, regarding comparison between the two pieces of legislation, I thank the minister for the efforts he and his staff have made this time with consultation and going out of their way to make sure we have had plenty of opportunity to understand. I know it would not have been easy for the minister and his staff, but I thank them for allowing us to see the regulations before we debated the bill. Last time, we were very concerned when the regulations came out. There was so much detail in them and we were concerned about a lot of it. This time the minister has gone out of his way to allow us to see them, so I thank the minister and his staff.

I go through a little bit through the concerns with the previous legislation to contextualise the debate on this bill. I will not go through my second reading contribution to the debate on the 2021 bill, but the concerns with that bill fell into a number of categories. The first one, a great concern, was that the way it was structured drove conflict. Why did it drive conflict? It did so because it monetised conflict. It may not have been the intention of the bill to do that, but that is what happened. To be very clear, most people just get on with most things in life. They behave in a reasonable way and do the reasonable thing, but whether it is a football team, the local P&C, whether it is Aboriginal people or non-Aboriginal people, if there is an opportunity to make a gain, people will do it. It is not a characteristic of one group or the other. It is a human characteristic. I pretty much used those exact words, or very similar words, in the debate on the 2021 bill—that is, if that opportunity exists, people will take it. We saw that very shortly after the previous regulations came into force. As I say, I am certain that the great majority of people would have got on with it in the spirit intended by the minister but, unfortunately the act left itself open to that. Monetisation of conflict was a significant driver of that. There was a lack of preparation, and when the legislation came into force, key parts of it were not ready, in particular the local Aboriginal cultural heritage services. That issue was raised. I remember that the member for Central Wheatbelt raised it in her contribution to the debate and subsequently until the regulations came in. It was clear that the mechanism was not going to work. It would have taken too long.

An area I appreciate is one that came out of the ruling by Justice Chaney, and that is bringing in tangible versus intangible aspects. I am aware that that distinction still exists, and the new repeal bill and regulations recognise that. When the great majority of people think about preserving heritage, they think of it as something physical. To be direct on this point, I refer to an issue of a person being charged for a bridge either at Northam or Gingin. Which was it, member for Roe?

Mr P.J. Rundle: It was Toodyay.

Dr D.J. HONEY: It was Toodyay; I was close! I thank the member for that. The justification, at least the one put to the public, was that it interfered with the dreaming path, I think, of the Wagyl, or some such thing. Well, gosh —

Dr A.D. Buti: Member, go on with your argument, but just be careful. It is before the courts, okay?

Dr D.J. HONEY: I thank the minister for that. I will not refer to that specific case and I appreciate the minister's interjection.

In relation to waterways, I was at a meeting in Manjimup with water users yesterday. It was a really interesting meeting. It was interesting that the topic of Aboriginal cultural heritage was very much to the fore in that group. It was very sensitive to it, particularly the status of water among water users. The obvious reality is that there are waterways everywhere and there is some mythical tale associated with them. If anywhere that water flows suddenly becomes the subject of Aboriginal cultural heritage approval, it will be extremely difficult. As I say, we are dealing with mythical paths of where a spiritual creature was supposed to have gone. The reason what happened at Juukan Gorge outraged so many people was that it was a magnificent physical site with archaeological sites in it. There were implements, artefacts and evidence of human occupation for thousands of years. That would be lost. I highlight that because I appreciate that that issue has not gone away with these changes, and it is a real concern. I think the great majority of the public very much sees that heritage is associated with tangible, physical sites. To make things too generic will cause problems and concern in the community.

The other thing about that 2021 bill were the extraordinary penalties. They were extreme. We can understand an egregious situation of someone deliberately destroying significant heritage, in this case Aboriginal heritage. In that case, we can go for it and a person should be penalised for wilfully destroying that history, but the previous legislation said that the defence of a mistake could not be used. That was a fundamental flaw in that act and it is good to see it has gone. The other thing was that the thresholds that would trigger a requirement for Aboriginal cultural heritage approval were low. The very low thresholds are yet to be determined for this bill. For example, it was arguable that someone who built a sandcastle beneath the high tide mark on any waterway would have needed Aboriginal cultural heritage clearance. That was more than arguable. In fact, the legislation stated that the use of more than 20 kilograms of sand, which is entirely probable, could trigger that. I am sure that was not the intention of the scope of the previous

legislation, but it had very low thresholds. At the time, a number of members pointed out that the destruction of Juukan Gorge could still have occurred under the previous legislation. Whether or not the previous legislation was legally a broadening of the application of Aboriginal cultural heritage, that is what it did. It enlivened a whole new area of concern and claims around Aboriginal cultural heritage. I do not think that has gone away. Although the bill will repeal the Aboriginal Cultural Heritage Act 2021, it has enlivened an issue for a group of people, particularly Aboriginal groups in the south west. I think we are going to see a lot of ongoing concern raised about Aboriginal cultural heritage and whether there is heritage that has to be protected and, from the other side of the fence, whether that is real and should be protected. We will see. Time will tell.

I will talk in a broader sense about the philosophy behind the 2021 bill. It covers other aspects of the legislative program of this government. I mix with a broad cross-section of the population. Some of them are left-wing academics and others who talk about this whole issue of the right of Aboriginal people to control what happens on the land. The logic is pretty straightforward. I have had it put to me that this is the way the law should be. The words we hear in various forums are that Aboriginal people never ceded sovereignty over the land and that in fact, because they never ceded sovereignty over the land, Aboriginal people own all of the land, even crown land, according to some people. I am not talking about what the law is; I am talking about the philosophy that people have. If Aboriginal people are the owners of all the land, then everyone else who is on the land—every non-Aboriginal person—is a tenant on that land. If you are a tenant on someone else's land, you pay rent. We hear that in popular songs—about paying rent for being on that land. Rent is ongoing if someone else owns the land. Also, tenants need to seek approval from the owner of the land for everything they do on the land. I will be direct: I do not support that view. I understand the view that is put out, but I have made it clear here before and I have made it clear privately that I recognise that Aboriginal people were the first inhabitants of Australia, but many people occupy Australia now. What I do not want to see are laws that divide us as a people. Division was a certain outcome of the 2021 act.

I recognise the critical importance of protecting our cultural heritage, and especially Aboriginal heritage. As many people in this place have said on many occasions, it is a unique, continuous heritage. We need to protect that heritage so that we do not lose it, but as I say, I do not want to see laws that divide us. One of the things I most value about Australia and what characterises most Australians is that we are egalitarian. I think that is largely true, although perhaps our culture is changing a bit. We believe that everyone should have the same rights and the same opportunities. It does not mean everyone is equal, but we should have the same rights and opportunities to do our best in life. We do not want to see one group set aside from another.

I welcome the government's decision in introducing the Aboriginal Heritage Legislation Amendment and Repeal Bill 2023. Again, as the member for Central Wheatbelt has pointed out, I would prefer that we had a simple repeal bill, not that I do not think other changes need to be made. I think there has been a lot of discussion in this place and the other house that some things should be done differently. There will be a diversity of opinion about what those things are. I respect the minister for making every effort to get the information to us, but one of the shortcomings of bringing in other changes to the bill is that there will be unintended consequences and that he will not have done all of the things that need to be done. I think the opportunity could have been taken to do a simple repeal and then to come back with a more considered range of amendments and more consultation.

Before I talk in detail about the briefing note that was given, which I think is a good structure to go through and discuss, I believe that the state government generally needs to better consider private property rights in our state. The old saying is that owners of private property have the right to quiet enjoyment of their land. That quiet enjoyment extends to freedom from unnecessary intrusion by government. We are seeing more and more laws of government impinging on that quiet enjoyment and the freedom of people on their land. Members of Parliament look at laws and we can be philosophical about it, but legislation is really distressing for people who are in the crosshairs. I was in Manjimup yesterday and there was concern by water users about possible changes. They hear rumours about what is proposed and what is coming on because different people have been consulted and spoken to and that goes down the whisper chain. A lot of them are doing it pretty tough. Those small landholders rely on water for their living and they are genuinely distressed. It is easy for us to sit in this place and be philosophical about changes that are being made, but I think we sometimes forget the tangible distress that it can cause individuals who will be affected by those laws. I said at the time that I never thought that BHP or Rio Tinto or any of those big companies would be particularly fussed about the previous changes because they did pretty much everything that was in that legislation. They have literally thousands of people who deal with approvals and all those things. The impact was going to be on individual property owners—someone who is just trying to get on with life. An area that we need to be more cognisant of in this place is the right for property owners to have quiet enjoyment on the land. Quiet enjoyment means not having a constantly changing regulatory environment and not constantly having additional imposts put on them. A lot of the concern about the 2021 act arose because it was bringing ACH into areas in which people were not used to that applying. I understand the argument about whether it legally did, but the fact is that in practice it did not.

I will go through some sections of the bill and indicate areas on which I have a particular view. I am talking directly from the briefing and amendment regulation notes. It has a nice structure, so I thank whoever put that together. Point 2 states —

> Changes made to the 1972 Act through the Bill include:
>
> Extending the right to seek review of the grant or refusal of a section 18 consent …

Absolutely; that is a sensible outcome. One thing that upsets me with the planning laws is that developers can appeal decisions—for example, joint development assessment panel decisions—but property owners directly affected by that have no right of appeal at all. It would be churlish of me to come in here and complain that the minister has given both sides an equal right to appeal; therefore, I think that is a sensible amendment. Maybe the Minister for Planning can look at that.

[Member's time extended.]

Ms R. Saffioti: I'm not the planning minister anymore.

Dr D.J. HONEY: Sorry, minister. Perhaps she can lobby the new Minister for Planning on that one.

Ms R. Saffioti interjected.

Dr D.J. HONEY: I think it has to be someone who is directly affected, not just someone in the general community. It is when direct neighbours are affected and so on. We will talk about that in another forum, minister. I have very few minutes to go through this. I am happy to have a chat later.

I think the new information obligations went to the root cause of Juukan Gorge. I do not know whether information had or had not come forward, but the allegation was that if that new information had been available, a different decision would have been made by the minister. That makes a whole lot of sense.

The briefing states —

> Contractual provisions which purport to restrict the right of Aboriginal people to participate in decision making processes … are read down to be of no effect.

Perhaps the minister can explain that. I did not find that, but it sounds like a good thing. Another small proposed amendment, which we will go through in consideration in detail, is the definition of "native title party". I think it will be good to have real clarity on that. I understand from a discussion with my colleagues that in some areas—Kalgoorlie was an example—there is a dispute between two native title groups. Proponents are never quite sure with whom they have to talk, and the two groups are at odds, as I understand it. That makes it difficult. I know of another location where that is the case and two families who had an equal claim to an area just did not get on. Nevertheless, for the majority of the state, it is critical for everyone to have clarity on who is the responsible party. This will make it very clear. The amendments to support the transferability of section 18 consents will also provide clarity. Obviously, we do not want Aboriginal cultural heritage clearance to, if you like, die with the owner. If logic applies, it should be continued.

I refer to the regulation-making powers. The devil is in the detail. I will say at the outset that there might be things in the regulations that I find irksome, but there is nothing in there that I think will be fatal to the carriage of the bill.

I go on to the definitions in category 1 of "native title party" and the like. Those seem like sensible additions. The briefing states —

> The definition is premised on having generally one native title party per relevant area.

I have already talked about that. I would like clarity on this. I did not see it in the bill or the regulations, but someone put to me that that meant that other parties could come in. I thought it would actually stop that from happening. I do not know whether I have missed something, but it seemed clear to me that one party should have carriage of an area. The rest of that section continues to refer to those proposed definitions.

Category 2 of the briefing refers to the transfer amendments. It states —

> New section 18B will require an owner of land to give notice to the Minister of a change in ownership …

Again, these are sensible changes. I did not see any major issues or problems with the section 18 transfer amendments.

I refer to the regulation-making power. One area of the regulations I want to focus on a little concerns the Aboriginal Cultural Heritage Committee. For all the foibles of the previous process for considering section 18 notices, there was a high level of expertise in that committee. The shortcoming—I think it is a fair criticism—was that there was no requirement to have any Aboriginal people on that committee, and I think perhaps at times there were no Aboriginal people; maybe it was all the time. There should be Aboriginal representatives on that committee, but I think the risk is that we go from one extreme to another and end up with a committee that has no expertise. I want to give a plug for archaeologists. In my previous life, I had a lot to do with archaeologists in examining

Aboriginal cultural heritage. To be clear, when I worked at Alcoa, I was responsible for large areas of land that were to be developed. I found that the archaeologists—Archae-aus was one company we used—not only were enormously sensitive to the need to deal properly with local Aboriginal communities, and they did that extensively, but also had a high level of expertise. It is not expertise that an ordinary Aboriginal or non-Aboriginal person would have. This is not just about knowledge that has been passed down; in fact, in many areas, because of the displacement of Aboriginal people, there are no people or at least no Aboriginal people who are aware of the history. I know that in a large number of areas, the older local farmers are probably more aware of the Aboriginal cultural heritage in their area than the local Aboriginal community, because of displacement and change over time. I have said this before: I find farmers to be extremely respectful of Aboriginal cultural heritage. I know of farmers who will fence off an area if they are aware that it has Aboriginal cultural heritage. They are very respectful. They do not want to harm that heritage. Of course, when this act came in, they were suddenly very concerned that their preservation of Aboriginal cultural heritage was going to be used against them.

To get back to my key point—not to distract myself too much—I think it is important that the committee has appropriate expertise. I am sure that the committee will have a majority of Aboriginal people, but I am sure there are some excellent archaeologists who have Aboriginal heritage. I encourage that. I think there is a real need for expertise on that committee, and I am sure that expertise is required in other areas, as well.

I will just flick over a couple sections and turn to the changes to the penalties. It is pleasing to see that the penalties in this legislation are more moderate and more real. I am pleased to see that there are no jail terms. There should be significant penalties for people who wilfully destroy heritage and Aboriginal heritage, but I think the penalties are reasonable. They will act as a deterrent, but they are not going to destroy people.

The proposed changes to the regulations relating to time lines and the use of the Aboriginal cultural heritage management system are good. The time lines will give certainty to people. One big issue for government generally is that approval time lines are very uncertain in a lot of areas. In fact, the single biggest criticism I get from people who are trying to do developments, whether mining or other developments, is that they end up with enormous delays when they go through the approval processes.

I will go through the rest of the proposed amendments. Again, the fee regulations are more reasonable. I think that was a real barrier for people. As I say, I was not so fussed about the big end of town; I am sure their accountants were, but they can pay those fees and they do so in any case. I am concerned that although we will not have prescribed fees for various activities, I am aware that, in a lot of areas, the local prescribed body corporate or senior Aboriginal figures who are required to give advice about what exists will charge their own fees for that. They will say, "Yes, I can consult with you, but it's going to cost you this much money." Under the old act, there was a case in which a small pastoralist in the north of the state who was looking to put down a test bore dealt with the local Aboriginal PBC. They had an Indigenous land use agreement for other uses on their land. They said that they wanted to put down a water bore. The Department of Water and Environmental Regulation said, "No, hang on, because of the 2021 act, we now require you to go through Aboriginal cultural heritage clearance." The family thought that was fair enough; they had dealt with Aboriginal people all the time. They contacted the prescribed body corporate, which sent a lawyer down. That lawyer said that it would cost $300 000, I think it was, to consult with the family on putting down a test bore. This is just a small family operation; there is no way on this God's earth that they could pay that. That concerns me. I raised this point in the briefing—that people, whether as part of a group or an individual, might charge excessive fees for consultation. The answer I was given at the briefing was that that was a matter that could go to the minister during the section 18 approval process; that is, they could say, "I have tried to consult with the prescribed body corporate or the appropriate body, but the fees they are charging are just so ridiculously onerous that I don't believe it's practical for me to do that. I've tried to consult, but I don't think it's fair." I am interested in the minister's answer to that, because I think that is a potential issue and he would have heard that raised at various times. As I said, the prescription of the fees in relation to processing is reasonable. Look, I have been through all the detail. As I said at the outset and as the member for Central Wheatbelt has outlined, I think the simple path for this would have been to split the bill. We will move an amendment, led by the member for Central Wheatbelt. As an outcome of all this, I want the 2021 act repealed. We will look at the detail of what is happening in this legislation, but I think if we keep the 2021 act, that will be a poor outcome for the state of Western Australia.

MR P.J. RUNDLE (Roe — Deputy Leader of the Opposition) [4.30 pm]: I also rise to make a contribution on the Aboriginal Heritage Legislation Amendment and Repeal Bill 2023. I will talk about some of the things that have happened over the last few months. I compliment the member for Central Wheatbelt on her comprehensive analysis of the Aboriginal Heritage Amendment and Repeal Bill 2023. I think as the member for Central Wheatbelt pointed out, it is very important that we outline why the act should be repealed and that the government gives us the opportunity to do that after the second reading debate. The government has recognised that the ACH act 2021 was totally unacceptable and unsuitable. That is why it is really important that on behalf of the people of

Western Australia, we have the opportunity to repeal that initial legislation and then look at the 2023 bill and its many elements.

I also want to thank the minister's advisers and the like for the efforts they have made. No doubt they have been working overtime over the last few weeks to vary the regulations and guidelines. I have a wad of documentation, including the draft *Consultation policy for section 18 applications*, the draft *Aboriginal Heritage Act 1972 guidelines*, the Aboriginal Heritage (Fees) Regulations 2023, obviously the bill, the Aboriginal Heritage Amendment Regulations 2023, and the Aboriginal (Transitional Provisions) Regulations 2023. Then we have 12 or so amendments. I can only imagine what the advisers and director general, deputy director general and many others in the department have been going through over the last couple of weeks—and, of course, we had the comprehensive briefing the other day. As the member for Cottesloe pointed out, the bill overview is set out very well.

I would like to talk about the reaction of the people of Western Australia, certainly regional people, in my experience, and the uproar over this scenario. In November 2021, the initial bill was brought in with very little notice. We were given less than 36 hours' notice. I remember sitting here late at night with the member for Cottesloe and the former member for North West Central trying to ask questions about farm dams, fencing and any other number of things. As we saw at the time, the minister said, "You'll just have to wait until the regulations come out. I cannot answer a lot of those questions." The question is: why was that bill rushed through in November 2021? Then, if you do not mind, the regulations came at four o'clock on the Thursday before Good Friday when most journalists had probably gone down to the pub. The government thought: let us bring in the regulations at four o'clock on the Thursday before Good Friday, just to give it a few extra days before people wake up to it. That is the process that we have been through. As people woke up to it, they saw exactly what was happening and the fact that the regulations were totally unsuitable and totally unworkable.

I remember one of the last speeches summing up in the second or third reading contribution by the member for Cottesloe. He said that we cannot support the bill and we cannot oppose the bill because we just do not know enough about it. That is exactly what he said. That was spot-on at the time, because we had very little consultation. That was the experience we went through. The government told us not to worry; the regulations would come along down the track and all would be revealed. No problem. Of course, there was.

Then, of course, we saw the new Premier in action and he criticised us in his first question time. He absolutely went to town on the opposition about us asking questions and the like. It was quite insulting and his attitude was quite concerning. Talking about the opposition, he said we were like dogs going back to their own vomit. It was quite upsetting. Then, of course, he was back-pedalling a few weeks later when he found out that his legislation was not up to scratch. As the member for Central Wheatbelt said, he was in cabinet. He was the Deputy Premier. He sat in there in amongst all that. He sat in there amongst three ministers over time. Three Ministers for Aboriginal Affairs had different stages of the bill and he was right there in amongst it. That is no excuse, as far as I am concerned.

I take members back to some of the things that I went through as the member for Roe. It is funny; I remember one particular phone call I had from a well-known farmer in my electorate. I think it was on a Saturday morning. I was walking somewhere to get a coffee and I remember him ringing me and saying, "Look, I can actually handle this new bill because I'm on the way out. I am going to retire at some stage in the not-too-distant future, but I worry for my sons. They are taking over the farm." He said, "This Aboriginal Cultural Heritage Bill has put the wind up all our sails. I very much worry for the future of my sons and the future of all young farming families who have started coming back to our agricultural areas." We have recently had some pretty good seasons, cropping-wise and sheep-wise, until this year. A lot of younger families are starting to come back. We are seeing numbers in the younger age groups increase in our schools, and the number of pre-primary, kindergarten and year 1 and 2 students is increasing at a few of our schools. There is encouragement for those families to come back. The last couple of seasons were very good. They were appearing—then all of a sudden people got wind of the Aboriginal Cultural Heritage Act 2021 and that frightened the whole farming community. That was one phone call that I remember.

I also distinctly remember the first consultation meeting in Esperance. I waited in a 60 or 70-metre long line with hundreds of other people to get in the door and was handed a set of regulations by the department as I walked in. I was very concerned about the way things evolved as that meeting went on. I was concerned about the hostility that came out of that meeting and, I guess, the confusion. The people who were delivering the forum were doing their best, but, quite frankly, they only got through about 10 per cent of it before people started firing questions about the fee regulations, the surveys, how many dollars an hour people would be charged and all those elements. All of a sudden, people could not focus on the presentation that was in front of them, so the meeting deteriorated. As I said, what really concerned me was the level of hostility from people as they came out of that meeting, as they not only felt that they had not been informed, but also were very worried about their future and what they might have to do if they wanted to put up a fence or put in a new dam or the like. After that meeting, I said to someone—I also said it in here the other week—that I thought this had set back relationships in my area in particular, and surely in the rest of the state as well. The Premier, of course, gave me a spray and criticised me for those comments.

I am worried about the division that has been created by this legislation. The new bill is some sort of improvement, even though we have not had much time to look at it. However, the division that has been created over the last few months is quite a concern. When I am in the electorate talking to farmers, the first thing they talk to me about is the Aboriginal cultural heritage legislation.

As the member for Cottesloe said, four members of the National and Liberal Parties were in Manjimup yesterday to talk to people who have water licences and dams and are still very worried about this legislation. I know that the Western Australian Farmers Federation and the Pastoralists and Graziers Association are also worried about how this new bill will fit with water, because I think we all know that a lot of Aboriginal cultural heritage is connected to waterways. There are a lot of questions to be asked. As I said during question time, 42 members of the Labor Party were invited to come down to the Manjimup water forum, but not one turned up, including the local member. That was disappointing. I stood up in front of the water forum and tried to explain some of the differences with the Aboriginal Heritage Legislation Amendment and Repeal Bill 2023, what I thought would happen with the passage of the bill and so on and so forth. I do not think it would hurt for the Minister for Water or the Minister for Aboriginal Affairs to go out to the regions and talk to people, especially about water. The Manjimup–Bridgetown–Nannup area has a massive amount of water and massive dams. It is one of the food bowls of this state. The member for North West Central has Carnarvon in her electorate, which is another food bowl in WA. Of course, the wheatbelt is also a food bowl. Manjimup and surrounding areas have a lot of water. Those areas a great food bowl for our state.

At the forum, I explained how I thought the bill was going to go through Parliament. That was fine; I was happy to do that. We then had questions about whether freehold title would override the Aboriginal cultural heritage legislation. People got up and quoted High Court cases and that sort of thing. We seem to have a lot of experts out there who talk about freehold title, the Transfer of Land Amendment Act and any number of issues. That has been brought to the fore because of the way in which these bills have been handled. From my perspective, that was really signalled by the 30 000 people who signed the petition in a short space of time. We could see that they were worried. As the member for Central Wheatbelt alluded to earlier, when we asked the minister for some education sessions, his initial response was that people could drive four or five hours from Southern Cross or wherever up to Perth—not a problem! As it turned out, he saw the error of his ways and, to his credit, he put on forums at Merredin, Katanning and a few other places to give people in the wheatbelt an opportunity to understand what they would be dealing with.

The other thing I point to is the regulations under the previous act. After the Esperance forum, I spent an hour and a half reading them on the plane on the way back. I asked the minister a question the next day about farming activities and so forth and he said that there would be no problems as it would be like for like and farmers would be able to continue as they were. I suspect that some of his advisers—his chief of staff and others—probably said to the minister that night that he needed to look more closely at the regulations because there would be more complications with tier 2 or tier 3 activities and that they would not be like-for-like activities and people would not be able to press on regardless.

[Member's time extended.]

Mr P.J. RUNDLE: The minister had another look at the regulations. The real concern for me, which I think is a bit of a signal of how this government operates, was the way in which the government quarantined properties of less than 1 100 square metres. The government continued its assault on the people of regional WA by drawing into the legislation anyone who had a piece of land above 1 100 square metres. It was going to protect all its city electorates—that is, anyone with a property under 1 100 square metres—but the regional electorates did not matter as they would not be a problem for the government at the ballot box. It quarantined metropolitan people in safe metropolitan seats who have properties below 1 100 square metres because there is no Aboriginal cultural heritage on those blocks and it wanted to shore up its vote for the next time around. It was going to throw the members for Geraldton and Collie–Preston to the wolves, because they have constituents with larger blocks, but it was ensuring that the 43 metropolitan seats would be safe from the legislation so that they would not be penalised at the ballot box. That is what it did. It was quite disturbing.

I went to the WAFarmers forum at Katanning to which 600 people turned up. The two issues at the forum were Aboriginal cultural heritage and live sheep exports. Those involved in the live sheep export are in a world of pain. There will be some real problems in the next few weeks. Whenever I talk about live export, people stand up and walk out of this chamber, but now that people cannot get rid of their sheep, they will have to start shooting them. They can get only 50¢, $1 or $2 for sheep that they paid $140 for last year. It will be cheaper to shoot them on the farm than transfer them to saleyards to get that money. This government has not stood up in any way whatsoever to its federal counterparts. There is an impending mental health crisis in the live sheep export industry.

I digress. The other issue discussed at the forum was the Aboriginal Cultural Heritage Act 2021. At the forum, WAFarmers moved a motion that the state government amend the act to exempt freehold farmland that has been disturbed, developed or cultivated, which was carried. Another motion was that the state government amend the act to recognise that intangible cultural heritage identified across freehold farmland would not impose restrictions

on land usage, which was carried. There were various other motions, including one about the issue of 1 100 square metres. Another was that if farmers and the like were included, then everyone in the state should be included. I spoke against that motion, because I did not feel that it was right to penalise other people. As I said, this government decided to protect its metropolitan voters from the legislation, thereby ensuring that it would not be messed up at the ballot box at the next election. Rather, it decided to penalise regional people and those in the pastoral and mining regions and the like. That is a short summary of some of the things that happened over time.

In addition, there was a new movement of people who were unsure about where they stood. Some groups decided to stop tree-planting activities when the Minister for Transport was at the end of the freeway with Geof Parry and activities were going on. People were unclear about who was representing what part of the landscape. There was general unrest. Some people were worried about heritage fees. Shane Kelliher, a landholder south of Perth, had his lawyer look into the fees and he said that after the act came into effect on 1 July, he could be forced to pay between $30 000 and $100 000 for a cultural heritage assessment. Although he supports protecting Aboriginal cultural heritage, Mr Kelliher argued that it should not be at the cost of individual landholders.

The member for Central Wheatbelt spoke about the survey. I am curious to hear the minister outline his plan for the statewide heritage survey that has been spoken about. A lot of landholders were anxiously looking at the mapping on the department's website over the last few months. The pink-hatched area indicated that a person's land potentially contained Aboriginal cultural heritage. In his second reading reply or during consideration in detail, I ask the minister to outline how he plans to survey the rest of the state over the next 10 years, how the state government will budget for it and whether constituents will have to pay any money for heritage surveys on freehold land. I am certainly interested in hearing about those things. Those things happened immediately after the 2021 bill was introduced. I call that price gouging certain members of the community for surveys and the like. That was one element of it. Another element was confusion. Without being an expert by any means, people like me tried to explain how the act would work. People were worried about deep ripping dams, tier 1 activities and tier 2 activities et cetera. Further, only three local Aboriginal cultural heritage services were formed prior to the act coming in—perhaps there was one, with the other two not far away.

As part of my conclusion, my worry is about the way that regional constituents have been, and are being, treated. During the seven and a half years that the Labor Party has been in government, regional people seem to have become second-class citizens. There was an example of that yesterday, as the member for Cottesloe pointed out. People who are worried about their future and how this bill will affect their water supply went to the Manjimup Town Hall. Not one member of the government was prepared to turn up to explain things. The member for Cottesloe, Hon Colin de Grussa and I were there trying to explain how we understand it and, of course, there were other speakers as well. The bill contains 259 pages and 353 clauses and people are very concerned.

A few weeks ago, there was an article in *The West Australian* about the Standing Committee on Legislation. It is opportunities such as these for that committee to swing into action and have a decent look at legislation. People like Hon Dr Brad Pettitt were criticised for being paid to be on the committee that has not sat. But this government, with its numbers in the other place—and here, for that matter—will not allow any legislation to go before that committee. Committee members are being paid to sit on a committee that does not meet because the government will not refer legislation to it. What a classic. It is an abuse of power. We have seen that scenario many a time with different pieces of legislation.

When I asked the Premier whether the Prime Minister picked up the phone and said, "You need to drop this legislation—drop it like a hot potato because it's affecting my referendum", he denied it, but I can assure members that there would have been phone calls to the effect, "Drop the legislation. This is affecting the Voice referendum." There are no two ways about it. That was the Premier's opportunity to stand up and say, "We'll drop the legislation and bring in a repeal bill if the federal government drops its ban on live export." That was the leverage the Premier had. There are no two ways about it. A phone call from the Prime Minister said to drop this like a hot potato. As far as I am concerned, when we look at the balance of things, this was the opportunity for the Premier to sit back and say to himself, "I have stood up here and said that I support live export. I have done nothing, but I stand up and say that I support live export. This is my chance to use some leverage with the Prime Minister, who rang up to say 'drop it'." I look forward to discussing this further down the track.

MS L. METTAM (Vasse — Leader of the Liberal Party) [5.00 pm]: I rise to contribute to debate on the Aboriginal Heritage Legislation Amendment and Repeal Bill 2023. From the outset, I would like to reiterate that it is important legislation and the opposition is certainly not opposed to ensuring greater protection for Aboriginal cultural heritage. However, it would seem that the opposition is faced with a case of deja vu in this government's handling of Aboriginal heritage legislation. More than 670 days after the first bill was introduced in this place, I am again on my feet, discussing the same issues and lamenting how the opposition was again given no opportunity to consult on the details contained in the bill.

The original bill, which was introduced into Parliament on 17 November 2021, was rammed through Parliament and bypassed all the established and essential procedural norms of this place. The process was expedited and effectively denied the opposition the opportunity to thoroughly review the bill or engage in meaningful consultation with various stakeholders or affected constituents. At the time, in my second reading contribution I highlighted significant implications for not only the government if it had it wrong but also individuals if they misunderstood the implications or expectations of the proposed legislation. I questioned the reasons for such haste, as did my colleagues in this place. I said that if the government truly believed in the merits of its legislation and is confident that it strikes the right balance and has undergone the necessary consultations, then it should be allowed to progress through the legislative process as it usually would. A democratic system thrives on transparency and robust debate, and bypassing these principles raised concerns about this Labor government's commitment to openness and honesty, not only among fellow members of Parliament but also among all citizens of Western Australia. Moreover, there were valid concerns about the potential over-reliance on regulations to enact the provisions of this bill. Such an approach could lead to an extended period of uncertainty for involved stakeholders. Uncertainty, as we know, can hinder effective planning and decision-making, making it imperative that we address this issue thoughtfully and comprehensively.

However, it was not just I who had these concerns about the original legislation. The former Leader of the Opposition and lead speaker on this bill, the member for Central Wheatbelt, said the following —

> 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.

The member for Cottesloe, who was the Leader of the Liberal Party at the time, stated —

> 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.

Unfortunately, as we know and learned, these concerns fell on deaf ears. The former Premier even went as far as to state —

> Eventually, governments have to act. We cannot continue just to consult and allow these matters to pass into history, as past governments have done. Our view is that the time for action is now. We do not want to see any more destruction of Aboriginal heritage, as was the case with the Juukan Gorge matter, which was approved in 2013 by the last government. Therefore, we intend to ensure that we put in place the strongest and most protective Aboriginal heritage laws in Australia.
>
> …
>
> My view is that governments are elected to act, they are elected to make decisions and they are elected to improve things, and that is what this legislation will do.

That was certainly not the case. The legislation was supposed to be a significant step forward in establishing a contemporary framework for the preservation and appreciation of Aboriginal cultural heritage. According to the government, it was a much-needed initiative that recognised the importance of Aboriginal cultural heritage as an integral and living part of Aboriginal people's lives. It also emphasised the need for Aboriginal communities to have the autonomy to define and safeguard their heritage, the intent of which we wholeheartedly supported. Its intent was to recognise that Aboriginal cultural heritage was not static but constantly evolving; therefore, it was essential to have a flexible framework that could adapt to changing circumstances.

According to the former Labor Premier, the 2021 legislation was —

> … the most progressive Aboriginal heritage regime Australia has ever seen. It is arguably as good as anything anywhere in the world.

The legislation had a simple aim: to oversee activities that may pose a threat to Aboriginal cultural heritage. It recognised that these activities could have a significant impact on Aboriginal communities and, therefore, that a balance that benefits all involved parties needed to be achieved. It sought to prevent and mitigate harm to Aboriginal

cultural heritage whenever feasible and ensure the preservation of cultural heritage, which was a top priority of the state.

A guiding principle that drove the 2021 legislation was the recognition of Aboriginal communities and the unique perspective they have on their cultural heritage. Their perspective is based on their lived experiences and their intimate knowledge of cultural practices and traditions; therefore, the legislation emphasised the importance of active participation in the decision-making process by Aboriginal communities. This included consultation, negotiation and agreement-building to ensure that communities had their say on how their cultural heritage would be managed and protected. This was a significant approach to ensure that another Juukan Gorge incident never occurred again. Its intent was well understood and supported by the opposition; however, the implementation of the 2021 legislation and its regulations can be seen as nothing short of disastrous, exceptionally complex and far from the world-class legislation we were promised.

As we came close to the new act's implementation date, it became crystal clear that the government was not ready for the legislation to commence. Accordingly, the opposition called for a six-month delay of the rollout of the legislation's implementation to enable the act to be implemented seamlessly. Hon Neil Thomson in the other place stated at that time —

> "People are worried about their future and fear being bound up in red tape which could require permits for things such as putting a new fence in, digging a dam or removing noxious vegetation," …
>
> "Farmers, pastoralists, and companies that provide services such as plumbing and civil contracting are all trying to work out the implications, as are hobby farmers around the metropolitan area that are deeply concerned about what they will be allowed to do on their land, without a permit.

As members of this place are aware, an e-petition was sponsored by the shadow Minister for Heritage, Hon Neil Thomson, which gained almost 30 000 signatures and was presented to Parliament on 22 June. It states —

> The Act will create a new and unique and untested approvals system for which there is no capacity at this time to seek approvals online, meaning businesses, such as pastoralists, farmers, prospectors, and those in civil construction will have to cease all works until approvals, which can only be lodged after 1 July are then processed and approved or rejected.
>
> …
>
> In view of this intolerable situation and risk to the Western Australian economy, we call on the … Government to delay the promulgation of the Act …
>
> … Establish a working approvals system which allows for a reasonable period of online interaction, lodgement, and approval of permits …

The Premier dismissed the e-petition and steadfastly refused to delay the rollout, despite widespread uncertainty and confusion over the regulations and, more recently, the new Minister for Aboriginal Affairs staunchly defended the new laws. What were the outcomes of this decision? At the commencement of the legislation, none of the approximately 40 region-specific local Aboriginal cultural heritage services had been established, despite advisory bodies playing a key role in the updated legislation that passed Parliament in late 2021. This led to widespread community concern, as penalties for damaging cultural heritage sites ranged from $25 000 to $1 million for individuals and $250 000 to $10 million for corporations, as well as jail time. Following the very widespread backlash from farmers and landowners upset over what they said was the rushed implementation and lack of clarity about the regulations, the state government announced that it would delay the compliance penalties for a year in favour of an education-first policy.

We saw a community-driven tree climbing event intended to enhance the local environment encounter an obstacle due to the implications of this act and the misunderstanding and confusion surrounding what the act represented. Prior to the event, thorough online checks were conducted to ascertain the presence of any Aboriginal heritage on the site. What was apparent and surprising is that those checks did not yield any such heritage markers. However, the event faced an unexpected twist when a highly respected knowledge holder, who holds a prominent role in the community, intervened. This individual made the decision to cease the tree-planting activities based on concerns related to ground disturbance and the newly enacted Aboriginal Cultural Heritage Act. Additionally, the decision was influenced by what was perceived as the significance of the site to the local family and its cultural heritage.

Five weeks after the new laws commenced, our new Premier admitted that the government's Aboriginal Cultural Heritage Act 2021 was divisive, confusing and stressful for landowners, and axed them. At the time, the Premier stated —

> "Put simply, the laws went too far, were too prescriptive, too complicate and placed unnecessary burdens on everyday Western Australian property owners," …

He said, as the Premier —

> "I understand that the legislation has unintentionally caused stress, confusion and division in the community, and for that I'm sorry," …

Here we are, 671 days later. As I mentioned earlier, parliamentarians on this side of the chamber have been given just days to gets their heads around the amendment and the 2023 repeal bill that will create the revised approvals system for WA cultural heritage applications, which affects a vast majority of the state, and yet again we have not had the opportunity to consult the affected stakeholders, including Aboriginal people, who are not happy with this legislation. For the second time in as many years, we have had to consider the bill and its implications in a joint party room meeting. It is clear that we yet again have to seek additional information and assurances during the consideration in detail processes. There are obvious elements that require further clarification and examination. The government will charge for services, although there are exemptions for small businesses, non-profit and government proponents. Further clarity is required on what constitutes a small business, the level of fees and whether they are cost reflective.

The Environmental Protection Authority remains legislatively compelled to consider Aboriginal cultural heritage by the definition of "social surrounds" in the Environmental Protection Act. This creates an unnecessary level of duplication that has the industry concerned and has the potential to effect approval time frames. I have asked a question in this place and raised this matter as well. The Premier will be given the power to call in a decision made in the State Administrative Tribunal on a section 18 matter that is considered to be of state significance. After the brief consultation that I had with stakeholders, I will move an amendment to introduce the same threshold of materiality for new information to be considered by the minister in the interests of consistency and clarity. The penalty provision in the 1972 act at section 57 will be amended to provide for the contravention of a regulation, which will be an offence and punishable upon conviction with a penalty not exceeding $20 000. The Yamatji Marlpa Aboriginal Corporation has stated that the penalty should at least be consistent with those in the Aboriginal Heritage Act.

Finally, with the government having to backflip on the legislation that it had 18 months to get right before its implementation, we would assume that it would not repeat any of the concerns going forward. By no means does the opposition seek to delay the repeal of the act.

[Member's time extended.]

Ms L. METTAM: However, we need to ensure that the legislation is given the appropriate level of discussion and debate in this house. It is with that in mind that I hope the government will take a commonsense approach the second time around and allow proper scrutiny of the bill to occur. As others have said in this place, many issues with the regulation for the 2021 act were raised. We were provided with the detail of the regulations. I had a briefing yesterday and a briefing was offered last Friday. Those regulations have only just landed, and many industry groups and others are getting their heads around this legislation and what it represents. It is the comments around the unintended consequences that have us concerned. It is a concern that the government cobbled together this 2023 bill in what was described as a "lightning consultation process with industry", and that raises some very real concerns with the opposition. Industry has raised concerns about the extent of the implications with what is presented in the guidelines and what changes could be made going forward. Most importantly, we want the disastrous 2021 act repealed. That is the feedback we have had from the industry and the broader community. The disastrous legislation, which was apparently world class according to this government, needs to be scrapped. That is our priority here.

I have raised a number of points seeking clarity on what the regulations represent. I also have an amendment to the bill in the interests of consistency and clarity for the minister to consider. We need to recognise that industry and the broader community want certainty going forward. The outcome of the 2021 act was disastrous. It could have been even worse had the government not changed its position and made a commitment to repeal the 2021 act on the back of community outrage and concern. Until that point, industry groups had undertaken quite significant cost to work as best they could with the legislation. Their feedback to us, with the limited information they have received so far, is that this legislation is a significant improvement on the 2021 measure. There is a real need to address any uncertainty going forward so there is not a repeat of the unintended consequences and implications we saw this year through the implementation of the 2021 act.

If only the WA Labor government had treated the opposition with respect in the first place. If only the government had undertaken proper consultation when implementing those disastrous laws. We call for some clarity. There is an amendment on the notice paper that will be moved by the member for Central Wheatbelt to split the bill. It was our commitment to repeal the disastrous 2021 act, go back to the drawing board and consult properly, instead of, as was said to me, lightning consultation. There are concerns about unintended consequences. The matter of what could be in the guidelines has been raised. Going forward, we would like more clarity. I have pointed to the amendment to clause 13 of the bill around materiality, which we will move. I urge the minister to give that important

amendment consideration, as he should to the amendment to be moved by the member for Central Wheatbelt. I leave my comments there and allow other members to speak.

MS M. BEARD (North West Central) [5.24 pm]: I rise to speak to the Aboriginal Heritage Legislation Amendment and Repeal Bill 2023. As the newest member of Parliament, and someone who lives and represents —

Mr R.R. Whitby: You are the second newest member!

Ms M. BEARD: What did I say?

Several members interjected.

Ms M. BEARD: Sorry! Where did that come from? The member for Rockingham is the newest.

As a new member of Parliament—I should have taken the e-s-t out; apologies to the member for Rockingham!—and someone who lives in the electorate of North West Central, I was not in this place in 2021 when the first bill was debated. However, I was well aware of what was happening, particularly as a community member. It was at the top of people's agenda and definitely part of conversation. I was obviously not in this place prior to last year and in the lead-up to where we are today, so I was not privy to that debate, but I suspect the no-one in here at the time would have disagreed that the priority needed to be to protect Aboriginal cultural heritage in WA. I do not believe there is anyone in WA who disagrees with that. There is definitely a need to protect Aboriginal cultural heritage in WA and to modernise the framework to preserve it and make sure it happens.

As a person who grew up on a pastoral lease, as did my family before me, I particularly understand the significance and importance of this legislation, and I have no issue with the measures to provide protection. In actual fact, I can tell members where the Aboriginal cultural sites are on the property. An elder I grew up with contacted me in the street and asked when my father was coming up because he knows where those sites are, and some of his elders have passed on. There is scope for lots of people to feed into this process. My father and my mother were born in those areas, and they are very aware of the cultural sites and are very, very respectful. We were always brought up to be respectful. I absolutely have a lot of understanding and empathy for the need for this to happen. I just want to put that on the record.

It is interesting that despite such significant and important changes happening, the opposition was given seemingly little time to review them. In any environment, if significant changes are being made, the need for robust discussion is essential, and all aspects need to be considered and put into the mix. It is interesting that that did not take place and that the lead-up time was very short. After the previous legislation was rammed through Parliament and the government started to develop the policies, regulations and guidelines, there clearly needed to be an extension of time to consult widely.

Another point I make, based on feedback from people on the ground, is that the advisers, ministers and other people in this space had quite a detailed understanding of the legislation, but to some of the people on the ground it was like another language. They are busy farming. They are very good at doing that and they understand what they are doing. It is difficult for them to understand and interpret some of the detail of this legislation. For example, at the briefing, a number of people said to me that it was like listening to another language. They said there was so much information and they just wanted to simply understand what they had to do, what it meant and what the outcomes would be. In some instances, there is a disparity between people being able to understand a lot of information and the complexities of what has to happen and what people need to understand. I guess it is about picking out what is crucial, what is important and what people need to know. That was the feedback given to me. It was quite concerning for people to hear, or perceive, the government say, "She'll be right; we'll just put it in place." People on the ground contacting me were particularly concerned. They saw the legislation as a threat to their livelihoods. One person likened it to me as thinking their job would be gone any day at any time. They had invested a lot of time and money, and they were concerned about what was going to happen. They definitely saw it as a threat to their industry. Some of them were disappointed because they had had good relationships with traditional owners and had always worked with them. Stakeholders, industry and other people were looking to understand exactly what these changes meant to them, their businesses and their land. They were seeking a clear framework of what it would mean moving forward and what it would look like for industry, Aboriginal people and everyone involved.

I think everyone understands that this is a complex area that is difficult to traverse. My question is: why was this legislation rushed through last year without time to consider it in detail? Surely, the best results come out of robust discussion. I found it disappointing that the opposition's questions were dismissed. A lot of the questions we raised were a result of people telling us that they were confused and concerned. They were not opposed to the fact that change needed to happen; their concerns highlighted that in any complex area, we need clear, concise and detailed communication on many levels to ensure that no matter who people are or where they are in the state, the changes and impacts are well understood. That is my view. It may be a naive view of how I thought this place worked

before I came here—I do understand how it works—but this is very important to me. I felt that time was required then and it is required now. That is why I totally support the motion to split the bill. I think that we need to split the bill and take the time that is needed to get really good outcomes. I believe that, as a group, that is our responsibility. All of us in here should have a goal to make this a better place that gets better outcomes, but some of the responses to questions asked by this side of the house staggered me and sent a message to people that no-one was listening to their concerns about such an important change. That was fed back to me. I hope the suggestion of splitting the bill is well considered. A petition of 30 000 signatures was initially dismissed before a rally pushed it to the point at which people were heard and we actually got some change. People were disappointed with that. If we can rectify that going forward, that would be a very good outcome.

In my area, the word "consultation" popped up regularly. I thank the minister for finding a bigger venue in Carnarvon. We initially had a venue for 50 people; we ended up with 300 people. Members may not know that we have a large Vietnamese community in my electorate; a few of them speak good English and they usually interpret, but many do not. A third of the way through the forum, a lot of those people left. It concerns me that if we do not cater for all levels and all abilities to understand, things will fall off and not be enacted as they should be. If people do not understand something, they dismiss it and carry on doing what they have always done. I think that communication is a massive part of this. Someone in that forum put up their hand and asked how many people had been to the consultation. Out of those in the room, I would say five to 10 people put up their hands. I am not sure whether it was the same group of people who were consulted. Communication is really hard; I understand that. Does one go through social media, put it in the newspaper or walk the pavement? I acknowledge that it is really hard to communicate, but I think it is particularly important. People are trying to navigate the legislation and the regulations. Those things are entirely foreign to a lot of people. We need to work through these issues going forward as well as right now. Some of those people will have used Google and they will be experts! Anyone who has something wrong with them googles it and gets a thousand answers and diagnoses themselves with things that they do not actually have. To avoid that, we need to make sure that the information is very clear.

I represent a very large region. As everyone knows, it covers 820 000-odd kilometres. My region does not have suburbs. It is really hard to communicate with people. One of the difficulties of that region is that there are so many different communities with very different groups and very different cultures and needs. As an example, I was in Yalgoo and a lady said to me, "I have family from both sides, but the local Aboriginal cultural heritage service sits in Geraldton and I don't know how I can get onto it, and I can't get in." She was very stressed that her family would not be represented in that space. There was a lot of angst from a lot of different areas. It is hard to communicate; Yalgoo is two and a half hours away from Geraldton. It is difficult to get the message out to all these people who are spread very far and wide to give them clarity and enable them to stay calm and understand. Many of these industries and groups coexist. In my area, there are mining, oil and gas, fishing, horticultural and pastoral industries, and that is all overlayed with tourism. Even people in the fishing industry want to know how this will affect them. They want to know what it will mean for them if they want to put their pumps on the banks of a river or if they want to put their boats in and out somewhere and there is no ramp.

Another consideration that may have been overlooked is the multiculturalism of some of the regions. Some pastoral people felt offended because they have done the right thing for generations and have very good relationships. One elder whom I grew up with was in the consultation session in Carnarvon. He stood up halfway through that session and spoke to the facilitators. I might add that they did a very good job; I would not have been in their shoes for quids! I thank them for handling that situation extremely well. The elder stood up and said, "Look, I went to school with these people; I grew up with them. We have a good relationship. You're making this very difficult. It has become very complex, which is daunting." I think that again comes back to the communication aspect. That cemented for me that we really need to find a way to communicate at different levels, because not everyone communicates in the way that we communicate. It is creating confusion.

Fees were another issue that was particularly frightening for many. There was a lack of understanding about the fees in every aspect and every quadrant. In the briefing, people were asking me what it would cost, what would constitute a small business, what they would have to pay, whether it would be repetitive, whether it would be ongoing or a one-off fee, and whether they would be able to get a one-off survey. There were so many questions that I could not answer. Maybe we can find a mechanism by which we can feed those answers back. I felt that the questions we raised were dismissed.

Issues of property ownership and the potential impact on people's businesses were definitely raised. People who had been operating a business for five or six decades wanted to know what it would cost and how it would affect the value of their property. There were so many stress points for so many people. The member for Roe commented about mental health issues. There may still be real issues for some people, and we cannot dismiss that.

The penalties in this bill are more moderate, which I welcome. The big end of town probably had the resources to understand the act, but a large cohort below them would definitely have struggled to navigate their way through the various scenarios.

The size and diversity of the electorate that I represent is a live example of a very diverse cross-section of industries and people. We need to recognise the stress that was caused by ramming through the Aboriginal Cultural Heritage Act; we owe it to people to get it right this time. The backflip over the 2021 act demonstrates that it was a poor process; that is how I see it. Given the importance of these changes, we need time to make sure that we get this bill and the amendments right. As highlighted by the member for Central Wheatbelt, the suggestion to the government to split this bill is really important as it would give us more time to address the large cohort of people who are looking for clarity and certainty. Clearly, the proposed amendments within the bill seem to be cohesive on the surface, but further questions will be raised about what will be in the bill and what will be transferred to the policy and guidelines. People out there need clarity and certainty that, this time, the legislation and the framework that will sit alongside it will be robust and they will be able to understand it. To use a word that someone in my electorate used, the clumsy process the government displayed in the rollout of the Aboriginal Cultural Heritage Act 2021 caused an enormous level of angst and uncertainty. Aboriginal groups, individual industries and businesses deserve a smooth rollout of this legislation. Surely, it is our responsibility to make sure that happens. It is reasonable to try to make it seamless. I urge the minister to take the time to get it right and strongly consider the opposition's suggestion to split the bill. The priority is to have the 2021 act and the regulations and functions repealed.

Finally, I would like to thank the advisers for their time in the briefing. I have a wad of information that I am ploughing my way through. I found it incredibly difficult to do that on the weekend because I was driving north and driving south again, so time was not on my side. I thank the advisers for their time and help.

MR R.S. LOVE (Moore — Leader of the Opposition) [5.40 pm]: I will make a brief contribution to the second reading debate on the Aboriginal Heritage Legislation Amendment and Repeal Bill 2023. It will be brief because I am limited to 20 minutes plus a short extension. I will be speaking until the dinner break—I think we are having a dinner break tonight—and I imagine a little bit after that as well. Over the last number of months, since the Aboriginal Cultural Heritage Act 2021 was introduced on 1 July, we have had the most spectacular failure of a government to properly implement legislation that Western Australia has ever seen. It led to uproar across the state. It led to tens of thousands of people signing petitions, joining interest groups, joining Facebook discussion groups and contacting members of Parliament. My office was inundated with calls from members of the public, not by big mining companies or people who are normally consulted by this government on any issue. As we will see when we go through some of the answers that were given to questions asked by the opposition throughout this sorry time, the government seemed to feel that the only people it needed to consult was large mining companies and a few special interest groups. It failed to understand that tens of thousands of Western Australian landowners, big and small, small businesses and other people were concerned about the implications of this legislation. We saw situations in which community landcare groups were not able to plant their seedlings because there was disputation between Aboriginal knowledge holders and the groups over that activity, yet these were approved activities that had been funded. Surely, all Western Australians would want to see landcare thriving and moving forward. Even in that laudable objective, disruption was caused by the ham-fisted, botched implementation of that legislation.

That piece of legislation was five years in the making, from the time it was first spoken about in 2018 through to the time it passed through this house, until its commencement in 2023. When the bill was first mooted in 2018 by the then Minister for Aboriginal Affairs, Ben Wyatt, there was an assurance that there would be a green bill that would be discussed widely in the community so that people would know what was going to be implemented. What we saw instead was a process that relied upon discussion with a few stakeholder groups. I say a few, because it is pretty obvious that most people in the state had no idea what was in the bill. I question some of the consultation processes this government undertakes, and other organisations, but mainly in this government's time. I have been told by people who are on some of the groups that are consulted that, if they are a representative of an industry group, they cannot go back and discuss what is being discussed in the consultation process fully with their members. We have a situation in which a very select group of a select group are engaged in consultation. The government does not seem to have understood that this has left out the majority of people in the state. That is how we came to the situation in which we had tens of thousands of people who had no idea what was about to happen to them and had no idea how they could move forward.

I have been to properties in my electorate where people have been in the middle of developing a hobby farm into a working tourist attraction that might have fish ponds et cetera. They were halfway through developing their fish ponds when this legislation suddenly appeared and then they were unsure as to whether they could carry on. They did not have the resources to sit around and do nothing for 12 months while it settled down and while an educative process was undertaken so that everyone would know what was going to happen; they needed to get earthmoving contractors in and they needed to keep their project going. They had no idea how they could do that because there

was no-one to turn to, there was no information and there was no process. There was no-one actively on the ground that they could turn to in a reasonable time frame. People do not have months and months to sit around for a simple approval. They do not have the time. They do not have the ability of a larger organisation to employ consultants and advisers who may be able to provide them with knowledge of how to navigate through the legislation. They rely on information that is given to them by the government and the processes put in place by government. What we saw was a failure by the government to provide that information properly.

I am having a bit of trouble with the conversation in the corner, Mr Acting Speaker.

The ACTING SPEAKER (Mr P. Lilburne): Thank you, Leader of the Opposition. The Leader of the Opposition is getting distracted. Perhaps that conversation, which I thoroughly respect and am aware of, could be done somewhere else. It is obviously important; I understand that.

Mr R.S. LOVE: At the time that we were considering this legislation, all members of Parliament had people from our electorates coming forward with their concerns—small business people and farmers, as we would expect. In my electorate, tellingly, there are a lot of people who have small landholdings—those in the Shires of Toodyay, Chittering and Gingin, and even those in shires that surround some of the larger towns, like Moora, or the City of Geraldton, because I have extensive rural residential areas just to the north of Geraldton. Those people were heavily impacted, especially if they had not yet developed a dwelling on their property. To have a situation in which tens of thousands of dollars of costs potentially would be loaded upon those rural residential blocks meant that they were not an attractive proposition for people to move to. Real estate agents in the area reported a complete lack of interest in buying those larger blocks at that time. People are not going to invest in a block of land when they potentially might be up for tens of thousands of dollars of costs or be unable to develop their land in the way they had anticipated. I think this legislation went far beyond who the government thought it would affect.

In answers to questions in this place, the minister shouted at me, "Don't the PGA and the WAFF represent all the farmers?" They represent a number of farmers, but they do not represent the hundreds of thousands of small land users and many other land users who are not part of an industry group. That does not mean those land users do not have a right for their government to talk to them or a right to be consulted and educated and be considered going forward. Someone should not have to be part of an industry group for the government to take their views into consideration. The government should not mandate that. I think that has been a failure of this government.

I also had discussions with some members of the Aboriginal community in my electorate who expressed concern that they had a breakdown in the relationship between the prescribed native title group or the persons that were there to undertake the heritage agreements under both the south west and southern Yamatji settlements. These Aboriginal people on the ground said they were concerned that they were not going to be consulted and were being locked out by the structures that the government was putting in place. All sides of the equation were labouring under the yoke of the Aboriginal Cultural Heritage Act 2021 and the tin ear of the minister and the government as this went forward.

We in the opposition are intensely interested in maintaining the appropriate protection of Aboriginal heritage, but we are also intensely interested in maintaining the property rights of ordinary Western Australian landowners, who might be farmers. The word "farmers" encompasses a lot of people who are involved in agriculture. They could be pastoralists in some of the areas of the member for North West Central, for instance, or even further afield from Perth than that. They could be horticulturalists. They could be people growing all sorts of produce in all sorts of landscapes. It could be on the Gascoyne River or in irrigation areas around Gingin, for instance, in my electorate, where the vast bulk of Western Australia's vegetables are grown just outside of Perth. They could be people who just want to spend some time on the land in regional and rural Western Australia by having a small block. They could be a typical wheat farmer or dairy farmer. A whole gamut of people is affected, as are all the people who service them. All the people in the service industries were also very, very heavily impacted by the uncertainties from this legislation. The government did not seem to get that it virtually shut down the state. No development was going to happen under the 2021 legislation.

It took an inordinate amount of time for this government to listen. The issues were not only from the implementation, but also prior to the implementation. The opposition called for the government to delay the implementation of the act on 1 July. We consistently asked the minister to do that. Let us look at some of the history in question time. I took the time to pull out some of the questions that we asked. On 13 June, I asked the Premier —

> Will the Premier postpone the implementation of the act to ensure that the community is adequately informed and that the government is properly prepared to oversee the new system?

Part way through the response, he said —

> As the Minister for Aboriginal Affairs said, nothing has changed; we continue to protect Aboriginal heritage. Farmers can continue to farm their land, mend their fences and graze their sheep or other livestock. This

> important legislation must be put in place as a matter of urgency. This legislation was passed over 18 months ago; we are ready to go. It is legislation that the other side of politics actually voted for. The legislation is ready to go.

He continued —

> Members, listen for a second. Do you hear that? That is the same dog whistle that has been blown in this Parliament by that side of politics for decades, whether in the mid-1980s when the then Burke government was interested in introducing Aboriginal land rights legislation; the early 1990s … Every time, like a dog returning to its vomit, these guys trot out their straw man arguments to simply distract members of the community and raise these issues in people's minds. They are undermining harmonious reforms that are about the respectful observance of Aboriginal heritage. These laws are not radical. These laws are ready to go.

Thankfully, these laws are ready to go and this repeal bill will bring that about. The opposition has consistently called for the repeal elements of the bill and the amendments. I have been on the record as supporting in principle the amendment to allow for an Aboriginal knowledge holder or prescribed group to ask for a review of a section 18 notice being issued. Along with everybody else, we believe that it is abhorrent to try to gag people from expressing concerns and those other matters that we have discussed and provided support for. We will see that support being discussed at the consideration in detail stage because although we support these things, we are very concerned that we are seeing another rushed and botched implementation and process.

We had time to debate these matters in Parliament today but on Thursday night extensive amendments to the legislation were proposed. We thought the legislation was beyond any further need for consideration and ready for Parliament to put through the process and rubberstamped. Let us call it a rubber stamp of the Labor-dominated Parliament because that it is what it is. We did not think that at the very end of the week before we were about to debate the legislation, the government would bring in a number of amendments. I think 22 amendments to the legislation are now on the notice paper—from the government! Of course, we have a very sensible motion on the legislation that will precede that discussion and, hopefully, the government will listen, because we need a proper process in place and it is obvious that we do not have that at this time.

It has often been given as a justification by the minister and others in this place that the genesis of this whole debate was in Juukan Gorge but this process kicked off in 2018, long before that event ever happened. This is not some sort of response to that discussion. A review of Aboriginal heritage laws was already in play before that happened. Of course, it might have been educated or informed by that event, if you like.

[Member's time extended.]

Mr R.S. LOVE: Oddly enough, when we were debating the legislation, we were told that of itself it could not prevent another Juukan Gorge. One hopes that what is being proposed now in amendments to the 1972 act might do that. But as an opposition we do not have the opportunity and the time to go back to our constituents and consult with them—in a way that they have never been consulted with by this government at any stage in any of this discussion—so we avoid another situation in which people wake up the day after this goes through and find that they are adversely affected by the legislation. We want to avoid that and ensure that this legislation is as considered as it possibly can be. That is why we believe that if we want to remove the sword of Damocles that is hanging over people's heads at the moment in the form of the 2021 act and clear the air to discuss all the changes that need to happen to ensure better processes under the 1972 legislation, we should have enough time to do so. That will involve as much discussion with the community as with a handful of stakeholders.

I do not in any way wish to denigrate the contribution of the implementation group, which has now become the quasi-stakeholder consultation group; I am not doing that at all. I am saying that that will not, in itself, get information back to the hundreds of thousands of other people who want to know what is going on. They have just as much right to be consulted as anyone in those groups as we go through this very important legislation. It is a matter that should be very, very carefully considered. We are not getting the opportunity to go back to reassure the public that everything is happening as it should.

I go back to when we were considering the implementation prior to the commencement date of the legislation. I paraphrase a question I asked of the Premier on 15 June. I asked the Premier whether, given that peak Indigenous bodies, industry groups and more than 18 000 Western Australians had signed a petition, he would acknowledge that his Minister for Aboriginal Affairs was not doing a great job and was not listening to the people. His response was, in part —

> A significant amount of consultation was undertaken. Maybe at some point in those consultations people were not paying as much attention as perhaps they could have, —

I do not know who he was referring to there, but it was rather pointed —

> but that is not from a lack of engagement and opportunity provided by the government to engage with people.

Apparently, according to the Premier on 15 June, it was the people's fault that they had not been told what was going on before the implementation actually commenced. The government was already blaming the people for not being informed. How ridiculous. The government had a responsibility to make sure that the people were informed, but it did not do so. I also asked about the ill-advised implementation schedule for the Aboriginal Cultural Heritage Act, and whether the Premier would delay implementation for at least six months. The Premier's response was, in part —

> These are not new laws; these are the same laws modified and put into a framework that everyone agrees upon. Let us not continue to bark and undermine; let us understand that a lot of work and consultation has gone into this. Consultation is going on even today and it will continue to go on. A lot of that consultation goes down to allaying people's fears, which are mislaid and misplaced because people out there are stirring things up and providing misinformation in the community. We will continue to implement these laws in the manner in which they were envisaged and in the appropriate time frame, which is from 1 July.

Again, there was a refusal to listen to the real concerns that the opposition was bringing to this place in response to what we were being told. I have spoken about the stakeholders in my electorate, but my remit is a bit wider than that, and I can say that my electorate office in Dongara was inundated with calls from all over the state—not just from the electorate of Moore, but from every other electorate. Quite a few people made the observation that they had a Labor member of Parliament and that they were ringing me because no-one in the Labor Party was listening. That was one of those very, very busy times that electorate offices experience when there is a crisis. I have seen that a couple of times; it happened during the pandemic. Our offices were flooded. However, this was the busiest time in my electorate office ever. It was busier than it was at the height of COVID, when we were dealing on a daily basis with applications from people trying to enter the state, move between districts, bring workers in or attend funerals of loved ones—whatever it was. We dealt with those issues, but this issue resulted in the most intense period I have ever experienced in my electorate office. I give credit to my staff for responding and providing some guidance to people who were being impacted by the botched implementation of the Aboriginal Cultural Heritage Act.

I again go back to the fact that this legislation was dressed up as a response to Juukan Gorge, but it was not. The legislation had been in train years earlier. That points to the poor processes of this government. I asked a question of the Minister for Water on a similarly important bill on 30 August. I asked her whether the water reforms being considered by the government would be the subject of a green bill so that people could gain an understanding of it and so that the government could avoid botching that legislation in the same way as it botched the Aboriginal Cultural Heritage Act. The response: no. Again, this government has learnt nothing about consultation. It actually appears to be incapable of learning about what constitutes sufficient consultation. We have seen that time and again with some of the issues around road construction. We see it with the development of marine parks. We see it with the very important water legislation that will be coming into this Parliament at a time that suits the government, but will come without Western Australians having any knowledge of it—Western Australians who have such a vital interest in the use, protection, availability and sustainability of their water supply.

It is actually incredible that this government does not seem capable of listening to those types of concerns. It has not taken on board any real learnings from what we have seen since 1 July. Just because the government has a vast majority in this house and a very workable majority in the other house, it does not mean that it gets everything right. Just because the government thinks everything is all right when it brings legislation in here and it has its pack of nodding heads in the background, all cheering it on, it does not mean it is doing a good job, but it does mean that the government is lacking a filter. I urge the government to take on board the learnings of the last few months and weeks, and I urge the Minister for Water to also take on board the learnings of that time. We cannot afford another hit on regional Western Australia like this. We need a government that actually listens to the people of regional Western Australia, because it is those people who help pay the bills for this place and help pay the government's bills.

I say to the government: listen to the people, learn from the experience and listen to the opposition when we talk about splitting the bill and the need to go through these provisions carefully, rather than coming in here with 22 amendments a couple of days before we are about to debate legislation. How can the government possibly think that that is an appropriate way for it to develop legislation? This is too important for it to get wrong again. I urge the government to remember that when it gets the opportunity to agree to split the bill. If it has learnt anything from this discussion and this process, and from the way in which it has been unable to listen to the people of Western Australia, it will have an opportunity to exhibit that tonight by supporting the splitting of the bill. I think that is actually at the core of the government's ability to demonstrate that it can learn from its mistakes.

We do not know what led to the government's final backflip—whether it was just electoral pressure or shocking polling. The Attorney General spoke in this place about there being a cost to every landowner of $40 000 to $50 000.

A government member interjected.

Mr R.S. LOVE: Yes, the member did. I have him in *Hansard*. He said $40 000 to $50 000 for every landowner, every farmer. That was unacceptable. Okay, where was that advice? I asked for the advice but was never provided with anything. That figure was apparently just plucked out of thin air. Someone must have informed someone in cabinet that that was the ballpark figure of the cost for all landowners in the state. When we asked the government to show us the advice and modelling, we got crickets. We were told that the Attorney General sought State Solicitor's advice and that that had help to inform the decision to backflip on the Aboriginal Cultural Heritage Act 2021. When I asked the Premier to table the advice, he said "No, I can't do that; it's unprecedented." There have been two occasions on which a Labor Premier has done just that. Indeed, advice was tabled by former Premier Geoff Gallop and the other one—I am trying to find the date—was also tabled during the Gallop era. A former Labor Premier had the courage and conviction to provide a copy of the advice. Given the importance of this legislation and its potential impact, it would have been highly instructive to this discussion if we knew the real problem with the legislation. Was is political or was a fundamental legal flaw in the legislation identified by the State Solicitor and covered up by the Premier? That is the question. The minister has an opportunity to provide clarity about that advice, but, of course, he will not be able to do so because the Premier will not release the advice. It would appear that there was something very rotten about this legislation in the state of Denmark.

MR D.A. TEMPLEMAN (Mandurah — Leader of the House) [6.11 pm]: I rise to not only provide a second reading contribution, but also highlight to the house some discussions behind the chair with the manager of opposition business, the Leader of the Liberal Party and the opposition lead speaker on the Aboriginal Cultural Heritage Act 2021. As members will be aware, the bill we are debating is a repeal bill and it contains a range of amendments, which have been highlighted. Members may also note that we have passed what was the designated dinner break. I can report to the house that the conversations with the manager of opposition business, the Leader of the Liberal Party and the lead speaker on the bill were about ensuring that the lead speaker is able to robustly debate the amendments during consideration in detail. I acknowledge that she is not well so we have agreed to the following.

Firstly, we will not rise for a dinner break this evening. Once the Minister for Aboriginal Affairs has concluded his second reading reply, we have agreed to debate for as long is necessary to the liking of the lead speaker a motion that she has listed. The house will make a determination on that motion. It has also been agreed that I will then adjourn the house, and, in doing so, I foreshadow that we will sit later tomorrow night. The opposition indicated that it is prepared to truncate private members' business, which will be from 4.00 pm to 6.00 pm tomorrow evening. I foreshadow that we will break for dinner from 6.00 pm to 7.00 pm tomorrow evening, after which time we will continue debate on this bill. I cannot determine at this point how long that will take; it depends on the debate during consideration in detail. It is likely that we will continue debate on Thursday, with the agreement that when consideration in detail concludes, I will move a motion to allow us to proceed to the third reading forthwith. We will conclude the third reading debate on Thursday afternoon. That is the intention of the house.

I thank the manager of opposition business, the Leader of the Opposition—I am sure he supports this!—and the Leader of the Liberal Party for their concern about making sure that we acknowledge the difficult circumstances in which the member for Central Wheatbelt is participating in this debate. I thank the member for Central Wheatbelt and I thank the minister for his agreeance. It is an important bill. I will sit down and allow the minister to provide his second reading reply and we will then deal with the motion from the member for Central Wheatbelt. I will then adjourn the house at the appropriate time.

DR A.D. BUTI (Armadale — Minister for Aboriginal Affairs) [6.16 pm] — in reply: I thank all members for their contribution to the second reading debate on the Aboriginal Heritage Legislation Amendment and Repeal Bill 2023. I have an extensive response but if the member for Central Wheatbelt is not feeling well due to her health condition, I will cut my response short. As the Leader of the House said, we have made changes so that the member can get home sooner and provide a greater contribution tomorrow.

Every member of the opposition spoke; I thank them for their contributions. Obviously, I do not necessarily agree with everything they said, but it is important to hear their contributions. Before I comment specifically on the various contributions, I reiterate the government's position that the destruction of Juukan Gorge caves was a global embarrassment for Western Australia. We all know that and we want to avoid a repeat of that disaster, which is why the amendments that we seek to make to the Aboriginal Heritage Act 1972 are incredibly important. They are targeted and geared to ensure that we avoid another Juukan Gorge scenario. We cannot contemplate having the 1972 act without making those amendments.

The member for Central Wheatbelt talked about concern and anxiety about the 2021 act in the community. We listened to that and, in response, we have a commonsense approach for a simple system to improve the protection and management of Aboriginal cultural heritage. The act has been in operation since 1972. When we made this announcement, the Leader of the Opposition said that he supported going back to the 1972 act with some amendments. At that stage, he said that he supported the amendments we flagged to the section 18 process. I will go through some of the issues.

As was mentioned by the member for Central Wheatbelt, the bill contains a call-in power, which is similar to the powers that the Minister for Planning has under the Planning and Development Act 2005 for matters that would otherwise be heard by the State Administrative Tribunal. Under this power, the Premier will be able to direct SAT to refer a matter to the Premier or direct SAT to hear the matter and refer its recommendation to the Premier without making a decision. The call-in powers provide for submissions from both parties to support the review process. Both the notice of the decision to exercise the call-in power and any reasons for determination must be tabled in Parliament, so there will be transparency.

The member for Central Wheatbelt sought clarification about the funding for native title parties, acknowledging that with the repeal of the 2021 act there will no longer be Aboriginal cultural heritage services. We will shortly begin an extensive engagement with traditional owners to build the governance and leadership capacity of native title parties to understand their views and finalise details of the program. Generally speaking, the approach will be to ensure the protection and preservation of Aboriginal cultural heritage, which every member of the opposition agrees needs to be protected. I refer to resourcing capacity, economic growth and statutory compliance with the Aboriginal Heritage Act 1972. Funding for specific elements of the program or for the total amount will be refined as part of the consultation process. The government agrees that we will have a capacity-building program, and it will be very important.

I turn to the survey program. The government has committed that there will no longer be a requirement for everyday landowners to conduct their own heritage surveys, and I am happy to provide some clarification about that now. We will develop and implement a 10-year program of Aboriginal heritage surveys in high-priority areas. To clarify, surveys in this program will be funded and undertaken by the government through the Department of Planning, Lands and Heritage. I also add that all surveys will require the permission of the landowner and will be scoped and undertaken in consultation with the relevant Aboriginal people. The survey program will identify the location of Aboriginal heritage sites, revisit Aboriginal heritage sites and known heritage places to remap boundaries accurately and precisely, and identify locations with no sites of Aboriginal cultural heritage.

One of the demands repeated by members of the farming community was that they believed that the government should pay for Aboriginal cultural heritage surveys. We will do that under our 10-year program, but a heritage survey will not be conducted without the consent of the relevant landowner and without consultation with the relevant Aboriginal people. We will determine priority areas for the survey program after consultation with stakeholders and Aboriginal organisations. We also will need to be mindful of industry capacity in developing some immediate goals and long-term plans. Obviously, we will need expertise to conduct the surveys.

Eligible landowners who require a survey as part of a section 18 consent will be able to apply to have a survey undertaken by the state. This will not include surveys required for the purposes of mining, extractive industries, and commercial and industry subdivisions; these will remain the responsibility of industry and will not be funded by the government. In other words, we will conduct a survey program in priority areas, but individual landowners who need to seek a section 18 consent can also come to government to have government conduct the survey. Obviously, mining and resource industries will still be responsible for conducting and paying for their own surveys.

The member for Central Wheatbelt also sought clarity on landowners' obligations. All landowners have an obligation to not knowingly damage an Aboriginal heritage site. That has been the situation since 1972. All landowners in Western Australia are not to knowingly damage Aboriginal cultural heritage, which has always been the case. If an impact to Aboriginal heritage is likely, approval will be required. Everything I heard from the opposition today would support that because all opposition members said that they believe in protecting Aboriginal cultural heritage. If Aboriginal cultural heritage will be impacted, approval will be required. This was a requirement under the 1972 act, prior to the 2021 act coming into effect. In fact, it has been the case for 50 years, and there will be no change under the bill before the house.

To understand where Aboriginal heritage is, a landowner or proponent will be able to search the register on the department's website or contact the department and speak to one of the Aboriginal heritage officers. Depending on the nature of the activity and the area concerned, approval or the section 18 consent process may or may not need to take place. One benefit of the survey program is that more and more of Western Australia will be surveyed and registered, so we will have a greater knowledge of areas in the state that have Aboriginal cultural heritage. The member for North West Central mentioned that her family has known about sites for a couple of generations. I am sure that many people in the agricultural industry know where the sites are. They would, of course, not knowingly destroy Aboriginal culture because they want to protect it.

The defence of lack of knowledge is in section 62 of the 1972 act. It has been there for 50 years and will not change. One must not knowingly destroy Aboriginal cultural heritage, but it is a defence if one could not reasonably be expected to know that Aboriginal cultural heritage is there. That has always been the case. There is an expectation that people will make reasonable inquiries and not just rely on the special defence of lack of knowledge. That is what one would hope. As the opposition said, no-one in Western Australia wants to knowingly destroy Aboriginal cultural heritage. That has always been the case. Of all the people across Western Australia

I have spoken to about this bill and the 2021 act, no-one wants to destroy Aboriginal cultural heritage. I cannot see why that will be any different; it should always be the case.

While we are discussing the requirement for approval, I want to confirm that the government is committed to removing duplication between this legislation and the Environmental Protection Act, but that will involve further work under the Environmental Protection Act. We want to ensure that people will not have to duplicate the process when they are seeking environmental approval as well.

The member for Central Wheatbelt correctly talked about the government introducing fees. The bill provides a head of power for making the regulations for the introduction of fees. There will be a flat fee of $250, as the member for Central Wheatbelt correctly noted, which will apply for all applications for consent under sections 16 and 18 to undertake activities that may impact Aboriginal heritage sites. The member also sought an explanation on the variable fee component of $5 096, which will apply to a number of proposed investigation sites or identified places. That fee is based on the annual cost of the department's team that processes and assesses applications, which is $2.44 million, divided by the average number of place assessments undertaken each year, which is roughly 480. The fees established under the draft supporting regulations will only recover the costs associated with the application and assessment process. It will be just cost recovery. Any additional costs to the department associated with the survey and capacity-building programs, including resourcing, will be considered as part of the normal government budget process. Those costs will not come out of the cost-recovery fees that may be introduced.

A number of members asked for clarification about the definition of "small business". As the member for Central Wheatbelt correctly noted—I think she noted this—the definition comes from section 3(1) of the Small Business Development Corporation Act. During consideration in detail, we can discuss that in further detail and the issue of the chief executive officer or the director general of the department having the ability to waive the fees.

The definition of "native title party" is an important part of the amendments. Native title represented bodies and native title service providers will be the native title party only when there is no other native title party for the land. The member for Central Wheatbelt asked why certain Aboriginal organisations are specifically prescribed in the bill rather than relying on regulation powers to prescribe certain native title parties. The only native title parties named in the bill are the regional corporations under the south west agreements and the Yamatji Nation Indigenous Land Use Agreement. No further native title determinations will be made in those areas covered by the Indigenous land use agreements, which I hope clarifies why they have been named. With regard to the reference to the Native Title Act 1993 and the query that the member for Central Wheatbelt received from the Yamatji Marlpa Aboriginal Corporation, I confirm that the department has discussed this point with representatives of that corporation. The Native Title Act has been used in this bill for the sole purpose of prescribing YMAC and other organisations and entities who can seek a review of section 18 decisions in relation to land only when there are no other native title parties for that land. This will not impact on, and is separate to, YMAC's functions and duties under the Native Title Act. Further, the 1972 act and regulations do not impose any obligations on YMAC; it simply gives YMAC the right to seek a review of a section 18 decision, and it is up to YMAC whether or not it exercises that right.

I will be happy to table—I do not have with it with me at the moment, but I will have it during the consideration in detail stage—the list of regulatory penalties that members were provided with today or yesterday. The penalties set out in the act will remain unchanged by this bill. However, the regulations no longer include the penalty of imprisonment—there is no imprisonment—and specific regulatory penalties have now been added. The member for Central Wheatbelt is correct that some of the new offences in the regulations relate to breaches by members of the proposed Aboriginal Cultural Heritage Committee, such as declarations of conflict of interest. The member mentioned the policy and guidelines. Considerable effort has been invested into considering the elements of the new framework that we will be working under and how the new framework should apply in legislation, regulations and policy. The policy and guidelines will not override the law; rather, they provide guidance for proponents and Aboriginal corporations on the expected consultation requirements. One of the criticisms made of the 2021 act is that it was too complex and too prescriptive. Not trying to include everything in the legislation has advantages, but there is a requirement that has been followed by ministers for some time now to show proof of consultation with the relevant traditional owners for the land in question or when an area involves a section 18 application. That is part of the consultation policy. We think that it has worked well since that has been followed, basically, by the last three Aboriginal affairs ministers. We will have that in the policy.

The member for Cottesloe has referenced the cost of undertaking Aboriginal heritage surveys. Now the government will take on much of that, apart from those industries that we believe can afford to pay for it. The bulk of the costs generally go to consultants, not to traditional owners. One of the criticisms from a number of industry people is that traditional owners do not receive those costs; they are being received by consultants. Officers from the Department of Planning, Lands and Heritage will work with Aboriginal organisations and proponents to facilitate a sensible way forward. An inability to reach agreement on the consultation or survey costs and processes will not preclude a section 18 application from being lodged.

A key driver in the decision-making to establish the new framework was to end the confusion and create a system that was simpler and fairer to follow and implement. The policy guidance is deliberately succinct and focuses on key elements of the process that are important to both Aboriginal people and proponents. I think the member for North West Central talked about providing information that people actually want to know and hear. The whole idea is to try to be more succinct in our policy guidelines and not overprescribe everything in the legislation. In recent months, we have heard loudly, clearly and broadly across the community about the shared commitment to protect Aboriginal heritage. People have reaffirmed that commitment and are doing the right thing. I am confident that they will comply, regardless of any legality. I think people generally want to protect Aboriginal cultural heritage. That is why I think that the amendments that we are making to the 1972 act are very sensible. We will be investing considerable sums of money into capacity building for native title parties to ensure that they are adequately resourced to meet the demands that will come their way through the amended 1972 act, which, in many respects, will not necessarily be any greater than that which have been operating since 1972, but they need to be better resourced.

I turn now to the definition of "Aboriginal heritage". I have never heard any significant complaints about the definition of "Aboriginal heritage" under the 1972 act that people have been working with since 1972, obviously. That deals with Aboriginal sites and objects that are of a tangible nature. However, often those sites and objects may also include intangible elements; for example, the water snake, which lives in rivers. Approximately 16 000 lodged places or sites are identified on the register for the purposes of informing the protection and management of Aboriginal heritage. That has been the case and people worked with that without too many, or any, complaints. The member for Cottesloe referenced that most people expect that Aboriginal heritage will be something tangible or physical. In fact, section 5(b) of the act refers to sacred sites, which includes an area of land or water associated with a religious or spiritual belief. This is an intangible element and has been in operation since 1972. People have worked with that. That has always been the case and will not change under the bill before the house.

On a related matter, I note the advice from the member for Vasse that she intends to move amendments to the proposed requirements for providing new information relating to section 18 consents. I thank her for foreshadowing them with me. We can discuss further during the consideration in detail stage how such amendments would narrow the scope and intent of those clauses that would risk excluding sites such as Juukan Gorge. The government will not support the amendments, but we can discuss that in consideration in detail.

Very shortly, the member for Central Wheatbelt will move a motion to divide the bill and deal immediately with the repeal of the 2021 act and defer the amendments to the 1972 act. We will not support that, but we will talk about it more after the member moves the motion. To split the bill and deal with only repealing the 2021 act would mean that important transitional issues would not be dealt with. We will deal with that during the consideration in detail stage, but the bill before us includes transitional provisions. If we repeal those and just go to the 1972 act, there will be a problem with those transitional provisions. That is why, superficially, it may seem attractive, but it would have major consequences if we proceeded to do that. In addition, the amendments that we are making to the section 18 process are in response to the recommendations of a Senate inquiry into preventing another Juukan Gorge incident from taking place. If we were to repeal the 2021 act and go back to what is in the 1972 act, we would not provide greater protection to prevent another Juukan Gorge situation, and we not prepared to do that. I do not think the transitional issues have been thought through by the opposition, judging by the motion that the member for Central Wheatbelt will move shortly. We can deal with that soon.

The member for Cottesloe made a number of references in his speech to property rights and the rights of landowners in relation to the bill. This issue has been raised over a number of months. I think the Leader of the Opposition has raised it quite often. It is clear that the act—now, in the past and in the future—causes no concerns for property rights. Aboriginal cultural heritage does not interfere with property rights. All freehold land is subject to a number of government approval processes, such as development approvals, environmental approvals and non–Aboriginal heritage approvals. I ask members to think about this. I am not saying that members of the opposition are suggesting this, but some people are suggesting that the Aboriginal cultural heritage act should not apply to freehold title. What about non-Aboriginal heritage? People cannot say that Aboriginal cultural heritage should be excluded with respect to freehold title but non-Aboriginal heritage should be protected. We also have other approval processes, such as environmental and development approvals. The issue about property rights is a furphy in the sense that Aboriginal cultural heritage protection does not interfere with people's property rights.

The member for Cottesloe talked about the new Aboriginal Cultural Heritage Committee. It will be skills based. The difference is that it will have to have co-Aboriginal chairs and the majority of its members will have to be Aboriginal. The members of the current council, who will transfer to the committee, have very wideranging skills.

I thank members for their contributions. I was going to comment on the member for Central Wheatbelt's Frankenstein analogy, but it is probably best not to, so I will leave that. The member probably feels a bit like Frankenstein at the moment, given that she is not feeling very well.

We have listened to the feedback from the community, Aboriginal organisations, industry, landowners and government agencies. The stakeholder feedback has informed our approach to this bill. We agree with the opposition that we must end confusion and provide clarity so we can move forward and afford greater protection of Aboriginal heritage in Western Australia. I appreciate that the draft regulations were recently shared. However, this bill was introduced on 9 August 2023, some six weeks ago. Yes, there are a couple of significant amendments, but one is about transitioning the section 18 consent relating to consultation with new landowners. I am sure the opposition would agree with that. A number of policies and guidance materials have also been provided.

Once again, I thank members for their contributions to the debate on the bill today. I look forward to examining it further during consideration in detail.

Question put and passed.

Bill read a second time.

Two-Bill Split — Motion

MS M.J. DAVIES (Central Wheatbelt) [6.43 pm]: I move —

> That the Aboriginal Heritage Legislation Amendment and Repeal Bill 2023 be divided into two separate bills, being —
>
> (1) The Aboriginal Cultural Heritage Repeal Bill 2023, consisting of —
>
> (a) a Title "**A Bill for an Act to repeal the *Aboriginal Cultural Heritage Act 2021* and regulations made under that Act.**";
>
> (b) new clauses 1 and 2 as follows —
>
> **Part 1 — Preliminary**
>
> **1. Short title**
>
> This is the *Aboriginal Cultural Heritage Repeal Bill 2023*.
>
> **2. Commencement**
>
> This Act comes into operation as follows —
>
> (a) Part 1 — on the day on which this Act receives the Royal Assent (***assent day***);
>
> (b) Part 2 — on the day after assent day.; and
>
> (c) Part 2.
>
> (2) The Aboriginal Heritage Legislation Amendment Bill 2023, consisting of —
>
> (a) a Title "**A Bill for An Act —**
>
> - **to amend the *Aboriginal Heritage Act 1972;* and**
> - **to make consequential and related amendments to other written laws."**;
>
> (b) new clause 1 as follows —
>
> **Part 1 — Preliminary**
>
> **1. Short title**
>
> This is the *Aboriginal Heritage Legislation Amendment Bill 2023*.;
>
> (c) Clause 2;
>
> (d) Part 3; and
>
> (e) Part 4.

To those who are concerned that I might drop straight off my chair shortly, I appreciate the kindness they have shown me this afternoon. For that reason, we will not dwell on this motion. I will make some points, given that we said we would move the motion and explain the reasons for it. I appreciate the response of the Minister for Aboriginal Affairs to the issues raised by members of the opposition during the second reading debate. No doubt there will be further discussion of those issues during consideration in detail.

For members' interest, the motion is on the notice paper, along with the amendments that the minister plans to move. Essentially, the effect of the motion would be to split the bill in two to allow for a separate bill to be created to deal with the repeal of the 2021 act, which the opposition has repeatedly stated it would like to see progress forthwith. It would also create a second piece of legislation, with the remainder of the bill. That could be dealt with

in the fullness of time. Although I appreciate what the minister just said during his second reading response, we are not saying that we would revert forever to the 1972 act. We all agree that it cannot sit the way that it was. We are saying that we have not had enough time to consider it. We have also raised concerns about the process through which the amendments were brought to this place. Obviously, a decision was made to step away from the 2021 act. In very short shrift, the government brought in a whole new process. It is a complex area. Although the government will continue to say that these are simple and efficient amendments, I and other members of the opposition have had the experience of trying to deal with industry stakeholders who have been consulted over the last few weeks about the development of regulations and guidelines. They are still trying to wrap their heads around what it will mean and the consequences of the package as a whole. Essentially, we are saying there is no contention from anyone about the repeal of the 2021 act. We all agree, including the government, that it needs to be removed. However, we are concerned about the less than seamless way that the new legislation was brought to the Parliament for consideration. What we want, and what we are giving the government the ability to move forthwith, is the immediate repeal of the failed act.

I return to the point that I made during my contribution to the second reading debate—that this seems to be a political tactic to put the repeal of the act and the amendments together so that if the opposition decides that it cannot reach a position of support, the ultimate outcome will be that we will be characterised as not supporting the repeal of the act. I want to put paid to that. We are giving the government the opportunity to do that and also allow more consideration of how the regulations and the legislation will work together, as well as the amendments that will be moved from the floor.

What would happen if the government agreed to split the bill and progress with the repeal as soon as possible? It would provide relief for thousands of people who had the 2021 system foisted on them. They are still living with that; it is still there and it is still a risk, despite what the government said about taking an educative approach. It is the law until it is removed. The repeal of that act will provide relief to those who are under the potential threat of fines or jail time if they inadvertently destroy precious Aboriginal cultural heritage. It will put a full stop at the end of the disaster that is the Aboriginal Cultural Heritage Act 2021. Every day that this legislation sits on the books, it creates angst and confusion. Every day that that 2021 act, the regulations and the ecosystem that was created around it remains in place, decisions will need to be managed under that system that is adding more complexity and uncertainty as we move forward. Every day that it sits on the books, it is costing the state, proponents and traditional owner bodies time and money. I cannot see that that is something that the government would want. Despite the minister's advice that the government will not be supporting the motion, I urge the government to consider it carefully because I do not think we are being unreasonable. We are offering a very sensible way forward so that the no-man's-land that everybody finds themselves in can be resolved and put to bed.

The hard work in relation to the 2021 act has already been done. I cannot imagine it was easy for the Premier or the minister to make that statement. All we are trying to do now is deal with what needs to be cleared up as a result of that decision, which is to once and for all put to bed that 2021 act. There was a strategy devised of putting the repeal and the amendments into the same bill, which is quite complex because it seems to amend itself within the same bill because of the timing of the various parts of the act coming in. It is not straightforward legislation, but this motion is self-explanatory and straightforward. It will be disappointing to ultimately hear the government say it is not interested in it because we could have got to the repeal of the 2021 part of this legislation much faster, but we are not likely to because of the strategy that has been devised to make sure that everything goes through at the same time. We are given very little wriggle room on that front. If this amendment had been successful, we could have had the repeal dealt with and shot off to the Legislative Council for its consideration.

For those reasons, I urge the minister and government to consider this motion. Having given notice that this is what we intended to do, it is important we continue to put that point. I thank the Clerk and those who assisted in the drafting of the motion to make sure we had the capacity to put our commitment into practice. I thank members, and I will let the Leader of the Liberal Party make her contribution.

MS L. METTAM (Vasse — Leader of the Liberal Party) [6.51 pm]: I rise to add a brief contribution to the opposition alliance's lead speaker on this Aboriginal Heritage Legislation Amendment and Repeal Bill 2023 and her motion that supports community and broader industry sentiment to give some urgency to the repeal of the disastrous 2021 act. That is what the almost 30 000 signatures were about. They were also about consulting properly so there were not any unintended consequences of this important legislation, the intention of which we support, especially the prevention of a future Juukan Gorge. The regulations, guidelines and policy were released on 13 September and have not been seen in their totality by industry or understood by the broader community.

Again, we are asked to take on board with very short notice the amendments proposed as part of the 2023 bill. We will seek some clarity, particularly around the costs associated with the amendments and what they will mean for small operations. We have concerns about the definitions I have spoken about. We will put an amendment on the notice paper related to threshold definitions and how new information will be dealt with. This will include the

operation of the new Aboriginal Cultural Heritage Committee, which will have a range of new obligations, tasks and time frames, and how it will work. We support the motion to urgently repeal the 2021 act, and for the government to ensure there are no unintended consequences and that it learns from the very harsh lessons of what was presented across the community.

I will raise this further in consideration in detail, but concerns have been raised about the regulations. There is concern that they will now be put into the guidelines and the issues with the 2021 regulations will be transferred into them. There has been lightning consultation. Industry and others who have been briefed have seen a couple of versions of this legislation. The government is certainly moving on the hop when it comes to the bill. We all agree that the government needs to get the bill right. We agree with the intent, but as a matter of urgency, the government should repeal the 2021 act and ensure there are no unintended consequences, as was the case last time.

DR D.J. HONEY (Cottesloe) [6.55 pm]: Thank you, very much, Deputy Speaker.

Dr A.D. Buti: The member wants to get home; she is sick.

Dr D.J. HONEY: I know, and I sympathise with the member for Central Wheatbelt. I will make a very brief —

The DEPUTY SPEAKER: Contribution!

Dr D.J. HONEY: Contribution—that is the word I was struggling for! Thank you very much, Deputy Speaker; that is why you are in your esteemed role!

I heard what the minister said in his contribution that the bill cannot simply be repealed because of the things that have to be done, but I think it gives us the best chance of getting certainty in the longer term. We do not anticipate that the government should wait a long time before introducing the other amendments. That is to give industry certainty and, I might say, to protect people, because currently the existing law is law. If someone chooses to report a breach under the existing law to the police, the police will not be directed by the minister, the Premier or the government; they will have to deal with that claim under law as it is. Therefore, repealing the act quickly and then taking time to do the changes properly is reasonable, and that is why I support the motion moved by the member for Central Wheatbelt.

MR R.S. LOVE (Moore — Leader of the Opposition) [6.57 pm]: I will be very brief. In rising to support the motion from the member for Central Wheatbelt, the lead speaker of the opposition in this important area, I take the minister back to Tuesday, 8 August, the day he stood out in front of this Parliament—I give him credit for doing that—and took on board the views of many, many thousands of Western Australians, not just the people there on the day but expressed throughout all that time. I go back to what the minister said —

> I can give this assurance to the WA public: I will be working day in, day out to ensure that we have an Aboriginal cultural heritage regime that benefits all Australians and Western Australians, whether they be Aboriginal people or land proponents. That is what I am committed to, and that is what the Premier and this government are committed to. I note from the comments that the Leader of the Opposition made in *The West* that he supported the move for the government to repeal the 2021 legislation and go back to the 1972 legislation.

That is what we are asking for right now. The minister went on to say —

> My assurance to the Western Australian public is that I will work day in, day out to ensure that we have a regime that protects Aboriginal cultural heritage in a way that will allow industry to continue. I went out and spoke to the farmers today because I believe that professional bodies and trade unions should be able to come to Parliament to present their case. I listened to them and I will continue to listen. We will have a first-class system in Western Australia.

Minister, that is what we all want. I urge the minister to listen to the opposition, to take on board this very honourable and well-reasoned position that the member for Central Wheatbelt has brought to repeal the legislation—as the minister promised on 8 August—and to allow there to be a process to develop first-class legislation. That is what we want. Please split the bill.

DR A.D. BUTI (Armadale — Minister for Aboriginal Affairs) [6.59 pm]: That was a lovely rendition of my contribution. It was word for word, I am sure. Well done. As I mentioned in my response to the second reading, we oppose the amendment moved by the member for Central Wheatbelt. There is a lot of angst out there that the Aboriginal Cultural Heritage Act 2021 should be repealed. We agree, and that is why we are repealing it. If I may paraphrase the Leader of the Opposition, seeing as he wants to quote me, he said that when he knew we were doing this he supported the amendments that we have proposed and specifically stated the right of review for Aboriginal people. That is what we are doing. There are now four major amendments to the Aboriginal Heritage Act 1972, and the opposition surely would agree with the one we added recently for the transfer of a section 18 consent to a new landowner. Of course farmers would agree that the consent should go with the land, not just the person. I am

sure the opposition agrees with the amendments we will make to the 1972 act. I will get to the more specific point that the member for Central Wheatbelt has not thought about in moving this motion—the issue about the transitional phase—shortly. I also want to consider the content of the various clauses of this bill, which we will do at the consideration in detail stage. I do not want to hold up the house tonight. The member for North West Central is not well, so she should get home as soon as possible.

Ms M.J. Davies interjected.

Dr A.D. BUTI: You will be tomorrow. I am more worried about the member for Roe!

Concerns have been expressed that things have been rushed and the opposition has just got the regulations. As members know, it is incredibly rare for regulations to be given to the opposition prior to a bill being debated in Parliament. We have also given briefings. We even had a special briefing for the Leader of the Liberal Party because she could not make the one on Friday. We have done everything we can. Yes, Leader of the Opposition, I have worked day in, day out, and my fantastic advisers, the State Solicitor's Office, the Department of Planning, Lands and Heritage, and my ministerial officers have worked overtime. I made that commitment in front of the farmers out there and that is what we have done. We brought this bill before the house and it is consistent with the opposition's view that we need to protect Aboriginal cultural heritage and ensure that another Juukan Gorge does not happen. If we just repeal the 2021 act and go back to the 1972 act, we risk that possibility. As I said, there are more important transitional issues that we need to look at.

The opposition may not want to believe it, but there was no political strategy in joining the two acts to put pressure on the opposition to support it. This just has to happen with the way the legislation is. Under the 2021 act, sections 310 and 311 allow the 1972 act to remain in existence until 31 December, and then it will fall away. We would have to start the whole process again. Then what would be the choice—that we have no legislation in WA to protect Aboriginal cultural heritage? Of course, we cannot have that.

But the bill before us, the amendments, which by all accounts the opposition agrees with and has not opposed, will ensure that gag clauses can no longer be used, so they cannot prevent native title parties from applying to make submissions to the State Administrative Tribunal or submissions in relation to a section 18 notice. The Leader of the Opposition pointed to being strongly in agreement with that. It will give the same right of review through the State Administrative Tribunal for native title parties who are aggrieved by the minister's decision on a section 18 notice. This has previously been available to only a landowner. The member for Cottesloe said that is an appropriate amendment. An obligation for the consent holder to advise the minister on new information for Aboriginal sites and for the minister to review the consent will prevent another Juukan Gorge situation, which nobody wants. We are responding to the Senate inquiry there.

We will ensure that the expert advisory body that provides recommendations to section 18 notices to the minister has female and male Aboriginal co-chairs and a majority Aboriginal representation. Regarding concerns raised by the member for Cottesloe, it will be skills based. If he had a look at the 11 members of the current Aboriginal Cultural Heritage Council, who will be the committee, he would be hard pressed to say that they are not an august body of experts in their area. It is chaired by Hon Ken Wyatt, former federal Aboriginal affairs minister, and Irene Stainton has many years in the public service. There are also a number of other skilled people on that council; they are all very skilled in different areas.

I think the opposition has agreed that the Premier should have the call on matters that have gone to the SAT, when the Premier considers it of sufficient state or regional importance. The opposition agrees with those five amendments. I do not see why there would be such a concern about agreeing to the bill before the house. As I said, one of the amendments that we brought in since we read in the bill is the transferability of the section 18 consent, which has been a key issue for industry. We listened to industry on that and will allow that to happen. Even if the opposition does not think those amendments are worthy of inclusion right now, the bill before the house deals with important transitional issues that arise as a result of the repeal of the 2021 act. This is the main weakness of the motion the opposition moved. The opposition agrees with the amendments, from my understanding. It wants to discuss it in detail; I understand that. But even if it did not agree to those amendments, if we were to repeal the 2021 act and not have the enlivened 1972 act, it would stay as the current 1972 act and we would have problems. These would include the transitional issues that this bill allows for so that any permits that have been granted and management plans approved or authorised under the 2021 act will be deemed to be section 18 consents. If we just repeal the 2021 act, that would not be the case. What will happen? They would have to start the process all over again. Surely, that is not something that many of the industry people whom the opposition has spoken to would want. If they have got a permit approval or management plan approval under the 2021 process, and we repeal the 2021 act without the transitional provisions that are included in this bill, any application for approvals will fall away, and the applicants would have to start the process again.

Allowing people to rely on the defence of having undertaken a due diligence assessment is in accordance with the 2021 act, which determined there is no risk of harm to Aboriginal cultural heritage and, therefore, no need for any kind of approval. In other words, if they have done the due diligence under the 2021 act and there is no risk of harm, they would not have to go any further, but if the act is just repealed and does not have these transitional provisions that defence will also fall away, as will any tier 1 activities, including emergency activities, that have 12 months to be completed. Those matters are included in the transitional issues.

Also, the 2021 act repealed the Aboriginal Heritage (Marandoo) Act 1992. Repealing the 2021 act will obviously reinstate that act, which means that the proponent in question would not have any approval to carry out its existing operations. That would be pretty significant. The particular proponent has spent an enormous amount of time working with the relevant prescribed bodies corporate to agree to an area where they could continue to operate, which was put into effect by the 2021 act and needs to be transitioned to the 1972 act. If we do not do that, all the work that was done as part of the repeal of the Marandoo act will now fall away. That proponent would then have a problem about what they can actually mine. To only repeal the 2021 act and reinstate the 1972 act without any amendments would mean that important transitional issues would not be dealt with, and people who had obtained an approval under the 2021 act to undertake an activity would no longer have any approval to do so.

I would also like to point out that the 2021 act amended the 1972 act by inserting sections 4A and 4B. These sections limited the application of the 1972 act to determining applications under sections 16 and 18, and regulations 7 and 10 that were made prior to 1 July 2023. If the 1972 act is reinstated without amendments, as the opposition is proposing with this motion, landowners will not be able to apply for any kind of approval under the 1972 act. This will obviously have a significant impact on anyone wanting to undertake an activity within the boundaries of an Aboriginal site and bring significant economic activity to a halt.

Members of the opposition, I understand that superficially it might sound simple and attractive to just repeal the 2021 act and go back to the 1972 act, but in doing that, we would ignore those important amendments that the opposition agreed to and supported that came out of the Juukan Gorge state inquiry. Those transitional provisions would be incredibly significant for the many people whom the opposition says it represents in the agricultural industry. Therefore, I ask members to oppose this amendment. We will look forward to resuming tomorrow and, hopefully, the member for Central Wheatbelt will be in a better condition, but the rest of the team might be in bed by then because they might have got the bug!

Division

Question put and a division taken, the Deputy Speaker casting his vote with the noes, with the following result —

Ayes (6)

Ms M.J. Davies	Mr R.S. Love	Mr P.J. Rundle
Dr D.J. Honey	Ms L. Mettam	Ms M. Beard *(Teller)*

Noes (42)

Mr S.N. Aubrey	Mr T.J. Healy	Mr D.R. Michael	Ms J.J. Shaw
Mr G. Baker	Mr M. Hughes	Mr K.J.J. Michel	Ms R.S. Stephens
Dr A.D. Buti	Mr W.J. Johnston	Mr S.A. Millman	Mr C.J. Tallentire
Mr J.N. Carey	Mr H.T. Jones	Mr Y. Mubarakai	Mr D.A. Templeman
Mrs R.M.J. Clarke	Mr D.J. Kelly	Ms L.A. Munday	Mr P.C. Tinley
Ms C.M. Collins	Ms E.J. Kelsbie	Mrs L.M. O'Malley	Ms C.M. Tonkin
Ms L. Dalton	Ms A.E. Kent	Mr S.J. Price	Mr R.R. Whitby
Mr M.J. Folkard	Dr J. Krishnan	Mr D.T. Punch	Ms S.E. Winton
Ms E.L. Hamilton	Mr P. Lilburne	Mr J.R. Quigley	Ms C.M. Rowe *(Teller)*
Ms M.J. Hammat	Mrs M.R. Marshall	Ms M.M. Quirk	
Ms J.L. Hanns	Ms S.F. McGurk	Ms R. Saffioti	

Question thus negatived.

[Leave denied to proceed forthwith to third reading.]