CONSERVATION AND LAND MANAGEMENT AMENDMENT BILL 2021

Second Reading

Resumed from 11 August.

HON NEIL THOMSON (Mining and Pastoral) [2.55 pm]: I do not intend to speak for long, but I want to continue on the theme on which I was speaking last, when we were talking about the role of the agency in particular in managing the process of establishing the joint vesting arrangements that this bill refers to. As I outlined earlier in my contribution, the management of the process is actually more important. We support the idea of joint vesting, because it empowers the agency to work with the full knowledge and cooperation and in full partnership with the Aboriginal people who have traditional rights and understandings of the marine parks that we are managing. This has worked very effectively with the terrestrial parks and reserves that we have, which are being managed together. As I said, these arrangements were developed by the former Barnett government, so the principle is supported. But we saw an approach that proved to be quite divisive in the community for a period. We saw the back-pedalling of the government, and a sudden engagement after there was a hue and cry by local people, many of whom are related by marriage or through family connection, or who may not be traditional owners, but have lived in that area very closely in a cognitive sense with the traditional owners for many, many generations. It is those people whom I speak for. It may not be popular for the other side. We had interjections from members opposite about whom I was speaking for. I am not going to name names or provide that data, but the point is there was a hue and a cry. There was a large number of people who were quite concerned and upset.

Hon Kyle McGinn interjected.

Hon NEIL THOMSON: If the member opposite would only go and —

Several members interjected.

The DEPUTY PRESIDENT: Order! Members, I am struggling to hear Hon Neil Thomson. The interjections have got so rowdy, I am no longer able to understand him, either.

Hon NEIL THOMSON: If the members opposite had the time to actually engage with people, and sat down with the recreational fishers —

Several members interjected.

Hon NEIL THOMSON: These are not recreational fishers. These are people who live in the town of Derby, for example, who have, for many years, taken —

Several members interjected.

The DEPUTY PRESIDENT: Order!

Hon NEIL THOMSON: Who have taken their small dinghies —

Several members interjected.

Hon NEIL THOMSON: They have taken their four to five-metre dinghies, whatever you like to call them, into the waters that they are suddenly being excluded from, and they find out after something like 12 to 18 months that discussions have been going on in secret, outside of the purview of the community. This is not good enough! It is very dangerous for senior bureaucrats to come under the cover of Aboriginal culture and work with the community without engaging the broader community in order to make sure that there is a proper engagement with all people involved, so that there is a sense of fairness and fully informed understanding.

Several members interjected.

Hon NEIL THOMSON: There are continual interjections from another member of the Mining and Pastoral Region, who I do not think has bothered —

Point of Order

Hon NICK GOIRAN: In courts of law, we have a thing called badgering the witness, and I must say that Hon Kyle McGinn would be doing a fantastic job in a court of law badgering Hon Neil Thomson if he were a witness at this time.

Hon Alannah MacTiernan interjected.

The DEPUTY PRESIDENT: Order! We do not need submissions on points of order. Members, we have only just resumed debate on this bill and I have given some general warnings to the house around interjections becoming unruly very quickly. I will continue to monitor the debate, but I remind members that interjections should be used sparingly.

Debate Resumed

Hon NEIL THOMSON: In a nutshell, once things came to the surface it was revealed that a fair bit of negotiation had gone on—not through the Department of Biodiversity, Conservation and Attractions but with family, friends and people who live in that community. They had behind-the-scenes discussions with the traditional owners, some of whom had not been fully consulted on the matters that had led to the first draft being put out in the public domain. After that process occurred, there was some compromise, but it has not satisfied everybody. We cannot always satisfy everybody, but my warning to the government is that if it brings about powers to undertake these sorts of arrangements, it must tread carefully with the community and not pit one part of the community against the other. That is important. I put on the record the matter that particularly upset members of the community, which was the arrangement with a particular type of zoning—I cannot remember the exact title it was given—whereby a person could access the fishery if they hired somebody, a traditional owner, to go with them to fish the fishery. That is all very well for the elites of Perth who sip Penfolds wine and mix with multibillionaires, but it does not provide opportunity for people who own a four-and-half-metre long tinnie, have lived in the area for a long time and who have basically caught one or two fish over the weeks to put in their freezer so that they can provide for their family. There needs to be better sensitivity. It is not for the elites in Perth and senior public servants to, without consultation, line-up secret negotiations and then bring it on the community before they can provide fully informed input. In fact, there was a lack of scientific information behind some of the restrictions that have been put in place. This is not a criticism of the traditional owners; rather, it is a criticism of the department. It has a very specific agenda to shut down for the community specific safe areas where fishing has been a longstanding practice. That was the problem. I put that on the record because I stand up for the members of my community who were very upset. I trust that in the passing of this bill, we will see a more responsible exercise of government by the Labor Party and a more responsible use of the powers that it has been given by this Parliament to engage people of all tiers, levels and status in the community so that they feel that their voices have been heard and that they are respected in the delivery of these joint management agreements.

HON STEPHEN DAWSON (Mining and Pastoral — Minister for Emergency Services) [3.04 pm] — in reply: I thank Hon Tjorn Sibma and Hon Neil Thomson for their contributions on the Conservation and Land Management Amendment Bill 2021. I am grateful that the opposition will support the bill. It is pleasing because we have had bipartisan support for these types of bills for a long time. Successive governments have wanted to meet the aspirations of Aboriginal people to conserve their lands and waters, practice their culture and heritage and participate in economic activities. It is no surprise to anybody in this house that Aboriginal people along the coast have strong connections to the coast and the sea for access to its resources, ceremonial practices and to maintain a connection to country. Aboriginal people have also expressed a strong desire to have this recognised and acknowledged to ensure that the management of their land and sea country conserves and protects their culture and heritage. The McGowan government is introducing two important reforms in the bill that will improve the management of our marine reserves for all Western Australians. They are to enable joint vesting of marine reserves with Aboriginal people and the protection and conservation of the value of the marine park to the culture and heritage of Aboriginal persons as a new reserve purpose for marine parks.

I will now address the queries raised by honourable members. The first is the consultation and management plan process. On the matter of consultation and marine park planning, the comments provided by those opposite are noted. In 2019 and 2020, prior to the bill being introduced into the Legislative Assembly, there was initial and follow-up consultation with key stakeholders. As Hon Tjorn Sibma correctly pointed out in his contribution, the only substantial change between the bill that we are now discussing and the original version that was agreed to in the other place is the timestamp on the bill. I am advised that based on stakeholder feedback at the time, there was a good understanding of the bill and its potential ramifications and implications. Nothing in the bill has changed since that time. The Department of Biodiversity, Conservation and Attractions maintains an ongoing consultative relationship with a broad range of stakeholders in the management of marine reserves under the Conservation and Land Management act 1984.

In the co-design of new marine reserves with traditional owners, DBCA works closely with the Department of Primary Industries and Regional Development and undertakes extensive consultation with a range of stakeholders. The consultation includes the commercial and recreational fishing sector, conservation groups, other users of marine parks and the public of Western Australia. A broad-based consultation program that is tailored to the settings of the marine park is undertaken. This commences prior to and during the establishment of marine park boundaries, identification of key values and the development of the marine park zoning scheme, which are all key parts of the marine park planning process. Consultation occurs over several months and is interactive, involving numerous meeting, workshops and other engagement processes. An indicative management plan is prepared under section 55(1), which outlines the management arrangements for the proposed reserve. The indicative management plan requires the Minister for Environment's approval and the concurrence of the Minister for Mines and Petroleum and the Minister for Fisheries prior to it going out for a minimum three-month public comment period. Based on the feedback received during the consultation, amendments to the plan are made. This involves further consultation. The proposed final plan is then prepared, again requiring the approval of the Minister for Environment and the concurrence of

both the Ministers for Mines and Petroleum and Fisheries. The final management plan, proposed classification notice and reservation proposal are then submitted to the Governor and published in the *Government Gazette*.

In response to the comment about the approvals process for the three new marine parks in the Buccaneer Archipelago, I can confirm that the Minister for Fisheries and the Minister for Mines and Petroleum provided their concurrence to the final management plan on 15 June and 20 June 2022 respectively. Hon Tjorn Sibma asked which traditional owner groups have been consulted on the proposed marine park on the south coast. I am advised that the Esperance Tjaltjraak Native Title Aboriginal Corporation is fully engaged in the planning process. DBCA continues to work with the Wagyl Kaip, Ngadju and Mirning traditional owner groups to design an agreed engagement approach that meets their aspirations and capacity. These groups represent the native title holders of the lands and waters that may be included in the proposed marine park.

Hon Tjorn Sibma asked about the relationship of this bill with the Aboriginal Cultural Heritage Act 2021 and whether there would be duplication, legislative or policy divergences. The new Aboriginal Cultural Heritage Act 2021 provides a modern framework for the recognition, protection, conservation and preservation of Aboriginal cultural heritage while recognising the fundamental importance of Aboriginal cultural heritage to Aboriginal people. It represents a significant step towards achieving equity in the relationship between Aboriginal people, industry and government and it replaces outdated cultural heritage laws and removes the controversial section 18 approvals process in favour of agreement-making with Aboriginal people. The intention is to ensure that the Aboriginal Cultural Heritage Act and this bill work well together. This recognises that regulations to fully operationalise the new Aboriginal Cultural Heritage Act are yet to be prepared by the Department of Planning, Lands and Heritage for the Minister for Aboriginal Affairs.

I turn now to joint vesting. It was very pleasing to hear honourable members opposite support joint vesting of both terrestrial and marine reserves. By way of background, in 2015 the CALM act was amended to introduce joint vesting of national parks, conservation parks and nature reserves between the Conservation and Parks Commission and an Aboriginal body corporate. This bill extends those provisions so that marine reserves—marine parks, marine nature reserves and marine management areas—can be jointly vested. Jointly vesting recognises a shared responsibility between the state, through the Conservation and Parks Commission, and an Aboriginal body corporate to hold land or land and waters by recording the relationship on the reserve title. In addition to managing the respective reserve, joint vesting also specifically provides an Aboriginal body corporate with a role equal to the Conservation and Parks Commission in preparing a proposed management plan and review of each expiry management plan for the jointly vested land and/or waters; provides an equal role in being consulted on the granting of licences and leases for the jointly vested land and/or waters; provides an equal role in being consulted and providing advice to the Minister for Environment on proposals to cancel or amend the purpose or changing the boundary of certain types of CALM act reserves that are not class A reserves; and provides an equal role in being consulted by the Minister for Environment on certain minor amendments to boundaries of a class A reserve.

Hon Tjorn Sibma indicated his interest in governance arrangements that will apply to joint vesting arrangements. Firstly, the governance arrangements for Aboriginal bodies corporate are provided for by the commonwealth Corporations (Aboriginal and Torres Strait Islander) Act 2006. Among other matters, the act imposes on a director a duty to notify other directors of a material person or interest and, when conflict arises, the declaration and management of conflicts of interest by Aboriginal bodies corporate. Secondly, in relation to joint vesting and joint management of CALM act reserves with an Aboriginal body corporate, the following measures are put in place to ensure good governance arrangements. Indigenous land use agreements, which are negotiated for the creation of CALM act reserves such as marine parks, establish joint management bodies and joint management agreements, and relevant provisions provide a governance framework. A copy of the joint management agreement is included in the approved management plan for the reserve and is publicly available.

Given that joint management bodies consist of representatives from the Aboriginal body corporate and DBCA, under the standard provisions of a joint management agreement, a majority from each party needs to support a resolution for it to be ratified; that is, DBCA and the Aboriginal body corporate both need to support the decision. In the event that both parties cannot reach agreement, the matter is escalated and ultimately referred to the Minister for Environment for a decision. The minister is the single point of accountability for joint management. To date, these arrangements have provided effective governance as they include a process for dispute resolution and proper management of the marine reserves.

In relation to the management of assets and liabilities for jointly vested reserves, Hon Tjorn Sibma wanted to know how assets and liabilities would be managed on jointly vested reserves. At a broad level, assets and liabilities remain with the land. The jointly vested reserves are crown land, so the assets and liabilities remain with the Crown. The jointly vested bodies—the Conservation and Parks Commission and the relevant Aboriginal body corporate—have vesting, or care control and management of the reserve, not ownership of the land or the assets. DBCA and the respective Aboriginal body corporate, through a joint management agreement and joint management body, are responsible for managing the reserve together.

The second key amendment to be made by this bill is that it will add the protection and conservation of the value of the marine park to the culture and heritage of Aboriginal persons to the marine park purpose in section 13B(1). I can advise honourable members opposite that this amendment will provide more certainty for commercial and recreational users of the marine environment as it clarifies and supports the implementation of amendments made by the previous government in 2012. I would first like to clarify that the term "protection and conservation of the value of the land to the culture and heritage of Aboriginal persons" is not a new term in the CALM act. When the previous government amended the CALM act in 2012, it introduced the term seven times into the act, having implications across both lands and waters. The government also introduced provisions at the time for ascertaining the value of the land to Aboriginal persons.

Hon Tjorn Sibma sought an explanation of the term "cumbersome prose" or a "cumbersome invocation". He might want to chat to his colleague Hon Neil Thomson, who is sitting behind him. When the legislation went through the Parliament, I think he may have been the chief of staff to the Minister for Environment. If I am correct, that was in 2011 and 2012. The previous government considered this issue, and we have considered it, too.

The legislation is good legislation and it is clear. Since 2012, five environment ministers, including me, have not had a problem administering the provisions of the legislation.

The amendment bill will ensure that a section 62 classification notice for a special purpose area can give effect to the management planning objectives provided for in section 56(2) as inserted into the CALM act in 2012. Section 56(2) expressly provides that the proposed management plan shall have the objective of protecting and conserving the value of the land to the culture and heritage of Aboriginal persons. It is necessary to refer to this purpose in section 13B(1) so that no adverse inference or omission could be drawn. Expressly inserting "protection and conservation of the value of the marine park to the culture and heritage of the Aboriginal persons" in the marine park purpose will therefore clearly enable a section 62 notice for special purpose areas to be created for the purpose of conservation and protection of the value of the marine park to the culture and heritage of Aboriginal persons. Importantly, it will also clarify and allow the incompatibility of activities to be tested against that purpose in the notice rather than having the objective in the management plan and then relying on that management plan to make a classification notice that gives effect to that purpose.

The DBCA and its predecessor agencies have been preparing, and Ministers for Environment from both sides of Parliament have been approving, management plans that have the objective of conserving and protecting the value of lands and waters to the culture and heritage of Aboriginal persons since 2012. To date, there has been no opposition to this approach.

Hon Tjorn Sibma raised concern about how the government would mediate different values and their importance held by adjacent traditional owner groups within the boundary of the same park. He provided the Recherche Archipelago as an example and asked —

> In the interpretation of this bill, are we assuming that each of those groups values that marine park and values its contribution to the preservation of their culture and heritage in the same way as their neighbouring groups?

In response, I can advise that the government will navigate this process—I think I said this yesterday in answer to a question—by creating separate marine parks for each of the relevant native title holder groups, as was done recently in the Buccaneer Archipelago. The following description of Aboriginal cultural and heritage values comes from a draft policy that DBCA is preparing —

> Aboriginal cultural and heritage values can be tangible and intangible and can extend beyond specific places and objects. In the context of marine parks, tangible values could include seascapes, landscapes, other coastal and geological landforms and features such as fish traps.
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> They could include sites such as men's sites, women's sites, lore sites and birthing sites. Intangible values could include specific cultural associations that tell a story about the area such as song lines and cultural obligations and customary practices. Associations with plants and animals including totem animals, food and medicinal items, and on-country care practices are also values.

A comment was made that there has never been an ecological or environmentally based justification for this bill. My view is that the protection of Aboriginal cultural and heritage values is complementary to conserving the ecological and environmental features of a marine reserve. I think I am backed up by about 60 000 years of evidence to support this statement!

In relation to potential impacts on existing or lawful businesses, Hon Tjorn Sibma was concerned that the development of this new special purpose zone could have potential impacts on existing lawful, well-entrenched businesses, some multigenerational. In response, I make a couple of points. Firstly, the zones are not new. Special purpose zones for cultural protection have been established in marine management plans since 2014 and are represented in the Eighty Mile Beach Marine Park, the North Kimberley Marine Park and the Yawuru

Nagulagun/Roebuck Bay Marine Park, all created under the former Barnett government. Secondly, the co-design and extensive consultation process considers the requirements of industry and business. In circumstances in which the values of the marine park can be maintained and enhanced, business and industry can and is accommodated, and promoted in the marine park as permitted uses. Businesses may well be lawful and multigenerational and that is something to be respected, but so are the native title rights of Aboriginal people, whose connection to country spans thousands of generations.

The member mentioned the trammelling of existing property rights. This statement needs to be considered in the context of native title rights of Aboriginal people and their connection to country. As the McGowan government said in its election commitment, it will protect the rights of traditional owners to the land and sea country. It is the role of the marine park management plan to find the right balance between business, environment and cultural heritage. This rests with the government of the day. It is the Minister for Environment who is responsible for approving the management plans, with the concurrence of the Ministers for Fisheries and Mines and Petroleum.

Hon Tjorn Sibma also asked about the process of determining the bone fides of the cultural and heritage zones. Section 57 of the Conservation and Land Management Act covers this issue. It states —

> … the responsible body for the land may consult any person for the purposes of determining the value of the land to the culture and heritage of Aboriginal persons.

A range of information could be used in determining the bone fides of special purpose zones for cultural protection. Information could include benthic habitat mapping; species distributions; known Aboriginal cultural heritage sites; historic and current cultural areas; areas for customary activity and areas that are significant to lore, ceremony and oral histories; and information on lawful activities. Information is gathered from published and unpublished reference material when this is available and directly from traditional owners and other stakeholders during the planning process.

Hon Tjorn Sibma also asked whether any consideration had been given to potentially grandfathering existing operations from being deemed incompatible, or whether there was the potential for joint use of the same zone. Provisions in section 13D of the CALM act recognise the validity of existing authorisations under the Fish Resources Management Act 1994 for commercial operations in marine parks, marine nature reserves and marine management areas. These provisions will not be affected by the passage of this bill. There will be no effect on commercial and recreational fishing in marine parks where fishing is a permitted use, in either a special purpose zone or general use area, noting that relevant authorisations are issued under the Fish Resources Management Act. In the circumstances that the marine park becomes jointly vested, neither the Aboriginal body corporate nor the Conservation and Parks Commission have a statutory role in approving the grant or renewal of any authorisations under the Fish Resources Management Act for an area in a marine park. None of the amendments in this bill affect these roles. There will be no need to reapply for permitted commercial or recreational fishing approvals or to renegotiate with the Conservation and Parks Commission or the respective Aboriginal body corporate when the marine reserve becomes jointly vested. However, if the relevant authorisation under the Fish Resources Management Act expires, its renewal by the Department of Primary Industries and Regional Development can be guided by the provisions of the CALM act and the relevant management plan.

Hon Tjorn Sibma queried incompatible uses, the recourse to appeal and the provision of natural justice. In response, I can advise that operators of existing commercial or recreational activities are consulted during the preparation of an indicative management plan for a marine park. When activities may be incompatible with the conservation purpose of a special purpose zone to be established for Aboriginal cultural protection, operators will be notified at the time the indicative management plan is released for public comment. Operators can then lodge a submission, which is assessed along with all the other submissions. The decision to approve a marine park management plan, which, among other things, addresses zoning and incompatible uses, rests with the Minister for Environment following, again, the consultation of the Minister for Mines and Petroleum and the Minister for Fisheries. Any stakeholders, including operators of commercial and recreation activities, can take their concerns to the relevant ministers prior to a management plan being approved.

I am getting towards the end of the questions.

Hon Tjorn Sibma asked whether it is the government's preference to deliver a support package for business if their operations are found to be incompatible in a marine park or whether they would be directed to the relevant legislation. Work has commenced on developing a sector support package for impacted commercial, charter and recreational fishers, which will be established prior to the commencement of the new marine parks' zoning scheme on 1 July 2023. Compensation may also be available under the Fishing and Related Industries Compensation (Marine Reserves) Act 1997 if commercial operators are excluded from their usual activities as the result of the creation of, or an amendment to, a marine reserve. The FRIC (MR) act describes the events that can cause an entitlement to compensation. Importantly, the development of any sector support package and administration of the FRIC (MR) act remains under the jurisdiction of the Minister for Fisheries and the Department of Primary Industries and Regional Development and both are extensively engaged during the marine park management planning process.

I note Hon Neil Thomson's comments and his contribution. They are noted. There were never secret discussions. At the 2017 election, Labor made the commitment that it was going to do this, and from that time on conversations initially started with traditional owners but then broadened out. This has not been a secret. This was publicised and was an election commitment.

In concluding, I want to emphasise that in bringing this bill before this place, the McGowan government seeks to meet the aspirations of Aboriginal people to conserve their lands and waters, practice their culture and heritage, and participate in economic activities. This bill builds on the work that has been done by past Parliaments. Again, I commend the bill to the house.

Question put and passed.

Bill read a second time.

Committee

The Chair of Committees in the chair; Hon Stephen Dawson (Minister for Emergency Services) in charge of the bill.

Clause 1: Short title —

Hon TJORN SIBMA: I thank the minister for his reply to the second reading, which I must say was rather comprehensive. That is not to say that I do not have any further questions; the minister would be disappointed if I did not.

Hon Stephen Dawson: I wouldn't be too disappointed!

Hon TJORN SIBMA: It depends! I gave a commitment behind the chair that I would not seek to unduly detain the passage of this legislation that I can see the government has a mandate for and there has been precedent established in respect of co-vesting of land on the terrestrial estate and that, furthermore, the previous Barnett government did quite a bit of work on in establishing more marine conservation areas. This is a continuation of that work, albeit in a new dimension. However, it is obviously the potential that legislation like this gives rise to the enablers and the instruments that are legitimised by its passage. I suppose that if there is to be controversy, that is where the controversy will be, because that is where it will rub up against competing uses, competing claims over areas, processes, rights of appeal and the like. The minister has addressed those matters to some degree, although they might bear closer examination.

This might not be the best place to do it, but I might ask my question now rather than waiting until clause 9, which, if I am right, will introduce the new purposes into section 13B. I will make a comment first; it is not my first question. My interest is in where there might be some incompatibility between the purposes of the legislation. We would presumably come across this in the terrestrial domain, but I am a bit less familiar with how this might apply in a marine environment. For example, how will traditional fishing customs, heritage or practice correspond with the overriding biodiversity principle and focus of the original act to protect flora and fauna? How will equally important but competing purposes be mediated through this, or has this been designed out through the establishment of special purpose zones within marine parks? What I am trying to understand is what will be the higher claim. Will the preservation of the culture and heritage of Aboriginal people in a bit of the marine estate be equal to or greater than the government perhaps wanting to introduce certain bans or reductions on demersal fishing, for example? Who will have the priority rights in this domain, or is this something that will effectively be designed out through the establishment of the marine park plan and the composition and location of the particular zones within them?

Hon STEPHEN DAWSON: That will be addressed during the marine park management planning process. There always has to be a bit of give and take when we do this stuff. As part of that process, there will be consultation with the fishers. There will also be consultation with the traditional owners as part of the co-design process. It is not an exact science. Whether it is a terrestrial park or a marine park, there needs to be a lot of conversations and consultation before we land on an area that we hope most people will be happy with.

Hon TJORN SIBMA: This might also be best placed under the clause 1 debate, but if not, I will take the minister's guidance as to where it might be best directed. One other dimension of the policy imperatives is the Plan for Our Parks initiative and the expansion of the conservation estate overall, by virtue of the marine parks that will emanate as a consequence of the passage of this bill. Could the minister tell me what area of the marine estate will be added to the overall conservation estate once, for example, the Recherche Archipelago plans are added to the Buccaneer Archipelago plans, and the expansion of the Marmion Marine Park?

Hon STEPHEN DAWSON: The honourable member is conflating two issues. The new marine parks will not be created under the bill that is before us today.

Hon Tjorn Sibma: The joint vesting will.

Hon STEPHEN DAWSON: Yes, the joint vesting will. However, the honourable member asked an important question. The Plan for Our Parks initiative is for five million hectares over five years. Approximately 660 000 hectares

is involved in the Buccaneer Archipelago marine park and about 20 000 hectares in Marmion. In terms of the south coast marine park, there is no number on the table yet because the boundaries have not yet been defined. The early conversations have started. I think a drawing on a map was put out that said that between those areas there was the potential to have a marine park, but it is early days, so we do not have a number in relation to that just yet.

Hon TJORN SIBMA: My interest is in the overall area of water at issue—the minister is absolutely correct. The reason for my foray into this matter is, I suppose, to quantify and, if I can, contain the overall issue of potential existing lawful uses of that environment being found to be incompatible with a special purpose zone designated for the preservation of Aboriginal cultural heritage. The Buccaneer Archipelago has three marine parks encompassing an area of some 660 000 hectares. What will be the composition of the special purpose zones for the protection of Aboriginal culture and heritage in those parks? What area of water are we talking about? My interest is in how existing, extant, lawful activities in those bodies of water, whether recreational, commercial or otherwise, are going to be affected. I am trying to put the challenges into a proper context, but it is not something that I have any insight into at the moment.

Hon STEPHEN DAWSON: We do not have that information and I am not sure whether it can be provided. It is fair to say that different marine parks will have different levels of importance to different traditional owners based on where they are around the state. Certainly, the three traditional owner groups involved in the new Buccaneer Archipelago marine parks that are being created are essentially sea people, whereas it might not be the same for the Noongar people, for example, in relation to Marmion, and the TOs also might not have the same affinity with the marine park that is being created down on the south coast. I am not saying that they do not; I am just saying that they might not have. In terms of what is in each of the three that have been created, we do not have that information.

Hon TJORN SIBMA: I presume there is some flexibility prior to gazettal, the finalisation of plans and the working through of potential transition packages and the like. My operating presumption is that there would be an estimate that the department could provide, perhaps after question time, of the area to which these special purpose zones would relate. I am attempting to contextualise the overall issue. Any change to land use or sea use creates anxieties, for obvious reasons. What I do not want to do is to inflame anxieties when people should not be anxious. I want to understand how I might best direct my future inquiries to the management of transition packages and the like and compensation arrangements to understand who will be affected and how many users will be affected by a particular zone. For me, that would be particularly helpful. I hope we will get to that.

Hon Stephen Dawson: We'll see whether we can get that. It may be held in the Kimberley office of DBCA. I am not sure where it is, but we'll see what we can get.

Hon TJORN SIBMA: I thank the minister. I think we are in a better position to focus on the Buccaneer Archipelago because the plans are so well advanced in comparison with the south coast where consultations and the like are still underway. I take a particular electorate-based interested in the Marmion Marine Park, which is a body of water I have been recreating in for the better part of my life.

The minister mentioned—he was right to pull me up on this—the phrase that I feel is cumbersome is one that is well worn to some degree, and one can impute from that a degree of flexibility, I suppose. When we were discussing the Aboriginal Cultural Heritage Bill late last year, we talked about how cultural practices and meaning can evolve over time to encompass changing value sets and the like. Is it possible to make tangible some of the overriding purposes in the special purpose cultural protection zones in the Kimberley, for example, so I can actually understand what it is that we are seeking to preserve, and better understand how some existing practices in that area could still be considered compatible with that designation but other existing purposes might be rightfully considered incompatible and, therefore, I would presume trigger not only the compensation course of action, but also that industry transition plan? Is it possible to elaborate on, citing some specific and tangible examples, the special purpose zones for culture and heritage that are presumably embedded in the three marine parks in the Buccaneer Archipelago and the values we are preserving for traditional owners and future generations?

Hon STEPHEN DAWSON: Honourable member, I do not have with me the advisers who were involved with the creation of those marine parks. A lot of that work was led by our local office in the Kimberley. We have a team at the Department of Biodiversity, Conservation and Attractions that was involved in negotiations with traditional owners on the creation of terrestrial parks and marine parks. I do not have that information on hand. All I can give the member is the information in my second reading reply speech about the types of things that could be taken into account. I am happy to repeat those, once we find where it is in the speech, so give me one second.

I mentioned that Aboriginal cultural and heritage values can be tangible and intangible and can extend beyond specific places and objects. In the context of marine parks, the tangible values could include seascapes, landscapes, other coastal and geological landforms and features such as fish traps. They could include men's sites, women's sites, lore sites and birthing sites. Intangible values could include specific cultural associations that tell a story about an area, such as songlines and cultural obligations and customary practices associated with plants and animals, including totem animals. Food, medicinal items and on-country care practices are also values. Those are the types of

things that could be included. As I said, I am not aware of the ones that were included in the Buccaneer Archipelago marine parks. I recall early in the process meeting with traditional owners who expressed a view about particular areas in the Buccaneer Archipelago where there are whirlpools. They expressed a view that because of culture but also for reason of danger that should be a special purpose zone. It was culturally important for them but there were also issues with the risk to life of people fishing in those areas. I am not clear whether that particular area was included or not. I can give a further example of trochus shells. If there are trochus shells in the park, they may well be in a special purpose zone.

Hon TJORN SIBMA: I accept that for now, minister. I think it would be to all our advantage to develop greater cultural comprehension so we are cognisant of what we are attempting to preserve and protect and how other marine uses that have taken place in the 200 years hence might be either compatible or incompatible, or respectful or disrespectful of a particular cultural designation. This is not to be tendentious—using hypotheticals is dangerous—but I am trying to comprehend what is at issue here. Is it more likely in the instance of the three marine parks we now have in the Kimberley that the special purpose zones are weighted towards preserving more of a tangible purpose or more of an intangible purpose?

Hon STEPHEN DAWSON: Honourable member, for the same reason I gave earlier, those questions could be asked to those staff who were involved in the work creating those parks but unfortunately not the advisers I have here for the bill before us. Again, if I am able to provide any information later, I will see what I can get, but I am not sure that I can.

Hon TJORN SIBMA: I appreciate that there will be details germane to locally engaged staff that relate to putting together a marine park in a particular part of the state. Is there perhaps an overriding sort of logic, however, that might give us some indication about how these matters might be arbitrated—I use "arbitrated" not in a legalistic sense—or how they might be determined not only insofar as the creation of new marine parks that are jointly vested with traditional owners, but also potentially, as ethnographic studies or cultural history and awareness manifests itself, they might relate to the expansion of this kind of special purpose zone within the existing marine estate? It is an inelegant way to put it. What would ordinarily be the case? Is it more likely to be a conflict between a commercial fishing practice—by which I mean a boat prawning or catching snapper or whatever species of fish—and the preservation of a "more tangible" site of some value or an intangible one? I am just trying to predict to some degree where there might be—I will not say conflict—incompatibility. Where is it likely incompatibility will exist, or is that too difficult to determine at this stage?

Hon STEPHEN DAWSON: It is difficult to ascertain. Having been in the office of the Minister for Environment for the best part of 20 years now, conflict often follows marine parks. Because the creation of a marine park requires the approval the Minister for Environment and the concurrence of the Minister for Mines and Petroleum and the Minister for Fisheries, my experience is that each of those ministers comes to the table with the unique perspective of the sector they represent. There is often a great deal of—I would not say argy-bargy—negotiation and conversation about how the park will look in the end, including the zoning in the park. If I can offer the member some assurance: having been through it numerous times as a staffer and indeed as a minister, a great deal of negotiation takes place across government to make sure that the various stakeholders who have an interest in the park have their voice at the table, and there is a balancing out of the interests. I note, of course, that the purpose of the bill before us is to provide the opportunity to jointly manage marine parks.

Hon TJORN SIBMA: I think that provides a measure of reassurance in contestability in the way that overlapping uses of the parks might eventually be mediated. I confess that it is difficult for individuals such as myself who have a particular cultural background to speak in any way knowledgeably about anybody else's cultural background. What I am striving to do, however, is to comprehend, for the benefit of future governments, where those competitive claims might be more likely to arise and what might be the most likely outcome in the process of determining what is a compatible activity in a special-purpose cultural zone and what is not.

This might be unhelpful, but I will proffer a hypothetical. I will use Marmion Marine Park because I know it. Abalone season happens every winter at Mettams Pool. I remember as a 15 or 16-year-old surfer that scores of people would be falling over the reef, hurting themselves and taking away bags of abalone. That is a "modern-ish" cultural practice or recreational pursuit—there is no commercial activity. I am not suggesting that there is anything afoot at Mettams Pool. However, if it were determined that the preservation of abalone or shellfish at Mettams Pool was a very important activity to the heritage of local Aboriginal people, would the traditional winter recreational harvest of abalone by everybody who is not an Indigenous person be a compatible process?

That is what I am attempting to determine. I am not suggesting that there is anything nefarious happening. I am just trying to understand longstanding practices that people have been accustomed to recreationally—before I even venture into the commercial abalone fishing off Esperance. What is likely to be an incompatible or compatible practice? If, presumably, abalone fishing was compatible, I would look at it as a tangible practice. It is a food source. It is there. It is part of culture. It is part of heritage. It is obviously tangible. But if non-Indigenous people were to

do it or if there were to be at some stage a commercial harvesting arrangement, which I find very unlikely, would that be incompatible?

I am just trying to predict where an incompatible practice might arise—not the best example—and, then, how we would determine a schema by which "this activity is compatible and this activity is incompatible" that does not rely on the mediation of ministers between themselves, some further way up the process, because I do not necessarily think that that is the best method.

Hon STEPHEN DAWSON: I am not trying to frustrate the member with my answer, but there is no rule of thumb. Each park is different. There are different people, different users and different values. In relation to Marmion Marine Park, no Aboriginal person has said to me that abalone should not be fished there, and my advisers are not aware of anything; I just want to place that on the record. An assessment will be done on a case-by-case basis and through case-by-case negotiation. This stuff is, in the main, sorted long before it gets to a minister. Certainly, as I alluded to in my second reading reply, scientific reports will be used to look at the values or history because work would have been done by various scientists most likely—particularly at Marmion—over the years, and it would all be taken into consideration as part of the decision-making process. It would be only at a very later stage—if it were needed and if there was real tension between ministers, those ministers would have to negotiate.

I will also make the point that the different minister and their agencies have different responsibilities under their acts. As part of its raison d'être, one of the things that the fisheries part of the Department of Primary Industries and Regional Development is supposed to do is help the economic viability of the fishing industry in Western Australia, so that is always part of its thinking when it is at the table for the conversations about the creation of parks, or at a later stage if the Minister for Fisheries has to be at the table, adjudicating and making a decision. It is always from that background that the fisheries sector comes, and so the member can be confident that the voices of those sectors are alive in this process.

Hon TJORN SIBMA: I think we are probably in the area of getting into the operation and approval of the management plans. Minister, can I clarify something about the most recent announcement that that proposal required joint ministerial approval to get up. Once established, however, do those joint ministerial approval arrangements apply to the expansion of zones or the creation of new zones within a park? Can the minister elaborate on how that process would work?

Hon STEPHEN DAWSON: Yes. A similar process would take place in the expansions of zones in those parks. Again, I think I commented a few times in my speech when I said that the Minister for Environment must get concurrence from the Minister for Fisheries and the Minister for Mines and Petroleum. That happens as a matter of course.

Hon TJORN SIBMA: I think these plans are reviewed every five years. Is that effectively the life of type? Can the minister elaborate on how that process might work? For example, if there were some measure of satisfaction or disputation with the use of, or access to, particular zones, would they be likely to be fixed in place and continue ad infinitum or would there be a process of mediating, reconfiguring or resolving intra and interparty disputes?

Hon STEPHEN DAWSON: The plans are in place for 10 years, unless they are revoked or replaced, but they can continue after the 10 years, until we have a new plan. Any decision to amend or revoke a management plan is made by the government of the day. Section 55(2) of the CALM act provides —

> A management plan shall state the date on which it will expire, unless it is sooner revoked, but notwithstanding anything in this section or in the plan, a plan which would otherwise expire shall, unless it is revoked, remain in force until a new plan is approved.

A management plan can also be amended. If a management plan is amended or a new plan prepared, it is subject to the public consultation review concurrence and approval processes outlined in the CALM act in sections 57 to 60. The review of the marine impact management plan is undertaken by the Department of Biodiversity, Conservation and Attractions, so yes.

Hon TJORN SIBMA: Please tell me if I am getting into detail that is best done elsewhere, but I think this might be the best place to do it—lest there be a review of clause 1 debates. I am the principal offender of asking questions at this clause, rather than other clauses.

Hon Stephen Dawson: If we are making progress, then I am quite happy to sit here.

Hon TJORN SIBMA: Okay, great. Say a marine park has been operational for a period of three to four years, and the co-vesting and management arrangements have been embedded and given sufficient time to warm up and gear up. Would there potentially be some value in articulating, at a future time, and evaluating how effectively these values are being preserved within a particular park? I ask this because I am still uncertain about what will specifically be preserved and protected within these cultural special-purpose zones, and therefore what any reasonable observer should expect about what future activities could be considered compatible or incompatible. Will this process of

operation and review potentially generate a rule of thumb that will guide future governments and future management practices? I am looking for an insight into the internal review process and the external reporting on how each park is being managed and how effectively it is preserving its flora and fauna values, and archaeological values, as well as its cultural values.

Hon STEPHEN DAWSON: There is a mid-term review that is taken of the management plan by the Conservation and Parks Commission. That is every five years and obviously the stakeholders, particularly if there was joint management in place with the Aboriginal body corporate, would obviously be consulted as part of that. If it was found to be deficient in areas or required changes, as part of that review those changes could be evaluated and brought forward.

Clause put and passed.

Clauses 2 to 4 put and passed.

Clause 5: Section 7 amended —

Hon TJORN SIBMA: I am just trying to interpret the clause—clause 5 will amend section 7 of the act by inserting a new paragraph (aa). This paragraph concerns arrangements around vesting and the like. Does this have any bearing again on the management of investments, properties, liabilities and the like? I think in the minister's second reading reply speech, he said that everything reverts to the Crown, but I am interested to know: is there any other sort of corporate governance bearing on this particular section?

Hon STEPHEN DAWSON: No, there is not. Does the member want me to explain or is he all right?

Hon TJORN SIBMA: Please go ahead.

Hon STEPHEN DAWSON: Clause 5 will amend section 7(1B) by inserting new paragraph (aa), which will specify that this section will not apply to waters, land, or land and waters that are vested under new subsections 8AA(4A) or (5A). Under the CALM act, land may be vested by way of section 7 or 8AA. This amendment clarifies that section 7 does not apply to waters, lands, or land and waters that become jointly vested between the commission and an Aboriginal body corporate because they are vested pursuant to section 8AA.

Clause put and passed.

Clauses 6 and 7 put and passed.

Clause 8: Section 13AA amended —

Hon TJORN SIBMA: I am attempting to introduce a scenario that might apply. Presently we have a requirement that when a class A marine reserve is proposed over an area subject to joint vesting, the commission must consult with the relevant Aboriginal body corporate in its determination. This might not be a scenario that is being contemplated but, in the event perhaps of opposition from an Aboriginal body corporate to that plan, how would that particular scenario be managed?

Hon STEPHEN DAWSON: It would be managed through the management planning process. If at the end of the day there was a view from the Aboriginal body corporate that was different from the view of the department, for example, that decision would be adjudicated by the minister at the end of the day.

Hon TJORN SIBMA: In the event that there is disagreement between the two counterparties—potentially an intractable disagreement of some kind—what stipulations or constraints are likely to be imposed upon the Aboriginal body corporate? Hopefully, this never arises, but if it did: if there is a breakdown of some kind, is that body corporate or its representatives—who may also be co-representatives on the management team of the park—constrained in any way in giving voice to their dissatisfaction or expressing views?

Hon STEPHEN DAWSON: No; they would not. This is not like one of those agreements that we heard about that mining companies have signed with traditional owners whereby their rights have been taken away from them. No. If there were concerns, those concerns could be vocalised by those groups at their will.

Hon TJORN SIBMA: If I am correct, I think that is also consistent with the policy position the government has adopted in the Aboriginal Cultural Heritage Bill and the range of bodies that will be created through that mechanism.

Hon Stephen Dawson: Obviously, in relation to the Aboriginal Cultural Heritage Bill, agreements were made between proponents and traditional owners that stopped them from speaking out. There has never been any such restriction in this bill before us. So, yes, it means TOs can speak out, as they can now speak out under the ACH bill; I just want to make the point that they have never been constrained.

Hon TJORN SIBMA: Okay. I do not know whether this is the best place to deal with this, and, to his credit, the minister addressed the issue in his second reading reply speech. It pertains to a question that I had in mind, which is whether there is much divergence between the governance, operation and purpose in this bill and what was

passed by the minister very ably last year. Is there much of a tangible connection between the Aboriginal Cultural Heritage Bill and the practices it will embed, and what is proposed in this piece of legislation?

Hon STEPHEN DAWSON: I thank the honourable member for his comments. In my second reading reply, I indicated that it is our understanding that this bill is quite complementary to the Aboriginal Cultural Heritage Bill, and the intention is that we ensure that they work well together. Of course, I also mentioned that the regulation-making process of the Aboriginal Cultural Heritage Bill is underway at the moment, and all agencies and stakeholders are involved in that, but the intention is to make sure that they work well together.

Hon TJORN SIBMA: Forgive me, but in lieu of another opportunity to speak about governance more generally, we talked about how an individual management plan for a marine park is reviewed over its 10-year life plan, but is there also a body of reporting that would presumably be regular that comes out of these joint vesting arrangements? Presumably, there is a level of funding behind these bodies, too. Forgive me for probably not putting this in the best place in the clause-by-clause detail. Can the minister elaborate either here or somewhere else on how these joint vested bodies will be funded and then structured, and then what sort of reporting obligations will apply, and what we should expect to see as lay observers?

Hon STEPHEN DAWSON: The funding and structures will all be negotiated as part of the Indigenous land use agreement. That might include things like a benefits package or the funding and creation of a new Aboriginal ranger program. The joint management body meetings occur regularly. It is probably more likely to be quarterly, so four times a year. It does not have to be; it is not structured, but the intention is that they meet regularly. My understanding is that those minutes can be made available. I asked whether they were sent as a matter of course to the Conservation and Parks Commission, for example. My advisers are not aware of that, but certainly there is no reason they would need to be secret. I imagine that if anything were to come out of those meetings, at least the departmental people on those joint management bodies would bring that information to the attention of the appropriate people in the department, and stuff may well filter back to the Conversation and Parks Commission as part of that process.

Clause put and passed.

Clause 9: Section 13B amended —

Hon TJORN SIBMA: We addressed much of this at clause 1. This is the operative phrase that is critical to the purpose and the future functioning of this bill. I have some further questions on consultation with both traditional owner groups and pre-existing stakeholders. This might provide some useful insight into matters as they will relate to the three new marine parks in the Buccaneer Archipelago. Does the government have a good indication or a sense of how many stakeholders, be they recreational or commercial operators, whose practices can now be reliably thought to be incompatible with the introduction of these cultural special purpose zones in those three parks?

Hon STEPHEN DAWSON: Would the honourable member mind repeating that question, please?

Hon TJORN SIBMA: Sure; I will phrase it more succinctly. There will presumably be stakeholders who are users of the three marine parks in the Kimberley in either a commercial or a recreational manner whose current activities will be deemed to be incompatible with the introduction of these new special purpose cultural zones. I am trying to ascertain—perhaps this is more appropriate just in the commercial dimension; recreational might be hard—how many commercial stakeholders or users of these special purpose zones today will not be able to access or use those zones upon the gazettal of the marine park plans, and specifically these special purpose zones?

Hon STEPHEN DAWSON: I do not know, honourable member, and my advisers do not know. We do not have a list of the various stakeholders who might be impacted as a result of the creation of the Mayala, Bardi Jawi Gaarra and Maiyalam parks.

Hon TJORN SIBMA: That is probably more than slightly problematic.

Hon STEPHEN DAWSON: I just draw the honourable member's attention to the answer that was provided by Hon Kyle McGinn yesterday. The commercial and charter operators have been identified. Obviously, as the member pointed out, it is not possible to identify each of the individual recreational fishers. Approximately 200 commercial fishing authorisations have been identified as being impacted to varying degrees across the Kimberley. There are 95 fishing tour operator licence holders who have access to the areas included in marine parks across the Kimberley. The extent of their activity varies considerably. That will be the subject of further consultation with the licence holders. That list is across the whole of the Kimberley; it is not necessarily across the area of the three marine parks.

Hon TJORN SIBMA: That is helpful. Would it be fair to categorise the government's future efforts on identifying those stakeholders as a process of zeroing in on those operators who are most likely to be affected? I can understand that if a person has a commercial fishing authorisation, that fishing authorisation might be relevant to quite an expansive area of ocean or relate to a very defined commercial process. Should I presume that the number of commercial fishing operations or businesses that will be disproportionately impacted by the introduction of this

special purpose zone will be some order of magnitude below the 200 that was provided yesterday? I am trying to ascertain whether we are talking about potentially dozens or 20 or 30 businesses that will be affected. Ascertaining that level of detail will be critical to determining the value and relevance of the transition package that the government announced would be led by the Department of Primary Industries and Regional Development.

Hon STEPHEN DAWSON: The member's last comment is pertinent in that it will be led by DPIRD and the Minister for Fisheries, so it will be less than that. This may affect different operators differently. For some it might just be a case of, "All right. We're not going to that area; we'll go somewhere else." For others, they may be pleased that a marine park is being created because that will elevate the area to an area of significance and for those who have charters, for example, there may well be some people who want to explore the marine park by boat and not necessarily fish. It will affect different people differently. The "zeroing in" that the member spoke about will be led by DPIRD.

Hon TJORN SIBMA: That is helpful. To the degree that DBCA bears responsibility from this point on, the aspect of identification of commercial and recreational fishing interests and whether they need to be supported and transitioned through the introduction of the zones will solely be the responsibility of DPIRD rather than DBCA; is that a fair categorisation of responsibility?

Hon STEPHEN DAWSON: Yes; if is about compensation, it will be directly in the bailiwick of DPIRD. It is important to note that those operators who are likely to be impacted by the changes will have been identified early in the process and would have been consulted as part of the process.

Hon TJORN SIBMA: In the time before question time—I might be unreliably guided by both clocks in the chamber, particularly unreliably guided by the one at the rear of the chamber; the other one might be okay—we earlier talked about a potential congruence in the preservation and pursuit of particular objects of this bill in that to a large extent, possibly a very large extent, traditional ecological values and the preservation of Aboriginal cultural and heritage practice and values are highly compatible. But is there, for example, with respect to the creation of those three new parks in the Kimberley, a defined ecological outcome or superior environmental management outcome that will eventuate as a consequence of the passage of this bill in a manner that is a serious uplift from business as usual?

Hon STEPHEN DAWSON: I am not sure whether this answers the member's question, but marine parks that are created need to be consistent with the proper conservation of the natural environment, the protection of flora and fauna and the preservation of any feature of archaeological, historic or scientific interest.

Clause put and passed.

The DEPUTY CHAIR: Before I put the question, I remind members about chamber etiquette, in particular standing order 25.

Clauses 10 to 13 put and passed.

Clause 14: Section 89 amended —

Hon TJORN SIBMA: This clause relates to some administrative tidying up with the changing of forms and the like. There is a relationship between clause 14 and subsequent clauses. I propose to expedite this process potentially before question time. What is the material administrative or efficiency outcome in the changes proposed at clause 14 but also consequently through to clause 19? I want to understand what is being changed.

The DEPUTY CHAIR: Order, members! Can I just have some quiet in the chamber. Thank you.

Hon STEPHEN DAWSON: Clause 14 will amend section 89(1) to remove the requirement for the form of permits to be prescribed in regulations and replace with a provision allowing for permit forms to be forms approved by the CEO. This amendment is consistent with regulatory reform by removing the requirement that the form of permits be prescribed in regulations. It is called streamlining!

Clause put and passed.

Clauses 15 to 19 put and passed.

Title put and passed.

Report

Bill reported, without amendment, and the report adopted.

Third Reading

Bill read a third time, on motion by **Hon Stephen Dawson (Minister for Emergency Services)**, and passed.