

ABORIGINAL HERITAGE LEGISLATION AMENDMENT AND REPEAL BILL 2023

Third Reading

DR A.D. BUTI (Armadale — Minister for Aboriginal Affairs) [10.25 am]: I move —

That the bill be now read a third time.

MS M.J. DAVIES (Central Wheatbelt) [10.25 am]: I rise to offer some reflections on the debate we have had over the last two days on the Aboriginal Heritage Legislation Amendment and Repeal Bill 2023. I start by again thanking the Minister for Aboriginal Affairs and the house for accommodating me on Tuesday night so that I could sleep before we sat until 11 o'clock last night to deal with the consideration in detail stage. That was appreciated.

I also start with an observation that we found ourselves in a highly unusual situation a couple of months after the commencement of a new bill that was to replace, in the government's words, an old and outdated piece of legislation. We are debating the repeal of that replacement legislation and reverting to the old, outdated 1972 act, albeit with some amendments. My second reading contribution covered how we got here in detail and had a particular emphasis on what I think was the downfall of this legislation but which, unfortunately, has been the hallmark of this government. It was arrogant to dismiss the concerns of the opposition when it was raising those concerns in this house. It was arrogant to dismiss the concerns of the community that were being fed, no doubt, to every member of this house and the Legislative Council. It was arrogant to dismiss the concerns of Aboriginal groups and people. They had been raising concerns about the new process. It was certainly arrogant to dismiss the concerns of the other stakeholders who had serious concerns about how it would practically work, but that is what the government did until the heat was so high and it became evident the political fallout was derailing the new Premier's ability to control his government's narrative.

It was at that point we saw the backflip. That was only a matter of weeks ago. In the government's own words, the 2021 act went too far and was too prescriptive and complicated. After months of pressure, the government capitulated and agreed with the opposition that common sense was required for the important framework to protect Aboriginal cultural heritage. The government's statement that common sense was to drive the protection of Aboriginal cultural heritage, which was in the media statement that was issued when this spectacular backflip was conducted, conceded that common sense had indeed been absent from the 2021 iteration that we had spent a considerable amount of time discussing. We find ourselves in this extraordinary position of being back in Parliament to debate the new iteration of the legislation.

I will get to what we spent the last two days discussing in a moment, but I do not want to miss the opportunity to again emphasise just how much angst, anxiety, frustration and anger there was in the community around this failed legislation. That has left an indelible mark in many quarters of our state and in particular communities, among all persuasions that are engaged in the pursuit of protecting Aboriginal cultural heritage. The Leader of the Opposition described how busy his electorate office was—perhaps busier than when we were dealing with some of the impacts of COVID in our electorate offices. It is quite remarkable for our offices to be taking calls at that rate, because I remember feeling absolutely overwhelmed, as everyone in this house did, during the COVID and pandemic response. I can attest that my office was similarly receiving those phone calls and, unfortunately, they were coming from outside our own constituencies because people were not getting through to their own local members. Labor Party members of Parliament were toeing the party line at that point and it was very unfortunate that their constituents were getting nothing more when legitimate concerns were being raised. That is a salutary lesson for members in the Labor Party that the government machine does not always get it right. When members have been out on the front line defending the government, only to see their Premier stand up and backflip, they have to go back and have conversations at a very intimate and personal level with constituents, and it is pretty uncomfortable. When having those conversations, members should make sure to be absolutely convinced that what the government is doing is correct, because MPs are here to represent their constituents first and their party second. That is what we are elected for.

As an aside, yesterday there was debate during question time on the south coast marine park process that is underway at the moment. Minister Whitby jumped to his feet and talked at length about the consultation that was being undertaken. I remember vividly the Minister for Aboriginal Affairs and the current and previous Premiers leaping to their feet when we asked questions about consultation for the 2021 act and reeling through what they were doing, how many meetings had been held and how many people they were talking to, yet we find ourselves here, repealing that act and progressing with a very different way forward. Just a word of warning to the minister: he may like to read out what the department gives him about consultation that has been carried out, but if it is not genuine and he is doing it because he has made the decision and is ticking a box, it will not work out well for the government. If there was ever a case in point of that, it is what we are dealing with right now.

I turn to the discussion over the past two days. The minister is aware that we are not entirely comfortable with the way the bill was brought to the house. It was mashed together in a short time frame. I know that the minister would not use those words, but it cannot be characterised in any other way, given the short period that the department,

the minister and the government has had, because it needed a framework if there was to be a repeal of the legislation. The regulations have been created in an even shorter period, because the opposition made it clear, and I do not think industry or Aboriginal corporations would have accepted it either, that we would not want to consider a new framework without understanding the regulations, guidelines and policy. We have had limited time to consider that, but the government came good on its promise to provide them to us. Whether we have had time to digest and adequately consult on them is another question, but we understand the imperative, because we all share the desire to repeal the 2021 act and create certainty for everyone who is required to engage in the process.

The opposition genuinely offered the government the opportunity to split the bill and do what we all want, which is to repeal the 2021 act, but that offer was rejected during the consideration in detail stage. That is of great concern, because although we had discussions on the detail of what the new framework will look like, and this still has to go through the Legislative Council, there was no question that there was agreement on the repeal of the 2021 act. We gave the government an option to deal with that posthaste and remove the regulations and framework, the entire ecosystem that was created around that act, from the statutes. That would have given some comfort to those people who are most concerned about the impact of inadvertently running afoul of the 2021 act, and facing the penalties contained within that act. We canvassed that during consideration in detail. The minister said that an educative process will be applied if there is no evidence that there has been wilful destruction of Aboriginal cultural heritage while the 2021 act is in place. Nevertheless, that act and those penalties are still in place. Everything relating to that act will exist until we have gone through this process in the fullness of time. We simply wanted to fast-track the section that would get rid of the 2021 act to give everyone confidence that they would not be at risk. Despite the minister's advice and statements, I think it is disappointing that the government did not take up that offer to fast-track the repeal of the 2021 act. The opposition stood ready and willing to assist in that.

Regarding the other elements that we discussed over the course of yesterday—the consultation time frame and with whom the government consulted on the 2021 bill and regulations—my colleagues in the Legislative Council will look at what we have discussed in here in advance of discussing it over there. They will see that the minister provided a list of all the corporations and stakeholders that were invited to be part of the consultation process. There was some concern. We have already talked about the time frame in which that consultation took place. Certainly, I would have thought that, even by the government's own standards, that was less than ideal. It was important from our perspective to ask whether this legislation was seen as a stop gap, and whether we were likely to see further additional amendments or changes to the regulations. Of course, we know that the guidelines and policies can be changed at the government's whim, but the minister gave an undertaking that for the regulations and the legislation this would be it as far as the government was concerned. I do not want to verbal the minister, he can respond in his third reading reply, but that was my understanding of our conversation, that once we go through this process —

Dr A.D. Buti: The regulations are still out for consultation—I did mention that.

Ms M.J. DAVIES: Right. The regulations are out for consultation, which is a very important clarification, and there is potential for the regulations to change. Of course, I would point out for the record that we will have no capacity to disallow those regulations. It is important that industry has the opportunity to provide its feedback and that the government listens. I hope that will be the case.

We canvassed the definition of Aboriginal cultural heritage and how it will remain consistent with the 1972 definition. The minister can clarify this, but reading back this morning over the debate we had last night, it is my interpretation that consideration of places that have a connection to mythological or intangible elements is already encompassed in the 1972 act, so there is capacity for that to be considered when section 18s are being applied for, but we remain consistent with that definition put forward in the 1972 act.

The complicated commencement process that we discussed is due to the repeal and transitional elements and new amendments that were brought forward. Just to remind members, amendments were moved by the minister on the floor after the bill was introduced to the house. I had a smile on my face when, early in the piece, we still had not seen the regulations and I received advice from the minister's office that the regulations were relatively simple and we need not worry too much, and perhaps we would consider a briefing on the day that we started to debate the legislation. I am pleased that the government was in a position to offer us more than just a morning briefing on the day we were to start debate on this legislation, which would have been at the beginning of this week. I offer my thanks because, although if one lives, eats and breathes this as a part of the department or the minister's office, it may seem straightforward, I can assure members that with the resources the opposition has, it takes some time to understand how all those moving parts work together. In my experience, as someone who has been here for some time, it is an unusual way to proceed with the commencement dates, the proclamation and the fact that the bill amends itself within the legislation. It was a rather complicated process. I thank the minister for clarifying that.

We covered what stakeholders must do in the interim, including why guidelines and policy documents had been removed from the website for the 2021 act, and the advice from the minister that was to call the department for guidance until the 2021 act had been repealed. That was raised by industry, which is concerned that there is now no information to support the 2021 requirements. It is clear from the minister's advice that anybody seeking to enter

into anything while the Aboriginal Cultural Heritage Act 2021 is still in place needs to contact the department and they will be provided that advice. Again, that is not really ideal. It would be preferable to have a very clear framework; however, we understand that because of the debacle that occurred, that is not possible at this stage.

We also discussed the potential work that the government will do to clarify the role of the Environmental Protection Act, and how that will sit with the responsibility of the Aboriginal Cultural Heritage Act and the committee. The minister asserted that work will be done to try to make sure there is less duplication in those two bodies. I think that is important; certainly, industry has conveyed to us that that is important.

No quantification was provided of the cost of the overall failed process. The minister touched on the fact that the \$12 million that had been set aside for the LACHS will be repurposed for capacity building for native title bodies and groups. No doubt, there will be additional questions from us on what that will look like, exactly how it will be achieved, and what kind of key performance indicators and framework the government will put around that particular \$12 million. Obviously, there were more costs involved in the rollout of the failed 2021 act than just the \$12 million identified for the LACHS. There were significant consultation processes leading up to the 2021 act; there was then a flurry of consultation on the regulations; and there were education sessions and no doubt a significant amount of legal advice in the preparation of the bill, only to have us come back to repeal all that. Although the government's advice may be that all is not lost, I would suggest that a significant amount of those costs could have been used for other purposes to get a much clearer and better outcome in the long term. The minister did not provide a quantification; I am not sure whether the government has turned its mind to that, but I think there will certainly be avenues for us to pursue that further down the track. It is very important to understand how taxpayers' dollars are being spent.

During the consideration in detail stage, we had a discussion about the cost recovery functions, the fees and charges, and clarification on which groups will be charged and how much those charges will be. That was important from our perspective given the minister's commitment to the challenges that some of the smaller businesses and landowners might face if they had to present a section 18 application. That was certainly one of the biggest concerns in the 2021 process. The Small Business Development Corporation Act defines "small business". As I understand it, small businesses are exempt from being subject to the variable charge of \$5 096 for every site that is considered within a section 18 application, and those particular landowners can apply to government to conduct any surveys that will be required going forward. I thank the minister for providing clarification on that. I understand that that was as a result of discussions with industry. It was raised with me by a number of different sectors, and will be welcomed when the detail of those surveys and how the government will prioritise that is made available.

We also talked about the transfer of the responsibility for considering applications for sections 18 and 16 requests and advising the minister to the newly created Aboriginal Cultural Heritage Committee, which essentially will be lifted from the 2021 act and placed in the Aboriginal Heritage Act 1972, and its roles and responsibilities. Associated regulations outline how members of that committee are to conduct themselves. We talked at length about the skills required, and the government does not intend to be prescriptive in sectoral representation or skills base, but it will expect appointments going forward to have relative experience in Aboriginal cultural heritage in the industries in which there are intersections with the section 18 consents that will be required. I think that the process for future decisions around appointments has been made clear. We also talked about what will happen to LACHS, and any charges, fees and duties that they will have already undertaken when we transition across.

There was some discussion amongst a number of members about the directory and what it will look like for someone looking to see whether they will be required to make a section 18 application, how that will sit alongside the information system, what will happen to information that has been added or will be added, and how the government survey information will be added. I think that is really important, because there are no exemptions under this act for any landowner. Someone who wants to undertake an activity has to be really clear that when they look at that register, it will without doubt tell them whether they are required to start the process of making a section 18 application. I cannot emphasise enough the importance of the accuracy of that directory, the information system and the advice that the department will provide on that matter now, given that there will be no tiers or any of the framework that was created under the 2021 act. Everyone will be treated equally.

We touched on the survey program, the funding and the prioritisation. Just going back to that, I understand that the government's intent is to progress with those proactive surveys only if there is agreement between the landowner and the traditional owners. They are not going to impose that on any landowner. Obviously, some areas will be prioritised, but I think my interpretation of what we discussed—the minister can clarify—is that when the government starts that proactive survey, if there is not agreement from the landowner and the traditional owners, that may not proceed. It would be helpful if the minister could clarify that.

We also talked about penalties, breach of penalties in the regulations, penalties in the act that remain the same, and the transfer of ownership of land subject to a section 18 consent. It was pretty late in the day when we got to this. I raised some questions on the timing and when it would be clear that those consents would be transferred without amendment.

Although I understand that the request for this amendment has come from industry, it was raised with me as a matter of interest in relation to having clarity and certainty. Someone who is transferring a property wants to know what encumbrances, requirements or responsibilities they have. To my understanding, the transfer of the section 18 consent will not be confirmed until after the transfer of the property has happened. But it is the intent of that amendment to bring that into effect, so perhaps, fresh in the morning, the minister would like to reflect on that as well.

I am sure that the Leader of the Liberal Party will stand and speak on a materiality threshold for new information. We spoke about new information and who can provide it to the minister to clarify that process. For those who are seeking to understand how this will work in practicality, it was an assertion from the opposition that perhaps a threshold for materiality is required. The government is certain that it is not. That particular amendment was defeated on the numbers and was not considered something that could be progressed.

The last thing I want to touch on is the revised definition of “native title party” to give priority to regional corporations and ensure that prescribed bodies corporate and registered claimants have a right of review for all land within their determination and claim boundary, regardless of whether native title has been extinguished or surrendered. I raised some questions on that and whether they would be compelled to do that. Obviously, this legislation will provide the opportunity for those bodies to do that; I understand what the minister said during the debate. Some questions were raised with me about whether some of those bodies would see it as their responsibility, but I understand the intent of why it has been brought forward—to try to provide clarity on who those bodies would be, if there were concerns around decisions. I think that, in summary, touches on what we covered.

I think the opposition has been clear from the outset that we want the 2021 act and the regulations and the entire framework that was created around that process repealed, and, for that reason, we will support the passage of the bill through the house. We are not going to oppose the bill, and it is on that basis. We would not like the government or any stakeholders to be under the illusion that it is on any other basis. The primary function of this legislation, in our view, is to remove from the books the 2021 act and make sure that there is clarity going forward. I think I used the word “Frankenstein” in my second reading contribution to describe the amendments brought together. The amendments have been done under enormous duress and pressure, and I do not think anyone in government or the department or anyone who has been involved in that process from an industry perspective would say anything other than that. That is not an ideal way to bring legislation to Parliament for consideration. The reason we got to this point is that the government arrogantly did not listen to the concerns of the community the first time around when the new legislation was being brought forward.

Although we have raised concerns and there is some clarity about the amendments going forward to allow everyone to get on with what we need to do to protect and preserve the state’s precious Aboriginal cultural heritage, it has been a really poor process and one that I hope we will never see repeated. It caused some real division in the community. It caused anxiety and angst unnecessarily. I hope that the government will continue to show contrition and reflect on that anxiety and angst and the financial and emotional cost that was brought about by the amendments in the Aboriginal Cultural Heritage Act 2021. It is not an ideal situation that we are back having this debate again and it is not something I ever anticipated. The opposition is clear that it wants the 2021 act repealed. This legislation will provide for that to happen and we make no bones about it: that is why this bill has our support to pass through this house.

MS L. METTAM (Vasse — Leader of the Liberal Party) [10.52 am]: I rise to make a relatively brief contribution as the Leader of the Liberal Party in support of the lead speaker for the opposition alliance, the member for Central Wheatbelt, and her response to the third reading of the Aboriginal Heritage Legislation Amendment and Repeal Bill 2023.

As the member for Central Wheatbelt has stated, we certainly welcome the repeal of the Aboriginal Cultural Heritage Act 2021. In an unprecedented situation, this Parliament has had to deal with repealing a piece of legislation, particularly in such a short time. We certainly support the repeal of this legislation, which should be a lesson for all governments, but particularly a lesson for this Labor government, about what happens when the government does not listen and completely ignores proper process and scrutiny. It was so arrogant as to ram legislation through with a view that the community’s views are not important. That is certainly what we saw with the introduction of the Aboriginal Cultural Heritage Act.

Firstly, the legislation was introduced as an urgent bill and we were given very little notice. As many in this place are now very well aware, the government used urgent emergency powers, and the level of urgency meant that we were briefed on the overview of the bill and it was rammed through Parliament. The debate was guillotined. The opposition had feedback from industry about the support for the intent of the act and what the 2021 act was meant to represent and promised to do on behalf of the broader community—that was, to support and protect Aboriginal cultural heritage, which the opposition has consistently supported. The 2021 bill was also meant to improve and add efficiencies to the 1972 act. Instead, we saw something that was a far cry from that, not only in what the act represented but also the regulations. It was extraordinary. About 30 000 people even signed a petition urging the

government to rethink this and the new Premier, freshly in his role, promised to be more consultative but at the same time accused us and the people whom we were raising these issues on behalf of as dog whistling and referred to us as dogs returning to vomit. It was certainly a very disappointing display on the back of what was a very sorry approach to Parliament and legislation in this place. It caused confusion. The 2021 regulations were a disaster. It was an overreach and it certainly went much further than what is acceptable. We heard feedback from individual landowners and farmers who raised real concerns about their capacity to comply with the regulations. There was also a level of uncertainty.

As an opposition, our focus has been to remove that disastrous act and to see it repealed. I take the opportunity to thank all those individuals who signed the petition, who rallied at Parliament, who showed up at meetings and who expressed their distress. I also thank the representative in the upper house, Hon Neil Thomson, who put together that petition and approached the Pastoralists and Graziers Association to give this issue the spotlight it deserved. It is quite clear that although it was not the government's first response, on many occasions the government not only tried to rush in the 2021 act, but also took a number of steps to ensure that the legislation could remain in place. If it were not for the people of Western Australia and the nearly 30 000 petitioners and the public pressure, we would not be seeing the legislation repealed. That is certainly a positive.

Since that extraordinary moment and the backflip by government, which we welcomed, there has been a period of what has been termed by people in the industry as lightning consultation on the new legislation and the amendments that have been presented. The member for Central Wheatbelt and the opposition raised a number of points for clarification during the second reading debate and the consideration in detail stage to find out what this new legislation will mean. It is certainly welcome. We certainly welcome the repeal of the act. We have interrogated the legislation. We have been given an assurance that this is not stopgap legislation and discussed the regulations to be put in place. A concern has been raised that the issues in the 2021 regulations will not be directed into the guidelines, but we have been given an assurance that that will not be the case.

All we can deal with in this place is the legislation presented to us and what we can scrutinise. On the back of responding to industry feedback on the legislation, the need to ensure that the 2021 act is repealed is absolutely the opposition's priority. The member for Central Wheatbelt, the opposition lead on this bill, stated that we offered an alternative of splitting the bill to ensure the urgent repeal of this act and provide opportunity to the government for more time to deal with amendments needed in the 1972 act. However, that was not supported by government.

It is also worth outlining what has been undertaken to get to this point. I touched on the extraordinary process through Parliament. I touched on the extraordinary level of community angst of landowners and people, with tree planting and other events being cancelled and the level of unnecessary community concern and distress. We all support the protection of Aboriginal cultural heritage, and industry groups have undertaken a significant body of work to get to the point at which the 2021 regulations could be put in place. After a lot of time and investment, it is back to the drawing board. Although we welcome the repeal, how much has already been undertaken must be recognised, as well as the need for real clarity going forward.

That is why the opposition and I put forward an additional amendment to provide clarity over new information adding the terminology "of state and regional significance" in response to feedback from stakeholders. It aligned with the government and opposition's intent to support preventing a future Juukan Gorge. It was about setting a minor threshold, creating much-needed clarity and stopping other parties putting forward questionable new information that could hold projects up. We thought this was a reasonable amendment given that the wording exists in the Planning and Development Act and other parts of the act and would have created great certainty. We moved that amendment last night, but, unfortunately, it was not supported by government. We asked a number of questions through this process. I understand that it will now go to the other place. It is very important that it is properly scrutinised, but also that traditional owners, local groups, industry groups and the broader community have some certainty and clarity going forward that the new act will meet the objectives of preventing a future Juukan Gorge and protecting Aboriginal cultural heritage. It is important to add a streamlined approach for approvals that delivers clarity and does not unnecessarily hold up projects and create the overreach of the disastrous 2021 act with the private property rights of landowners across this state.

I also take the opportunity to thank the minister's advisers and staff for providing advice and briefings to the opposition throughout this process. I again thank all industry groups and stakeholders. We received some good feedback from across the community with traditional owners, other Aboriginal and industry groups who grappled with how this legislation would work. Industry groups and the broader community have an interest in ensuring that this legislation is the best it can be to meet the target of protecting Aboriginal cultural heritage, but also streamlining a workable process with a good balance that does not overreach on the private property rights of the broader community.

I leave my comments there.

MR R.S. LOVE (Moore — Leader of the Opposition) [11.06 am]: I make a very brief contribution on the third reading. The member for Central Wheatbelt, the lead speaker for the opposition, put the position of the opposition

very succinctly. I point anybody who wants an understanding of that position to read her contribution, but also go through consideration in detail during which some opposition concerns and discussions were held to provide clarity and greater understanding around some of these measures, given that, again, we had a very rushed process with little time to consider many aspects. As we know, this third reading debate was delayed as the final copy of the bill was not available because of the complex nature of some amendments made throughout discussion last night.

I reiterate the thanks to the advisers for their professional contribution and assistance to the minister throughout the discussion. I also thank the Leader of the House, the member for Belmont and the Minister for Aboriginal Affairs for what I thought was an extraordinary act of kindness on Tuesday night, when my lead speaker was not well, but was bravely doing her role in the chamber. I thought that was one of the more touching acts I have seen in this chamber. I thank very much those people involved in making that possible. I also put on record my appreciation for the work that the member for Central Wheatbelt has done throughout this episode. The last week and a bit has been very frenetic while trying to get an understanding of the legislation. She presented a very cogent argument to the house as to why the bill should have been split and why it would have been better to proceed down the path of immediately repealing the 2021 act, which we all know was causing great concern and anxiety in the community. The arguments the member prosecuted were exactly in the interests of Western Australia. I thank all involved in the conversation. I will sit down now and listen to the Minister for Aboriginal Affairs' summation.

DR A.D. BUTI (Armadale — Minister for Aboriginal Affairs) [11.09 am] — in reply: In finalising the debate on the Aboriginal Heritage Legislation Amendment and Repeal Bill 2023, I thank the opposition for its collegial approach and support of the amendments introduced during consideration in detail. I acknowledge everyone who contributed to that stage of the bill, but I particularly thank the member for Central Wheatbelt for making herself available despite being quite unwell. I very much appreciated her input and that of other members to the debate. I think we had a very good consideration in detail phase of the bill. I do not want to canvass our reasons for not supporting the amendments moved by the member for Central Wheatbelt and the Leader of the Liberal Party, the member for Vasse. I think we did that during consideration in detail and in my second reading reply.

Aboriginal culture is one of the world's oldest continuing cultures, dating back at least 60 000 years. It holds significant value to Aboriginal people and has social, spiritual, historical, scientific or aesthetic importance within Aboriginal traditions. It is clear that all members of this house from all sides of the political spectrum share a common goal to develop an improved system for protecting and managing Aboriginal heritage that also provides greater clarity for the Western Australian community. We also know that the vast majority of Western Australians have a strong desire and intent to do so irrespective of any laws that regulate their activity. It became clear that the Aboriginal Cultural Heritage Act 2021 was too prescriptive. That was not our intention and the government gave serious consideration to options that would restore confidence while affording improved protection to one of the world's oldest living cultures. The result is this bill. By repealing the 2021 legislation through this bill, the tiered approvals system will fall away, meaning all the extra burdens and obligations placed on landowners will be removed and no longer apply. That includes the repeal of the associated regulations that were developed to support the 2021 act. It is worth noting that this bill will also remove the role of local Aboriginal cultural heritage services as well as a number of other processes and requirements.

Given that the Aboriginal Heritage Act 1972 remained an act of law until the end of this year, the proposed amendments in this bill to the 1972 act provide for improved protection of Aboriginal heritage. The government worked to ensure that these amendments could be considered at the same time as the proposed repeal to ensure that transitional matters were addressed and, more importantly, that Western Australians did not revert to the 1972 act without improvement or without protection for Aboriginal heritage. That would not have been an appropriate outcome for anyone. The initial amendments in the bill were based on the government's view that in restoring the 1972 act, we had to address the outcomes of the Senate inquiry into the Juukan Gorge incident and respond to the long-held requests from Aboriginal people for greater representation of their voices and views in the process of managing and protecting Aboriginal cultural heritage. We have done this through the proposal of equal rights of review; the majority representation of Aboriginal people, including male and female co-chairs on the statutory committee that provides advice to the minister; the prohibition of gag orders; and the requirement to report new information under a section 18 consent. This bill and the associated draft regulations respond to the views of stakeholders and the government's implementation group that includes Aboriginal representatives. Other amendments to include transferability of section 18 consents and definitions of "native title party" are in response to other consultation undertaken more recently.

I will address a couple of matters that arose last night during consideration in detail. One matter discussed was the requirement, when a section 18 consent is in place, for a landowner to notify the Department of Planning, Lands and Heritage of a land transfer and whether there should be some form of notification on title. We investigated options for this to occur, noting that not all forms of land tenure are captured by the Landgate system. Through engagement with stakeholders it was determined that the proposed approach is appropriate. Depending on the nature of the land tenure and the nature of the activity, conditions attached to a section 18 consent can be used to prescribe certain

requirements of the consent holder, including a standard condition requiring notification of the new landowner or their obligations under the act to notify the minister, council and native title party. Section 18 should not necessarily be seen as an encumbrance. It is a consent that the new landowner does not have to proceed with because it is already in place. It should be seen as beneficial and that is why stakeholders asked us to allow for the transferability of a section 18 consent.

Members also inquired about the time frames for processing section 18 applications. Currently, the average processing time is 105 days. However, with the additional resourcing of the department and the increased frequency of committee meetings, it is my expectation that the prescribed time frames under the amended 1972 act will be met.

Finally, there was another inquiry about the rate of remuneration for the proposed Aboriginal Cultural Heritage Committee, which I think was addressed last night. However, for clarity and subject to verification by the Public Sector Commission, we expect that it will be the same as that which is currently applied to the Aboriginal Cultural Heritage Council: \$28 948 per annum for each of the co-chairs; \$17 462 per annum for members; and a fee of \$459 per meeting for any member acting as one of the co-chairs.

This bill is not a temporary solution. We believe that the amendments in the bill to the 1972 act are necessary to provide a new legislative framework that will protect and manage Aboriginal heritage in Western Australia. I reiterate some of the discussion that happened last night and some of the comments made by the member for Central Wheatbelt about surveys. Yes, the survey cannot take place without the consent of landowners and the traditional owners need to be a part of that survey process. I clarify that not just any landowner will be able to seek to have a survey done; they will have to be in the process of seeking a section 18 application. As I said, we will also be surveying priority areas.

In closing, I want to thank all members for their contributions to the debate of the Aboriginal Heritage Legislation Amendment and Repeal Bill 2023. The government will continue to work to finalise regulations ready for publication in line with when legislation comes into effect; to finalise the supporting consultation policy and section 18 guidance; to develop, scope and implement programs for government-led Aboriginal heritage surveys and capacity building for native title parties; and to align application and assessment processes for environmental and Aboriginal heritage approvals. Obviously, a considerable amount of effort within a very short time frame has been invested by a number of people into the drafting of this bill, its associated regulations and the policy guidance. I want to express my appreciation and thanks to everyone involved, notably the staff from the Department of Planning, Lands and Heritage, the Department of the Premier and Cabinet and the State Solicitor's Office. I would dearly love to name each individual but I will not because I know that I will forget someone. I will try to do that in a more private setting. I also thank my ministerial staff, the staff from the Premier's office, the Premier, my cabinet colleagues and caucus members for their support. Thank you.

Question put and passed.

Bill read a third time and transmitted to the Council.