

ABORIGINAL HERITAGE ACT AMENDMENTS — HERITAGE AND SACRED SITE DECISIONS

Grievance

MS J. FARRER (Kimberley) [9.11 am]: My grievance is to the minister representing the Minister for Aboriginal Affairs and is in relation to the proposed amendments to the Aboriginal Heritage Act 1972. As an Aboriginal person, I am extremely concerned that the proposed changes will mean less involvement by Aboriginal people on crucial decisions relating to heritage.

The people of the Kimberley are angered by the proposed changes. This government's intention is to threaten over 60 000 years of Aboriginal heritage. The significance of Aboriginal heritage is being ignored by this government's bureaucracy. It is outrageous that a single person, a chief executive officer in the Department of Aboriginal Affairs, will be given total power by this government to make judgement on such significant and cultural issues as heritage and sacred sites. At the stroke of a pen, this CEO will decide whether or not there is an Aboriginal heritage site on a piece of land. Shockingly, there is no requirement for this CEO to be an Aboriginal person or to even have the relevant qualifications in Aboriginal heritage, archaeology or anthropology. The CEO will decide what is included on or axed from the register of Aboriginal sites and objects, and there will be no tribunal or way for Aboriginal people to challenge the decisions of the CEO or minister. The CEO can make declarations of his or her own initiative, without any consultation or advice, and once made they cannot be undone.

The minister stated that the changes were needed to keep up with rapid development, but it should not be to the detriment of Aboriginal people. How about the government fast-tracking consent determinations for native title? The government must support Aboriginal people having a voice in decision-making, particularly in matters involving heritage, economic development, mining and construction.

Another example of the government's lack of willingness to support Aboriginal people and engage in meaningful decision-making processes is the government's recent discontinuation of the state activities funding agreement—SAFA—with the Kimberley Land Council. The agreement, which began in 2012 and had the possibility to remain until 2016, set out an agreed heritage process for ensuring the protection of significant sites and traditional country. The funding agreement established a dedicated KLC team to manage the engagement and consultations with traditional owners regarding all state government future acts, Indigenous land use agreements—pre and post-construction—special projects and Aboriginal heritage matters. It seems the government wants to bypass the KLC and deal directly with prescribed body corporates; that is a ridiculous notion. How will the government be able to effectively engage directly with PBCs without the assistance of the KLC, when not all Aboriginal native title groups have a PBC? Further, the Aboriginal native title groups that have a PBC do not necessarily have an office at all, so there is really nothing in the Kimberley—no phone lines and no staff.

Numerous KLC staff are now unemployed because of this government's mindless decision, and I am very worried about what will become the government's new method of Aboriginal engagement. As an Aboriginal person, I wholeheartedly agree with my colleague Ben Wyatt, the member for Victoria Park, who said —

It is extraordinary that the government's proposed amendments actually contemplate a reduced involvement for Aboriginal people than the original Act drafted in 1972.

The act in its existing form is weak, as we know. It is not effective and fails in protecting Aboriginal heritage. Changes do need to be made—changes to strengthen the act, not weaken it.

I will read a few clauses of the draft Aboriginal Heritage Amendment Bill 2014 that are particularly disturbing to me as an Aboriginal person. Clause 18C provides that the CEO can declare that an area of land does not contain any sites of significance for Aboriginal people. The CEO can do that without any referral to or consideration of the views of the traditional owners. That is outrageous and completely diminishes the value of this act as one to protect Aboriginal heritage. The ability for traditional owners to be involved in the scrutiny of decisions under the act will be diminished. Traditional owners are not identified as stakeholders under clause 19D. Clause 57A prevents private prosecutions for breaches of the act. Clause 50B has the effect that traditional owners are not required to be consulted about the information included on the register.

The government must protect Aboriginal heritage sites and objects for all future generations. This is essential to all Aboriginal people across Western Australia. The proposed changes to the Aboriginal Heritage Act 1972 are an insult to Aboriginal people, and they are an insult to me.

Opposition members: Hear, hear!

DR K.D. HAMES (Dawesville — Minister for Health) [9.17 am]: Members may or may not know that I was the minister responsible for Aboriginal heritage for six years in total—outside that, after I lost my seat in 2001, I set up an Aboriginal heritage company undertaking Aboriginal heritage surveys for four years. In fact, under the Labor government, I got a contract to do a 700-kilometre by 250-metre wide corridor from Geraldton all the

way through the front door of Murrin Murrin, so I wonder who had some influence down there! During that time, I oversaw the consultation with seven different Aboriginal groups. I can tell members that there are significant problems with the act from the point of view of both Aboriginal people and developers. I think the draft bill sets out to fix those things for both groups, and in fact the government has consulted Aboriginal people on this for two years, trying to get agreement. I think what currently exists in the draft is successful, and I will just address some of the points made.

Mr B.S. Wyatt: You don't believe that for a minute, do you?

Dr K.D. HAMES: I absolutely believe that, and if I had half an hour, I would convince the member for Victoria Park, I am sure.

The areas that affect Aboriginal people that are not covered properly in the act are the desecration of Aboriginal sites, and the inadequate punishment for those who do it. As a typical story, I was driving towards Sandstone coming from Leonora with Peter Muir, Dolly Muir's partner, when we came across two sites—one was on the side of the road and it was clearly an area of Aboriginal significance. Peter explained the significance of that site, but it was not registered because no-one had ever done a survey because a developer did not find any metals there that it wanted to survey the area for. The department had no funds to do that survey and get it registered, so we got it registered. We went across to Sandstone, where a bulldozer had been in an area digging out ground for road maintenance. That was an Aboriginal site. The process of getting that person to court and punishing him was tough enough, but it was too late to get reparation of that site to what it was. He had significantly damaged that Aboriginal site. The legislation will have a significant increase in penalties for those individuals or organisations who damage heritage, and there will be an ability for the court-ordered remediation of damaged sites. I think that is a huge step forward from what is in the current act.

Let us now go back to what happens with Aboriginal sites. On many occasions, a survey is done in an area with the traditional owners and it is identified that there are no sites there. If there are no sites in an area, there are no sites in an area. If a few years later someone wants to do something in that area, they have to do a survey again to see whether there is an Aboriginal site—and again and again. That is just not logical. If there is not a site in the area, there is not a site in the area. The chief executive officer will be able to talk to the Aboriginal Affairs Coordinating Committee looking at the evidence of what is there. If the survey has been done before —

Mr B.S. Wyatt interjected.

The SPEAKER: Member for Victoria Park!

Dr K.D. HAMES: This is a proposed review of the act and if the member does not like components of it, he should move amendments to it. The reality is that something is needed to stop the necessity of doing that.

Several members interjected.

Dr K.D. HAMES: I had only seven minutes and I have only three minutes left.

The SPEAKER: This is something that must be spoken to the Chair about and dealt with. We cannot have this constant to-ing and fro-ing.

Dr K.D. HAMES: I am trying to stop it, Mr Speaker, but I cannot!

If someone came along to the area on the Swan River where the bridge was built with an application to rebuild the bridge because it was falling down, they would have to go through the full survey process to rebuild the bridge—even if it were being put back in exactly the same spot. There has to be some commonsense in all of this. As members know, there is no requirement to have the director general of the Department of Aboriginal Affairs involved, but there has been an Aboriginal person in that role for about 70 to 80 per cent of the last 15 years, and there is currently an Aboriginal person in that role putting forward this proposition.

Several members interjected.

The SPEAKER: I do not want any more interjections.

Dr K.D. HAMES: An Aboriginal person has responsibility for running it. The member spoke about the Kimberley Land Council. I have got on well with the Kimberley Land Council, but the worst mob to get on with was the Yamatji Land and Sea Council, which refused to do a survey.

Mr B.S. Wyatt: From your perspective.

The SPEAKER: Member for Victoria Park!

Dr K.D. HAMES: From my perspective, it was the worst one I had to deal with.

Mr R.H. Cook interjected.

The SPEAKER: Member for Kwinana, I call you to order for the third time.

Mr R.H. Cook interjected.

The SPEAKER: Member for Kwinana, I call you to order for the second time.

Point of Order

Mr R.H. COOK: The grievance from the member for Kimberley was very specific. It was about the act, not about a character assassination of the people of the Yamatji Land and Sea Council. This is an outrageous slur on that particular organisation. The minister should be told to stick to the point in front of him, which is to defend the indefensible.

Dr K.D. HAMES: Further to that point of order, the discussion around organisations such as Yamatji Land and Sea Council fed on from the member's own comment about the Kimberley Land Council and its relationships with doing surveys. This specifically relates to issues around the Aboriginal Heritage Act.

The SPEAKER: Carry on please, minister, and just get to the point as soon as you can.

Grievance Resumed

Dr K.D. HAMES: The issue is that I was acting for another Aboriginal person, Joan Martin, who was pilloried by a particular group. I was helping her to try to do a consultation on what was provably her own country, yet she was refused support from the Yamatji Land and Sea Council.

The act needs to be changed to assist Aboriginal people in getting proper protection —

Mr B.S. Wyatt interjected.

The SPEAKER: Member for Victoria Park, I call you to order for the first time.

Dr K.D. HAMES: The act needs to be changed to assist Aboriginal people in getting proper protection for their land. Proper punishments need to be in place for people who desecrate Aboriginal land, and I personally regard that as the most important part of the legislation.

Mr B.S. Wyatt interjected.

The SPEAKER: Member for Victoria Park!

Dr K.D. HAMES: Aboriginal people are still significantly involved in all of the section 18 —

Mr B.S. Wyatt interjected.

The SPEAKER: Member for Victoria Park, I call you to order for the second time.

Dr K.D. HAMES: Under section 18, anyone who wants to do a new development on a site that has not been surveyed before still gets the opportunity to participate and comment.

Mr B.S. Wyatt: Rubbish.

Dr K.D. HAMES: They do. The legislation will come before Parliament. It will clearly be closely scrutinised and members opposite will have the opportunity to make any changes they believe are appropriate during the time. I, for one, if I have any responsibility for the legislation in this house, will be happy to discuss areas —

Mr B.S. Wyatt: You had better disclose conflicts as well.

Dr K.D. HAMES: I do not think I have a conflict at all.

Several members interjected.

The SPEAKER: I can see some people having a very early rest today.

Dr K.D. HAMES: No, because they were past employments and past associations, in fact, with someone who has passed away. All the people the member was closely associated with at the Yamatji council have probably moved off into private enterprise.