ABORIGINAL HERITAGE LEGISLATION AMENDMENT AND REPEAL BILL 2023

Second Reading

Resumed from 9 August.

MS M.J. DAVIES (Central Wheatbelt) [1.05 pm]: I rise as the opposition alliance's shadow Minister for Aboriginal Affairs to speak to the Aboriginal Heritage Legislation Amendment and Repeal Bill 2023. I will give the member for Roe an opportunity to shift from his chair so that I will not be breathing on him! As members can probably hear, I am not particularly well today, but this is a big piece of legislation for the opposition and government, so I wanted to be here to make sure that we could progress posthaste.

I was provided my role as the shadow Minister for Aboriginal Affairs by the Leader of the Opposition after the transition of leadership in the Nationals WA earlier in the year. I have watched the Minister for Aboriginal Affairs navigate this government's reform agenda for Aboriginal cultural heritage in WA, and I have to say that his approach, attitude and outcomes have been less than impressive, and we are now dealing with what can be described as nothing other than a complete debacle. Perhaps the attitude of the minister and the government could have been tolerated if the outcome had been a model piece of legislation reflecting the views of all stakeholders—one that provided a balanced and clear framework for industry, landowners, Aboriginal people, prescribed bodies corporate, native title bodies and everyone who needed to work on the preservation and management of Aboriginal cultural heritage for the benefit of our entire state. That is the aim, is it not? Not one person in this chamber or Parliament opposed the need for a modern framework to manage and preserve Aboriginal cultural heritage. Unfortunately, that is not what was presented for our consideration, and we subsequently had to deal with hastily put in place regulations.

Everyone acknowledges that this is a complex area to navigate, but that is why we are all here—to navigate complex policy and to negotiate, work together and achieve a good outcome for the state. At least, that is how it is supposed to work. Unfortunately, that has not been the calling card of this government. The arrogance of the Cook and McGowan Labor government leadership seeps through every tactic played out on the floor of this Parliament, in the media and in the community. It is a government that believes it can do no wrong and answers to no-one. One expects to be in the pathway of this arrogance and dismissive approach when in opposition. One expects that the issues important to the opposition, the programs championed when we were in government and the priorities of our National and Liberal Parties will fall down the list. That is not something that we have serious complaint about, although we will continue to put those issues on the list for the government to consider. What has been unexpected for me in this term of opposition is the number of stakeholders and industry groups that have approached me behind the scenes to share the gaslighting and the poor treatment that they experience if they dare to have a different view from the government. It is pervasive and it stinks of a government that has drunk its own Kool Aid and believes it can do no wrong.

The newly minted Premier, who had the opportunity to dial back that dialogue, fell into the same trap as his predecessor on this legislation and the 2021 legislation. Despite the growing chorus of opposition to the disastrous 2021 legislation, the Premier and his minister continued to answer questions in this house as though the opposition was being completely unreasonable, was out of touch with the broader community and, in some cases, was coming from a place of racist intent, which could not have been further from the truth. The fateful day when the question was asked of the Premier whether he would delay the commencement of the 2021 legislation, we in the opposition were met with the statement —

> Every time, like a dog returning to its vomit, these guys trot out their straw man arguments to simply distract members of the community … These laws are not radical. These laws are ready to go.

The opposition was simply reflecting the concern in the community from industry and everyday citizens who had this very complex and cumbersome legislation foisted on them. I say "foisted on them" because although there had been a long genesis in the consultation on the legislation, at the very end of that process when the destruction of Juukan Gorge occurred, it was all stations go. All care was thrown to the wind and the government was on a fast track to try to ensure that no minister would ever again be in a position in which their signature was on the bottom of a section 18 application. It is actually as simple as that. For all the rhetoric that sits around this, there could have been a sensible approach to try to get an outcome; instead, the politics of the day overtook the government, as it does so often with the Labor Party, and we were left with a disaster.

When the opposition was trying to assist in salvaging something from this disastrous legislation—for instance, asking for additional education sessions so that those who would be required to use the legislation understood the obligations that this government was placing on them—again we were met with dismissive responses from the minister. I recall being told that Perth was not far from Merredin and that my constituents, although there were no meetings to be held there at the time, could attend Perth meetings. Until it had been raised by the opposition, I do not think the minister had even questioned the department's strategy for the education sessions and where they might be rolled out or even understood the sheer level of concern in the community about what was about to become

law. It turned out that we were right and members of the community who were anxious, concerned and uncertain were very hungry for information. We saw education session after education session added, but, unfortunately, that added additional pressure to a department that was already under considerable strain. In the process of going through that, questions were asked at different presentations and different answers or interpretations of what was likely to happen were provided, which again fed into the confusion in the community.

Sadly, the impact of the complete mismanagement of this legislation by the minister and the government means that many stakeholders and the Aboriginal people whose cultural heritage we were supposed to be protecting have lost faith in this government. I think they have lost faith that it can deliver something that will work efficiently or effectively, and we will talk about that over the coming days. That is essentially the outcome, and it rests with the government of the day. How a government approaches things and what it does while it is delivering its policy intent matters as much as the content. I think that has effectively destroyed the confidence of many Aboriginal groups, non-Aboriginal groups and key industry stakeholders in dealing with this going forward.

I know that the minister is fond of jumping up and speaking about the consultation process that was undertaken to get to the 2021 act and the regulations thereafter. I want to point out some of the commentary at the time that the Premier announced that the government would be performing that spectacular backflip and dumping the 2021 act. On Wednesday, 9 August, in an ABC online news article, Jake Sturmer reported that the traditional owners of Juukan Gorge said that they had been betrayed and felt that the repeal of the laws were a backward step. Puutu Kunti Kurrama and Pinikura Aboriginal Corporation spokesman Jordan Ralph said that he had lost faith in the government's ability to adequately protect culturally significant sites. Yindjibarndi Aboriginal Corporation CEO, Michael Woodley, said that the key for this government is to find balance and to listen to everyone who has a concern about this and move forward together. There were also thousands who signed an e-petition that was submitted to the Legislative Council, only for it to be dismissed by the Premier as just an e-petition. He did not understand that the Legislative Council sees it as a very legitimate way of community members expressing their concern about actions of the government of the day. It is just as legitimate in the Legislative Council to submit an e-petition as it is to collect signatures, yet this was dismissed summarily by the Premier and the government. I raise these issues to point out that at the time, there was criticism coming from all corners that the government plays politics on every issue—hard and reckless and fast, no matter the consequences. If ever there was a piece of legislation to get right in the broader context of the debate that we are having at a national level, this was it. I want to be really clear—it is what I said when we debated the 2021 legislation—that anything we are dealing with now rests on the shoulders of those in government and in cabinet who are making the decisions.

I think it is a truism that this government has gotten used to getting its own way. At the beginning of this term, I reflected on the responsibility of a government with such significant numbers and the responsibility that came with that power. My observation of how this has operated over the last six years is that it is baked in, win at all costs, bury the opposition and sideline the opponent at all costs and toe the party line no matter what. That is not a strategy for longevity. It just has not worked well on the very complex and serious issue that our state has had to face. I imagine the last thing that the newly minted Premier wanted to do just eight weeks into his tenure was to perform a major backflip on a piece of legislation that had been in the making for some time. I am not going to give the Premier an out on this either. He was the Deputy Premier for the entire time that this legislation was being debated and, although there have been three Ministers for Aboriginal Affairs, he was a senior member of the government's cabinet throughout and should have had an idea that it was turning very bad very quickly.

Under three different ministers—Minister Wyatt, Minister Dawson and Minister Buti—the Aboriginal Cultural Heritage Bill 2021 was nursed along in the consultation phase until the Juukan Gorge disaster. As I said before, after that, the government went into overdrive in media and public statements. It was because it was intent on preventing another Juukan Gorge from occurring, and that is right. Not one person sitting in this chamber thought that that outcome was appropriate, but we all had a shared responsibility to ensure that it could not happen again. I suggest that behind the scenes, there was a drive to protect the Minister for Aboriginal Affairs from ever having to sign another section 18 application and ultimately being responsible for the destruction of Aboriginal cultural heritage. That is what the minister does; they put their signature at the bottom of a section 18, which provides consent for the destruction of Aboriginal cultural heritage. It was clear that a system was being set up to shift the government out of the firing line down the track. The minister may say otherwise, but for a party that presents itself as the only one for Aboriginal Western Australians to trust with their vote, it was a disastrous situation politically and most certainly for our state's heritage. The rush was on to finalise the consultation and get the legislation to Parliament for debate.

I want to be clear about that process. The opposition, as we have said in this place before, had not been briefed. We were given an overview of the legislation the day before we commenced debate, and the bill was pushed through in just one day. In its arrogance, the government said not to worry about parliamentary processes, such as allowing the bill to sit for a determined number of days to allow the opposition time to consult or complete its scrutiny of the bill, and that it would use the guillotine to cut the debate short. That was a real alarm bell. If the government was not prepared to defend and debate its decision, it calls into question the decision it was asking us to make. The

government was either arrogant or not confident that the legislation would stand up to scrutiny, or both. In this case, history shows it was both.

After the legislation was rammed through Parliament, the government started developing regulations, policies and guidelines, which in itself had a consultation process that left much to be desired. Regulations were developed in haste and under pressure, and often—as was admitted by the department at several briefings—by people who did not fully understand the regulations of the old act or the intent of the new act and how it would operate. That does not seem like an appropriate ecosystem to come up with regulations and rules to go forward. It was less than useful. The regulations were released late. At the beginning of this year, in March, when we returned to Parliament, I asked my first question as shadow Minister for Aboriginal Affairs, and I was dismissed. I asked where the regulations were. Industry was saying that they were required. We were approaching the middle of the year, when the act was due to commence. The minister said that there would not be any surprises, the government had been consulting heavily with industry and not to worry. We did not see those regulations until the day before Easter. Just a few short weeks later the bill was due to commence. Again, it was such a shoddy process that was put in place. I even gave the minister an out by asking whether we were working to his deadline or one imposed by the previous Premier. The minister answered that he was working to his deadline and the government was not for turning.

I still do not think the minister and this government truly understand the angst and anxiety created because of that shambolic process. I have rarely seen people congregate in such numbers in my electorate for a briefing by a government department. Let us face it, they happen quite regularly. When the Cummins Theatre, the hall in Esperance and places in Kalgoorlie are filled and need to be re-booked and re-booked for bigger sessions, there is clearly something going on. I understand it can be spun both ways. Community members might have had a keen interest to understand their obligations, but I suggest their attendance was driven by complete fear that they would end up in jail or with massive fines because they were not aware of what was being asked of them, as there had been no conversation with the broader community about what was to be imposed on them. The announced sessions were woefully inadequate, and that in itself should have been an indication to the minister that there was a glitch in the process. But we ploughed on right through the winter break, after the commencement of the act, until the Premier recognised that this disastrous legislation was going to derail his capacity to give a media conference without being asked about it. Therefore, a political decision was made to cut the ties, say sorry—because if you say sorry, everything is okay, noting sarcasm for the purposes of *Hansard*—and try to move on from that shambolic process. So here we are.

I consider my time in this place. Other members have been here longer, and I ask those members to consider whether they have ever been asked to repeal an act that has been in place for only a couple of months and to debate an amendment to the previous legislation. I have to admit that when we started talking about the incoming legislation, the government's narrative from behind the scenes during some of the briefings was that the amendments were simple. That is public as well, and I will get to it. The government says that the amendments are simple and we will not need to worry. I have to say that the legislation is not that simple. We received the regulations, guidelines and policies for and the amendments to the legislation a couple of weeks ago, on Thursday last week. We do not really trust what happened the first time round. It is far from a simple and straightforward process. I was handed another sheet of paper today from the minister's office telling us in what order the amendments to the bill were to be moved by the minister. Again, that is not something I have dealt with previously. I hope there is some latitude from the minister while we are dealing with this legislation because I am not fully across the amendments and their timing, as indicated by what was handed to me just a few moments ago. Perhaps it will become clearer in consideration in detail, if that is where we get to.

I hope that as we move through this legislation, the minister thinks about what it has taken for us to get to this point. Setting aside the dog vomit comment, I think the Premier understands that there needs to be some contrition. The government's apology was followed by actions that show it is truly trying to get something right, and I hope that is possible. I want to emphasise again that the Premier and the minister have broken the community's trust. The government's highly political true colours were revealed by the process, and they were not pretty—far from it. We are now faced with legislation that is a political necessity rather than a well-crafted bill. It beggars belief that with the numbers, power and time this government has had, we are dealing with what I can only describe as a stopgap. It is a bit of a Frankenstein legislation—hastily prepared amendments to enact what the government, in its own words, said was outdated and unworkable, which is why we headed down the path of the 2021 act. It is amazing what political necessity will deliver to get this issue off the front page of the newspaper, is it not?

I said "Frankenstein", and I meant it. It is pretty ugly legislation. Members in this chamber will no doubt be aware of Mary Shelley's creation. If members follow the analogy, the creature created, Frankenstein's monster, seeks affection in the first place, he seeks to be a part of the community, but in the end he turns against it and there is ultimately a very ugly outcome. I have a feeling this legislation might end up the same. It was created to try to placate and as a stopgap, but I am not entirely sure that it will be very good in the long run. I will not go any further with

that analogy, but members get my drift. I do not have great confidence that this quickly hashed together legislation, with its regulations and guidelines, will serve us well.

Instead of the government having done the job properly the first time, we are now revisiting the old, outdated legislation with what the Premier said are some simple and effective amendments. That remains to be seen. There is no spin the government can create to make anyone believe that this is an ideal outcome, yet a media statement issued by the government on 8 August, as it was performing this backflip, is there in black and white. The top dot points state —

- Cook Government listens to community feedback and reverses decision
- Original *Aboriginal Heritage Act of 1972* to be restored, with simple amendments
- The new legislation went too far, was too prescriptive and complicated
- Common sense to drive Aboriginal cultural heritage protection
- All additional obligations placed on landowners in 2021 Act to be removed

We should also note that the statement clearly articulates that the decision to revert to the original law draws on legal advice from the Solicitor-General. Despite repeated questions in this house from the Leader of the Opposition and the precedents for sharing legal advice, the government has to this day refused to share this legal advice on the public record. The government is very keen to say it runs transparently and to gain political mileage from pointing that out in an election campaign and comparing and contrasting itself with the previous government, but when it has the chance to put that into practice, it chooses not to and falls short.

I want to be very clear that we arrived here because of the way the Labor government approached the Aboriginal Cultural Heritage Act 2021 and its regulations. As a side note, I find it quite ridiculous that when Labor's members were out defending the 2021 act, their best defence in some cases was that the opposition did not vote against it. How is it that we had government members out in the community saying that the opposition did not vote against it? There are six of us and, no, we did not vote against it. I am sure that will be raised again, but it is hardly a leading point when the government is defending legislation that it said was appropriate, ready to be delivered and ready to go. It said there was nothing wrong with the legislation and that it was simple. That is hardly the point, but that is how members of the Labor Party have justified the disastrous 2021 act. The opposition, in good faith, agreed that the 1972 act was outdated and needed updating. The opposition had no input into the regulations or the capacity to disallow them. We worked with the government under extraordinary circumstances the first time around; once bitten, twice shy is all I can say. Truly, it just boggles the mind that anyone could suggest that we had any responsibility for the debacle that this government imposed on WA. Nonetheless, that is where we have landed. Forgive us if we approach this new iteration with some cynicism. For the record, although the government has allowed the legislation to sit in the house for the required time, I understand there is a move to have us sit late tonight and tomorrow, which is not normal. I also point out that the regulation and guidance documents, which had not been written when the bill was introduced, were provided last Thursday and a briefing was offered on Friday morning. Another briefing was held on Monday, and we thank the minister's office for that, but it was only a matter of days before we were due to sit and had to try to understand how all the changes knitted together in the puzzle that has become this piece of legislation.

I assume that every backbencher and every member of government has taken time to read the regulations. No matter what we raise during the debate on this bill, as I said last time, there are only six of us, so I am absolutely certain that this bill will pass because the government's numbers determine that it will. We will do our job, but I hope that other members will stand and put on the record that they have looked at what the executive government is putting forward and outline the things that they think will make a difference in their community for stakeholders as we move forward with the new legislation.

I want to now turn to the overview of the Aboriginal Heritage Legislation Amendment and Repeal Bill 2023. Briefly, the 2021 act will be repealed, which we absolutely support, along with the regulations, the guidelines and all associated aspects of the failed legislative framework. I will have more to say on that in due course. Proponents and native title parties will have the same right of review for section 18 decisions. That was not the case under the 1972 act. On face value, that is an appropriate amendment to make to the 1972 act. The Premier has been provided with a call-in power on decisions deemed of state significance and when a section 18 application has been approved, there will now be a requirement for the landowner to notify the minister of any new information around the site subject to that section 18 application. We will have some questions about that during consideration in detail. The Aboriginal Cultural Heritage Council, which was established under the 2021 act, will take on the role previously executed by the Aboriginal Cultural Material Committee and provide recommendations to the minister on the approval or otherwise of section 18 applications. Gag orders that constrain traditional owners from speaking about agreements that they have with project proponents will be removed, and we support that.

The government, in its media statement of 8 August 2023, announced the decision to scrap the failed 2021 act and that —

> There will be no requirement on everyday landowners to conduct their own heritage survey.

I would like clarification from the minister on this statement as we know there are no exemptions under the 1972 act for any class or project proponent or landowner. As the statement outlines "every landowner is equal". The local Aboriginal cultural heritage services, which were not ready for the implementation of the 2021 act, will be discontinued. The government advises that support will instead be provided to existing native title groups, including the relevant prescribed body corporates, registered claimants or native title representative bodies, to improve their capacity. I would like clarification from the minister on how this will be funded, how much funding will be provided and what the mechanism for providing this funding will be. The government has also indicated that it will commence a long-term plan over the next 10 years to undertake heritage surveys, with the consent of landowners, in unsurveyed areas in high-priority areas of the state. This is not contained in the legislation, so I would like the minister to address that in his second reading response with a particular reference to how this work will be prioritised, when it will commence, who will be consulted to determine the priorities, where the data will be published and in what format, and what will happen to landowners or Aboriginal people if they object to the government conducting the survey in a particular area. Will they have a right of veto? How will that practically work? That was something offered by the government during debate. It was something that Western Australian farmers raised as one of its wins. I am not entirely sure that it will work in the way that it was understood it would work in the first instance. I am not saying that it is the responsibility of the minister to help with the interpretation of those statements, but certainly there was some discussion at the time about landowners having access to funding to carry out those surveys. My understanding is that that is not what is being proposed by government. Clarity around that in the second reading response would be welcome.

I would also like the minister to reflect on the following comment in the same media statement of 8 August —

> "The Section 18 process will be strengthened—with these changes mainly impacting miners and Government, whose work most impacts cultural heritage.

The minister should be clear that this legislation has the potential to impact every landowner as there are no exemptions. The statement says that it is important that we outline exactly how the legislation will —

> … provide confidence to all WA property owners that they can continue to operate on their property, just like they have for the past 50 years, without any fear of committing an offence by unknowingly disrupting cultural heritage.

It is all very well for the Premier and the minister to make such statements, but when we read the 1972 act and the 2023 amendment bill, it is clear that there are no exemptions or exceptions. I ask the minister to be very clear in response to this question as many landowners will be watching and seeking an understanding of what the 2023 rules will mean for them, remembering that thousands signed the petition—not just farmers and pastoralists, but everyday people who own property in regional and metropolitan WA. I do not want this government to make sweeping statements to placate the anxious and angry crowd in an effort to get its political fortunes back on an even keel, and leave the detail to be worked out at a later date. This is the chance to make that very clear. To emphasise the point, I refer to the comments of the Attorney General in the media statement of 8 August that the changes mean —

> … that all landowners, be they freehold, leasehold, licensee, invitee or citizen, at large have one simple obligation: that is to not knowingly damage an Aboriginal cultural heritage site, which has been the law since 1972.

We understand that. I want to understand with confidence exactly how this amendment bill marries with the comments from the Premier and the minister that farmers, pastoralists and landowners can carry on as they have for the last 50 years without being at risk. We have to be clear about the real obligations of all landowners. Although it might suit the Premier and the minister to state that the legislation will provide confidence to those property owners and that they can continue to operate on their property just like they have for the last 50 years, that cannot possibly be the case if a person adheres to the letter of the law. I am happy for the minister to clarify that specifically so that we can determine where the line lies between rhetoric and reality.

Another change that we welcomed, although there are questions to be answered on this front as well, is in relation to costs, fees and charges. The cost-recovery model that was foisted onto proponents who were required to submit a management plan under the 2021 act has been replaced with a different schedule of fees. I remind members that industry was not consulted on the cost-recovery model in the 2021 act. On questioning, the government said that it was a unilateral decision of the government to pursue the model chosen. The government says that the new fee structure is fairer and simpler. My understanding is that there will be a $250 flat fee for anyone who makes a section 18 application and that proponents will then be charged $5 096 per site within that section 18 application. For a mining company, in some cases, that could potentially be upwards of 40 sites; it might be only one or two. Although I have confidence that the Rio Tintos and BHPs of the world can afford to pay that kind of fee, when we deal with this clause, we would like to have absolute clarity for smaller organisations. I understand that there will be

a defined exception of small businesses, not-for-profit organisations and government proponents. "Small business"—the minister can confirm this—is defined in the Small Business Development Corporation Act; it is defined in another piece of legislation. If someone falls under that definition, they will be exempt from the charge of $5 096 per site and will be charged just the $250 fee. I thank the minister's office for confirming that and providing feedback on the definition of "small business" in the Small Business Development Corporation Act 1983.

I ask the minister to reflect on the consultation with the mining and exploration, pastoral farming and property sectors in the preparation of these charges, and also to provide advice on how the figures have been calculated, because $5 096 is quite a specific number. I understand from the briefing that there is no taxation capacity within the Aboriginal Heritage Act, so this can only be a cost-recovery exercise for the department. I ask the minister to confirm that the work the department anticipates in providing advice on section 18 notices and other responsibilities through the committee to the minister has been calculated at $2.4 million a year. I guess that the new information clause will also potentially increase the amount of work that will come the way of the committee and the department, and I ask whether that has been factored into the costing and how this funding will be charged. I also note that the regulations provide that the CEO can refund, reduce or waive, in whole or part, a fee paid or payable under the regulations on a case-by-case basis. I ask the minister to provide some advice and details on why that regulation is necessary and what circumstances might trigger a decision to waive or refund those charges. That advice would be welcome.

I also seek the minister's advice on the proposed amendments to the definition of "native title party". These amendments were brought to us after the bill was introduced and the minister will move them from the floor. I specifically refer to the proposed amendment to clause 13 of the bill to provide more express statutory recognition of particular types of native title parties, rather than relying on the power to prescribe to achieve that. There is some question why the minister would prescribe the names of those parties in the legislation, when, over a period of time, there may well be native title settlements within that area under the banner of that particular party. Given that there is scope to prescribe additional native title parties through regulation, I seek clarification on why some of them, like the south west native title settlement, the Yamatji Nation Indigenous Land Use Agreement and others, are specifically prescribed in the bill.

I have some other questions, but we will go through them in consideration in detail. Yamatji Marlpa Aboriginal Corporation, in particular, has raised questions with me about the interaction between the Native Title Act, which is commonwealth legislation, and its responsibilities, and what the implications of asking them to be party to some of the activities in this amendment bill will be.

Finally, I seek clarification from the minister on what, if any, new offences will be created. I received, I think yesterday or this morning—I am sorry, I have lost the time line—a table that the minister's office has provided, which I am sure would be easy for the minister to table. I have that, but it would be useful for the purposes of the Parliament and others. I understand that there will be a number of changes to offences. A number of offences will be created to deal with breaches by the committee in how it is supposed to conduct itself, but also, I guess, to deal with those who run afoul of the intent of the act, which is to protect Aboriginal cultural heritage. I want to confirm with the minister that the penalty of imprisonment is not contained within the act or regulations. The opposition will have further questions when we move to consideration in detail, but I would like some feedback from the minister on those questions that I have put forward so that the issues are well canvassed as we progress. I will shift to industry feedback and questions that have been raised and ask the minister to also consider these in his response. I will do that a bit later.

I turn to the guidelines and policy information that has been released. It is not unusual for guidelines and policy to be created by the department to provide some assistance to various stakeholders on how to navigate legislation. I think, in the case that we are dealing with at the moment, we have seen a significant number of issues pushed into guidelines and policy rather than forming part of the legal framework. They cannot be relied on if, for instance, one is in a court of law or the State Administrative Tribunal; they are only policy and guidance. They are also not subject to the scrutiny that we have the opportunity to provide here in the Parliament. They can be created and they can be changed. I think a well-canvassed example is the Chaney decision on Port Hedland and the internal policy guidelines that were used to remove some Aboriginal sites from the register so that a project could proceed. That decision was challenged and upheld, which I think put enormous pressure on the government to then revisit other decisions that had been made using that set of policy guidelines. It becomes a challenge for governments of all persuasions when they are too heavily reliant on guidelines and policy rather than a clear regulatory and legislative framework. We would like to understand exactly how much weight these documents carry, because that is difficult to gauge. We have had feedback from industry—this has been the practice since this government came to power up to this point in time—about a letter from the traditional owner party accompanying a section 18 notice. The traditional owner party did not have to agree, because essentially the request is asking an Aboriginal person or group to agree to the destruction of their cultural heritage, but they were required to state that they did not object, as I understand it. That has been the practice of the department and will continue to be the case. That is challenging if there is a contested area of the state with undetermined native title or potentially as a result of the new information that will

be required under this act. The minister may like to reflect a little on how those policies and guidelines will be utilised. I understand that industry has been given the opportunity to reflect on them and provide feedback within four weeks. Over the weekend, they, like we, have been ploughing through all that information, which is not insignificant. There is the consultation policy and guidelines, also another document, and then there were three sets of regulations that were to be read in conjunction with the amendments, in addition to the additional amendments that the minister has foreshadowed he will be moving. It is not without complexity. If we have learnt anything from the last process, it is that we need to ensure that there is clarity. We are certainly receiving the message from all groups that they want clarity. Clarity comes from having a clear legislative and regulatory framework. The bulk of the work should not be done in the guidelines and policies that sit beside that framework or behind the scenes.

I want to go through the *Aboriginal Heritage Act 1972 guidelines* specifically. They state, according to my notes —

> Until lodged places have been assessed by the Committee against Section 5, it is recommended that they be treated as places that the Act might apply to in order to avoid any unintended breaches of the Act.

Although they will not be listed as registered sites, they will sit there and need to be treated as though they are. I wonder how many there will be and how they will be dealt with going forward. Appendix 1 of the guidelines has information on types of landscape features that are relevant to Aboriginal sites and objects. The minister will remember that various stakeholders spoke about mythological and intangible sites. In discussions with Aboriginal corporations, I learnt they are wondering why there has not been a more modern interpretation of cultural heritage included in the amendments. As the opposition spokesperson, I am happy to ask those questions from both parties because we are trying to seek clarity for everyone involved—as we were the first time—to ensure that the process is well understood.

I have touched on the registered sites and those that have not been assessed. There is also some guidance on time frames for the application. During the consideration in detail stage, we will go through that and how long it might take for the process to work. We were unclear on whether some sections would be "stop the clocks" or whether there will be an opportunity for extension of these times in the document titled *Consultation policy for section 18 applications*. That document has been created to assist landowners and proponents going through a consultation to prepare their application for a section 18. I want to be clear that some industry bodies will be engaging with a number of stakeholders, as they did under the 1972 act, including traditional owners and knowledge holders, and they will be doing that without any of the guidance provided under the 2021 act in terms of fees and regulations, which was a very prescriptive process. I presume this consultation policy has been created to try to provide some loose guidelines.

Some questions have come up. The policy states that before submitting a section 18 application, a landowner should consult the relevant Aboriginal people, and the policy goes through the consultation standards expected. I wonder whether the minister could reflect on what will happen if this is not possible. Do the guidelines hold any legal power? How will a landowner or an Aboriginal person provide feedback if the other party does not engage? The department has had to deal with that over a number of years in the previous phase. It is not new, but I think it should be articulated on the floor of Parliament because I think people will be coming back to look at what is being put forward for clarification.

Who is to be consulted? It is the native title party as defined in the act and Aboriginal people who have knowledge and rights in association with the application areas. To me, that sounds like the knowledge holders contained in the 2021 act. Will the guidelines just preserve what happened in the 2021 act? I understand it is important that we cast the net as widely as possible when someone makes a section 18 application and that as much information as possible is given to the minister. If there is a requirement to meet with the native title body or the prescribed body as set out, and additional people within that group, the conflict or uncertainty begins. Will it be a matter of those proponents writing a letter to the minister if they cannot get agreement between the two parties? How will they determine who those knowledge holders are? I am sure the minister has answers to those questions, and I look forward to hearing them and understanding exactly how that consultation policy will work in practice. It is not without precedence that conflict or a difference of opinion has arisen between knowledge holders, Aboriginal people and native title bodies in particular areas around our state. We would like greater clarity on that issue in particular.

I do not have very long to go. I have feedback provided by a number of different stakeholders who, like us, were working through the legislation over the weekend, trying to get their head around what the regulations and the guidelines will look like, how they will interact and what the obligations will be. Of course, in the interim, the 2021 act is still in play—and so the local Aboriginal cultural heritage services created and the rules and penalties are all still in place. I will use the feedback that the likes of the Chamber of Minerals and Energy, the Pastoralists and Graziers Association, the Association of Mining and Exploration Companies and others have provided to try to shape some questions I will ask when we get to the consideration in detail stage. Perhaps, in the fullness of time, there will be an opportunity to reflect on some of those changes in the Legislative Council. As I said, the feedback was received, through no fault of their own, rather late in the piece for me to weave into today's contribution.

I want to go back to where we started. We have arrived at this situation due to an appalling process that has been led by this government in relation to Aboriginal cultural heritage and the enactment of the failed 2021 act. I am not convinced that the process followed to get us to the point at which we are now debating a repeal and amendment bill has been much better. In fact, I think there has been far less conversation, consideration and discussion in the broader community about what is being offered than potentially that offered, at least in relation to the legislative framework, in the 2021 act. No-one on this side wants to see the 2021 act continue. We are very clear about that. We have called on the Premier and the minister to take up our offer of splitting the bill. Without doubt, we wholeheartedly support splitting out the repeal sections of this legislation, voting for it, getting it through Parliament and having that enacted in a heartbeat if that were the government's persuasion and thought.

I have confidence that that offer will be taken up. We will offer it as part of this debate, and the notice paper contains a motion in my name that seeks to do just that. The government could consider passing that motion so the 2021 act could be repealed. In the absence of that, we are dealing with, as I said earlier, a bit of a Frankenstein act. It is some sort of paper-and-sticky-tape concoction just to get the issue off the front page of the paper. The opposition alliance has never opposed the proposition that we make sure we have a framework that protects Aboriginal cultural heritage. We were happy to participate in conversations, albeit under enormous and very strange circumstances, as we debated the 2021 act.

Several members interjected.

The ACTING SPEAKER (Ms M.M. Quirk): Member for Jandakot!

Ms M.J. DAVIES: We offered. We really are not in a position to afford a second disaster, but I am fearful that because of the process that we have taken to get here, that is exactly where we are heading. Although the opposition supports the amendments contained in the bill on face value, and there may well be others that we will put forward for consideration, we will have questions about what is and what is not contained in the bill—it is not restricted to what is contained in the bill—what is in the regulations and what has been pushed to policy and guidelines. Remember that overarching all of this is our experience and that of the thousands of landowners and project proponents, Aboriginal groups and individuals who were burnt by the shambolic process the government delivered with the 2021 act. The government would not be surprised that we are not rushing to support this legislation with open arms from the outset.

I reiterate that opposition members want clarity. we want certainty and we want to make sure that the statements and assertions being made by this government are borne out in the detail of the legislation and the accompanying framework. That includes the regulations, the guidelines and the work that is being done behind the scenes. I say again: we do not have any interest in dragging our feet and we want to repeal the 2021 act immediately.

Debate interrupted, pursuant to standing orders.

[Continued on page 4797.]