
# Parliamentary Debates
**(HANSARD)**

FORTY-FIRST PARLIAMENT
FIRST SESSION
2021

LEGISLATIVE COUNCIL

Tuesday, 14 December 2021

# Legislative Council

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**THE PRESIDENT (Hon Alanna Clohesy)** took the chair at 2.00 pm, read prayers and acknowledged country.

## BILLS

*Assent*

Message from the Governor received and read notifying assent to the following bills —

1. Criminal Law (Unlawful Consorting and Prohibited Insignia) Bill 2021.

2. Police Amendment (Compensation Scheme) Bill 2021.

## SOUTHERN LINK ROAD STAGE 3

*Petition*

**HON DR BRAD PETTITT (South Metropolitan)** [2.04 pm]: I present a petition containing 146 signatures couched in the following terms —

> To the President and Members of the Legislative Council of the Parliament of Western Australia in Parliament assembled.
>
> We the undersigned oppose outright the construction of Southern Link Road stage 3 as proposed by the City of Canning. The proposed road impinges upon the Cannington Claypan, a Conservation Category Wetland hosting a Threatened Ecological Community on 6.71 hectares of land bound by Grose Avenue, Lake Street, Jameson Street and Bent Street, Cannington. This oasis in the Canning City Centre supports an array of plants and animals, several of which are conservation listed. The seasonal clay-based wetland communities of the South West are amongst the most threatened assemblages in Western Australia. Studies have estimated that more than 90% of the original extent of these wetlands has been cleared. The construction of Southern Link Road stage 3 and related developments will lead to the ecological values of the area as a whole being diminished in the long term.
>
> **We therefore ask the Legislative Council** to call on the City of Canning to abandon the construction of Southern Link Road stage 3 through this Threatened Ecological Community.
>
> And your petitioners in duty bound, will ever pray.

[See paper 985.]

## AGRICULTURE — GOVERNMENT SUPPORT

*Statement by Minister for Agriculture and Food*

**HON ALANNAH MacTIERNAN (South West — Minister for Agriculture and Food)** [2.06 pm]: Today I report on progress in two areas of importance to the agriculture sector—labour and export assistance. This evening our fifteenth cohort of seasonal workers from the Pacific Islands will leave our dedicated seasonal worker quarantine hotel. This latest cohort arrived from Tonga and will now head to apple orchards and abattoirs in the state's south west. This brings the total number of workers to just short of 2 000, which is more than double the number of Pacific Island workers who were normally in WA pre-COVID-19. Those businesses that have taken on Pacific Island workers are being rewarded with a happy, hardworking and productive workforce.

With the announcement yesterday that WA will safely ease its hard border controls from 5 February, double-vaccinated Pacific Island workers will soon be able to enter WA quarantine free. I thank the teams at the Department of Primary Industries and Regional Development, the Department of Health and vegetablesWA for their tremendous efforts to support the industry over the last 18 months.

With WA set to connect to the world in 2022, there will be new opportunities to grow our exports and take WA produce to the world. Our government is backing WA's agrifood and beverage businesses with the release of $2.7 million for round 2 of the international competitiveness co-investment fund grants. Leveraging off the expected increase in international passenger flights in 2022, grants of up to $100 000 are available to help businesses capture export markets. The first round of these grants helped transform recipients' businesses, including a digital marketing campaign for WA Lupins, Futari Wagyu's cold store beef production model and Craig Mostyn Group's strategies to extend the shelf life of Linley Valley pork.

## PAPERS TABLED

Papers were tabled and ordered to lie upon the table of the house.

## RETAIL TRADING HOURS AMENDMENT BILL 2021

*Notice of Motion to Introduce*

Notice of motion given by **Hon Wilson Tucker**.

## BUSINESS OF THE HOUSE — CONSIDERATION OF COMMITTEE REPORTS

*Standing Orders Suspension — Motion*

**HON SUE ELLERY (South Metropolitan — Leader of the House)** [2.09 pm] — without notice: I move —

> That so much of standing orders be suspended so that consideration of committee reports not be taken at the next day's sitting.

By way of explanation, I thank members for the conversations we have had behind the chair as a way of dealing with the legislative agenda in a timely fashion.

**HON DR STEVE THOMAS (South West — Leader of the Opposition)** [2.10 pm]: The opposition supports the intent of the government and will do its best to make the legislative agenda progress as committed to.

Question put and passed with an absolute majority.

## ABORIGINAL CULTURAL HERITAGE BILL 2021

*Committee*

Resumed from 9 December. The Deputy Chair of Committees (Hon Dr Sally Talbot) in the chair; Hon Stephen Dawson (Minister for Aboriginal Affairs) in charge of the bill.

**Clause 1: Short title —**

Progress was reported after the clause had been partly considered.

**The DEPUTY CHAIR**: Members, we are in committee considering the Aboriginal Cultural Heritage Bill 2021. Before I put the question, I draw members' attention to the most recent supplementary notice paper 56, issue 2.

**Hon NEIL THOMSON**: Continuing the conversation from our last sitting, there is a matter that I think is deserving of a little further interrogation on clause 1. I hope that consideration of clause 1 will conclude very shortly, noting the incredibly lengthy nature of this bill and the short time that we have to consider it; it is of great import for our community. We were at the point of discussing an issue that has been a lightning rod for discussion and, I suspect, part of the reason for the urgency with which this legislation is being pushed through—the issue of Juukan Gorge. I ask the minister to provide some clarity on the time lines around the government's knowledge of the matters regarding Juukan Gorge. It is an issue that has been used as a rationale for these major legislative changes. My question is: was the issue of Juukan Gorge and its significance known by the government prior to its destruction?

**Hon STEPHEN DAWSON**: I have to rely on my advisers. To the best of their recollection, I am told that the Puutu Kunti Kurrama and Pinikura people informed the state a matter of days before it happened. Obviously, the proponent at that stage had a valid section 18 approval, and the advice given was that PKKP should go to the commonwealth to see what powers the commonwealth could use to intervene in the process.

**Hon NEIL THOMSON**: Were any efforts made by the then minister, his staff or the department to contact Rio Tinto and get an informal stay of action on that project?

**Hon STEPHEN DAWSON**: I cannot comment on that, honourable member. The former minister is no longer a member of cabinet or, indeed, a member of Parliament, so I am not aware of what actions either he or his office took at that time.

**Hon NEIL THOMSON**: I think this goes to the heart of the challenges that we face with this matter. The issue is the structural arrangement concerning the compliance around Aboriginal heritage and the previous direct line of contact that was lost when the former Department of Aboriginal Affairs was merged under the machinery-of-government changes. That department had an Aboriginal director general and it had a history of Aboriginal directors general who had very good relationships with the mining sector. I certainly contend—this has been said to me in the past by those who are in a position to know—that had something like this occurred in the past under the previous arrangements, a phone call would have been made to someone like Sam Walsh and the matter would have been dealt with. The issue we have is as much a cultural issue within the department and the minister's office as it is a legislative or legal issue. My question to the minister is: in the minister's mind, does he believe that if he were the minister and became aware of the potential terrible destruction of something of significance, a phone call to the CEO of Rio Tinto may have resulted in that significant site not being destroyed?

**Hon STEPHEN DAWSON**: The member is asking me a hypothetical about actions that should have been taken in the past. I note that Sam Walsh is very contrite about the actions Rio Tinto undertook at that stage. I cannot hypothesise about what might have been done in the past, but I can say that the legislation before us now is strong legislation and hopefully it will mean that another Juukan Gorge incident will not happen. I want to point out to the

honourable member and put on the record that the restructure of the heritage branch of the Department of Aboriginal Affairs was completed in the second half of 2016 by the former government. That resulted in at least 10 heritage officers being offered or receiving a redundancy. That was done under the former Liberal–National government. The machinery-of-government changes following the election of the McGowan government in 2017 that resulted in the amalgamation of the Departments of Aboriginal Affairs, Planning and Lands, and the State Heritage Office resulted in the loss of one senior executive service position. The policy for the MOG changes at the time was to increase efficiencies by rationalising SES-level positions.

**Hon NEIL THOMSON**: I thank the minister for that clarification. I think the focus of my attention, at least, has been on the structural arrangements at the top and the line of communication with our senior players in the mining sector. This has been the subject of significant investigation, as the minister knows. The commonwealth inquired into the destruction of the 46 000-year-old Juukan Gorge caves in the Pilbara region of Western Australia. I note that recommendations were made for the commonwealth to take carriage of this. I do, for the record, minister, agree that this power should stay with the state. In that sense, I understand the difficulty the minister faces, which I commented on in my second reading contribution. I think certainly a review and reform of the Aboriginal Heritage Act is vital and so, in that sense, that is why the opposition is not opposing the bill and why it would probably support the bill if it had time to go through it in more detail. But I want to at least point to some separate additional comments by Mr George Christensen and Senator Dean Smith, MPs. I worked with Senator Dean Smith and he is a colleague whom I respect. I could mention it in greater detail, but their comments refer to significant cultural sites. I believe there has been some support in the community for this. Their additional comments state —

> Instead of new laws and regulations, there is already an existing Federal process for the registration of significant cultural heritage sites that could be streamlined and enhanced to enable Indigenous people to list sites for protection.

We will get into those protected areas later on specific clauses, but I will just ask a general question on the inquiry and the additional comments by Senator Smith and Mr Christensen: did the Senate inquiry findings have any impact on the redraft?

**Hon STEPHEN DAWSON**: No, they did not, honourable member. The process for this bill has been in train for a number of years, so the government was aware of the learnings from, or the knowledge of, what happened at Juukan Gorge, and that was taken into consideration in the work that took place over the past few years, including the draft bill that went out for public consultation.

**Hon NEIL THOMSON**: Concluding my comments on clause 1—I understand that others may wish to comment on this—I want to raise specifically the matter of consultation and some of the misinformation that I think has been propagated about the views of various parties concerning this bill. I have a copy of the letter that I believe has been sent to the minister. I have one to be provided, if required, because I have two copies on my person here. The letter is from the Kimberley Land Council to the honourable Minister Dawson on 14 December 2021, which is today. Does the minister have a copy of that?

**Hon Stephen Dawson**: I do not.

**The DEPUTY CHAIR**: Is the member seeking to table the paper?

**Hon NEIL THOMSON**: Yes.

[Leave granted. See paper 986.]

**The DEPUTY CHAIR**: We will give the minister a moment to look at it.

**Hon NEIL THOMSON**: I draw the minister's attention to some comments in that letter and seek a response, if he is willing. In that letter, the Kimberley Land Council wrote —

> The Kimberley Land Council would like to address incorrect and misleading information provided to the Legislative Council of the Parliament of Western Australia on 9 December 2021.
>
> While discussing the Aboriginal Cultural Heritage Bill 2021 (WA), the Minister for Aboriginal Affairs made the following incorrect statement:
>
> "*I also make the point that I have not had contact, and I do not think anybody else here has had contact, with prescribed bodies corporate to say that they are not happy with the legislation*" …

That quote is attributed to Minister Dawson.

The Kimberley Land Council then proceeded to raise some important points, but the gist of this letter is that it took exception to the minister's comments. The last paragraph of that letter reads —

> The KLC formally requests that you, as an elected official and Minister for Aboriginal Affairs, acknowledge the seriousness of making incorrect and misleading statements to the Parliament of Western Australia, that you make a statement to correct this as a matter of urgency, and you apologise to the Prescribed Bodies Corporates and other Aboriginal organisations whose views you have wrongly represented.

It is important to clarify this, because members may be under the misapprehension that somehow Aboriginal land councils do not play a critical role in providing advocacy on the views of prescribed bodies corporate. Appendix A lists a number of forums that were held in May 2021 in which the views presented were clearly not in support of the bill. I have only just received this letter, and I will not read out every single native title body on that list, but there are at least 15 Aboriginal corporations—for example, the Bunuba Dawangarri Aboriginal Corporation and the Karajarri Traditional Lands Association. I will not mention all the organisations on that list, but I am familiar with a number of those corporations and PBCs, and I know a number of the people involved, including the Jaru Aboriginal Corporation and Nyul Nyul PBC Aboriginal Corporation. Similarly, it lists organisations that attended forums in April 2021, including the Tjurabalan Native Title Land Aboriginal Corporation.

It is important that I clarify the KLC's position that the view expressed in a collective way through the land council has been one of opposition to the legislation. I understand the challenges for PBCs to make individual comments on legislation presented by government, because it is generally not in the interests of a PBC to make that kind of representation. We need to look at the historical arrangement and the significant role that the Kimberley Land Council has had in furthering land rights in Western Australia. I am concluding my comments on clause 1 at this point, so I offer the minister the opportunity to put on record his views on this letter.

**The DEPUTY CHAIR**: Before I give the minister the call, I remind the chamber that, as a general principle, the clause 1 debate is extremely flexible as to the limits of topics included in the debate. In my own mind, Hon Neil Thomson is pressing very close to one of those boundaries with this question. However, I point out that it is entirely up to the minister whether he chooses to answer. It is as well to occasionally remind members that although clause 1 is a broad debate, it is not without boundaries.

**Hon STEPHEN DAWSON**: Thanks, deputy chair. I stand by those comments that I made last week; I had not been contacted directly by any prescribed bodies corporate to express concerns about the legislation before us. In fact, the honourable member will note that some of those events took place in September 2020 when a draft bill was out for public comment. Looking back to April 2021 or indeed May 2021 when forums took place, they were again on a draft piece of legislation that has been updated since then. I stand by my comments in the statement I made last week that I had not been contacted by any of the PBCs directly on the legislation before the chamber.

**Hon COLIN de GRUSSA**: I have a few questions about the application process for different levels of activity. I thought I might ask them all at clause 1, rather than going through them individually in the bill. We will get them out of the way now, if the minister is okay with that.

**Hon Stephen Dawson**: Fire away. I might at some stage say it is more appropriate to deal with them elsewhere.

**Hon COLIN de GRUSSA**: Okay. We might be able to get these out of the way at this point. My questions are around the whole process. On the website is a helpful flowchart—I am sure the minister has a copy of it—that outlines the process for proponents for the different types of activities. I guess my questions are around the determination of whether Aboriginal cultural heritage is present. Under stage 1, if an activity is an exempt activity and it is not in a protected area, the proponent can go off and do their thing; however, if it is in a protected area, the activity cannot proceed. That is fairly simple. For tier 2 and tier 3 activities, which will be defined in the regulations, although they are loosely defined in the bill, a proponent must go to stage 2 of the process, and the first question is: is Aboriginal cultural heritage present? If the proponent knows that it is present, they will move to stage 3, which is to work with the local Aboriginal party to progress that application. The question for me concerns when they do not know whether Aboriginal cultural heritage is present. How will that determination be made? How will they find out?

**Hon STEPHEN DAWSON**: I am told that that process will be stepped out in the due diligence guidelines that are yet to be worked on. That commitment falls under the commitment to co-design the next phase of the process, which is the regulations but also the various documents or guidelines that need to be in place before the legislation is enacted. That is all to be worked out with the various stakeholders who have an interest in the issue.

**Hon COLIN de GRUSSA**: I thank the minister. I guess that is how I had it in my head—that part of that co-design process will be on how to determine whether ACH is present. I imagine that that, in itself, will be quite a job, given that a significant part of the state has not been surveyed. The government has committed $10 million in funding in the budget for the local Aboriginal cultural heritage services. If it is observed through this process that a significant body of work needs to be done in this area, as well as when the LACHS consult with parties to progress their applications, will consideration be given to providing additional funding? Has that contingency been planned for; and, if so, is there any known quantum for that?

**Hon STEPHEN DAWSON**: I thank the honourable member; it is a good question. The $10 million is about capacity building and starting the process. Once we have undertaken the co-design process, we will be in a better position to work out exactly what is needed. It may require further consideration by cabinet and by the Expenditure Review Committee of cabinet. The $10 million will start us off. Where we get to from here will depend on what might be needed next.

**Hon COLIN de GRUSSA**: I thank the minister. It is likely that there will be a quite significant increase in work in this space, given the changes in the bill. One other aspect of this, of course, is the determination of tier 2 and

tier 3 activities and what will be prescribed. I guess that will be part of the co-design process as well. My question, though, is around the definitions in the bill of moderate and high levels of soil disturbance. A moderate level of disturbance to a strawberry farmer might be different from a moderate level of disturbance to a large mining company. Is that going to be clearly defined so that we are absolutely certain that certain activities that have already been undertaken on various pieces of land can continue? For example, if we look in the agriculture space at what one farmer might consider to be a fairly destructive process such as spading or deep ripping or something like that, will that be allowed to continue?

**Hon STEPHEN DAWSON**: Yes, honourable member; the intention is that they will be clearly defined because, as the member said in his example, what is good for one farmer might not be good for another. It is fair to say that there are a variety of views amongst the Aboriginal organisations across the state that have had different levels of interaction with section 18 of the Aboriginal Heritage Act. Therefore, there is quite a body of work to be done as part of this co-design process—to work out exactly what is in and what is out. But once we have it, the intention is to have it clearly defined so that stakeholders are aware of what is in and what is out. At any stage, there is under the bill the opportunity for someone to write to the CEO if they are ever not sure about the clarity of something.

**Hon Dr BRAD PETTITT**: I start with a question around the United Nations Committee on the Elimination of Racial Discrimination. Is the minister aware of the correspondence that was sent on 3 December 2021?

**Hon STEPHEN DAWSON**: I am aware that a piece of correspondence is floating around. Neither I nor my office have been sent a copy of the correspondence from the UN. I am aware, though, that a piece of paper is floating around that media organisations have that refers to someone called "Excellency". It is obviously not me, because no-one has ever called me excellent! However, no-one has sent our office a letter from the United Nations.

**Hon Dr BRAD PETTITT**: I have this letter here. I seek leave to table it. That might be a useful thing to have.

[Leave granted. See paper 987.]

**The DEPUTY CHAIR**: Honourable member, do you want to continue with your questioning or do you need to wait until the minister has seen the letter?

**Hon Dr BRAD PETTITT**: I will continue. Thank you. Could I ask for the chair's guidance at this point. Is it appropriate to jump to a different topic?

**The DEPUTY CHAIR**: Yes, absolutely.

**Hon Dr BRAD PETTITT**: I will come back to that once the minister has that letter.

**The DEPUTY CHAIR**: As long as it addresses the question that clause 1 do stand as printed.

**Hon Dr BRAD PETTITT**: Yes, and I will seek the chair's guidance on that matter as someone who is new to this process.

My next questions are around the Aboriginal Cultural Heritage Bill co-design task force. My first question is: what are the criteria and qualifications that the minister will use to set members of this task force?

**Hon STEPHEN DAWSON**: The thinking on the co-design task force thus far is that it would have a male and female chair, representatives of the Aboriginal community—a male and female Aboriginal person. It would have a person representing industry and a person representing government. There would also be the capacity to co-opt other people. The likelihood, though, in our early thinking, is that there would potentially be a series of subcommittees, and the intention then is to do the consultation in tandem with the prescribed bodies corporate. Essentially, we would ask a prescribed body corporate whether it was willing to host a consultation session on its land and, if it was agreeable to that, we would go out and hold the consultation session there, and do that across the state.

The intention also is to do similar consultation sessions, if I can call them that, with other key stakeholders; for example, Hon Steve Martin mentioned farmers in his contribution. Certainly, the intention is to do it with groups like the farmers and others who would have a key interest. We will also ensure that we consult again with those stakeholders that have been part of the consultation process so far. For those who have made submissions on the journey thus far—the intention would be to re-talk to those people.

**Hon Dr BRAD PETTITT**: Is there a time line for creating this co-design task force?

**Hon STEPHEN DAWSON**: The intention is to start early in the new year. I have written to a number of Aboriginal representatives of the existing advisory committees that report to me—for example, the Aboriginal Cultural Material Committee, the Aboriginal Lands Trust and the Aboriginal Advisory Council of Western Australia—to ask whether a member of those organisations would be willing to be on the reference group. I have not yet received correspondence back from them. We have also started to think about who might be on the reference group from industry or from the state government, but there have been no decisions on that. I think we were keen to have the bill pass this place first and then put some more thinking into it over the next few weeks and start early in the new year, noting of course that depending on where people are in the state, the law might affect them differently, so we have to take those complexities into consideration, too.

**Hon Dr BRAD PETTITT**: This is my last question on the co-design. Obviously, there has been a range of voices on this bill, and some people have been quite publicly opposed to elements of it. I think that some people are concerned about how they might be involved in that co-design process and whether they will be represented on this task force. I am seeking some comfort that they will be.

**Hon STEPHEN DAWSON**: Honourable member, I am not quite sure I heard the question. Let me paraphrase it. If the member is asking whether those people who have been against the bill thus far will be excluded from the process, the answer is no.

**Hon Dr BRAD PETTITT**: Yes. I am seeking an assurance that they will be involved and will be invited to be part of that co-design.

**Hon STEPHEN DAWSON**: The intention is absolutely to involve everybody who wants to be involved. Although some people might not have been happy with the process thus far, the intention is still to include them over the next phase of the journey. If the bill passes this place, it will become law, and the intention is to then talk to everybody about the law, the regulations and the guidelines and how they might work, so absolutely.

**Hon PETER COLLIER**: The minister does not need to respond to this, but it is a point that I raised earlier and something that I feel very strongly about. I am very conscious of the fact that when we move through a bill of this calibre, people are very vocal, particularly those who are opposed to the bill, and that has been quite evident with the progress of this bill thus far. We are hearing an enormous amount from the people who are opposed to this bill. As the minister can imagine, on this side of the chamber, we have been inundated, and this is another example. That does not for a moment suggest that there are not people who are supportive of the bill; I am sure there are. But, having said that, I think I will give the minister some gratuitous advice, which he can ignore if he likes. As we know, Aboriginal heritage is an extraordinarily sensitive issue throughout the state, particularly for First Nations people, and this is absolutely vital. If this is going to get across the line—I am not just talking about the raw numbers in five hours' time or whenever we vote, and we will not be opposing the bill anyway; I am talking about the establishment of the regulations and the reference group et cetera—I am pleased to hear what the minister has just said, which is that those who are opposed to the bill will be engaged in the decision-making process and the consultation phase.

If the minister can get that out there, I think he will go a long way to winning over a lot more people. There has been consultation, and I acknowledged in my second reading contribution that there has been significant consultation, but a lot of people are still feeling alienated. If the minister can somehow overcome that barrier, dare I say it, that will go a long way to placating the concerns—in a number of instances, very emotional concerns—that this bill will in fact extinguish the views of Aboriginal people. If the minister can do that, good fortune to him, and the bill might just achieve what it is hoped it will achieve. If the minister can do that, please, sing it from the rafters and let people out there who are opposed to the bill know that they can be part of the next phase and the consultation.

**Hon STEPHEN DAWSON**: The point is well made and it is certainly my intention to do that. Should the Aboriginal Cultural Heritage Bill 2021 pass this place, I intend to write to all the organisations that have been involved thus far, and go further afield advising of the process moving forward and encouraging them to be involved.

**Hon WILSON TUCKER**: My line of questioning is on the topic of free and informed consent. I note the minister's comments in the Committee of the Whole house last Thursday, and I quote from *Hansard* —

> The bill will enshrine the United Nations Declaration on the Rights of Indigenous Peoples' principles of free prior informed consent in its agreement-making process.

I have a letter from the International Indian Treaty Council, which wrote to the Premier asking him to halt the passage of this bill because the council believes that the bill does not meet the criteria of "free, prior and informed consent" and is inconsistent with the United Nations Declaration on the Rights of Indigenous Peoples. Is the minister aware of this letter?

**Hon STEPHEN DAWSON**: I am not and I ask that the member table it so that the house can have it and we can discuss it if the member desires to ask further questions on it.

**Hon WILSON TUCKER**: I seek leave to table the letter.

[Leave granted. See paper 988.]

**Hon WILSON TUCKER**: I probably should have kept the letter.

**The DEPUTY CHAIR**: Can I make a suggestion, honourable member?

**Hon WILSON TUCKER**: Sure.

**The DEPUTY CHAIR**: If you have other questions, move on to them and see that somebody makes sure when the attendant comes back with the documents that you get a copy.

**Hon WILSON TUCKER**: I have a question on the co-design process for the regulations. How does the minister define co-design?

**Hon STEPHEN DAWSON**: How do I define it? It certainly is and has been my commitment to the various stakeholders since very early on when I took on the role of Minister for Aboriginal Affairs that the next phase of the process, the regulation making process, will be by co-design. That does not mean that everybody will agree but it is certainly about everybody having the conversation. We know from the legislation before us that various elements will need further work—for example, the issues Hon Colin de Grussa raised in his questions today about the activity tier levels. They are issues screaming out to be worked on by the various stakeholders.

The intention is to sit down with the stakeholders, to advise them of the most pertinent issues that need to be co-designed and to work with them, as I indicated, and where appropriate have sessions on their land and talk through the issues with them. It is a genuine intention to sit down together, talk through the issues and work out how we might suggest the regulations are formed. I note, of course, as I am now well aware having been in the role for the last few months, that we will never get agreement on everything. But the intention is to have the conversations to get feedback and move forward with as many people as possible to make sure this legislation and the regulations are the best possible and work for as many people across the state as possible.

**Hon WILSON TUCKER**: Thank you, minister, for the explanation. Will the minister take forward any tenets or principles as he conducts the co-design process to come up with the regulations?

**Hon STEPHEN DAWSON**: There is no document per se, honourable member, but as the Minister for Environment for the past four years, I am well used to being involved in co-design processes with traditional owners on, for example, the creation of new marine parks or new national parks. We have done that, and I think, for the most part, for Aboriginal organisations or Aboriginal people who have been involved in those processes, they have been very good. It has been a genuine kind of respectful process that we have sat down on country with people and talked through the issues. Experts in the area have talked to people and then we have moved along together. It is my intention to do similar things for the regulation co-design process of this bill.

I have that letter, by the way, so if the honourable member wants to ask me a question on it, he can.

**Hon WILSON TUCKER**: I have one more question on the co-design. Given the definition the minister has given, will any key performance indicators or outcomes be incorporated to measure the effectiveness of this co-design process to ensure that there is an equal weighting of industry and Indigenous stakeholders?

**Hon STEPHEN DAWSON**: There are no KPIs as such. How will I be happy? I will be happy if as many people as possible participate in the process and we can come to an agreement on what the regulations will look like. That will make me happy and that will be a KPI that I would like to be judged on. Noting, though, as a number of honourable members, including those who have come before me as Minister for Aboriginal Affairs, have noted in this place, it is often very hard to make everybody happy. But we will try to make as many people as possible happy.

**Hon WILSON TUCKER**: Coming back to the letter from the International Indian Treaty Council that was tabled, it states the organisation's concerns —

- The Bill's design and consultation process, including a failure to involve Indigenous peoples in Western Australia in a co-design process consistent with Article 3 and Article 32 of UNDRIP.
- Lack of free, prior and informed consent, leaving ultimate decision-making to the responsible Minister where there is no agreement between Indigenous groups and proponents and is inconsistent with Article 32 of UNDRIP.
- Lack of safeguards within the Bill to ensure that significant cultural heritage will not be subject to destruction, instead this is left to be determined by the responsible Minister in circumstances already described, which is inconsistent to Indigenous peoples' right to maintain, control, protect and develop their cultural heritage consistent with Article 31 of UNDRIP. The Minister's decision includes consideration of an 'in the interests of the State' test, which threatens to prioritize economic drivers before protection of significant cultural heritage and, thus, risks racially discriminatory decision-making.
- No review or appeal rights for Aboriginal peoples where a decision is made to destroy their cultural heritage and is inconsistent with obligations to provide effective mechanisms for just and fair redress, which is inconsistent with Article 32.

This letter was addressed to the Premier. Is the minister aware of whether the Premier has read the letter and whether he is planning to respond to the letter?

**Hon STEPHEN DAWSON**: Until the honourable member brought the letter to my attention today, I was not aware of it. The copy of the letter the honourable member has given me has who it is from but not who it went to, so I am not aware of the letter. I am sure it is always the case that any correspondence that is sent formally to the government's email or indeed via the postal system ordinarily would get a response.

**Hon WILSON TUCKER**: Does the minister have a response to the issues outlined and concerns raised in the letter that I just read?

**Hon STEPHEN DAWSON**: The issues the honourable member has raised relate to various clauses in the bill, and I am happy to talk to those issues when we get to those clauses. I am not going to generally do it now. I will make the point that the United Nations Declaration on the Rights of Indigenous Peoples states —

> Article 46
>
> 1. Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States.

Notwithstanding what is in the article, it says at the very end that if something impinges on the sovereign rights of a state, it is open to government to take a different course. I make that point. If the member has questions on particular clauses of the bill, we will deal with them when we get to those clauses.

**Hon WILSON TUCKER**: The Yamatji Marlpa Aboriginal Corporation is going to host a cultural heritage protection co-design strategy workshop with representatives from industry, traditional owners and prescribed bodies corporate from around the state. I believe an invitation was also extended to the minister. Is the minister planning on attending the workshop?

**Hon STEPHEN DAWSON**: My focus is on passing the bill before us now. If I pass this bill, I will think about the next phase of consultation. I am not aware of anyone from government going to the workshop. I am aware of a piece of correspondence that has come to my office. Can I say, I have been distracted dealing with other things, including this legislation, and my diary for January has not yet been worked out.

**Hon WILSON TUCKER**: Does the minister acknowledge that there could be a benefit in Indigenous groups and industry bodies getting together to formalise what co-design means to ensure that there is balance in the decision-making of the regulations?

**Hon STEPHEN DAWSON**: The honourable member is asking me for an opinion; I am not going to give an opinion today. However, certainly, our intention in creating a task force is to ensure that the various organisations—indeed, Aboriginal organisations have disparate views on this issue—are involved in the process. If other organisations want to organise conversations or meetings about Aboriginal cultural heritage and regulations, that will be up to them to organise. But we will create a state-run process. That is the commitment that I have to make to ensure that we get the regulations right and there is a proper co-design process.

**Hon Dr BRAD PETTITT**: I return to the letter that was tabled sent to Her Excellency Ms Sally Mansfield, the permanent representative of Australia to the United Nations Office in Geneva, from the vice-chair of the Committee on the Elimination of Racial Discrimination, Marc Bossuyt. I appreciate that the minister has only just seen that two-and-a-bit-page letter, but perhaps I can start by asking whether the government engaged with the UN Committee on the Elimination of Racial Discrimination at any time during the drafting of this legislation?

**Hon STEPHEN DAWSON**: No, it did not. But, of course, the UN Committee on the Elimination of Racial Discrimination could have participated in the process, particularly last year, when the draft legislation was released and a public comment period was undertaken. Of course, no correspondence was received from any UN committee on the legislation, to the best of my knowledge.

**Hon Dr BRAD PETTITT**: It is a long letter so I will not read it all, but I draw the minister's attention to the fourth paragraph on page 2, which provides a summary and states —

> According to the information received, the discretionary power attributed to the Minister of Aboriginal Affairs and the absence of effective remedies and legal redress for Aboriginal peoples to challenge his decisions will maintain the structural racism of the cultural heritage legal and policy scheme, which has already led to the destruction of Aboriginal cultural heritage in Western Australia.

It is a serious matter when the UN writes to the Australian representative on this basis. Clearly, there is a high level of concern. The letter goes on to encourage the state party—which I read to be the WA government—"to consider engaging with the United Nations Expert Mechanism on the Rights of Indigenous Peoples". Will the McGowan government engage with the UN Expert Mechanism on the Rights of Indigenous Peoples on these bills?

**Hon STEPHEN DAWSON**: No; it is not our intention to engage with the United Nations. Australia, of course, is a sovereign nation and a signatory to various agreements, and it is appropriate for the United Nations to engage with the Australian government.

I make the point that removing gag clauses, as this legislation does, certainly is not what the member just read out. Under this legislation, Aboriginal people will decide what is important cultural heritage to them and there will be informed consent as part of this legislation. First of all, I do not know who this person is and I am not confident that this person has read the bills before the Parliament. It is certainly my intention to proceed with the legislation before us now, as is. But, of course, the next phase of the journey is the co-design process. If the United Nations wants to get involved in the co-design process in little old Western Australia, well, good on it. I will be happy to consider that at that stage.

**Hon Dr BRAD PETTITT**: That was going to be my next question. Given the seriousness of the concerns that the UN mechanism has outlined, will the minister consider engaging with the United Nations on this bill and make sure that it is across the co-design process and that the co-design process is done in a way that meets the obligations and concerns outlined in this letter?

**Hon STEPHEN DAWSON**: Honourable member, what concerns me is why the United Nations Committee on the Elimination of Racial Discrimination is not complaining about the 1972 act—a 49-year-old piece of legislation that has not had Aboriginal people at the table.

**Hon Dr Brad Pettitt** interjected.

**Hon STEPHEN DAWSON**: It says that the bill will supersede it, but I do not think it has acknowledged that this piece of legislation will mean monumental change in how Aboriginal cultural heritage is treated and how Aboriginal people are respected. As I said, we have some ideas about the co-design process. The intention is to have a reference group. The intention is to work out with the prescribed bodies corporate on country the conversations we might have about the regulations. If other stakeholders make contact with us and say that they have a view or would like to have a say on the regulations, I am certainly open to it.

**Hon Dr BRAD PETTITT**: This is my last bit on clause 1. The United Nations letter is another example, along with many others that my colleagues have put forward. Unfortunately, the legislation in its current form does not have many friends. We spoke earlier about the limited number of people who support the whole bill, and I think the minister named two or three people he is aware of in that space. I recently received a copy of a letter written to the minister that refers to concerns about some of the things that were said during the debate last week when he stated that the PBCs had not written to him saying that they were not happy with the bill. The people who risk losing out under the bill have been vocal. This letter is from the representatives of some PBCs. It is quite clear that they have written to the minister about this and they certainly feel very strongly that they have been left out. I would like to table this letter in due course for the record.

**The DEPUTY CHAIR (Hon Dr Sally Talbot)**: Member, I wonder whether you would consider tabling that piece of correspondence now to assist the minister.

**Hon Dr BRAD PETTITT**: I certainly would. It is on the printer now. Someone will grab it for me. I do not have a hard copy.

**The DEPUTY CHAIR**: Minister, that letter is on its way to you.

**Hon Dr BRAD PETTITT**: The reason I raise it is that I think it is very important. We have groups that feel that they have not been heard or have been misrepresented. This letter, which will be in front of the minister shortly, is very clear. Some of the groups that the minister has indicated in this chamber support the bill actually do not. It is important that this is brought to the minister's attention. There is a long list of groups that wrote to him on 6 October 2020 to highlight their concerns with the previous draft of the bill. Of course, they highlight now that the current draft of the bill is even worse than that one.

**The DEPUTY CHAIR**: Member, would you like to seek leave to table that document?

**Hon Dr BRAD PETTITT**: Yes, I would like to seek leave to table the document.

[Leave granted. See paper 989.]

**Hon STEPHEN DAWSON**: I thank the honourable member. I am now told that an email arrived at 2.34 pm with this correspondence. The member is making the same point as Hon Neil Thomson made; that is, there are people out there who do not feel they have been consulted as part of this process. I say that people have been consulted as part of this process. People might not be happy with the process or where the legislation has ended up or with certain elements of it, but I stand by those elements. I have certainly met with representatives of the Banjima Native Title Aboriginal Corporation over the past few months. They participated in consultations on the early drafting phase of the legislation. I recognise that they are not happy with the bill before us. The bill before us is the bill before us.

Honourable members can probably pull lots of these emails out of wherever. I commented last week that I recognise and I have not in the slightest tried to resile from the fact that there are groups out there who are not happy. I have also received emails today from two other groups that are linked to YMAC, or Yamatji Marlpa Aboriginal Corporation, not because they have YMAC in their name, but because officers of YMAC had used their email address to send me letters from two other prescribed bodies corporate who, as a result of my comments last week, decided that they should write to tell me that they were not happy as PBCs with the bill before us. There are people out there who are unhappy, but the bill is before us. With the greatest of respect, whatever letters people have, it is not going to change my view. If there are particular issues in the letters that relate to clauses of the bill, I would urge members to raise those issues at the appropriate clause.

**Hon Dr STEVE THOMAS**: Noting the time, I would urge members to get on with this. It is funny, is it not, that any time people do not like an outcome, they generally claim that they have not been consulted properly. When we really do not like an outcome, we try to seek an alternative umpire that is not the one that we need to go to. I cannot tell members how many people have approached me to say that the Geneva Conventions or the Nuremberg Code

mean that they do not have to be vaccinated. It is not true, but obviously when people do not get the answer that they want, they try to find something else to convince the authorities that they are not the real authority. I suggest that the authority here is actually the state of Western Australia, in which the land is vested. If we make too big a fuss about that process, one day maybe everyone will decide that there is no point vesting all that land in the state and we will lose control of it to either the commonwealth or somewhere overseas.

I understand that not everybody is happy with the bill. I said in my second reading contribution that generally if everybody is a bit unhappy, the government is probably somewhere close to where it needs to be. The government needs to get on with continuing this process and delivering this legislation. If land councils are unhappy because they did not get everything that they want, guess what? That is probably appropriate. When I hear that such and such has said that they did not get everything they want, so they will go to the United Nations because that might give them what they want, I think that the United Nations generally will not do that, and it generally cannot do that, and nor should it. It should not have that power. In reality, everybody who is a bit unhappy has probably been consulted but does not like the outcome. The outcome is that the government is going to govern. If people do not like that process, unfortunately they are in the wrong place and probably in the wrong job. Can we please proceed with the remainder of the bill?

**The DEPUTY CHAIR**: That sounds like a cue that I put the motion that clause 1 do stand as printed.

**Clause put and passed.**

**The DEPUTY CHAIR**: I recognise that this might be slightly complex, but it would be of enormous assistance if members could indicate the clauses they wish to speak on. I recognise that several parties want to contribute to this debate. If it is not possible for you to do this now, could I request that at some stage in the next hour or so somebody presents the clauses that need to be discussed.

**Hon NEIL THOMSON**: Just to clarify, from my point of view, it is clauses 2 and 8.

**The DEPUTY CHAIR**: Thank you. I will give you the call. I just needed to put the question.

**Hon Dr BRAD PETTITT**: My question is on clause 11.

**Clause 2: Commencement —**

**Hon NEIL THOMSON**: Minister, I understand that a lot of work will need to be done to achieve royal assent for this bill. I would like to give the minister an opportunity to outline the time frame that is likely to occur and the conditions that will be set for the minister to take this bill to the next stage.

**Hon STEPHEN DAWSON**: The likelihood, honourable member, is that it could take up to 24 months for the bill to come into operation. I remain eternally optimistic in my role as Minister for Aboriginal Affairs. I would love the co-design process to commence and conclude by the end of next year, but there is then the writing of the regulations. To be realistic, it could take up to 24 months for the commencement of the legislation.

**Hon NEIL THOMSON**: Thanks for that. I think it is important to be stated. The regulations are one thing, but will the establishment of the bodies that will effectively govern the act be considered regarding the timing of assent? I am happy to take this question through to transitional arrangements if the minister chooses not to answer on clause 2.

**Hon STEPHEN DAWSON**: It is intended that the creation of the council, for example, and the other things that will need to be created as part of the act will all be done in the 24-month period.

**Clause put and passed.**

**Clauses 3 to 7 put and passed.**

**Clause 8: Objects of Act —**

**Hon NEIL THOMSON**: Clause 8(1)(c) includes one of the objects of the act, which is —

> to manage activities that may harm Aboriginal cultural heritage in a manner that provides —
>
> (i) clarity, confidence and certainty; and
>
> (ii) balanced and beneficial outcomes for Aboriginal people and the wider Western Australian community;

The massive challenge I have had in assessing this bill has really centred around this paragraph because I do not think sufficient assessment has been done on the issue of clarity. There is a huge lack of clarity. I cannot see how we can possibly say the bill achieves it. Would it be fair to say, minister, that without the regulations, this bill is not clear?

**Hon STEPHEN DAWSON**: I disagree. It is a very clear bill, which steps things out sequentially. Again, I will come back to the comment made by the honourable member's leader in the other place, Dr David Honey, who said words to the effect that this is very clear legislation. As is always the case, the detail will be in the regulations, including the practicalities of how something will work. That work has yet to be done. The 1972 act did not include an objects clause. Clause 8 is a new inclusion in the legislation. This objects clause was included in the draft bill that

was put out for public comment in September last year, so it has been known to the various stakeholders since at least that time. We have not had feedback, questions or concerns raised about it—far from it. The stakeholders I have spoken to think it is helpful.

**Hon NEIL THOMSON**: I think my honourable colleague Dr David Honey was referring to the language of the bill when he spoke about clarity. I think there is a degree of clarity in the language of the bill, but I think there are massive challenges with the materiality of the bill and its clarity. On the confidence issue, notwithstanding the minister's comments on matters of confidence, over the last few days in particular, I think we have seen a significant expression of a lack of confidence. Does the minister believe this bill achieves that confidence?

**Hon STEPHEN DAWSON**: I stand by what is in the bill before us. The objects clause makes the rights and responsibilities clear to all users under the bill, so I think it is a good clause to include. At the end of the day, in time to come, I think it will serve us well.

**Hon NEIL THOMSON**: I will make a final comment on this. I agree with the minister that the objects clause is important. I think it will stand to be tested. This is the government's legislation but I think a number of stakeholders have expressed concerns from a range of different perspectives, particularly about the way the bill has been rushed through this place. I support the objects of the bill, but for the record I do not believe that they will be achieved. The minister can take that as a comment. I conclude my comments by saying that I do not believe that this bill will achieve clarity, confidence and certainty.

**Clause put and passed.**

**Clause 9 put and passed.**

**Clause 10: Principles relating to management of activities that may harm Aboriginal cultural heritage —**

**Hon NEIL THOMSON**: Clause 10 relates to the principles relating to the management of activities that may harm Aboriginal cultural heritage. Again, I make the comment that the principles are important and necessary, but considerable challenges will be faced. I actually sympathise with the minister because of the challenges in specific aspects of this. I note that this clause was amended in the consultation phase. Can the minister provide the chamber with a synopsis of why the clause was amended?

**Hon STEPHEN DAWSON**: I am told, honourable member, that this was added in response to the feedback that was given as part of the consultation process. The suggestion was made that the inclusion of such a clause would help people navigate the legislation, if I can use those words.

**Hon NEIL THOMSON**: Can the minister outline the specific matter that was amended? A table of amendments was presented by the department. I am looking at my papers but I do not have the table at hand. Can the minister provide more detail on the amendment? Does the minister or his advisers have that table on hand?

**Hon STEPHEN DAWSON**: I draw the member's attention to clause 10(d), which states —

> as far as practicable, in order to utilise land for the optimum benefit of the people of Western Australia, the values held by Aboriginal people in relation to Aboriginal cultural heritage should be prioritised when managing activities that may harm Aboriginal cultural heritage.

**Clause put and passed.**

**Clause 11: Terms used —**

**Hon NEIL THOMSON**: Clause 11 is an extremely large clause. I have a specific question in relation to the definition of "Aboriginal skills". What is the reason for the inclusion of "Aboriginal skills" and what does it mean? It would be helpful if the minister could provide an explanation.

**Hon STEPHEN DAWSON**: Honourable member, there is no definition of "Aboriginal skills" in the bill. Perhaps the member is talking about the definition of "Aboriginal tradition", which —

> (a) means the living, historical and traditional observances, practices, customs, beliefs, values, knowledge and skills of the Aboriginal people of the State generally, or of a particular group or community of Aboriginal people of the State; and
>
> (b) includes any such observances, practices, customs, beliefs, values, knowledge and skills relating to particular persons, areas, objects or relationships;

Maybe that is what the honourable member is talking about; I am not sure.

**Hon NEIL THOMSON**: Yes, I thank the minister. There are, obviously, definitions for matters that this bill encompasses. I assume that that applies to matters pertaining to Aboriginal cultural heritage; it is not just a broad definition of the skills of Aboriginal people.

**Hon STEPHEN DAWSON**: It might, for example, relate to tool-making skills. For generations—for tens of thousands of years—people have made tools in a certain way, so that would be one example.

**Hon NEIL THOMSON**: I thank the minister for that clarification, and my apologies. It was not at all a trick question; I was just trying to understand what it meant. It is in the context of a traditional understanding. Thank you. That clarifies my point on that matter.

**Hon Dr BRAD PETTITT**: I also have a question on the same clause, at line 17 on page 14—the definition of "in the interests of the State". I am trying to understand that definition. Is that a common definition that is used across multiple documents, or is it just in this legislation? How will the minister determine who gets the most benefit from those interests?

**Hon STEPHEN DAWSON**: There are certain ministerial decisions that must be made on the grounds of what is in the interests of the state. These include decisions on protected areas; objections to decisions made by the council in relation to Aboriginal cultural heritage permits and Aboriginal cultural heritage management plans that have been submitted for approval; Aboriginal cultural heritage management plans submitted for authorisation, including any agreed Aboriginal cultural heritage management plans that may impact Aboriginal cultural heritage of state significance; and part 7 orders.

The intention is that, for these decisions, it will be appropriate for the minister to also consider the broader interests of the state. In considering what is in the interests of the state, it will be open to the minister to consult with and seek the views of other members of executive government before making his or her decision. It will be open to the minister to consult with cabinet colleagues and the like about what is in the interests of the state.

**Clause put and passed.**

**Clause 12: Meaning of Aboriginal cultural heritage and related terms —**

**Hon TJORN SIBMA**: I have a couple of questions on clause 12. I take the explanatory memorandum for my reference as much as the bill itself. Should I infer that an explicit or implied hierarchy of cultural heritage is outlined in this clause? Clause 12(b) encompasses "Aboriginal place" through to "Aboriginal ancestral remains". For the purposes of this bill, are they all given equivalent value?

**Hon STEPHEN DAWSON**: They are equal, honourable member.

**Hon TJORN SIBMA**: Is that to say that a cultural landscape is as significant for heritage purposes as ancestral remains? I can understand, on one level, how that might be the case, but viewed from another perspective, I find that difficult to reconcile—that all heritage is equal, particularly given that passages further along in the bill talk about Aboriginal cultural heritage of state significance. Somewhere, at some place, there must be a hierarchy of values or importance, but the bill does not go there. I want to get a sense of whether my thoughts on that are straight.

**Hon STEPHEN DAWSON**: There is no hierarchy. If the member wants me to, and if it is helpful, I can explain the thinking behind the definition of "cultural landscape".

**Hon TJORN SIBMA**: Maybe, because I still have a problem reconciling what an intangible piece of cultural heritage is. I find this intensely problematic when it might be invoked in an operative sense to prohibit a development proposal of some kind. I am still struggling to understand what intangible heritage might be. Is it intangible to the degree that it connects disparate parts of—forgive my ignorance—culturally tangible pieces of heritage, be they a significant site or a sacred or secret object, or can it be invoked globally without reference to something, dare I say, concrete?

**Hon STEPHEN DAWSON**: I will read what my note says, honourable member. Intangible Aboriginal cultural heritage is defined as intangible elements of Aboriginal cultural heritage, including knowledge or oral expression of Aboriginal tradition. The bill will allow for intangible Aboriginal cultural heritage to be recorded on the Aboriginal Cultural Heritage Directory to support Aboriginal people in preserving it and passing it on to future generations. That could be a story or a song, for example.

**Hon TJORN SIBMA**: I thought that might be the case. I wanted to understand whether, effectively, I should infer that a songline would assist me to comprehend this. Is it possible that the examples the minister provided can be harmed in any material sense and require protection? I am trying to get my head around that concept.

**Hon STEPHEN DAWSON**: It has to be tied to a tangible element. It cannot exist by itself.

**Hon NEIL THOMSON**: I appreciate the commentary on this particular issue because I was also going to ask a question about it, but I will move on to clause 12(b)(iv), which refers to the bodily remains of a deceased Aboriginal person and remains that are buried in a cemetery where non-Aboriginal persons are also buried. In making this comment, I note the alleged carnage that is occurring at Karrakatta Cemetery at the moment. Will this provision potentially impact on the consideration of the approach that is taken by the Metropolitan Cemeteries Board in any of the matters that are currently underway in our inner city?

**Hon STEPHEN DAWSON**: My advisers tell me, no, we do not believe so.

**Hon Dr STEVE THOMAS**: Is that because the definition of "Aboriginal ancestral remains" does not necessarily include a contemporary person? Maybe we could get some clarification on this. I am thinking of an Aboriginal person who is buried in a cemetery under the authority of the Metropolitan Cemeteries Board and where these certain actions are undertaken on a regular basis in the context of our local cemeteries.

**Hon STEPHEN DAWSON**: It could be a contemporary person; it does not have to be historical.

**Hon Dr BRAD PETTITT**: My line of questioning is on the same area. I am trying to understand intangible heritage. Obviously, it is included in clause 12(a), which talks about the tangible and intangible elements, and clause 12(b)(iii), which talks about a cultural landscape or a group of areas. However, in clause 12(b)(i), which talks about a single area that is an Aboriginal place, it refers only to tangible elements. Can the minister explain that to me, please?

**Hon STEPHEN DAWSON**: The honourable member has an amendment at clause 12 on the supplementary notice paper. His proposed change seeks to expand the definition of "Aboriginal place" to include an area within which tangible or intangible elements of Aboriginal cultural heritage are present. The current definition of "Aboriginal place" does not exclude intangible elements; it simply requires the area to contain some tangible elements of Aboriginal cultural heritage. Often, tangible and intangible elements are intrinsically linked. It is unclear what the proposed change is seeking to address. We do not support the proposed amendment because we think that the bill as it exists now takes into consideration what the member is talking about.

**Hon Dr BRAD PETTITT**: I am not wedded to moving the amendment, as long as I understand, but what I do not understand is why "a group of areas" explicitly mentions "tangible or intangible elements" but a single area mentions only "tangible elements".

**Hon STEPHEN DAWSON**: There are protections for cultural landscapes, but they do not have the harm provisions. The harm provisions rely on a place or an element of the songline.

**Hon WILSON TUCKER**: Minister, to expand on "intangible" and for my edification, is an intangible element tied to a physical location?

**Hon STEPHEN DAWSON**: I am told for a place, yes; it has to be.

**Hon WILSON TUCKER**: Minister, using the example of a songline, when an area has intangible cultural heritage elements of significance, is there a provision in the bill that will exclude an area around that area? I use the example of a train line built next to a songline; it could potentially erode some of the cultural significance if it is right next to the area with intangible elements of cultural heritage. Is there a provision to exclude areas around an area with tangible and intangible significance, with a buffer zone, if you will?

**Hon STEPHEN DAWSON**: In that example, if the area had high cultural significance, an application could be made to make it a protected area. The protected area would exclude activities from happening in that location. In fact, I think I said in my second reading reply that both houses of Parliament would be required to overturn a protected area—that is, generally, and even in terms of the size of the protected area.

**Hon Dr BRAD PETTITT**: I have been mulling over this one and trying to get my head around it, because I do not want to move amendments without having made the point. I am still not feeling comfortable, based on some of the advice and conversations that I have had with stakeholders that "intangible" is not included in that part of clause 12 at page 21, line 15. On the supplementary notice paper, I have given notice that I will move an amendment. I will do that. I will not bother going into a division or anything, but, for the record, I would like to move the amendment based on some of the feedback I have received, because some concerns remain amongst key stakeholders and those who are experts in this space that if the provision relating to "an area" does not contain "intangible elements", some of those areas will have a lower level of protection. Therefore, I move —

Page 21, line 15 — To insert after "tangible" —

or intangible

**Hon STEPHEN DAWSON**: I have previously spoken on this issue. The government does not support this amendment because it believes the bill has captured this issue.

**Amendment put and negatived.**

**Clause put and passed.**

**Clause 13 put and passed.**

**Clause 14: Act binds Crown —**

**Hon NEIL THOMSON**: I understand that this clause was added after further consultation on the 2020 bill. Is that correct?

**Hon STEPHEN DAWSON**: It was amended to remove a provision that the Crown could not be prosecuted.

**Hon NEIL THOMSON**: This is a significant provision that is worthy of further discussion. I am concerned about the mechanics of this for members of the public sector, including accountable officers, particularly those in Main Roads Western Australia, because the bill contains fairly severe penalties for breaches of the law when it comes into effect. My first question is: to what extent has the government consulted with senior members of the public service, particularly those who are likely to be held accountable? In view of the time, can the minister explain which officers may be exposed under this clause or whether it will ultimately be the responsibility of the minister of the Crown?

**Hon STEPHEN DAWSON**: I make the point, first of all, that the 1972 act does not bind the Crown. This clause was included after strong feedback from Aboriginal organisations. The proposed act will bind the state and the Crown and provide that the state, including its various governmental, commercial and industrial instrumentalities, will be required to comply with the proposed act and will not be immune from prosecution.

Main Roads, as the biggest user of section 18 applications at the moment, was certainly involved in conversations and consultation on the clause before us, and, generally, as part of the cabinet process, government agencies and ministers' offices were consulted. It is the strong view of government that its agencies need to be held to account for what they undertake, particularly when it will potentially impact Aboriginal cultural heritage.

**Hon NEIL THOMSON**: The practicalities of this are important, so I will put a hypothetical situation in which there is a breach and a prosecution and a mid-tier manager is seen to be at fault. Who would potentially be subject to the sanctions proposed under this clause?

**Hon STEPHEN DAWSON**: It would be a matter for the prosecuting authority to determine whom it would prosecute. The proposed act provides that prosecution under the act may be commenced by the chief executive officer of the department responsible for the administration of the act, or a person authorised by the CEO, as well as anyone who is otherwise authorised to commence and conduct the prosecution of an offence—for example, the Office of the Director of Public Prosecutions. It will be open to those undertaking the prosecution as to who might be prosecuted. I make the point that many other acts have similar provisions that bind the Crown. For example, I am told that the Public Health Act of whenever it was—probably 1902 or something; a long time ago—is one act that has such a provision.

**Hon NEIL THOMSON**: That is useful. I think it is worthy of a bit more consideration. Hypothetically, a manager who might be seen to be the major mover of the problem for which the prosecution has been levelled could be the one facing court.

**Hon STEPHEN DAWSON**: Any agency would undertake a due diligence process. Did the action taken by whomever concur with the legislation—with the law of the land? Should it not, obviously, steps would be taken to prosecute the action that was taken.

**Hon NEIL THOMSON**: Could there be a circumstance in which a minister of the Crown might be prosecuted for the actions of his or her agency?

**Hon STEPHEN DAWSON**: I was saying that it would be unlikely, but my advisers tell me that it would be possible. I make the point that it is the Public Health Act 2016, so it is more contemporary than I had first imagined.

**Hon NEIL THOMSON**: I am not familiar with the Public Health Act and the sanctions that it might apply. We are having a hypothetical discussion, but I think it is important given the sanctions that potentially could apply for a range of harms. It would seem that agents of the state—delegates of an accountable officer or possibly as high as a minister of the Crown—might find themselves in prison for activities that occur that relate to this law.

**Hon STEPHEN DAWSON**: I think it is fair to say that anybody who breaks the law could be prosecuted for breaking that law. I will just make a further point: this clause replicates a similar provision in the Heritage Act 2018. It is included in other contemporary legislation.

**Clause put and passed.**

**Clause 15: Act does not apply to certain objects —**

**Hon TJORN SIBMA**: I just have a quick one. The exclusion clause that appears to permit objects currently made and preserved by the Western Australian Museum is well understood. However, will this bill provide that the Museum and, presumably, although they are not referred to in this clause, the universities to continue to acquire such objects for that purpose?

**Hon STEPHEN DAWSON**: I am told that this will apply only to current collections.

**Hon TJORN SIBMA**: Is there some instrument or forward-looking provision that will permit collections to continue? I am interested to know. I do not necessarily think that this bill will prohibit collections of the style and import that the Museum currently has, but what arrangements will the Museum operate under if it wants to continue to preserve and showcase heritage items?

**Hon STEPHEN DAWSON**: This exemption has been added to ensure that the proposed act does not impact the management of cultural material held by the Western Australian Museum, including the repatriation of such material. Honourable member, I am not sure under which act that it can already collect this material and display it, but, certainly, it will be able to continue to display and collect material under the bill that is before us. There are provisions later on in the bill, though, that suggest that should a traditional owner call for the repatriation of something in the collection of the Museum, that material would have to be reported.

**Clause put and passed.**

**Clause 16: Native title rights and interests —**

**Hon NEIL THOMSON**: I see that in the "Native title rights and interests" clause, the bill claims —

> (2) This Act is not intended to affect native title rights and interests …
>
> (3) This Act must be interpreted in a way that does not prejudice native title rights and interests to the extent that those rights and interests are recognised and protected by the Native Title Act.

I think this is a good clause. I think it is important. I note, however, that throughout the bill there are quite a lot of references of other roles—for example, the definition of knowledge holders and those people who might have a role in traditional understandings about, or interests in, the cultural heritage space, and there is this hierarchy given later on. To what extent is the minister confident that this provision will not impact on native title rights and interests?

**Hon STEPHEN DAWSON**: I am told that my advisers are very confident, honourable member. In a contribution last week, somebody spoke about legal minds outside of Parliament and how good they were. Can I say that I am very confident in the legal minds who have been advising me over the past few weeks, and indeed months, on this legislation. I have the best of the best, and they tell me that we are confident.

**Clause put and passed.**

**Clause 17 put and passed.**

**Clause 18: *Freedom of Information Act 1992* does not apply to culturally sensitive information —**

**Hon NEIL THOMSON**: The clause is titled "Freedom of Information … does not apply to culturally sensitive information". I think this clause might have been amended from an earlier version of the bill. Is there a pre-existing requirement for the Aboriginal Cultural Heritage Directory to identify whether something is culturally sensitive information? In a case in which a freedom of information request is made, will it be possible for the material in that directory to be determined to be culturally sensitive in any way? Would this clause provide a requirement for the material to be listed as "culturally sensitive" prior to inclusion on the directory, which would determine the outcome of whether this clause applies?

**Hon STEPHEN DAWSON**: I am told that the department would clarify with the traditional owners about whether a piece of material was culturally sensitive before it would disclose anything under FOI.

**Hon NEIL THOMSON**: From what the minister is saying, could it be the case that when material is on the Aboriginal Cultural Heritage Directory and a freedom of information request is put forward, it is then determined at that point in time to be culturally sensitive?

**Hon STEPHEN DAWSON**: The culturally sensitive nature of the material would be disclosed on the directory, but a decision would be made on whether it could be provided to a third party, for example. If it were deemed to be culturally sensitive, that information would not be provided through FOI.

**Hon NEIL THOMSON**: I think this goes to the heart of providing certainty for proponents, particularly when there is, unfortunately—we know that this is always going to be a sad possibility—some conflict with a local Aboriginal cultural heritage service or the Aboriginal Cultural Heritage Council. I think the issue is whether there will be some flexibility, and that will take away some of the clarity and certainty that this bill purports to achieve. My point is that I think it would be beneficial if material that is registered on that directory were to be identified as culturally sensitive or not prior to any dispute arising, if the minister understands what I am asking.

**Hon STEPHEN DAWSON**: The directory has yet to be designed—it will be designed as part of the process—but, for example, under the existing regime, we are aware of culturally sensitive areas. The intention is to transfer those across. When someone discloses a new site to us, I am told there will be a box to tick, essentially, to indicate to the state whether a site is culturally sensitive, and that will be acknowledged on the directory, so that material would not be disclosed through FOI.

**Hon NEIL THOMSON**: I restate: obviously, it is important that culturally sensitive material is protected, but there is more to this issue. I hope that in the design of this registry, maybe through the regulations, there will be some discipline in culturally sensitive areas being identified up-front as far as possible.

The other matter related to this is on the gathering of information, if the minister could just stretch the boundary a little on this clause. Would this clause affect material that a court or third party may seek to subpoena as part of a court proceeding? Would that be bound up in this? I cannot find any provision in the bill relating to court subpoenas for particular information.

**Hon STEPHEN DAWSON**: I am told that it is a possibility, based on the subpoena. It is a possibility.

**Hon NEIL THOMSON**: It is possible that it may not be provided?

**Hon Stephen Dawson**: No, it is possible that it may be provided.

**Clause put and passed.**

**Clauses 19 to 23 put and passed.**

**Clause 24: Delegation by ACH Council —**

**Hon NEIL THOMSON**: I seek clarification on the delegation by the Aboriginal Cultural Heritage Council. It is a fairly technical provision, as many of these are. I understand that this provision is required to give effect to the functions of those local Aboriginal cultural heritage services. Is that correct?

**Hon STEPHEN DAWSON**: This is about just the Aboriginal Cultural Heritage Council and its powers to delegate.

Honourable member, I have just received some further advice about our last interaction. I have been advised to bring the member's attention to clause 216, which provides that information on the directory that contains culturally sensitive information must not be made available unless knowledge holders have given explicit consent. That is in addition to the earlier comment, and I have answered the one about this issue.

**Clause put and passed.**

**Clauses 25 and 26 put and passed.**

**Clause 27: Minister may give directions —**

**Hon NEIL THOMSON**: Clause 27(1) states —

> The Minister may give a written direction to the ACH Council in respect of the performance of its functions, and the Council must give effect to the direction.

That is pretty clear; the minister does have that power. Subclause (2) states —

> However, a direction under subsection (1) cannot be given in respect of the performance of a function in relation to any of the following —

A number of elements follow. My interest is drawn to paragraph (c), which states —

> a particular application for an ACH permit or for the approval or authorisation of an ACH management plan;

I have a number of concerns about that because it refers to performance. I discussed issues around performance management. I think the success of this regime will be determined by those elements that relate to small to medium enterprises and small landowners, which I indicated in my contribution to the second reading debate were of particular importance. My concern is the performance of those bodies and the exemption; that is, "cannot be given in respect of the performance of a function" in relation to "a particular application for an ACH permit". From my reading of this, it could be a major shortcoming if it impacts on the management of the permit system. Can the minister provide some background on that? How will it restrict the minister's management of the performance of the local Aboriginal cultural heritage services, which might have a very pivotal role in the specific applications for some very minor works in the future?

**Hon STEPHEN DAWSON**: I can give the member an example. If the ACH council has not made its decision within the required time frame, the minister can direct the council to make the decision forthwith, essentially. The prescribed time frames are in various sections of the legislation, but if they fail to meet them, I can direct them to do that. The minister can also give directions on the performance of other Aboriginal Cultural Heritage Council functions under the proposed act. This may include promoting public awareness, understanding and appreciation of Aboriginal cultural heritage and promoting the role of Aboriginal people and the recognition, protection and preservation of Aboriginal cultural heritage and the management of activities that may harm their heritage. The minister can also direct the Aboriginal Cultural Heritage Council to provide advice about the recognition, protection, preservation and management of Aboriginal cultural heritage and any other matters relating to the exercise of the powers of the Minister for Aboriginal Affairs under the proposed act. I bring to the member's attention clause 27(4), which states —

> The Minister must cause a direction given under subsection (1) to be laid before each House of Parliament, or dealt with under section 308, within 14 days after the direction is given.

Should the minister choose to issue a direction, although there is a level of transparency around that, it will need to be brought before Parliament.

**Hon NEIL THOMSON**: It does not give me a lot of comfort and we will address this more at later clauses, but one of the major shortcomings, potentially, of this legislation when it is enacted will be the accountability of those local Aboriginal cultural heritage services working on behalf of the Aboriginal Cultural Heritage Council to provide timely and efficient processes for what could be quite minor activities. That has always been my major concern with this legislation. Why is there an exemption in clause 27(2)? The minister knows how difficult it is to run an approvals process; we see government do quite a bad job of that, generally. As a former Minister for Environment, I am sure the minister understands that issue and the concerns raised by members of the public when there is a lack of clarity on their approvals. Will clause 27(2) in any way limit the minister from ensuring that the permit system operates efficiently?

**Hon STEPHEN DAWSON**: No.

**Hon WILSON TUCKER**: My question is on clause 27(1), which states —

> The Minister may give a written direction to the ACH Council in respect of the performance of its functions …

How will the council's performance be measured?

**Hon STEPHEN DAWSON**: I gave an example, honourable member. There will be required time frames under the act that will need to be met. For example, if the Aboriginal Cultural Heritage Council does not meet a time frame, the minister could issue a direction to say, "Make a decision quickly." If the council does not meet the elements established under the act—the things that it needs to do under the act—it is possible that the minister could decide that it is being tardy, or whatever, and could issue a direction. But as I have also said, should a minister issue a direction, clause 27(4) sets out the process that needs to happen to make sure there is a level of transparency around this process. This clause is, generally, to ensure the council can act impartially, but provisions are built in so that if the council does not do the work it was established to do, a minister could issue a direction, but there will be transparency around that.

**Hon WILSON TUCKER**: The minister mentioned a time frame. Is that a time frame to make a decision on an Aboriginal cultural heritage action plan?

**Hon STEPHEN DAWSON**: Yes, there will be a time frame around cultural heritage management plans. There are prescribed time frames set out in clauses 119(5) and 126(5) and 150(5), but the time frames will be in the regulations. We want to consult with the various parties as part of the regulation process to work out the appropriate time frames. When that is decided in the regulations, the act will provide the power to intervene if need be.

**Hon WILSON TUCKER**: Other than the time frames that will be set out in the regulations, will the council be measured against any other key performance indicators?

**Hon STEPHEN DAWSON**: They will not be KPIs as such, but clause 22 establishes the functions of the ACH council—what the council needs to do, whether it makes recommendations, provides advice et cetera. It will also produce an annual report. Were the council to not undertake those functions as set out in clause 22, it might be frowned upon.

**Clause put and passed.**

**Clause 28 put and passed.**

**Clause 29: Annual report of ACH Council —**

**Hon NEIL THOMSON**: I note that the ACH council will be required to produce an annual report. That is important, but I come back to the issue of accountability. Will the annual report be subject to investigation by the Auditor General just like all public sector annual reports are?

**Hon STEPHEN DAWSON**: Yes, it will be.

**Hon NEIL THOMSON**: The Financial Management Act is mentioned —

> … section 61 by the accountable authority of the Department

I assume that the department in this case will be the Department of Planning, Lands and Heritage?

**Hon STEPHEN DAWSON**: Yes; you are correct, honourable member.

**Hon NEIL THOMSON**: Will the annual report include a report on the performance of local Aboriginal cultural heritage services?

**Hon STEPHEN DAWSON**: No; it will simply be the council's annual report. It is arguable, though, that if the council has an issue with a LACH service, for example, or wants to suspend a LACH service, which could happen if it does not undertake the required work and there are issues, the council will mention such a thing in the annual report.

**Hon NEIL THOMSON**: I seek the minister's leave here to ask a question about the Aboriginal Cultural Heritage Amendment Bill 2021. I prefer not to go into Committee of the Whole on that bill, so I ask the minister whether he will indulge me to ask a couple of questions here.

**Hon Stephen Dawson**: I certainly shall.

**Hon NEIL THOMSON**: We will be able to get it out of the way; that is excellent.

I note a taxation power will be implemented through the Aboriginal Cultural Heritage Amendment Bill and that local Aboriginal cultural heritage services will have significant revenue raising powers. It is my understanding from what I have read that those bodies will not be subject to the Financial Administration Act.

**Hon STEPHEN DAWSON**: The taxation power is about the government having the ability to impose a tax or charge a fee. I make the point that organisations are doing this work under the current act. Organisations involved in section 18s, for example, or working with mining companies, ordinarily charge fees under the Aboriginal Heritage Act. They charge heritage fees of varying orders.

Under this legislation, the intention is that LACH services undertaking that work will be able to charge a fee. What that fee will look like will need to be signed off by the Aboriginal Cultural Heritage Council. That work will have to be done as part of the co-design process. But LACH services will not be captured by the Financial Management Act; no.

**Hon NEIL THOMSON**: The issue of accountability obviously has caught up with the ACH council. It is great that it will be in the system and be required to report. I think that there will be major issues with regard to performance. I think the equivalency that the minister refers to regarding organisations providing advice on section 18s is probably not correct. I suggest that that equivalency will not exist because a LACH service will be able to provide permits, just like any other statutory body. This provision in clause 29 will allow for inquiry, investigation and assessment by auditors at the Auditor General's office. I see that somewhere else there is a provision in relation to the Public Sector Management Act. I think the Aboriginal Cultural Heritage Council will be subject to that act, and maybe the minister can clarify that. It depends how far he wants to go on this clause.

For the sake of trying to resolve the questions, it would be helpful if the minister could provide background on why the local Aboriginal cultural heritage services seem to be escaping some scrutiny. Perhaps he could provide a little more assessment.

**Hon STEPHEN DAWSON**: The LACHS—I am trying to think of the word the member said—will be scrutinised. The LACHS will be responsible to the Aboriginal Cultural Heritage Council. I mentioned the council fees and I disagree with the member about section 18 and the current fees and similarities with the legislation before us now. These external organisations are currently able to charge fees, and they do. In relation to the new scheme, LACHS will be responsible to the cultural heritage council, so if at any stage the council decides that a LACH service is not undertaking what it is supposed to be undertaking, its rights can be removed.

**Clause put and passed.**

**Clause 30: Committees —**

**Hon NEIL THOMSON**: The ACH council may establish committees. Will there be any restrictions on the ACH council with regard to those committees and will those committees be able to avail themselves of the normal fees and charges that would be applied and the normal accountabilities that would be required of any statutory committee of government?

**Hon STEPHEN DAWSON**: Is the honourable member asking whether the committee of the council will be able to get a sitting fee?

**Hon Neil Thomson**: Yes, it is one of the suggestions.

**Hon STEPHEN DAWSON**: That is in clause 32, which states —

> A member of the ACH Council, or of a committee, is entitled to be paid the remuneration and allowances determined by the Minister on the recommendation of the Public Sector Commissioner unless the member is a public service officer.

That is just general standard stuff.

**Hon NEIL THOMSON**: Yes; the minister is right to point out those two clauses, clauses 30 and 32. Basically, my question is: will the ACH council be completely unencumbered in relation to the establishment of the committees? Is that correct?

**Hon Stephen Dawson**: Can you ask that again?

**Hon NEIL THOMSON**: Will the ACH council be completely unencumbered and not require the approval of the minister to establish a committee, which, from what I can gather, will effectively be a statutory committee of the ACH council?

**Hon STEPHEN DAWSON**: Yes, the ACH council can establish a committee without the minister signing off on it. For example, the council might decide to appoint a committee that has on it local knowledge holders about a particular area for a particular project—for example, there might be something in the East Kimberley—noting of course that the council is an overarching high-level kind of thing. The council might think that it needs some local knowledge on a particular project; and, if that were the case, it could establish a committee. As I have indicated, people could be paid for being on that committee. The committee will be required to keep minutes of meetings to the standard approved by the ACH council, and it must provide the ACH council with a copy of such minutes. It needs to be accountable to the council.

**Hon NEIL THOMSON**: Are there any comparable councils that have the ability to establish potentially an indefinite number of committees in order to undertake their function?

**Hon STEPHEN DAWSON**: I give the example of the Heritage Act, honourable member. This can be done under the Heritage Act.

**Clause put and passed.**

**Clause 31: Procedures —**

**Hon NEIL THOMSON**: This clause refers to "subject to the regulations". I hope the regulations will provide a degree of clarity around this. The procedures of the Aboriginal Cultural Heritage Council will be vital to the assessment—if we go back to the annual report—of those matters. I note for the record the need for the regulations to outline the required procedures, given that those procedures might have some impact on the approvals process, particularly if there was any kind of breach or complaint from a proponent or another person, even an Aboriginal person or party within a particular region. Will the procedures be comprehensive and subject to assessment by the Auditor General, and will they be able to be utilised in the assessment of any legal challenges that might be made to any approvals that are granted?

**Hon STEPHEN DAWSON**: This relates to procedures around when the Aboriginal Cultural Heritage Council should hold meetings, for example. In terms of design, the clause will enable the council to determine its own procedures, but that will be subject to any relevant regulations under the proposed act. As the member is aware, the regulations will be co-designed, so those conversations will be had post the passage of the bill. In terms of the Auditor General, the decisions and minutes of the council will be transparent. Because it will be a government committee, the Auditor General could potentially look into it. As we have said previously, it will be captured by the Financial Management Act 2006. It will have around it all those levels of not only transparency, but also accountability. It will be the same as under the Heritage Act.

**Hon NEIL THOMSON**: This may highlight the gap. I am putting that to the minister as a question. The bit that I do not see in this bill is the ability for the ACH council to develop policies or quasi-regulations. The functions that will be performed under this bill are probably more akin to the functions of the Western Australian Planning Commission, for example, which has innumerable state planning policies that provide significant guidance to State Administrative Tribunal appeals, court cases and consideration by local governments. I wonder whether there is a gap here, given the role of the ACH council, or will someone else do that?

**Hon STEPHEN DAWSON**: I am told that there are a number of places in the bill that provide a power to deal with policies. Part 13 of the bill, division 3, subdivision 1, "Regulations", allow for regulations to be made about the ACH council. That includes nomination, appointment, committees of the council, management of conflicts of interest, meetings and procedures. It provides also that regulations can be made about LACH services, including about reports to be provided by a LACH service about a range of things. Various places in the bill allow for regulations to be made to deal with the issue the member has raised.

**Clause put and passed.**

**Clauses 32 and 33 put and passed.**

**Clause 34: Purpose of local ACH service —**

**Hon NEIL THOMSON**: Clause 34 is a vital part on which this bill's success will pivot. Notwithstanding the concerns that have been presented by land councils and others across the state about some of the more challenging aspects of the minister's powers, for example of the final say and veto, this is more about the mechanics of those operating at the bottom end of the market. I have no doubt that the local Aboriginal cultural heritage services will be involved in some of the very big decisions, but one of the challenges the opposition has is the fact that this bill has been vetted quite widely with the mining sector. We have seen the tension that has caused, including the presentations and representations made by a range of sources on previous clauses. The mechanics of the local Aboriginal cultural heritage services are going to be vital for the success of the bill. I know how hard it is to efficiently operate an approvals process. The clause reads —

> **Purpose of local ACH service**
>
> A person designated as a local ACH service for an area of the State —

Later, I will raise the issue of the composition of these services when we get to this person —

> (a) must, as far as practicable, provide local ACH service functions for that area; and

That is straightforward, but the fees are an issue of great concern. The definition of the fee structure will be vital to make this work. Does the government anticipate that the fee structure will be based on hourly rates or on task-based outcomes?

**Hon STEPHEN DAWSON**: No decision has been made on that. The commitment is to co-design the fee structure as part of the co-design process. As I indicated earlier, fees are charged by organisations at the moment under the existing legislation. Fees differ in some cases as organisations in the Pilbara, for example, might charge more than organisations in the Kimberley. We need to sit down and co-design it to work out what will work for everybody. I refute the member's earlier allegation when he said something along the lines that the mining sector was heavily consulted on this bill. That is not the case. The mining sector was not heavily consulted in the absence of consultation with everybody else. Everybody has had a chance to be consulted on this. A range of stakeholders, including some

in the mining sector, are not happy with elements of the bill before us and we are seeking to make amendments. There are people out there on all sides who do not like this legislation. On the member's particular question, the fees will be worked out as part of the co-design process.

**Hon Dr BRAD PETTITT**: Following on from the question about local Aboriginal cultural heritage services and their funding, the government said that funding will be provided for their establishment and capacity building. Will ongoing costs be solely based on cost recovery? How will they be funded?

**Hon STEPHEN DAWSON**: No; a decision has not been made about that. There is $10 million in the budget for establishment costs and a capability amount to get them up and running. There is capacity to charge a fee under the bill, but in relation to how we might fund LACHS moving forward, a decision has not been made. I am told that clause 51 refers to the funding of local ACH services. There is a conversation to be had across government because it is fair to say that there may well be regions of the state that require more work to be done by LACHS than other regions of the state. What is needed capacity wise for a LACH service in the Pilbara, say, where there are lots of projects underway or ongoing might be different from one in the wheatbelt, for example. Those conversations have to be had as part of the co-design process.

**Hon Dr BRAD PETTITT**: Does the minister have a sense of many LACHS there will be in the state?

**Hon STEPHEN DAWSON**: No, we do not, honourable member; it will be opt-in. I am told that there are about 80 prescribed bodies corporate around the state. It could potentially be up to that number but it is opt-in and it will be staggered. We will roll them out in particular regions before we roll them out in other areas.

**Hon NEIL THOMSON**: That is right; there are about 80 PBCs. We also note that LACHS can apply to individuals and part of a PBC area if that is the wishes of a PBC or the next highest group on the hierarchy, such as a claimant group or others. There is the potential, theoretically at least, for the number of LACHS to be more than 80, but it is probably likely to be fewer than 80. This is the minister's bill; it will be his law across Western Australia. Activities in the tier 1 and 2 categories, particularly those in the tier 2 category, will be impacted in ways that they have never been impacted before, notwithstanding the minister's comments about the application of the Aboriginal Heritage Act 1972. The requirement for people to make an application for activities has never been codified in this way. There will be a requirement to make application for activities that in the past did not have such a requirement. They are likely to have a minimal impact.

Given the nature of the minister's comments about not knowing yet whether it will be cost recovery, I implore the minister to ensure that the LACHS are adequately funded, particularly those that are not reliant on the large revenues that come out of our resources sector. We could end up with 24, potentially, in the Kimberley. In some parts of the Kimberley there is so little activity but a proponent for a tier 1 or 2 activity will be required to seek a permit and then pay and have it as cost recovery in order to provide support. I implore the minister to make sure that the fee set for low-level activities is reasonable, proportionate and to a large extent fixed, because if it is based on some sort of hourly rate, it will potentially be hugely problematic for the most basic activities in our economy. I implore the minister to please make sure that there is as much certainty for the smaller parts of our economy. Will the minister endeavour to protect the smaller parts of our economy—smaller businesses and landholders—in the development of regulations and fees?

**Hon STEPHEN DAWSON**: Honourable member, this legislation has to work for every stakeholder in the state, so my intention is to make sure, as part of the co-design process, that each of the small stakeholders and small industries that the member has spoken about are consulted. Fees have to work for everyone. In relation to me knowing that this is my bill, I am well aware of that, honourable member; it has kept me awake for most of the last eight months, and I anticipate it will continue to keep me awake for the foreseeable future. We need to make this work, and it has to work for all Western Australians. It has to work around the state. That is why there is a commitment to the co-design process—to make sure we are aware of all the issues, who it needs to work for, and to make it work.

**Clause put and passed.**

**Clause 35: Nature of local ACH service —**

**Hon NEIL THOMSON**: Clause 35(1) states —

> A person designated as a local ACH service is not an organisation for the purposes of the *Public Sector Management Act 1994*.

This could be an individual, an organisation or a whole range of things. My concern is about the lack of accountability. What accountability mechanisms will be applied to these local Aboriginal cultural heritage services?

**Hon STEPHEN DAWSON**: The ACH council will have oversight of the LACHS. It will set the guidelines and be responsible for, I guess, overseeing the LACHS. There is that level of accountability and transparency there to ensure that the system works.

**Committee interrupted, pursuant to standing orders.**

[Continued on page 6354.]

## QUESTIONS WITHOUT NOTICE

### SUMMER JOBS CAMPAIGN — BUSSELTON–MARGARET RIVER

**1159. Hon Dr STEVE THOMAS to the Minister for Regional Development:**

My apologies for the length of this question. I refer to the minister's statement of 10 November 2021 headed "New campaign to help address hospitality worker shortage in Busselton–Margaret River region".

(1) As at 14 December, how many Busselton–Margaret River hospitality businesses have registered or signed up to the "ctrl your summer job" campaign, geared to encourage 14 to 17-year-olds to take up summer jobs in the region?

(2) How many 14 to 17-year-olds have been successfully placed in businesses under the "ctrl your summer job" campaign in Busselton–Margaret River?

(3) How is the success or failure of this campaign determined, and what are the predetermined criteria for the campaign?

(4) Which government entity has oversight of the campaign, and what feedback mechanisms has the government afforded to business operators to comment on the campaign?

(5) With south west businesses labelling the "ctrl your summer job" campaign as an absolute joke in the *Bunbury Herald*, will the minister acknowledge and apologise for the McGowan government's abject failure to acknowledge and address ongoing critical labour shortages, not only in the south west but also statewide?

**The PRESIDENT**: Before I give the minister the call, I would like to suggest to the Leader of the Opposition that he have regard to standing order 105. I will not rule the question out on this occasion, but I indicate that it is a very long question.

**Hon ALANNAH MacTIERNAN replied:**

(1)–(5) I say that the member should apologise not only for the length of the question, but also for the stupidity of the question. We all understand that we are in a global pandemic and we have closed borders. The population of Western Australia strongly supports that. What have our people been trying to do? They are going out there and finding every possible source of labour, including the 2 000 Pacific Islanders we brought in. We decided, "Let's see whether we can do something to get school leavers and kids on school holidays engaged in the hospitality industry." We are giving it a go; we are having a crack. No-one has pretended that this is a total solution. It is about doing every possible thing that we can to find labour to help.

We put out this program, and I commend the South West Development Commission for taking the initiative. We have had 79 businesses sign up. I love it when the Leader of the Opposition asks questions because he can never bear to listen to the answer. Those businesses that signed up include the gentleman from Peko Peko who was quoted in that article. Seventy-three jobseekers have registered and, in total, they have applied for 123 positions. So far, only three of those young people have been employed. The rest are waiting for the employers to contact them and to see whether we can make a match. We do not apologise in any way, shape or form for taking the initiative to try to find any possible pool of labour. As the Leader of the Opposition might know—he is probably not aware—school holidays have just started, although not for all of them. We are hoping that the employers will contact those 79 young people who have registered for work.

**Hon Dr Steve Thomas** interjected.

**The PRESIDENT**: Order! Thank you for your answer, minister. Because I gave the Leader of the Opposition a free kick on the concise nature of his question, I also gave you a free kick in relation to standing order 106, this time.

### CORONAVIRUS — INTERSTATE BORDER RESTRICTIONS — TRANSITION PLAN

**1160. Hon Dr STEVE THOMAS to the minister representing the Minister for Health:**

I refer to the McGowan government's announcement yesterday that WA would proceed with a safe transition plan to safely ease its hard border control in line with the 90 per cent vaccination rate from 12.01 am on Saturday, 5 February 2022.

(1) Is this date unequivocally set in concrete and will the border controls be eased, regardless of whether the 90 per cent vaccination rate is met?

(2) If an individual is diagnosed with COVID-19 and is required to quarantine at home, will all family members or close contacts, regardless of whether they are double vaccinated, also be required to quarantine?

(3) If a business is identified as a hot spot for a COVID-19 outbreak, will the business be forced to close or will it continue to operate if the staff are double vaccinated?

(4) Will individuals or businesses that are forced to quarantine or close due to medical advice be offered compensation from the government if their livelihoods are impacted because of that direction?

**The PRESIDENT**: Okay, so we are on long questions today.

**Hon MATTHEW SWINBOURN replied:**

On behalf of the Minister for Mental Health, I thank the honourable member for some notice of the question. I provide the following response based on the information provided by the Minister for Health.

(1) The date of 5 February has been selected based on health advice and the expectation that the state will have achieved a full vaccination rate of 90 per cent for persons aged 12 years and over. That date will not be amended based on the achieved vaccination rate.

(2) The principles established by Communicable Diseases Network Australia's series of national guidelines will be followed.

(3) Businesses and premises will not be forced to close by default. Each exposure site will continue to be risk assessed according to the extent and duration of the exposure.

(4) The McGowan government has provided over $9 billion in COVID-19 response measures to ensure that our frontline services are well resourced to respond to the pandemic, support businesses and households and boost our economic recovery. Services Australia's pandemic leave disaster payment is available for individuals who cannot earn an income because they must self-isolate, quarantine or care for someone who has COVID-19. The best way to protect individuals and businesses is to get vaccinated.

GOVERNMENT REGIONAL OFFICERS' HOUSING — SECURITY

**1161. Hon COLIN de GRUSSA to the Minister for Education and Training:**

I refer to the provision of housing to teachers in remote regional locations, such as Fitzroy Crossing.

(1) Is the minister aware of any issues with the level of protective security installed in housing provided to teachers located in Fitzroy Crossing?

(2) Are the standards of security provided to teachers commensurate with those provided to other public sector workers located in Fitzroy Crossing?

(3) If no to (2), can the minister please explain why?

(4) Will the minister commit to investigating whether the current security standards need updating and further security upgrades are needed across the Department of Education's Government Regional Officers' Housing network?

**Hon SUE ELLERY replied:**

I thank the honourable member for some notice of the question.

This question was lodged on 8 December so I am going to give the honourable member the answer as at 8 December, but perhaps I will catch up with the member behind the chair to talk about what has happened since then.

(1)–(4) Government Regional Officers' Housing properties comply with the minimum security provisions set out in regulation 12B of the Residential Tenancies Regulations 1989. GROH properties that are leased from private landlords are audited prior to occupation to ensure minimum security provisions are met. If a GROH leased property does not meet the minimum security provisions, the decision to accept the leased property sits with the client agency, or an alternative property is sought. Individual client agencies may also provide additional security provisions for their employees. I am advised that the Department of Education has made one request for additional security at a GROH property in Fitzroy Crossing. All associated costs will be met by the Department of Education.

BEACH ENCLOSURES

**1162. Hon TJORN SIBMA to the parliamentary secretary representing the Minister for Fisheries:**

(1) What level of funding has the state government provided to support the installation of the following beach enclosures —

(a) Old Dunsborough Beach;

(b) Busselton Beach;

(c) Middleton Beach;

(d) Quinns Beach; and

(e) James Street groyne?

(2) Does state government support extend to funding in whole or in part the maintenance costs for preserving the above enclosures?

**Hon KYLE McGINN replied:**

I thank the member for some notice of the question. The following answer has been provided by the Minister for Fisheries.

(1) The state government has provided capital funding for the purchase of the following beach enclosures —

(a) Old Dunsborough Beach, $165 370;

(b) Busselton Beach, $200 000;

(c) Middleton Beach, $200 000 for the initial barrier and $200 000 for a replacement barrier;

(d) Quinns Beach, $200 000; and

(e) James Street groyne, $400 000.

(2) No. The relevant local government authority owns the infrastructure and is responsible for any maintenance.

PREGNANCY AND INFANT LOSS REMEMBRANCE DAY — HARVEY HOUSE AND MEMORIAL GARDEN

**1163. Hon DONNA FARAGHER to the minister representing the Minister for Health:**

I refer to the answer given to question without notice 742 asked on 16 September 2021 regarding the memorial garden at King Edward Memorial Hospital for Women, which confirmed that it remained the government's intention to subdivide the site.

(1) What is the current status of the proposed subdivision—not the proposed licence agreement—of the land on which the memorial garden sits from the King Edward Memorial Hospital site?

(2) Which government agencies are involved in the subdivision process?

(3) What is the government's current time frame for the completion of the proposed subdivision of the land area on which the memorial garden sits from the larger hospital site?

**Hon MATTHEW SWINBOURN replied:**

I thank the member for some notice of the question. I provide the following response on behalf of the Minister for Mental Health based on advice provided by the Minister for Health.

(1)–(3) It is anticipated that a subdivision to annex the Memorial Garden and Harvey House areas from the remainder of the King Edward Memorial Hospital for Women site will eventually occur; however, it is unlikely that this process will commence until after the Women and Newborn Health Service has transitioned off the site, which is likely to take between five and 10 years. The best options for the area being subdivided and the process for doing so have not been investigated in detail at this time. In the first instance, they are in the process of divesting a licence for a not-for-profit group—WA Medical Museum—to manage Harvey House and the rose garden.

BANKSIA HILL DETENTION CENTRE

**1164. Hon PETER COLLIER to the minister representing the Minister for Corrective Services:**

(1) What is the total number accommodated at Banksia Hill Detention Centre of —

(a) males; and

(b) females?

(2) What is the accommodation capacity at Banksia Hill Detention Centre for —

(a) males; and

(b) females?

**Hon ALANNAH MacTIERNAN replied:**

I thank the member for the question. The following information has been provided by the Minister for Corrective Services.

(1) (a) As of midnight on Monday, 13 December, the population was 103 males; and

(b) 11 females.

(2) (a) It is 186; and

(b) 29.

ABORIGINAL CULTURAL HERITAGE BILL 2021 — FACILITATORS

**1165. Hon Dr BRAD PETTITT to the Minister for Aboriginal Affairs:**

I refer to the minister's comment, on 9 December 2021, in Parliament that "Independent facilitators were hired" as part of the Aboriginal Cultural Heritage Bill consultation process.

(1) Can the minister please list all consultants and independent facilitators who were engaged for the consultation process and drafting of the Aboriginal Cultural Heritage Bill?

(2) Have any consultants and independent facilitators already been engaged for the co-design and consultation process for the Aboriginal Cultural Heritage Bill co-design task force and regulations?

(a) If yes to (2), could the minister please list those engaged?

**Hon MATTHEW SWINBOURN replied:**

I thank the member for some notice of the question. I provide the following response on behalf of the Minister for Aboriginal Affairs.

(1) Lee Harper Penman, Graham Castledine, Stuart Bradfield, Noel Morich, Colleen Hayward, Kali Balint, and Robert Reynolds.

(2) No.

(a) Not applicable.

CORONAVIRUS — INTERSTATE BORDER RESTRICTIONS — TRANSITION PLAN

**1166. Hon WILSON TUCKER to the minister representing the Minister for Health:**

I refer to the safe transition plan announced on 13 December.

(1) Is the 5 February transition date contingent on a statewide 90 per cent vaccination rate?

(2) If yes to (1), will the transition date be revised if projections for a 90 per cent vaccination rate change?

(3) What is the currently projected date by which the regions of Pilbara, Kimberley and goldfields will achieve an 80 per cent vaccination rate?

(4) Will lockdowns continue to be a method of COVID control as part of the safe transition plan?

**Hon MATTHEW SWINBOURN replied:**

I thank the member for some notice of the question. I answer on behalf of the Minister for Mental Health and provide the following response based on information provided by the Minister for Health.

(1) No; the WA transition plan will occur regardless on 5 February 2022. However, if Western Australia does not reach 90 per cent double-dose vaccination of eligible persons by 5 February 2022, additional restrictions will be introduced for the unvaccinated.

(2) Not applicable.

(3) Additional restrictions may be required in some at-risk regional communities where current projections suggest higher levels of vaccination may take longer to achieve. These temporary additional health and social measures for impacted regions are to protect the very vulnerable communities until a higher level of vaccination is reached to minimise the risk. These restrictions will be removed or stepped down once the required double-dose vaccination rate is achieved in the region, subject to the specific health advice at the time. I encourage all eligible Western Australians to go and get vaccinated now.

(4) Public health and social measures may be scaled up or down based on updated health advice or rates of hospitalisation.

SUBSTANCES — LEGALITY

**1167. Hon SOPHIA MOERMOND to the Leader of the House representing the Premier:**

My question concerns this government's policy on cannabis. I refer to the Western Australian government and the Western Australia Police Force's handbook titled *Cannabis laws in Western Australia*. The opening paragraph reads —

> Because cannabis is harmful, it is against the law for people in Western Australia to cultivate, possess, use, sell or supply cannabis, or to possess pipes and other smoking implements containing detectable traces of cannabis.

The consensus from this government is that if it is harmful, therefore, it should be illegal—one follows the other, it seems.

(1) Will this government make alcohol illegal—after all, it is very harmful, more harmful than any other drug in society?

(2) Will this government make sugar-based soft drinks illegal? I am sure we are all aware of the harm they do and the amount of harm diabetes does in society.

(3) Will this government make all prescription opioid drugs illegal, as they kill more people than people who die on our roads every year?

**Hon SUE ELLERY replied:**

I thank the honourable member for some notice of the question. It is not in my file but I know the answer. If the member wants to ask a question about the text in a Western Australia Police Force publication, she needs to direct that question to the Minister for Police.

(1)–(3) There are no plans that I am aware of to make any of those substances illegal.

KARRAKATTA CEMETERY — HEADSTONE REMOVAL

**1168. Hon Dr BRIAN WALKER to the Minister for Education and Training:**

I refer the minister to question without notice 1147 dated 9 December, which I asked of her colleague the Minister for Local Government; and, likewise, I refer her to the recent article in *The Post*, entitled "Wrecked war grave saddens Beazley".

(1) Will the minister join me in commending the year 6 students from Freshwater Bay Primary School for what the Governor described as the "absolutely gorgeous" actions they took, placing wooden crosses at the site of his late grandfather's official war grave, the headstone of which was removed and destroyed by the Metropolitan Cemeteries Board as part of their renewal scheme at Karrakatta?

(2) Will the minister also join me in praising the moral fibre and character of these young people, and the staff at Freshwater Bay Primary School who have done a remarkable job to produce outstanding young men and women whose behaviour puts that of their elders, and particularly their elders at the MCB to shame?

**Hon SUE ELLERY replied:**

I thank the member for some notice of this question, but he is seeking an opinion and that is a breach of the standing orders.

*Point of Order*

**Hon Dr BRIAN WALKER**: I was not actually asking for an opinion; I was asking for an action. I was asking the minister to commend them, not for an opinion.

**Hon Sue Ellery**: Go and read the question; you were asking for my opinion. Read standing order 105.

**The PRESIDENT**: Honourable member, I did actually listen to the question quite closely. There is no point of order because the question stated an opinion and therefore is contrary to standing order 105, "Rules for Questions", in which suborder (1)(b) states that questions should not seek or state an opinion. Although I will not rule the question out of order because the Leader of the House did actually answer it, I ask the honourable member to again have regard to the standing orders, and particularly standing order 105.

SCHOOLS — ABORIGINAL STUDENTS — ATTENDANCE

**1169. Hon NEIL THOMSON to the Minister for Education and Training:**

I refer to the recent court case involving Mr Burston, an officer from the Department of Education who works in the Kimberley.

(1) Was the data on school attendance for the Kimberley provided in answer to my parliamentary question of 27 May 2021 accurate and correct; and —

  (a) if not, why not, and will the minister correct the record in Parliament?

(2) Noting the proceedings of the court, why has the department provided the minister with false data on school attendance in the past?

(3) Now that the minister is aware of the practice of incorrect data being provided, will the minister refer the matter to the Ombudsman and the Public Sector Commissioner for independent review?

(4) Has the minister taken any other action on this matter?

**Hon SUE ELLERY replied:**

I thank the honourable member for some notice of the question.

(1) Yes.

  (a) Not applicable.

(2) I do not accept the premise of the question. The data had not been quality assured by the Department of Education's system and school performance directorate.

(3) There is no "practice of incorrect data being provided"; there was an incident. The department is undertaking its own investigation into this matter. I will await the outcome of that process before considering what further action may be required.

(4) Yes, I have spoken to the director general and outlined my expectations.

HOMELESSNESS — DEATHS

**1170. Hon STEVE MARTIN to the parliamentary secretary representing the Minister for Community Services:**

I refer to the ABC article published last week that stated that the minister questioned the data from the University of Western Australia's Home2Health project that found that at least 56 people who have experienced chronic homelessness in Perth have died this year up to the end of October.

(1) Why does the minister doubt the veracity of the figures on the deaths of people who have experienced homelessness?

(2) When did the minister ask WA Health to investigate these figures?

(3) What information has the minister received from WA Health?

(4) Has the minister or her staff taken up the offer to meet with the University of Western Australia's Associate Professor Lisa Wood about the data on homeless deaths made on 5 November?

**Hon KYLE McGINN replied:**

On behalf of the parliamentary secretary representing the Minister for Community Services, I thank the member for some notice of the question. The following information has been provided to me by the Minister for Community Services and is quite lengthy.

(1)–(3) The report authored by the Centre for Social Impact at the University of Western Australia is a broad assessment of how Western Australia is progressing towards ending homelessness. The report recognised the significant resources and effort being made by homelessness services, housing providers and the McGowan government, particularly through the *All paths lead to a home: Western Australia's 10-year strategy on homelessness 2020–2030* and the programs and initiatives flowing from it. I am not aware of the specific methodology behind the Home2Health study being published. Figures relating to the deaths of people experiencing homelessness are estimates only, as mortality rates, life expectancy, causes of death and any death data for people experiencing homelessness are not currently measured in Australia. Following the release of the report, I sought advice from WA Health via the office of the Minister for Health, which advised that there is no robust way to accurately collate information pertaining to homelessness across Department of Health data.

(4) I asked the Department of Communities to meet with Associate Professor Wood to receive a briefing on this research. On 29 November, the department provided a range of options for that meeting; Associate Professor Wood confirmed the meeting on 7 December 2021.

GRAIN STORAGE

**1171. Hon COLIN de GRUSSA to the Minister for Agriculture and Food:**

This question is entirely without notice. Is the minister aware of reports that her parliamentary secretary has been dumping grain in an unused CBH Group open bulkhead without permission, causing major headaches for other growers and CBH; and will the minister commit to looking into this?

**Hon Alannah MacTiernan**: I have no intention of answering that question.

Several members interjected.

**The PRESIDENT**: Order! I am currently seeking advice on the nature of the question, and given that I have not actually given the minister the call to respond to that question, please maintain order while I am seeking advice.

Members, given the relatively complex nature of the question, I undertake to seek further advice about that and report back to the house with a ruling about the nature of the question and whether it is in order before I ask the minister to provide an answer.

ABORIGINAL CULTURAL HERITAGE BILL 2021 — ABORIGINAL INSPECTORS

**1172. Hon TJORN SIBMA to the Minister for Aboriginal Affairs:**

My question is dated 8 December. I refer to the designation and/or appointment of Aboriginal inspectors under part 10 of the Aboriginal Cultural Heritage Bill 2021.

(1) How will these Aboriginal inspectors be appointed and trained?

(2) Which statutory authority will have oversight responsibility for the conduct of Aboriginal inspectors and how will the activities of these inspectors be recorded and reported?

(3) What consultation was undertaken prior to proposing the sweeping powers at clause 234 concerning the power to stop and enter vehicles?

**Hon MATTHEW SWINBOURN replied:**

I thank the member for some notice of the question. I provide the following response on behalf of the Minister for Aboriginal Affairs, who is absent from the chamber on urgent parliamentary business.

(1) The chief executive officer of the Department of Planning, Lands and Heritage will appoint and provide training for the Aboriginal inspectors.

(2) The Department of Planning, Lands and Heritage will have oversight responsibility for Aboriginal inspectors. It is anticipated that Aboriginal members of a local Aboriginal cultural heritage service or Aboriginal rangers may be appointed as Aboriginal inspectors.

(3) Clause 234 was contained in the consultation draft of the bill that has been available to public since September 2020, with a total of 176 submissions received from a wide range of stakeholders, including Aboriginal organisations, industry, government, land users and heritage professionals. The inspection powers, including the power to stop and enter vehicles, are in line with state standards under other statutes, including the Criminal Investigation Act 2006, the Biodiversity Conservation Act 2016 and the Environmental Protection Act 1986.

EARLY YEARS INITIATIVE

**1173. Hon DONNA FARAGHER to the parliamentary secretary representing the Minister for Community Services:**

I refer to the answer provided to question without notice 1143 asked on 9 December 2021 about the Early Years Initiative, which states —

> … Bidyadanga was endorsed on 14 March 2019; Armadale west … on 13 June 2019 …

Can the minister clarify the difference in the information provided in last week's answer and the information given by the minister's parliamentary secretary during the Department of Communities estimates hearing on 18 October 2021, which indicated that Armadale west was endorsed in March 2021 and negotiations with the remaining two communities were currently underway?

**Hon KYLE McGINN replied:**

On behalf of the parliamentary secretary representing the Minister for Community Services, I thank the member for some notice of the question. The following answer has been provided to me by the Minister for Community Services.

In June 2019, Armadale west was endorsed by the Early Years Initiative board as a partner community for the Early Years Initiative. The March 2021 date referred to by the parliamentary secretary during the budget estimates refers to the initiative board endorsement of funding for a community connectors proposal in Armadale west.

Several members interjected.

**The PRESIDENT**: Order!

PRISONERS — REHABILITATION PROGRAMS

**1174. Hon PETER COLLIER to the minister representing the Minister for Corrective Services:**

What rehabilitation programs are available for prisoners during their term of imprisonment and after they have served their sentence in a Western Australian prison?

**Hon ALANNAH MacTIERNAN replied:**

I thank the member for the question. The Minister for Corrective Services has provided the following information.

The Department of Justice's corrective services delivers a suite of evidence-based programs designed to address the criminogenic needs of prisoners during their term of imprisonment based on their treatment assessment needs. The department also offers programs, after they have served their prison sentence, for those offenders who are assessed as requiring additional support whilst on parole. Categories of programs include addiction; cognitive skills; violence, including family and domestic violence; general offending; and sex offending. All rehabilitation programs are available to prisoners according to identified treatment needs, demand and length of sentence, and in situations when no individual barriers to program participation are identified—for example, mental health, language or cognitive disability barriers. After prisoners have served their sentence, the department provides rehabilitation programs through internal staff as well as through non-government organisations under service agreements.

ABORIGINAL CULTURAL HERITAGE BILL 2021 — CONSULTATION

**1175. Hon Dr BRAD PETTITT to the minister representing the Minister for Aboriginal Affairs:**

I refer to question without notice 1036 asked on 30 November 2021. I refer to Minister Dawson's comments in the Legislative Council on 9 December 2021, when he said —

> I am aware of at least one location, Warburton, at which the session was done in language …
>
> …
>
> … I answered the question the way it was asked. Your comments are wrong.

(1) Of the 175 workshops, meetings and information sessions held as part of the consultation process for the Aboriginal Cultural Heritage Bill 2021, were any conducted in First Nations languages?

(2) If yes to (1), which sessions, and in which First Nations languages were they conducted?

(3) Does the Department of Planning, Lands and Heritage plan to conduct any of the co-design and consultation workshops for the regulations of the ACH bill in First Nations languages?

(4) If yes to (3), how many workshops and in which languages?

**Hon MATTHEW SWINBOURN replied:**

I thank the member for some notice of the question. I provide this response on behalf of the Minister for Aboriginal Affairs, who is out of the chamber on urgent parliamentary business.

(1)–(2) Interpreting services were provided in workshops held at Balgo, Warmun and Warburton.

(3)–(4) The Western Australian government is establishing a regulatory task force—the Aboriginal cultural heritage reference group—that will comprise two Aboriginal representatives, one male and one female, and a representative from each of industry and the WA government. The role of the Aboriginal cultural heritage reference group will be to oversee the development of the co-design process to ensure that it is delivered in an inclusive and culturally appropriate manner. It will be up to the group to determine the number and location of workshops and meetings as well as the format in which they will be conducted.

## ABORIGINAL CULTURAL HERITAGE BILL 2021

*Committee*

Resumed from an earlier stage of the sitting. The Deputy Chair of Committees (Hon Steve Martin) in the chair; Hon Stephen Dawson (Minister for Aboriginal Affairs) in charge of the bill.

**Clause 35: Nature of local ACH service —**

Committee was interrupted after the clause had been partly considered.

**Hon NEIL THOMSON**: I have a question about the accountability of the local Aboriginal cultural heritage services. Clause 35(1) states —

> A person designated as a local ACH service is not an organisation for the purposes of the *Public Sector Management Act 1994*.

Will these services be subject to scrutiny by the Ombudsman?

**Hon STEPHEN DAWSON**: No. They will be accountable to the Aboriginal Cultural Heritage Council.

**Hon NEIL THOMSON**: That is concerning, given that the Aboriginal Cultural Heritage Council will not have the same powers of investigation. If a complaint is made about the conduct of a member of a local Aboriginal cultural heritage service about setting a service or a fee, or issuing a permit—noting that it could be a person; it does not have to be an organisation—who would a proponent apply to?

**Hon STEPHEN DAWSON**: The proponent would complain to the Aboriginal Cultural Heritage Council. The member touched on a fee. As I previously indicated, the fee will be set by the council. The LACH service cannot set a fee itself. Any complaints about a LACH service will go to the council.

**Hon NEIL THOMSON**: Will they be subject to a complaint to the Corruption and Crime Commission?

**Hon STEPHEN DAWSON**: No, honourable member. Clause 35 refers to the Public Sector Management Act in relation to the designation of a person as a local ACH service, which is not subject to that act. A person or organisation designated as a local ACH service is not an agent of the state and will not have the status, the immunities and privileges of the state. It will not be an agency of the state; however, it will report to the ACH council, so the council will be able to take action against a LACH service, as well as remove the powers of the LACH service from it.

**Hon NEIL THOMSON**: I think this goes to the heart of the concern about the accountability of these LACHS. There is one entity, the Aboriginal Cultural Heritage Council. If an aggrieved party is not able to receive comfort from the Aboriginal Cultural Heritage Council, who will they go to?

**Hon STEPHEN DAWSON**: They could go to the department or the minister but it will still be the council's responsibility to deal with the issue.

**Hon NEIL THOMSON**: For the record, this seems to be an extremely deficient component of this proposed law insofar as the LACHS will play a pivotal role at a regional level in the approval of matters relating to any kind of development or activity on people's land. Given the potential composition of the LACHS and the obvious commercial incentive for unscrupulous people who might be party to a LACH service—I am not saying that all LACHS will be like that; they will be very dependent on the capacity of them to deliver an efficient, ethical service—I think there is a serious deficiency noting the level of accountability that applies to any other agency, such as a local government, to an ombudsman or the CCC. Given the range of accountability that applies to any approving authority across the state, this is incredibly deficient. For the record, I implore the minister to make sure the Aboriginal Cultural Heritage Council has sufficient powers.

Will it have any investigative powers to undertake a review of the performance and conduct of individual members of a LACH service?

**Hon STEPHEN DAWSON**: The local Aboriginal cultural heritage services will be required to report the carrying out of their functions to the Aboriginal Cultural Heritage Council. As I previously indicated, the ACH council will

have overall oversight of the LACHS. If a LACH service does not perform its function satisfactorily, the council or the minister can suspend or cancel the designation for all or part of an area. The minister could have a role in that too. That is the accountability. It will not be an agency of the state; it will report to the ACH council.

**Clause put and passed.**

**Clause 36: ACH Council must designate local ACH service —**

**Hon NEIL THOMSON**: Clause 36(1) states —

> The ACH Council must, as far as practicable, designate persons as local ACH services …

Will there be circumstances in which a single person will be a local Aboriginal cultural heritage service?

**Hon STEPHEN DAWSON**: There will not be. It will need to be a native title organisation or a Corporations (Aboriginal and Torres Strait Islander) Act–related organisation.

**Clause put and passed.**

**Clause 37: Designation of local ACH service —**

**Hon TJORN SIBMA**: I have a quick question. Clause 37(2) concerns when the ACH council decides not to designate a person as the LACH service for an area, and that the council must advise the minister in writing of the decision and the reasons for that decision. Could the minister possibly outline the circumstances in which the ACH council might determine that a LACH service should not be designated and whether that information will be appealable and made public?

**Hon STEPHEN DAWSON**: An example of what the member proposed could be if the application does not meet what is identified and laid out in clause 39.

**Hon TJORN SIBMA**: I note that there is still a fair degree to get through. If I am to take the minister's answer to its heart, the application being inconsistent with what is laid out in proposed section 39 is the only reason an application might be denied, or would there be other circumstances in which the council would determine that some person or some organisation is not appropriate for that designation? I suppose what I am getting to here is whether there is the potential for vested interests to become entrenched and the competition of LACHS to be thwarted. I am attempting to explore whether this provision might preserve, effectively, a business function through a regulatory instrument, rather than allowing other suitably qualified LACHS to operate in the same jurisdiction.

**Hon STEPHEN DAWSON**: Clause 40 sets out the priority and clause 39 sets out the requirement. In relation to a person and what acts as a person, the Interpretation Act 1984 states that the term "person" includes a public body, company, or association or body of persons, whether corporate or unincorporated. I want to place that on the record. It does not mean a single person.

Clause 39, "Requirements for designation as local ACH service", has a list of requirements including comprehensive knowledge of the local Aboriginal community in the area, the endorsement of any registered native title body corporate or registered native title claimant for the area, sufficient support of the local Aboriginal community and so on. It is not proposed that there will be competing LACHS in an area; there will be one LACH service for an area.

**Clause put and passed.**

**Clause 38 put and passed.**

**Clause 39: Requirements for designation as local ACH service —**

**Hon NEIL THOMSON**: I need clarification about fees again. A designated local Aboriginal cultural heritage service will be required to have a structure for the fees that it will charge. The minister said earlier that the Aboriginal Cultural Heritage Council will set fees. Just for clarification for *Hansard*, it seems as though those fees will be at the discretion of a local cultural heritage service and that it will need only to comply with the fee guidelines of the Aboriginal Heritage Council.

**Hon STEPHEN DAWSON**: The honourable member is correct. The council will set the guidelines around the fees, so it might set a parameter, but it will be open to a local area cultural heritage service to charge a lower fee. The guidelines will be set by the council and it will also endorse the fee structure that is put in place.

**Hon NEIL THOMSON**: There will be a significant difference in the business model of each LACH service. We know that the type of activity that occurs across the state varies depending on the region, both in terms of quantity and the nature of an activity. I alluded to my concerns earlier. I think that the business model for each LACH service will be significantly impacted by its location. Given that there is an element of cost recovery, which seems to be implied—notwithstanding the minister's lack of certainty about how much of it will be funded—it will be dangerous for the state. Tier 2 activities, for example, will disturb land—one of those activities is yet to be defined—when, say, a trench is dug for a plumbing service. Is it fair to say that the fee for that service will be different in one part of the state compared with another part of the state?

**Hon STEPHEN DAWSON**: It will be a case of supply and demand. Some LACH services will be busier than others just by virtue of where they are in the state and how minerally prospective or otherwise an area is. That is

an important thing to say. In terms of what the fees will look like, that is yet to be decided and it will be dealt with in the co-design process. Could a fee be different in one part of the state from another? Potentially it could, but that will all be worked out as part of the co-design phase.

**Hon NEIL THOMSON**: Clause 39(b) states —

> … the endorsement of any registered native title body corporate, or registered native title claimant …

That will be a requirement. I refer to clause 40 in which there seems to be a particular priority list of designation services. The requirement of endorsement is an absolute necessity; is that correct?

**Hon STEPHEN DAWSON**: Yes.

**Hon NEIL THOMSON**: I note again that native title bodies' governance, management structures and membership vary considerably. Some native title bodies around the state that have only 70 or 80 members can have very small revenues and be in significantly difficult financial situations. By their nature, the governing bodies of those native title bodies change regularly. We have seen that that is a reality. I am not saying that is the case for all native title bodies; some of them are very well structured. In my region, some major native title bodies have significant infrastructure around governance, staff and a whole range of things. Is it foreseeable that the endorsement of these bodies will switch on and off and that that will create significant disruption to the economic activity that will need approval?

**Hon STEPHEN DAWSON**: No. Once we have designated a local Aboriginal cultural heritage service, it will remain designated until it is cancelled. That power will exist with the council, so if the council does not think that the LACH service is up to scratch or doing things in the required time frames et cetera, it could make a decision to remove the LACH service. We do not propose for the process to be slowed down at all.

**Hon NEIL THOMSON**: It is a complex bill and I have obviously read it in detail, but my recollection is that there is some process for a native title body to appeal the designation. That is my understanding and it may come up further in discussion. I am not sure whether that is correct. My understanding is that the designation can be removed. Is that not correct?

**Hon Stephen Dawson**: I have said that it can be removed. The council can remove the LACH service's designation.

**Hon NEIL THOMSON**: My understanding is that a native title body can effectively seek the disendorsement of the LACH service as an operating body.

**Hon STEPHEN DAWSON**: It will be up to the council to decide whether to accept a designation. Obviously, there could be whatever politics going on in the native title body. At the outset, it will be appointed, but if there is an issue at a later stage, it will be up to the council to decide whether to remove that designation.

**Hon NEIL THOMSON**: Noting the time, I will conclude my comments on this clause. The challenge of course will be with the designation. The stability of these LACHS will be important, and whether a change can be made through the ACH council or some other process. My concern is with the significant investment required for approvals infrastructure, noting that there will some requirement for proponents to provide their proposals in writing. I will go into more detail, but I assume that that means lodging an application via the internet. It might simply be to register the fact that due diligence has been undertaken by the LACH service. Hopefully, only one system of approvals will be used as a framework for these bodies; otherwise, it will just be a nightmare. Quite frankly, I hope it is not going to be letters. Has the minister assessed what a model LACH service might look like, the number of staff it might have and the approvals infrastructure that might be required so that it can meet the requirements of a designated local Aboriginal cultural heritage service?

**Hon STEPHEN DAWSON**: The answer is no. That work will be done as part of the co-design process. There may well be groups that decide that they just do not have the capacity to apply to become a LACH service. All that work will be done in the next phase.

**Clause put and passed.**

**Clause 40: Order of priority of designation —**

**Hon NEIL THOMSON**: The order of priority of designation of a local Aboriginal cultural heritage service for an area is interesting. This clause goes to the nature of this mishmash of ideas around native title and other aspects. I wonder why we did not just bite the bullet and require it to be a prescribed body corporate if that is where we are going. I understand that there will be issues with claimant areas where native title has not yet been settled, so maybe some allowances could be made there. Clause 40(1)(d) states —

> a CATSI Act corporation or a Corporations Act corporation that —
>
> (i) represents the local Aboriginal community in the area; or
>
> (ii) has members that are knowledge holders for the area;

That seems to be a very loose description in terms of the priority list. Surely there could have been some discipline in relation to this if it is truly going to rely on native title. It states a corporation that "represents the local Aboriginal community in the area". It is a very non-native title description.

**Hon STEPHEN DAWSON**: The member is correct. It is because there may not be native title for the area. This will align with native title where it exists; but, in the absence of it, we need to have a way of dealing with local people to make sure that LACH services can be created and decisions can be made, and the Western Australian economy can continue to tick over.

**Hon NEIL THOMSON**: To me, it represents a degree of danger. I understand that a corporation may not have native title. Clause 40(1)(e) states —

> a native title representative body for the area.

Why is that the last order of priority? We have a CATSI act corporation that will represent the local Aboriginal community in the area, and further down the hierarchy we have a native title representative body for the area.

**Hon STEPHEN DAWSON**: I am told that an example is Murujuga Aboriginal Corporation, which is a CATSI act organisation. It deals with land for which various native title holders have native title interests, essentially. This would countenance such a situation.

**Hon NEIL THOMSON**: I find it fascinating that this order was struck upon, given the integrity and history of some of these representative bodies. My concern is that there may be a local community body that outranks a representative body. I assume that the designation of the LACH service will be informed by the native title prescribed body corporate.

**Hon STEPHEN DAWSON**: I am told it is about making sure that the knowledge holders are captured. That is why it has been done in this way.

**Hon NEIL THOMSON**: Clause 40 does not include anything about competency. Why not?

**Hon STEPHEN DAWSON**: Competency is dealt with in clause 39, so it is not needed in clause 40.

**Clause put and passed.**

**Clause 41 and 42 put and passed.**

**Clause 43: Suspension or cancellation of designation as local ACH service for area or part of area —**

**Hon NEIL THOMSON**: The minister may have answered this. I am trying to understand and unpack this as much as possible for the sake of the record. Clause 43(1) states —

> The ACH Council may, on the written request of a person who is designated as the local ACH service for an area, cancel the designation …

Effectively, could a local Aboriginal cultural heritage service cancel itself?

**Hon STEPHEN DAWSON**: Yes.

**Hon NEIL THOMSON**: Clause 43(2) states —

> The Minister or the ACH Council may, by written notice given to a person who is designated …
>
> (a) suspend the designation …

The minister did not say that the ACH council would be the arbiter of who was or was not a local Aboriginal cultural heritage service, but here it states "the minister or the ACH council", so the minister may interdict on this issue and cancel a local Aboriginal cultural heritage service?

**Hon STEPHEN DAWSON**: I am on the record as saying it is either. The ACH council or the minister could cancel or suspend the designation for all or part of an area.

**Clause put and passed.**

**Clause 44: Change to area for local ACH service —**

**Hon NEIL THOMSON**: What are the grounds for amending the area for a local Aboriginal cultural heritage service?

**Hon STEPHEN DAWSON**: It is in subclause (4). It reads —

> The ACH Council may amend the area for which a person is designated as the local ACH service only if the Council is satisfied that —
>
> (a) the person —
>
> (i) is in the order of priority for designation for the amended area as set out in section 40(1); and
>
> (ii) meets the requirements to be designated as the local ACH service for the amended area as set out in section 39;
>
> and
>
> (b) there is no other person designated as a local ACH service for any part of the amended area.

**Hon NEIL THOMSON**: The minister said earlier that the area was related to the prescribed body corporate area. Is it possible there could there be multiple local Aboriginal cultural heritage services within one determination area?

**Hon STEPHEN DAWSON**: Yes, in one determination area, but they cannot overlap.

**Hon NEIL THOMSON**: That poses something of a challenge. I can understand where it might be appropriate. The major challenge I have is the capacity in size and potential for fragmentation of these services, given their huge responsibility to deal with matters that are going to have a direct effect on the functions of our economy and activities that all persons—Aboriginal and non-Aboriginal people—will want to undertake in our community. My concern is that there seems to be no limit to the potential fragmentation. I know that is probably a theoretical argument, because in reality, I would hope, as was said earlier, that there would be some sort of amalgamation, particularly for areas where not much activity is undertaken. For the record, again I hope and implore that the ACH council will have some role in guiding the degree of capacity and scale of the local Aboriginal cultural heritage services, given the important role they will have. My question is really whether the ACH council will have a role in making sure that we do not end up with huge fragmentation of local Aboriginal cultural heritage services in one determination area and across the state so that we do not end up with 200 or 300 of them all running their own systems and fee structures within the context of the ACH council guidelines. I think the success of this will be determined on the scale and ability to get good information on the ground and being able to quickly and efficiently deliver outcomes for our community.

**Clause put and passed.**

**Clause 45: Change to local ACH service —**

**Hon NEIL THOMSON**: I am sorry to labour the issue of change, minister, but it bothers me a lot. The ACH council may, on its own initiative or at the request of a person designated as a local Aboriginal cultural heritage service for an area, amend the name of the person, the contact details and other information. How efficiently will these services be able to be identified and contacted by someone who wants to undertake the most basic activity? How does the minister expect that to operate?

**Hon STEPHEN DAWSON**: They will be in the directory, honourable member.

**Hon NEIL THOMSON**: The directory sounds like a paper-based system. I am thinking of the average punter who wants to do something; they have done their due diligence and want to seek a permit. How will they get that permit?

**Hon STEPHEN DAWSON**: Hon Neil Thomson should have asked these types of questions that range over numerous clauses during debate on clause 1. There are clauses that relate to the directory later on and he can ask questions about the directory when we reach those clauses. The question that the member asked does not relate to clause 45, which is a technical clause.

**Clause put and passed.**

**Clauses 46 and 47 put and passed.**

**Clause 48: Local ACH service functions —**

**Hon NEIL THOMSON**: This clause goes to the heart of the functions of a local ACH service. The provision states —

> … as far as practicable, to be provided in relation to an area by the person designated as the local ACH service …

It will be vitally important that the functions are efficient. "As far as practicable" seems to be a pretty fluid requirement. Activities may not be able to occur if the services are not functioning. A local Aboriginal cultural heritage service might be in operation but not meet the "as far as practicable" requirement and not provide the service. What will happen then?

**Hon STEPHEN DAWSON**: If a LACH service does not provide the service, it will be open to the council to remove its designation as a LACH service.

**Hon NEIL THOMSON**: How long will that potentially take? There could be a situation in which it takes a couple of months. A proponent might have an application before a LACH service and for some reason it might not meet the function of "as far as practicable". I would have thought that that would mean that even if it is not practicable, the LACH service could continue to operate. I would have thought that there would be the necessity—not the option—for a local Aboriginal cultural heritage service to provide a service. I am trying to imagine a situation in which it would not be practicable. Can the minister describe a situation in which that might be the case?

**Hon STEPHEN DAWSON**: An example is during COVID when restrictions are in place and people cannot enter or leave a community. That is one example. Another example is law. At different times in different places, communities might be undergoing law. That is why the provision reads "as far as practicable". In terms of how long it might take, as I spoke about earlier on, the prescribed time frames within which work has to be done and what those time frames will look like will be done as part of the co-design process. I will also make the point that proponents who need to engage with LACHS will, I am sure, be the same proponents who currently engage with the state government. They are always very quick to pick up the phone to a local member's office, a minister's office or, indeed, the Premier's office, when they think something is being delayed. I am sure that if this bill passes, notwithstanding the time frames, there will be proponents out there who will want to keep us all abreast of where their project is, and there will be pressure on everyone to make sure the decisions are made in a timely fashion, and with an element of transparency.

**Hon NEIL THOMSON**: This really goes to the heart of the problem: the mindset of the framers of this bill. Let us say there is a multibillion-dollar project to develop a mine site; the lead times are in years. There will be an army

of consultants alongside the proponents to go through this process. Yes, we hear complaints about those sorts of proponents as well, and the challenges the minister mentioned—it may be law business, or it may be seasonal issues; who knows? There could be a whole range of issues. I keep coming back to the example of a builder who wants to put a footing down on an undeveloped site. I assume there will be continuity of service for exempt activities—maybe tier 1 activities—that will not be affected by law business. I do not think anyone in Western Australia could tolerate a situation in which the most basic activities are affected, and the minister has not been able to explain whether those activities are tier 1 or tier 2. For example, a farmer might want to plough a field for the first time. The minister has not been able to give an explanation yet. It is the things that happen on a daily basis. There are tens, hundreds, thousands of applications that need to be assessed on a daily basis. Local government does that, to a degree, and we know there are some challenges there. I am worried that this situation might develop, given the codification of new activities that never attracted any attention under current legislation. I understand the point of view of the mining industry and the resources industry. I understand the mindset of the framers of this bill when they sat down and drafted this provision. They have not thought about the nuts-and-bolts activities and the day-to-day approvals that require outcomes on a rapid basis to allow people to get on with their daily business. Will this bill deliver for that part of the industry?

**Hon STEPHEN DAWSON**: I have answered yes, honourable member. Again, we are not on clause 1 of the bill; we are actually now on clause 48. Let me state at the outset that I have no issue with the framers of this legislation, because I believe it is very good legislation. I will also mention the fact that whether people are in the Perth metropolitan area or out in the bush, they can be affected by cyclones, by flooding and by pandemics, as we have been in Western Australia for the past two years. Including the words "as far as practicable" helps us out in that regard.

**Clause put and passed.**

**Clause 49: Fee for services provided by local ACH service —**

**Hon NEIL THOMSON**: We have a lot more detail about the fee structure for an entity designated as a local Aboriginal cultural heritage service and about the variation of the fee. Basically, it is a complex area. Clause 49(3) states —

> However, a person designated as a local ACH service cannot charge a fee for services that it provides to the Department —

My understanding is that the department can be any department. It continues —

> or the ACH Council in connection with any local ACH service …

Does this mean that agencies like Main Roads will not be required to pay a fee for their application?

**Hon STEPHEN DAWSON**: No, it does not. Main Roads will have to pay a fee if it engages to undertake the services covered by the bill before us.

**Hon NEIL THOMSON**: What about the Department of Health? Will it be required to pay a fee? Cut to the chase so it saves me from having to try to guess which departments would not. Why do we have in the bill —

> … cannot charge a fee for services that it provides to the Department …

Which department does it refer to and which agencies are we discussing? My reading of "department" when I went to the list of definitions is that it can be any department, but it might just be the Department of Planning, Lands and Heritage; is that right?

**Hon STEPHEN DAWSON**: The member is correct; the Department of Planning, Lands and Heritage will be responsible for administering the legislation, if it is ever passed in this place.

**Hon NEIL THOMSON**: Does that include any activities of the Western Australian Planning Commission? I assume that it does not.

**Hon STEPHEN DAWSON**: It does not.

**Hon NEIL THOMSON**: Which activities might the Department of Planning, Lands and Heritage not have to pay a fee for? Has any consideration been given to that? My point is that if a local Aboriginal cultural heritage service provided a service, I would think that a cost would be associated with that. What is the likelihood, if any, that a service will be provided to the Department of Planning, Lands and Heritage?

**Hon STEPHEN DAWSON**: If an organisation gave information to the department to add to the Aboriginal Cultural Heritage Directory, a fee could be charged in that case.

**Hon NEIL THOMSON**: Is the minister telling me that the department, when it seeks information and holds a meeting for people in the bush or even in the metropolitan area when people come together to provide advice, will not be able to charge a fee for that service? Is that part of the local Aboriginal cultural heritage service?

**Hon STEPHEN DAWSON**: In that example, if they come together for a meeting and the local Aboriginal cultural heritage service discusses something that it wants to give to the department or it asks the department to add something to the Aboriginal Cultural Heritage Directory, no, it cannot charge the department a fee.

**Clause put and passed.**

**Clause 50 put and passed.**

**Clause 51: Funding for local ACH services —**

**Hon NEIL THOMSON**: The funding for local Aboriginal cultural heritage services is important. We had some discussions about that during the debate on clause 1. This clause provides a more elaborate opportunity to look at the funding issues for these services. As was highlighted earlier, there is a concern about the need to cost recover. During my contribution to the second reading debate, some points were made about the potential for outsourcing. I know that the minister and I differ. In his response to that issue, he mentioned the role of the consultants, for example, who are already providing services. I beg to differ on that. These bodies will provide statutory approval and will be directly involved in the outcome of activities. Again, a multiplicity of activities will go well beyond the large resources projects, and people will have to negotiate that process. Under this clause, the CEO—I assume that is the CEO of the Department of Planning, Lands and Heritage—will have the opportunity, with prior written approval of the minister, to decide that funding is to be paid to a person designated as a local ACH service. Is it anticipated that the process by which the CEO decides that funding is to be paid for a service will be caught up within a budgetary process of the Department of Planning, Lands and Heritage? Could we feasibly have a situation in which the CEO sees that a LACH service needs a top-up of, say, $1 million in its budget? Is it that broad? Will an opportunity exist for the CEO to provide for significant shortfalls in a LACH service's operating budget?

**Hon STEPHEN DAWSON**: The intention, once the bill passes, is to have a bucket of money to establish the LACHS in the first instance. Then, once the LACHS are carrying out the roles they are required to do under this legislation, they will be able to charge fees. The intention is to fund the LACHS to enable them to do the work that they want. LACHS will be able to charge a fee for the services that they deliver. It would be open to the director general to seek further funding in the future, but it should not be needed because we will give them the capability funding in the first place and then the ability to charge fees to provide the services.

**Hon NEIL THOMSON**: The LACHS will not be really constrained in any major way through the budget process. There will be no real accountability under the Financial Management Act. They will not be public service entities. They could operate at a loss, for example. I know how this could be a reality. We will have the minister. The Aboriginal Heritage Council will have some oversight. We will have the CEO. They will all look at the situation and know it will be a problem. It seems that there will be no capacity, really, to manage on a daily basis the efficiency of these LACHS, but under this provision the CEO will have the power to effectively fund LACHS with the approval of the minister. I think this is a recipe for disaster, considering the lack of accountability on one hand to this place. Agencies are subject to budget estimates hearings and a whole range of other processes. On the other hand, we will have a cost recovery arrangement. The government has washed its hands of effectively funding the LACHS, but it has slipped in the power for the CEO to fund the LACHS at some point in time. It does worry me. I have to say this is the minister's bill and I understand he has taken responsibility for that on multiple occasions. But I see here we have the capacity of the CEO—I can sort of see some nodding—to determine and set out the amount of money to be paid as funding to the person and the manner in which the sum must be paid. I assume the person can include a LACH service as a whole; is that correct?

**Hon STEPHEN DAWSON**: Yes, it would be a LACH service as a whole. As the honourable member quite rightly pointed out, the CEO of the department can provide extra funding, on the approval of the minister. As we have already said numerous times in the debate thus far, the capacity and capability of LACHS around the state will vary. This clause allows for the government to provide a LACH service with a top-up should it not be able to cost recover the full amount to do the work it will be required to do. However, if funding is given to an ACH service, and that service is cancelled because of clauses in the bill, the uncommitted amount must be returned to the ACH council. The CEO must ensure the local ACH service that is paid the funding sum is given a written notice of the conditions of the funding, including the requirement to pay back any uncommitted amount upon cancellation of the designation.

**Hon NEIL THOMSON**: I think the minister has now made it very clear. I appreciate that. The top-up concept will definitely be available under the legislation for a LACH service that is—hypothetically—suffering from a lack of ability to cost recover for its operations through a challenge around the costs. We know everyone is human and we can see that organisations might have cost blowouts. I already mentioned that there seems to be a lack of incentive for LACHS to contain their costs because they are not subject to the same scrutiny that we would expect for entities that will be the beneficiaries of funding from the consolidated account. It appears that could occur.

This might help other members who wonder whether LACHS will be funded by the consolidated account. The capacity for that exists, which is absolutely necessary. In a lot of ways, I would prefer that LACHS be funded by the consolidated account, as a centralised process of cost recovery would be a much more sensible option for fees and for the good of Western Australia. This would ensure that we did not end up with a complete hodgepodge, which is probably not the right word, but a lot of variation across the state in terms of the quality, cost and performance of local Aboriginal cultural heritage services. As a former Treasury officer, I ask the minister whether the Department of Treasury has provided a comprehensive assessment of the potential budgetary impact of the upper and lower range of fees proposed under clause 51 into the future.

**Hon STEPHEN DAWSON**: No. Treasury has been involved in consultation on this legislation. However, I have been at pains to remind honourable members that fees associated with this process will be determined as part of the co-design process. The regulations and guidelines of co-design are all ahead of us. The government will be in a better position to know what this will cost once the co-design process is completed. As I have already pointed out, the budget included $10 million in capability money to start.

**Hon NEIL THOMSON**: The minister expects us to take a lot on faith. Again, it would have been much better if the matter had been referred to the Standing Committee on Legislation, given the significant unknowns in the bill.

**Hon Stephen Dawson**: With respect, by way of interjection, that issue has already been dealt with. The house has voted not to send that to committee, the member is not supposed to reflect on that decision—just so the member is aware of that.

**Hon NEIL THOMSON**: Thank you for the advice, minister. It is a complex bill and my colleagues and I are expected to scrutinise the significant impacts the bill will have, both economic and cultural, which I think will require a lot better detailed consideration than is available today. I am happy to finish on the clause.

**Clause put and passed.**

**Clause 52 put and passed.**

**Clause 53: Terms used —**

**Hon NEIL THOMSON**: I understand the importance of this provision and respect the need for it. I would appreciate an explanation, as someone who is not necessarily over the detail, about ancestral remains. Paragraph (a) refers to the "meaning given in section 55(1)(a)". The minister could explain proposed section 55(1)(a), if he wanted to, and I will be happy if he could go through how ancestral remains are identified.

I would have thought that a number of them are quite obvious because of the archaeological evidence that will be provided. However, given that previous clauses of the bill relate to cemeteries, and we had the comment about contemporary remains of Aboriginal persons, there might be situations in which it could be quite difficult to identify those remains. For the purposes of the scrutiny of this bill, could the minister possibly outline the level of discipline that might be imposed on the identification of all ancestral remains, given the penalties that will apply to persons—unwittingly, even—in breach of some of the provisions in the bill related to those remains?

**Hon STEPHEN DAWSON**: I draw the member's attention to the definition of "Aboriginal ancestral remains" in the bill. I am further advised that if remains are found anywhere outside a cemetery, those remains will go to the coroner and the coroner will have a role in identifying the source of those remains.

**Hon NEIL THOMSON**: I am sorry to impose, but I think this is important. The coroner's decision on the definition of whether the remains are ancestral remains or just the remains of a non-Indigenous person, for example, will be final; is that how this works?

**Hon STEPHEN DAWSON**: The coroner will decide whether it needs to deal with it. Yes, it is the coroner's role.

*Sitting suspended from 6.00 to 7.00 pm*

**Clause put and passed.**

**Clauses 54 to 67 put and passed.**

**Clause 68: Reporting Aboriginal cultural heritage —**

**Hon NEIL THOMSON**: I think that this clause deserves some further discussion. It states —

> (1) A person who knows, or becomes aware, of the existence of any of the following must, within the prescribed period, report it to the ACH Council —
>
> (a) an Aboriginal place;
>
> (b) an Aboriginal object;
>
> (c) Aboriginal ancestral remains.

There is a penalty of $10 000. It continues —

> (2) However, subsection (1) does not apply to —
>
> (a) an Aboriginal person acting in accordance with the person's traditional rights …

I would like a bit of a synopsis, if possible, of the logic of this approach. Again, I can see in the legislation the mind of the lawyer who framed it, and that they might have been thinking of a larger corporation with a lot of knowledge, with significant engagement with Aboriginal people on an ongoing basis, that maybe has a geographic information system and a whole range of things, and that maybe employs archaeologists. From some of the reports I have, we know that it is largely archaeologists who provide information about these places. I am happy to hear the minister's views on that. He obviously has had more experience in dealing with this as the minister than I have had, specifically

on this matter. I am wondering how that might apply to people who will be relying on information systems. I would have thought that the other way around might have been important, obviously notwithstanding that an Aboriginal person who is acting in accordance with traditional rights will not expect to receive a penalty. However, there might be some obligation for those persons to provide information about where the Aboriginal place and object is. It seems a bit like proponents will have to shoot in the dark and the onus will be on them to identify those places. I would appreciate it if the minister can provide some rationale about the background. I know it is an open question, but if the minister is willing, I will be happy with that.

**Hon STEPHEN DAWSON**: Thanks, honourable member. First of all, the proposed act requires only people who know or become aware of the existence of Aboriginal cultural heritage to report the Aboriginal cultural heritage to the ACH council. We understand that not all Western Australians will know what is Aboriginal cultural heritage. A function of the ACH council will be to promote public awareness, understanding and appreciation of Aboriginal cultural heritage in the state. This will be achieved through the publication of fact sheets and educational awareness campaigns. Over time, this will assist people in identifying what is or may be Aboriginal cultural heritage.

In relation to an exemption, the proposed act provides that Aboriginal people will determine what is Aboriginal cultural heritage and what should be added to the directory. as some Aboriginal cultural heritage may be subject to culturally sensitive information and, in accordance with traditional law, should not be disclosed, the proposed act provides that an exemption should be provided to any person who does not report Aboriginal cultural heritage if they are acting at the written request of an Aboriginal person who is acting in accordance with the person's traditional rights, interests and responsibilities in respect of the heritage.

In determining penalties for the proposed act, other Western Australian legislation and legislation in other states and territories were considered. The penalty for failing to report Aboriginal cultural heritage is similar to the penalty provided for a similar offence in the Victorian Aboriginal Heritage Act 2006 and the South Australian Aboriginal Heritage Act 1988. It should be noted that the penalty amount stipulated in the proposed act is the maximum for an individual, but may be up to five times more for a body corporate.

Do Aboriginal people have to report heritage? The proposed act provides an exemption for an Aboriginal person acting in accordance with tradition, as well as the person acting at the request of the Aboriginal person, from the requirement to report Aboriginal cultural heritage. The proposed act recognises that Aboriginal people have custodianship over Aboriginal cultural heritage. One of the key principles relating to custodianship and control of Aboriginal cultural heritage is that Aboriginal people should be recognised as having a continuing living relationship with and as being the primary custodians of Aboriginal cultural heritage. Therefore, no Aboriginal person should be convicted of an offence for harming Aboriginal cultural heritage when undertaking activities in accordance with the person's traditional rights, interests and responsibilities in respect of the cultural heritage.

**Hon NEIL THOMSON**: The minister touched on that other aspect of persons acting on behalf of Aboriginal persons. I am thinking of consultants who might be working on behalf of Aboriginal persons. I do not know how to word this. I wonder why there will be no obligation for the provision of information to the Aboriginal Cultural Heritage Council, notwithstanding those places might be considered to have sensitive information. In general, I would have thought the need for the provision of information would have been better so that the Aboriginal Cultural Heritage Council could create greater awareness for proponents so that they would not be in a position whereby they inadvertently stumble onto places, objects or a whole range of things. What is the logic behind supporting those parties who work on behalf of Aboriginal persons? Could the minister explain why that was included?

**Hon STEPHEN DAWSON**: I am told that in legislation we cannot override the rights of Aboriginal people in how they manage their heritage, essentially.

**Clause put and passed.**

**Clauses 69 to 71 put and passed.**

**Clause 72: Application for area to be declared as protected area —**

**Hon NEIL THOMSON**: This part refers to protected areas. It is an interesting part of the bill and I think it probably deserves at least a little discussion. I refer to the additional protections that will be provided by declaring an area as protected. Could the minister explain what protected areas already exist under the current act, and, given the importance of protected areas, how many of those protected areas are there likely to be across the state, what will be the breadth and scope of those protected areas, and what additional protection they will provide?

**Hon STEPHEN DAWSON**: I am told that there are currently 78 protected areas across the state. The last one was declared—if that is the right word—in 1994. There have not been any since that time. Because the protected areas are currently vested in the Minister for Aboriginal Affairs, post the Native Title Act coming into place, it was deemed that any protected area declared after that date would be under a future act, so there have been no declarations made since that time. A declaration of an area as protected sterilises the land, so it means that a proponent cannot apply to damage cultural heritage on that land. I think I said earlier, either today or on the last sitting day, that an application to overturn a declaration as a protected area would have to go through both houses of Parliament.

**Hon NEIL THOMSON**: In the definition here, the test to declare an area as protected includes a requirement to describe the outstanding significance of the Aboriginal cultural heritage of the application area. I do not have a notation on that, but I think that might have been an amendment that was made between the two bills; is that correct?

**Hon STEPHEN DAWSON**: Honourable member, my advice is that I do not believe so.

**Hon NEIL THOMSON**: The identification of "outstanding significance" requires declaration by the knowledge holder of the Aboriginal cultural heritage group or community members. That significance should be recognised through social, spiritual, historical, scientific or aesthetic values as part of their tradition. I want to focus on that process of identifying outstanding significance and the test that will be undertaken. I assume that the decision to approve that will be made by the ACH council; is that correct?

**Hon STEPHEN DAWSON**: Guidelines will be made on how to declare a protected area and, obviously, that will happen as part of the co-design process that we have previously spoken about. Only knowledge holders may nominate an area containing Aboriginal cultural heritage of outstanding significance to be declared a protected area. Applications made by others on behalf of knowledge holders will be accepted. I am happy to give the process to the member. The process to declare a protected area will be as follows. An application must be made to the Aboriginal Cultural Heritage Council in the approved form. Applications must provide details of the area being nominated, including details of the Aboriginal cultural heritage deemed to be of outstanding significance.

On receipt of an application, the ACH council must give written notice to Aboriginal parties of the area being nominated to seek their views on the significance of the Aboriginal cultural heritage. Following this, the ACH council will consider the nature and significance of the heritage to the knowledge holders, and will make a preliminary view that the area or part of the area or no part of the area should be declared a protected area.

If the ACH council forms the preliminary view that no part of the area should be declared a protected area, the ACH council is required to give notice of its decision, including the reasons of this decision, to the applicant and the Aboriginal parties of the area that were notified of the application. The applicant or persons given the notice of the application may request that the minister consider the matter. The minister is required to consider the application along with further information that may have been provided and any submissions provided to the ACH council and the reasons for the ACH council's decision. The minister will either confirm the decision of the ACH council or decide that the area or part of the area should be declared a protected area. If the latter is decided, the ACH council is required to continue the application as if it made this preliminary view.

If the ACH council forms a preliminary view that an area should be declared a protected area, written notice must be given to any affected party of the area, such as landholders or public authorities with an interest in the area, before making a recommendation to the minister. When making a recommendation to the minister, the ACH council is required to consider the application and any submissions received by affected parties. The ACH council would then recommend that the application area or part of the area or no part of the area should be declared as a protected area.

When the minister receives a recommendation from the ACH council, the minister will decide whether the area should be declared a protected area. The decision has to be made on the grounds of whether the minister is satisfied that the area is or is part of or contains Aboriginal cultural heritage of outstanding significance and that it requires the protection afforded to protected areas. The decision must be made on the grounds of what is in the best interests of the state—that being the social and economic benefit of the state, including the social and economic benefit of Aboriginal people and the interests of future generations.

If the minister makes a decision that an area should be declared a protected area, the minister is required to make a recommendation to the Governor to declare that the area become a protected area. The Governor is responsible for declaring an area as a protected area. In making it a declaration by the Governor, it will give the protected area the highest level of protection afforded to an area in this state, similar to A-class reserves and state heritage–listed places.

That is hopefully a fulsome answer for the member.

**Hon NEIL THOMSON**: Thank you, minister. That was a very fulsome description of the process. I appreciate that. It certainly helps me. The decision then rests with the minister. I assume the protected areas have probably been one of the main bones of contention from our—no? It is not? I ask the minister, while he is conferring with his advisers —

**Hon Stephen Dawson**: Just by way of interjection, this hasn't really been an issue —

**Hon NEIL THOMSON**: It has not been an issue?

**Hon Stephen Dawson**: — of contention; no.

**Hon NEIL THOMSON**: Therefore, to streamline this discussion, Aboriginal groups have been more concerned about other matters as opposed to this particular power of the minister to determine the final arbiter of the protected areas. That is good to know and I am happy to leave it at that.

**Clause put and passed.**

**Clauses 73 to 80 put and passed.**

**Clause 81: Decision of Minister —**

**Hon NEIL THOMSON**: I note a table was provided on the Department of Planning, Lands and Heritage website—we have talked about it before and it has been tabled in this place—that outlines the amendments to the legislation. My reading of the table is that there is a bit of a disjunction in the clause numbers from clause 81 going forward. It may be the case that there was a previous bill, or I may be reading it the wrong way, and it is to do with getting the clauses in the bill out of sequence. It just made it a bit harder to identify the changes to the clauses. The final decision and recommendation of the Aboriginal Cultural Heritage Council is under clause 79. It would be helpful if the minister could explain what the recommendation will potentially be. I may sound like I am digging around here, but the clause is quite extensive and I am trying to get some understanding of what it all means. Clause 81 refers to the decision of the minister on the recommendation. I would appreciate it if the minister could explain the sorts of recommendations of the ACH council that the minister might make decisions on.

**Hon STEPHEN DAWSON**: This clause provides that when the minister receives a recommendation from the ACH council, the minister must consider the information the ACH council has provided to the minister under clause 79, "Recommendation of ACH Council", and any further information received under clause 80 and make a decision on whether an area should be declared a protected area within the period specified in the regulations of the proposed act. Like the ACH council recommendation, the decision of the minister must be made on the grounds of whether the minister is satisfied that the Aboriginal cultural heritage located in the area is of outstanding significance for the purposes of the act and that the area requires special protection from activities that may harm such cultural heritage. The minister must also be satisfied that measures are in place for any overlap area between the proposed protected area and the area that is the subject of any ACH permit or ACH management plan to be excised from the area that is the subject of the ACH permit or ACH management plan, and as to any further matters that may be specified in the regulations of the proposed act.

However, unlike the ACH council, the minister will also have to consider what is in the interests of the state, which is defined to include the social or economic benefit of the state, which includes the social or economic benefit of Aboriginal people and the interests of future generations. This takes into account that the declaration of protected areas may significantly affect the rights and interests of other landholders or persons with an interest in the area, including the restriction of access or prohibition of activities from occurring within an area. If the minister decides that an area should be declared as a protected area, the minister may give any written direction necessary prior to the declaration to amend any ACH permit or ACH management plan under clauses 129(1) or 169(3) respectively so as to excise any overlap with the area that is to be protected, noting that such amendment will be based on the agreement of either the ACH permit holder or the parties to the ACH management plan under clauses 72(3) or 72(4) respectively. The minister is also able to determine that the protection area order is subject to any condition related to the management of or access to the area, or in respect of any other matter that is specified in the regulations of the proposed act.

Finally, the minister must recommend to the Governor that the government declare the area to be protected for the purposes of the proposed act. If the minister decides that no part of the application area should be the subject of a protected area order, public notice of such a decision will be required. The requirements of public notice are provided in clause 282 of the bill and require publication on a website maintained by or on behalf of the ACH council, and as required by the regulations of the proposed act.

**Hon Dr BRAD PETTITT**: As a follow-up on clause 81(6), will there be a review or appeal process if the minister were to make a decision that no part of an area should be declared as protected? Will there be process for review or appeal?

**Hon STEPHEN DAWSON**: There will not be. Decisions made about the interests of the state are not reviewable.

**Hon Dr BRAD PETTITT**: What will be the process? Can they apply again at a later date?

**Hon STEPHEN DAWSON**: Yes, they will be able to apply again after two years, but not within two years. They might want to give different information or a different explanation, or whatever, as part of their application.

**Clause put and passed.**

**Clauses 82 to 88 put and passed.**

**Clause 89: Application of Part —**

**Hon NEIL THOMSON**: I have a very simple question. This clause reads —

> This Part applies to the following Aboriginal cultural heritage only —
>
> (a) an Aboriginal place;
>
> (b) an Aboriginal object;
>
> (c) Aboriginal ancestral remains;
>
> (d) Aboriginal cultural heritage located in a protected area.

In relation to offences about harm, I read that changes were made in the second draft of the bill that, maybe, avoided any potential application of this bill to speech; that is, in relation to people making comments or other things that might not specifically relate to those elements in paragraphs (a) to (d). I would like clarification on that.

**Hon STEPHEN DAWSON**: I am not sure that we got the question, so if I am not giving the right answer, please, ask it again. The harm provisions apply only to the things that are outlined in the clause. Essentially, the clause sets out the Aboriginal cultural heritage to which this part applies. Offences of harming Aboriginal cultural heritage apply to an Aboriginal place, an Aboriginal object, Aboriginal ancestral remains and Aboriginal cultural heritage located in a protected area.

**Clause put and passed.**

**Clause 90: Meaning of harm to Aboriginal cultural heritage —**

**Hon Dr BRAD PETTITT**: As members will be aware, I have an amendment on the supplementary notice paper. But before I get to it, I understand that the definition of "harm" in clause 90(1) is different from what was in the 2020 draft bill. In fact, I understand that the words in my amendment on the supplementary notice paper are similar to what was in the 2020 draft bill. Can the minister confirm whether that is correct and explain the thinking behind changing the words that were in the 2020 draft bill?

**Hon STEPHEN DAWSON**: The definition of "harm" in the honourable member's amendment on the supplementary notice paper is what was in the consultation draft bill. The definition was amended in the final bill to remove the carrying out of any act in relation to Aboriginal cultural heritage other than expressing an opinion or belief that demonstrates disrespect for the importance of Aboriginal cultural heritage to Aboriginal people and diminishes the value of Aboriginal cultural heritage. The removal of those words was as a result of stakeholder feedback that that broad definition created significant uncertainty for stakeholders. In particular, the lack of judicial guidance on how this offence would likely be interpreted created an unnecessary level of uncertainty.

**Hon Dr BRAD PETTITT**: I am trying to dig down so that everyone is clear. My amendment on the supplementary notice paper seeks to insert paragraphs (a) and (b). The strong feedback of stakeholders to whom I spoke is that those two paragraphs are a stronger expression of harm to Aboriginal cultural heritage. I do not know whether the minister is able to disclose this, but I am just trying to understand which stakeholders were concerned about this more comprehensive definition of "harm".

**Hon STEPHEN DAWSON**: First of all, the government thought there were judicial precedents in relation to this issue, so it was included. Upon reflection, it was worked out that there was no judicial precedent in having a clause like this in the bill and it was very complicated to work out. There is that issue. In terms of which particular stakeholders raised it, I am advised that industry stakeholders voiced concern about it essentially because of what it would mean, the fact that there was no judicial precedent and it was going to be difficult.

**Hon Dr BRAD PETTITT**: This is my last question before I move the amendment. Does any other state or territory have this more expansive definition of "harm" included in similar legislation?

**Hon STEPHEN DAWSON**: We do not think it is included in any other legislation. I am further advised that the definition of "harm" does not necessarily preclude demonstrating disrespect for the importance of Aboriginal cultural heritage to Aboriginal people. It does not necessarily exclude that, but I am told that after reviewing the feedback, it was determined that what we have said is more legally and logically sound.

**Hon Dr BRAD PETTITT**: Although I acknowledge that feedback, certainly the feedback that I have had from a range of stakeholders is that this more robust definition of "harm" is preferable. On that basis, I move —

> Page 75, lines 13 and 14 — To delete the lines and insert —
>
> (1) To ***harm*** Aboriginal cultural heritage includes the following —
>
> (a) to destroy or damage the Aboriginal cultural heritage; or
>
> (b) to carry out any act in relation to the Aboriginal cultural heritage, other than to express an opinion or belief, that —
>
> (i) demonstrates disrespect for the importance of Aboriginal cultural heritage to Aboriginal people; or
>
> (ii) diminishes or otherwise affects the value of Aboriginal cultural heritage to Aboriginal people.

**Hon NEIL THOMSON**: On behalf of the opposition, I indicate that we will be supporting the government not supporting the amendment. I think this is a more careful approach, given the potential of setting a judicial precedent and the challenges with opinions or beliefs that might be expressed. I think it would be quite dangerous to curtail any views, notwithstanding the other protections that apply under federal legislation, including the Racial Discrimination Act et cetera. Our position is to not support the amendment.

**Amendment put and negatived.**

**Clause put and passed.**

**Clauses 91 and 92 put and passed.**

**Clause 93: Serious harm to Aboriginal cultural heritage, including by accident —**

**Hon TJORN SIBMA**: Bearing in mind that we have given a commitment to deal with this legislation by 9.45 pm, and that I am not in the habit of making speeches in committee consideration, I must say that I find clause 93 inherently problematic for reasons of law, because it underscores a bit of a fog of mystery in how much knowledge anyone can possibly have about the expanse of Aboriginal cultural heritage in this jurisdiction. To deny somebody the defence of accident is a serious undertaking. It is probably an issue that would have been deliberated upon with some interest by a committee should this bill have been referred to one. On whose advice was it determined that clause 93 as it is presented here, which will take away the defence of accident and seek to apply penalties for not destruction, but harm, which is still in a way nebulously defined, should be included in the bill, and is it absolutely necessary in order to achieve the objectives of the bill?

**Hon STEPHEN DAWSON**: I am told it was in the draft that was put out last year for public comment, so it was a policy consideration by the people who drafted the bill. I am told that up until now, there has never been the ability to prosecute somebody in this regard, but it was felt that it was a necessary inclusion in the bill; therefore, it has been included.

**Hon TJORN SIBMA**: Thank you, minister. We do not have time to do it, but would the minister have examples of cases that have occurred in this jurisdiction in recent times that have led to serious harm to Aboriginal cultural heritage by way of accident? That would be interesting to know. Has this occurred?

**Hon STEPHEN DAWSON**: I think it is about making sure that people do their due diligence to make sure that accidents do not happen. I do not have an example other than the contraventions that have occurred previously and that action was not able to be taken on. It is a serious inclusion in the bill, but, equally, not harming Aboriginal cultural heritage is also a serious issue.

**Hon TJORN SIBMA**: Would the minister be able to advise me whereabouts in the bill the opportunity for accidental harm to be caused to Aboriginal cultural heritage might be mitigated, perhaps by way of the education function that the ACH council will deliver? I must say that there is a knowledge gap here. I do not impugn any sort of partisan view to that. We are operating in a space that is yet to be quantified empirically. I would find this clause very difficult to agree to in the best possible circumstances, but if the government is going to include a clause like this, it is almost obliged to allow people to undertake due diligence to a degree at which it will have an up-to-date and accessible cultural heritage register that will be subject to free and open inquiry. I am interested to know what the government might do to remediate that gap.

**Hon STEPHEN DAWSON**: There will be a broad education campaign on the legislation. Obviously, this issue will be looked at. I draw the member's attention to clause 98, which talks about defences. Essentially, the defence is that the person has undertaken a due diligence assessment that there was no risk that the activity would cause harm to Aboriginal cultural heritage et cetera. That is an escape clause, if I can use those words.

**Hon TJORN SIBMA**: I am not intending to be obtuse here, but one might envision a scenario in which accidental serious harm was caused to cultural heritage and arose by cause of an accident and the origin of that accident was in ignorance. If one was to cause serious harm, how would that serious harm be detected if it was accidentally caused? I am really trying to find a scenario or a mischief the bill is trying to defend against. It seems it is dependent on self-disclosure or self-incrimination of some kind if it is caused accidentally. Presumably, an inspector or an Aboriginal inspector will not be surveying operations of any development going through all its development stages. I am trying to understand how, potentially, accidental serious harm caused to cultural heritage would be detected, reported or known about at all in a particular instance.

**Hon STEPHEN DAWSON**: It would have to be reported to us by somebody. I am further advised that feedback from traditional owners is that people should not use ignorance as a defence for harming Aboriginal cultural heritage. Generally, in life, I am not sure that ignorance is a legal defence.

**Hon NEIL THOMSON**: This ties into the issue I raised earlier about the necessity for traditional owners to disclose sites et cetera. The challenge is that the expectation is on the proponent. As I said, some of the proponents are well resourced and may be able to undertake the work that is required. However, there is the opportunity for proponents that may not be so well resourced to accidentally cause harm when the knowledge of sensitivity of an area in the context of cultural heritage was known to Aboriginal knowledge holders, yet not disclosed or available on the register. I think that is a very problematic situation. It could be a bit like a gotcha clause in some respect. Proponents might, with all best intent and desire, be properly informed, properly able to avail themselves of the information and would never have even contemplated causing harm, yet caused harm by accident and find themselves in that position. If that information was known to knowledge holders and accidental harm was caused, would there be any defence at all within the scope of this law in a court of law if that proponent was prosecuted for the harm?

**Hon STEPHEN DAWSON**: It is up to the prosecution authority to decide whether there is a case. The burden of proof is beyond reasonable doubt and the onus of proof is to be borne by the prosecution. The defence of accident is not applicable to strict liability offences generally.

**Clause put and passed.**

**Clauses 94 to 101 put and passed.**

**Clause 102: Due diligence assessment —**

**Hon NEIL THOMSON**: This clause, "Due diligence assessment", follows on from the discussion we had earlier. It would appear that a person undertakes a due diligence assessment to make a determination based on the Aboriginal cultural heritage management code. Has the Aboriginal cultural heritage management code been drafted?

**Hon STEPHEN DAWSON**: Honourable member, the code will be the subject of co-design, and that will include the details of the required levels of due diligence assessment and what information needs to be provided about the Aboriginal cultural heritage in the Aboriginal cultural heritage management plans. It is anticipated that for some proposals in which Aboriginal cultural heritage exists and prior investigations are adequate, further investigations may not be required. In cases in which Aboriginal cultural heritage has not been documented and reported, heritage investigations will be required to identify Aboriginal cultural heritage and understand its characteristics.

**Hon NEIL THOMSON**: When is the code likely to be available for broader consultation, noting the importance of due diligence for all members of the community? Any member of the community undertaking activity might fit into the tier 1, tier 2 or tier 3 strata.

**Hon STEPHEN DAWSON**: It will be co-designed. We do not propose to give a document to people or preordain what is in it. The intention is truly to sit down with the various stakeholders and co-design the stuff together. It will be some months away as part of the co-design process.

**Hon NEIL THOMSON**: Given that the people dealing with this code and showing responsible due diligence will be proponents, I hope that the minister works very closely with a broad cross-section of potential proponents because the onus of the requirement of due diligence sits squarely with those persons in the process of undertaking the activity. A part of the due diligence will be the assessment of whether an activity is a tier 1, tier 2 or tier 3 activity. We note that none of those activities have been defined and again we will be reliant on the process of regulation-making, which is underway. Can the minister describe to any extent what might be in a tier 1 to tier 3 activity? I also note that there are exempt activities; we had that description. I note that the bill does not refer to exempt activities. A person on the boundary of exempt activities could undertake activities that might be exempt or a tier 1 activity and there might be some requirement to undertake due diligence; I am not sure. I assume that including only tier 1 means that no due diligence is required for exempt activities but it is a bit of a conundrum because if that activity is deemed to be exempt and no due diligence is required, I can see a situation in which it falls into a tier 1 activity and somehow there is a breach. That person might say, "I didn't need to undertake due diligence." Can the minister provide a description of how that process might unfold?

**Hon STEPHEN DAWSON**: In relation to exempt activities, they are listed at clause 100 on page 828 of the legislation. In terms of the tiers, the member is correct; the activities in the tiers have not been predetermined. It is fair to say that there are different views amongst traditional owners about what should be a tier 1, tier 2 and tier 3 activity so there really is a need to get out around the state to talk to the prescribed bodies corporate and other stakeholders. There will need to be a coming together of ideas before we land on what is in each of the tiers. I put the following on the record. Due diligence assessment that is undertaken in accordance with the ACH management code will have the purpose of enabling a proponent to make an assessment as to whether the area where it is intended the proposed activity is to be carried out includes any area that is subject to a protected area order. The characterisation of the proposed activity will be a tier 1, tier 2 or tier 3 activity and that will determine how the proposed activity may lawfully be carried out; where Aboriginal cultural heritage is located; where it is intended the proposed activities be carried out; and whether there is any risk of harm being caused to Aboriginal cultural heritage by the proposed activity. If the proposed activity is categorised as a tier 2 or tier 3 activity, the person is to be notified or consulted about the proposed activity. That is what this clause is about. What is in those tiers has yet to be worked out.

**Hon NEIL THOMSON**: Are the due diligence requirements for all activities all the same?

**Hon Stephen Dawson**: Can you repeat that, please?

**Hon NEIL THOMSON**: Is the due diligence obligation identical for the various tiers—tier 1 and tier 3 activities?

**Hon STEPHEN DAWSON**: That is also subject to the co-design.

**Clause put and passed.**

**Clause 103 put and passed.**

**Clause 104: Proponent may seek confirmation about proposed activity —**

**Hon NEIL THOMSON**: Clause 104 is going to be a very big job for the CEO. I hope the department will have well-established processes in place. I note the rather archaic wording, "provide a letter of advice", to confirm whether a proposed activity is exempt. I would dearly hope that we are not literally talking about an exchange of letters. I would have thought that people could go to a website and ascertain whether the activity is exempt via a bunch of criteria and other things. Maybe they could lodge some sort of application on the website to get a response from the CEO in respect of the activity. We have a two-stage process. Firstly, there will be the determination of whether

the activity is tier 1, 2 or 3. A request under clause 104(1) must be in writing, containing details of the proposed activity. The applicant will then have to apply for a permit through the LACH service, so it seems that a bit of a two-stage process might be required of proponents. Can the minister explain the resourcing and process that might be used to streamline what I imagine will be a rather active and busy process for the CEO?

**Hon STEPHEN DAWSON**: The intention is that there will be a very clear table and an exhaustive list. Clause 104(4) states —

> A letter of advice under subsection (3) must only be provided by the CEO if the proposed activity described in the letter is an activity in relation to which there is uncertainty as to whether or not the activity is —

Paragraph (a), (b), (c) or (d).

As I said, there will be an extensive list, but only if something is not on the list will a proponent need to actually avail themselves of this clause.

**Clause put and passed.**

**Clauses 105 and 106 put and passed.**

**Clause 107: Persons to be notified or persons to be consulted about activities or proposed activities —**

**Hon NEIL THOMSON**: This clause creates some concern as well. I note that under clause 107(1), if there is not a local ACH service for an area or part of an area, each native title party for the area or part of the area and each knowledge holder for the area or part of the area are the people to be consulted. That could be a horrendous predicament for someone undertaking a tier 1 or 2 activity, given the transaction cost to engage parties. The proponent's activity might have a value of only $5 000, because it might involve the sorts of services that fit into these other activities. How are they supposed to be able to consult with that broad a range of parties if there is no local Aboriginal cultural heritage service for that area?

**Hon STEPHEN DAWSON**: There will be a finite number of knowledge holders. It will not be an extensive list. This bill seeks to align with the Native Title Act 1993, but the bill recognises that heritage is broader than native title. Often, knowledge holders are not members of a native title party but have knowledge of the Aboriginal cultural heritage in an area and have rights, responsibilities and interests in that heritage. We are not trying to make this an expensive or cumbersome process for proponents, but it is important to acknowledge that Aboriginal cultural heritage is priceless, so we need to make sure that we protect it for the future. Also, this provision will apply only to tier 2 activities; it will not apply to tier 1 activities.

**Hon NEIL THOMSON**: It will apply to tier 2 activities and above. It is all very well to say that heritage is priceless. I understand that concept and agree with it in the broader concept of heritage. From the lists that we have seen, the tier 2 activities could potentially be quite small projects in areas where there is an extremely low risk and it will not be a question of the likelihood of causing damage to heritage in either a significant or even a material way in any way. If there are no local Aboriginal cultural heritage services, proponents will be required, effectively, to go through what could be a very broad process. The minister is saying that there will be a number of knowledge holders. Is the minister suggesting that in the absence of a local Aboriginal cultural heritage service, a proponent undertaking a tier 2 activity with a total value of $5 000 will be required to go through this process even if it is very unlikely that the knowledge holders will be able to easily engage with any kind of rigour in the process of getting an approval? I find this part of the bill completely irresponsible and I think it is dangerous. If there is no local Aboriginal cultural heritage service, I think the state should be obligated to provide the proponent with some support because this provision will seriously undermine the activity. I can see this affecting all tier 2 activity and above. Maybe it will not affect tier 3 activity; maybe it will affect only tier 2 activity. It will affect those middle, low-cost activities that range from between $1 000 and $100 000 compared with those large activities for which engagement can occur because, as I said, the transaction cost as a proportion of the total project cost is low. I think this is a very dangerous provision. I again implore the minister to ensure that a safeguard will be provided for when a local Aboriginal cultural heritage service cannot be engaged by a competent and proficient body and that there will be a process that is more rigorous than this, because this could potentially completely block those tier 2 activities. That is a request. Maybe the minister can respond, because I think this will be unworkable.

**Hon STEPHEN DAWSON**: The commitment to co-design is real and serious. I will not speculate what might be a tier 1, tier 2 or tier 3 activity because that is not for me to decide; that will come out of the co-design process. It is intended that the Aboriginal Cultural Heritage Council will prepare some knowledge holder guidelines, for which there will be an opportunity for public consultation and submissions before their approval. Further, I draw the member's attention to clause 108, which talks about systems to identify persons to be notified or consulted. It states —

> A proponent may request the assistance of the CEO to identify the persons to be notified or the persons to be consulted about an activity that a proponent is carrying out, or a proposed activity that the proponent intends to carry out, in an area.

That is another thing that people will be able to avail themselves of.

**Clause put and passed.**

**Clauses 108 to 114 put and passed.**

**Clause 115: Application for ACH permit —**

**Hon Dr STEVE THOMAS**: It is repeated in a couple of other clauses, including clauses 120 and 163, but clause 115(2)(f) states —

> set out how the proposed activity will be managed to avoid, or minimise, the risk of harm …

Can the minister indicate whether he has a definition of "minimise"? I raised in my second reading address that obviously there will be circumstances in which Aboriginal cultural heritage will be effectively sacrificed for the greater good. Avoiding is obvious—do not harm it—but there will be circumstances in which some will ultimately go. If there is not a definition of "minimise", will the minister give an undertaking that, as part of the consultative process around the regulations, he will try to formalise that definition to acknowledge that it is accepted that in some circumstances there will be some impact, effectively? I am looking for some reassurance that the word "minimise" might indicate that, ultimately, the minister's direction will require him to allow some impact. If the minister does not have the definition now, maybe the minister can give us an undertaking that he will work out what it looks like coming up.

**Hon STEPHEN DAWSON**: Yes; I give the honourable member the undertaking we will work out what it looks like. There is no definition at this stage. It will be up to the council to work out, in its view, whether the proponent is minimising —

**Hon Dr Steve Thomas**: Surely there will be some ministerial oversight of that, because we do not want to be in the situation in which "minimise" really does not exist. We have to sort of somehow reinforce that "minimise" will occur on some occasions and destruction will occur on some occasions.

**Hon STEPHEN DAWSON**: It certainly will, and it does under the 1972 act. Proponents bring projects before the Aboriginal Cultural Material Committee and it looks at these things already.

**Hon Dr Steve Thomas**: I am trying to empower your discretion as the minister or the future minister to be able to do that.

**Hon STEPHEN DAWSON**: The intention is to work with the council to work out what "minimise" is. Perhaps this will inform part of the conversations that will be had in the co-design process for the regulations; stakeholders might wish to proffer a view on what "minimise" looks like.

**Hon WILSON TUCKER**: My question is about the application for an ACH permit. Is there a fee for the proponent who files an application with the council? Apologies if the minister already answered this previously.

**Hon STEPHEN DAWSON**: The answer is not yet, honourable member. The legislation provides the ability to charge fees. I am advised that it is intended that the department will track the number of applications and the resources that it requires to process them during the first 12 months, and that data will provide a sufficient basis for determining whether fees should apply to permit applications.

**Hon WILSON TUCKER**: I raised a question previously about the time KPIs associated with the council, and the minister said that they would fall under the performance scrutiny of the minister. Is the approval time frame for the ACH permit by the council one of those measurable time KPIs; and, if yes, what is the expected time it will take for the council to make a decision on an ACH permit?

**Hon STEPHEN DAWSON**: Guidelines will prescribe time frames. What those time frames will look like is to be decided as part of the co-design process. But, yes, that can be tracked. Essentially, if decisions are taking longer to be made than the time frame, that can be tracked. Whether they are in or outside the time frame can be tracked. As I alluded to previously, the opportunity exists for the minister to direct the Aboriginal Cultural Heritage Council if it does not meet the prescribed time frames. That is another option.

**Hon WILSON TUCKER**: Will the expected amount of time be included in the regulations?

**Hon Stephen Dawson**: Yes.

**Clause put and passed.**

**Clauses 116 to 127 put and passed.**

**Clause 128: Conditions —**

**Hon NEIL THOMSON**: I want to interrogate sovereign risk and the impact this clause will have on projects in Western Australia.

**Hon Stephen Dawson**: Could the member say that again?

**Hon NEIL THOMSON**: I would like to discuss sovereign risk and the impact this clause will have on projects of all sizes. One of the challenges with any project is the lead time for investment. As described in the "Objects of Act", there is a need for certainty, but this clause contains a broad provision that a permit holder must notify the ACH council of new information. Most permits that I am aware of are approved, applying a series of conditions. I understand that some information might be identified that will be material to the approval, but some of the definitions within the

nature of cultural heritage might allow for some flexibility of interpretation. I worry about the impact of this clause on significant investment decisions and the appetite in the investment community to make decisions in Western Australia. Has there been a proper assessment of this clause in relation to sovereign risk in Western Australia?

**Hon STEPHEN DAWSON**: I do not think this is an issue of sovereign risk in Western Australia. This clause simply requires that when a proponent changes, such as a company is sold and someone else takes over that company, the council will be informed. To be honest, it is good governance.

**Hon NEIL THOMSON**: The minister referred to clause 127. I am referring to clause 128.

**Hon STEPHEN DAWSON**: Why is the onus on proponents to report new information? It is a standard condition that a permit holder must report new information about Aboriginal cultural heritage to the council. There is nothing to stop an Aboriginal person from reporting new information to the council. For ACH management plans, a party to the plan, which includes the Aboriginal party, must notify the ACH council if the party becomes aware of any new information about Aboriginal heritage. Members in this place have spoken about Juukan Gorge over the past few months. If a clause such as this existed then, the likelihood is that we would not have seen the tragedy at Juukan Gorge. I stand behind this clause; it is not an issue of sovereign risk. It is simply an issue of ensuring that we protect Aboriginal cultural heritage. If further work is done that finds sites of significance, they will need to be reported and taken into consideration.

**Hon NEIL THOMSON**: I was going to refer to this as the Juukan Gorge clause because it seemed to be that, and the minister seems to have confirmed it. Clearly, the section 18 matter, in terms of the destruction of the site, and the notification of new information is very different, I would have thought, from the more nuanced approach around conditions of approval. This is not about destroying a site; this is just about the conditions on a permit that a permit holder will have in order to undertake an activity. I think it goes much further than the Juukan Gorge situation. The section 18 component could have been easily rectified with a simple amendment concerning new information on which the council or minister would be able to make a determination that there is significant heritage that needs protection. As we heard earlier in the discussion, the department might even have known about the situation that was emerging. We are not going to go over any great discussion of that, but there was a possibility that it might have exerted some other influence on Rio Tinto at the time. The issue for me is that I have a concern about the permit and risk. Something might be identified as being important as part of a development; for example, they might come across ancestral remains during excavation. I would have thought that there would be a narrow enough interpretation to provide certainty to proponents and would be no different from any normal heritage proposal. My concern is that a local Aboriginal cultural heritage service might choose to exert a bit more influence than is necessary and place a situation before the council. I am focusing on subclause (3). I am interested in how that might come about, because it states —

> If the ACH Council becomes aware of new information …

I assume that that information could come through the local Aboriginal cultural heritage service. The LACH service might already have negotiated extensively to come up with a permit and then, once a project is at the cusp of being finalised and after many millions of dollars of investment, this process could create considerable disruption to that investment. I think there probably needs to be more safeguards in the legislation to protect the investment community against sovereign risk. The intent is to provide safeguards to prevent the destruction of Aboriginal culture, but I think the intent here should be to ensure that a degree of certainty is provided. Can the minister please comment on the process of how the ACH council might become aware of new information and how it will assess whether that information is significant enough to effectively revamp the conditions that apply to a permit?

**Hon STEPHEN DAWSON**: I make the point that it will be an obligation to report; it will not mean that the project will be dead. It could be that the council will just set conditions to minimise harm in relation to the new information. For example, there could be a condition to have Aboriginal monitors on site. It will not mean that a project must stop. It will relate only to low-impact activities and not the kind of project for which there would be concern about sovereign risk. If it involves millions of dollars of investment, it will require a management plan. It will be a tier 2 activity. I think the member is wrong to be concerned about sovereign risk in relation to this clause.

**Hon NEIL THOMSON**: I do not want to labour this—I know that we have to push on—but maybe it is more of a concern to have such an extensive clause on this matter when we are not dealing with Juukan Gorge examples; we are dealing with minor activities. I just think that creates more concern. I will leave that as a comment.

**Clause put and passed.**

**Clauses 129 and 130 put and passed.**

**Clause 131: Objection to decision of ACH Council —**

**Hon Dr BRAD PETTITT**: Once again, on page 2 of the supplementary notice paper, I have given notice of some proposed amendments. I will take the chair's advice about whether they are moved singularly or as a whole.

**The DEPUTY CHAIR (Hon Steve Martin)**: You can seek leave, member, to move them en bloc or you can move them singularly.

**Hon Dr BRAD PETTITT**: I think it would make sense to move them en bloc because they are interrelated, but before I do so, I want to ask a question. The intent of these amendments is so that it is not just the applicant who is able to either appeal or be notified, but also broadened out to be any person who might be notified. Why was the narrower definition decided upon in the legislation so that it was just the applicant?

**Hon STEPHEN DAWSON**: The tiered approval system has been designed with the principle that the regulatory burden for a proponent should be proportionate to the type and degree of impact of the proposed land-use activity. This approach is part of a balanced system that will see the net gain being that more activities are regulated and there is greater engagement with Aboriginal people. Introducing objection processes for low ground-disturbance activities poses a risk to the practical operability of the legislation. It may have unintended consequences, including adding considerable time to the permit approvals process, as experienced with the expedited procedure process under the Native Title Act 1993. This process has been highly criticised for its inefficiency. The lack of review rights for permanent applications where the ground disturbance is low attempts to balance the increased participation of Aboriginal parties in the process, with the government's commitment to ensuring regulatory approval processes are timely and fit.

The ACH council must have regard to any submissions made by the Aboriginal parties prior to making its decision to grant, or refuse to grant, a permit. The council will need to be satisfied that the applicant will take all reasonable steps possible to avoid or minimise the risk of harm being caused to Aboriginal cultural heritage by the activity prior to granting the permit. The council will also be able to impose any conditions it considers appropriate to ensure the activity is managed to avoid or minimise the risk of harm to heritage. It is a standard condition of permits granted that the permit holder must notify the council of any new information about Aboriginal heritage in the area, and, in light of this new information, the council may impose or amend a condition on the permit that the council considers appropriate, to ensure that the activity is managed to avoid or minimise risk of harm because of cause to the Aboriginal cultural heritage. Stop activity orders and prohibition orders could also be issued to stop activity in light of this new information.

Unlike current section 18 notices, permits could be cancelled or suspended if the council is no longer satisfied that the activity has managed to avoid or minimise risk of harm to heritage or if the permit holder breaches a condition or carries out an activity that is not authorised under the permit.

**Hon Dr BRAD PETTITT**: Thank you for that. I think I caught in there that the minister said a person may be notified, within the current reading of this clause. Am I correct in understanding that although they will be notified, they will not be able to object? Is that correct?

**Hon STEPHEN DAWSON**: They could make submissions to the council, which the council will take into consideration.

**Hon Dr BRAD PETTITT**: I do not see why this is more bureaucratic. I am focusing on amendment 2/131, which would merely add a subclause after line 4. It states —

> (1A) A person to be notified may, within the prescribed period, object in writing to the Minister if the ACH Council grants the permit under section 119(1)(c)(i).

I do not quite understand how that is more bureaucratic and cumbersome than a person simply putting in a submission.

**Hon STEPHEN DAWSON**: This refers to low-level stuff; it is not high-level stuff, and so the decision has been made that it would be less bureaucratic not to have an appeal right here. There will be two opportunities for traditional owner groups to provide feedback: the first is to the proponent directly; the second is to the council. It is an Aboriginal council that will grant the permit after hearing from an Aboriginal party. That is the safeguard that we believe will be in place.

**Hon NEIL THOMSON**: Just to clarify, the objection provision applies only to tier 3 activity; is that correct?

**Hon STEPHEN DAWSON**: Sorry, it is tier 2.

**Hon NEIL THOMSON**: Obviously, there is no objection provision whatsoever for tier 1 activity, so basically would the applicant apply for a permit?

**Hon Stephen Dawson**: By way of interjection, there is no permit for tier 1 activity.

**Hon NEIL THOMSON**: There was a lack of clarity in some of the information we were provided through the department. There was an infographic, I think, which probably needs to be clarified. I would appreciate the minister providing that clarity, because a table was provided that did not seem consistent with the online infographic. Is the minister saying that there will be no permit requirement at all for tier 1 ever—period?

**Hon Stephen Dawson**: Correct.

**Hon NEIL THOMSON**: Okay. The objection process for tier 3 activity is a different process. That is provided.

**Hon Stephen Dawson**: Correct.

**Hon NEIL THOMSON**: I am sorry, I cannot recall where that is outlined, but it is not under clause 131.

**Hon Stephen Dawson**: No, that is correct.

**Hon Dr BRAD PETTITT** — by leave: Certainly, the feedback that we have been getting from key stakeholders is that this provision needs to be strengthened for not just applicants, but also other key parties involved. On that basis, with the deputy chair's permission, I would like to move en bloc the amendments listed on page 2 of the supplementary notice paper. I move —

Page 104, after line 4 — To insert —

(1A) A person to be notified may, within the prescribed period, object in writing to the Minister if the ACH Council grants the permit under section 119(1)(c)(i).

Page 104, line 5 — To insert after "ACH permit" —

or a person to be notified

Page 104, line 7 — To insert before "refuses" —

extends an ACH permit or

Page 104, line 7 — To delete "section 126(1)(c)(ii)" and insert —

section 126(1)(c)

**Hon STEPHEN DAWSON**: I just indicate, as I have previously, that the government is not supporting these amendments.

**Amendments put and negatived.**

**Clause put and passed.**

**Clauses 132 to 146 put and passed.**

**Clause 147: Application for approval of ACH management plan —**

**Hon NEIL THOMSON**: In the interests of expediting this, I have gone straight to clause 147, "Application for approval of ACH management plan". If the minister could indulge me a little on this, we can bat some general questions. I am trying to truncate some of the discussion on the management plans in general. As far as I can tell, only tier 3 activity will require a management plan or maybe there is some other provision in relation to tier 2 under which there might be a requirement. The issue is that these management plans will no doubt be governed by guidelines and procedures. However, I assume that they are yet to be developed and that the government has a fairly good idea of what an Aboriginal cultural heritage management plan might look like. I am sure some already exist with respect to the Aboriginal Heritage Act, although they may not be defined in the precise legal terms as they will be in the proposed act. I doubt a provision within the existing act requires them, but I am sure they exist.

Can the minister give a very broad description of what those management plans may entail and how many might have to be approved each year?

**Hon STEPHEN DAWSON**: Tier 2 proponents can choose to apply for a management plan, but they do not need to. There will be no necessity to do so.

The clause provides that a proponent may apply to the Aboriginal Cultural Heritage Council for approval of an ACH management plan that has been agreed to by each interested Aboriginal party for the plan. Such application must be made to the ACH council in the approved form and include the plan agreed to by each Aboriginal party and the proponent whose requirements are provided in clause 137 of the bill. It must include evidence that each interested Aboriginal party has given informed consent to the plan for the requirements in clause 146 of the bill. It must also include a summary of the information that the proponent disclosed to each Aboriginal party under clause 146(1)(a) of the bill. It must include details of the consultation required with each of the persons to be consulted under clauses 107 and 139 of the bill. It must include any responses to the proposal by each of the persons to be consulted on the proposal and include any other documents or information, if any, required by the regulations of the proposed act. Again, the intention is to design these plans as part of the co-design process. I suppose there has been some early thinking on the part of what it might look like, but the co-design will happen as part of the already announced co-design process.

**Hon NEIL THOMSON**: Does the minister have any idea how many management plans are likely to be sought?

**Hon Stephen Dawson**: I am advised that, under the existing legislation, we get about 100 section 18s per year, so it could well be in the order of that.

**Hon NEIL THOMSON**: That is a very useful guide because it probably helps to define what a tier 3 activity might look like in terms of what otherwise might be subject to the section 18 process. It might provide some comfort, I guess, to persons in the industry about the scope and the requirements. My understanding is that this could cost quite a considerable amount. I do not know whether the minister can consult with his advisers to ascertain the likely cost of an average management plan for, say, a standard resources project and maybe even an exploration project. Some sort of indication might be useful.

**Hon STEPHEN DAWSON**: I cannot. It is probably a case of: how long is a piece of string? I do not have an answer to that; it will depend on the project. To be honest, further advice is that we do not know how much it costs at the moment. Some of the bigger proponents have teams of people in their organisations working on this stuff. If it is anything like the environment portfolio I had last, some of the big proponents that were seeking environmental approvals had bigger environmental teams in their companies than did the whole of the department dealing with assessments, so it is probably similar for some of the bigger proponents at the moment.

**Hon NEIL THOMSON**: The minister has provided me with some comfort on that particular aspect of the bill. Obviously, it raises some concerns about other aspects of the bill, because it again feeds into the issue of transaction costs. We had a discussion earlier about those tier 2 activities, which are the focus of my attention, given the challenge. It is important to define those tier 3 activities. I again implore the minister as part of the co-design process to look at the transaction costs and make them commensurate to the size of the projects that are likely to be affected by the requirement to deliver management plans. That is my comment. Once management plans are established, will there be any way for the Aboriginal Cultural Heritage Council to report on the performance of those management plans through its annual reporting process?

**Hon STEPHEN DAWSON**: I am struggling this evening; the sound in the chamber is not great. Perhaps after I have answered the honourable member's question, could the deputy chair remind honourable members that if they have conversations that do not rely on or concern the bill, they might take them outside. The honourable member does not have a very loud voice and at times it can be difficult to hear him.

In terms of the question asked, there will be reporting requirements in some of those management plans and that can be monitored when reports are given back to the agency.

**The DEPUTY CHAIR**: The minister and I share a concern that it is difficult to hear this conversation, so, please, members, if you are having conversations, can you take them behind the chair.

**Hon NEIL THOMSON**: I thank the deputy chair and I will endeavour to speak a little louder for the minister's benefit as the Committee of the Whole House stage winds up.

I think it would be useful if key performance indicators were a requirement for the Aboriginal Cultural Heritage Council. Also, will there be any scope under the provisions for the Auditor General to assess the Aboriginal Cultural Heritage Council and the effectiveness and efficiency of management plans?

**Hon STEPHEN DAWSON**: The Auditor General could look at the decision-making time frames and whether the ACH council is making decisions in a timely fashion. If it is not, I dare say the Auditor General could make recommendations on potential processes or other things that might need to be changed. That is probably the extent of what the Auditor General would look at. It would not necessarily be what is in the management plan because that would be for the ACH council to decide with the proponent.

**Clause put and passed.**

**Clauses 148 to 210 put and passed.**

**Clause 211: ACH Directory —**

**Hon NEIL THOMSON**: The Aboriginal Cultural Heritage Directory will be a critical component for the efficient and informed function of the new legislation when it is enacted. Clause 211(1) states —

> The ACH Council must establish and maintain a directory called the Aboriginal Cultural Heritage Directory.

Earlier we had discussion about the onus on proponents providing information on the location of sites and cultural heritage and descriptions of that. I note the department obviously has some sort of central database of sites and current protected areas. The minister mentioned that there have not been any new ones since 1994 or 1996—I cannot recall. Will some investment be made in the lead-up to the go-live situation with this legislation to provide a much more seamless and usable framework for the Aboriginal Cultural Heritage Directory?

**Hon STEPHEN DAWSON**: The short answer is yes. I am told that the existing register of places and objects is rudimentary. It is intended that the new Aboriginal Cultural Heritage Directory will contain features that facilitate greater participation by Aboriginal groups. Some of the features that may form part of the Aboriginal Cultural Heritage Directory include: portals whereby local Aboriginal cultural heritage services can have direct access to all the information held under the directory relevant to their area of designation; notification to local Aboriginal cultural heritage services about details of registered users undertaking searches within their area of appointment; and notification to local Aboriginal cultural heritage services of issues with approvals under other legislation. For example, there have been discussions with the Department of Mines, Industry Regulation and Safety that notification of approvals issued under legislation that it administers is to be provided to local Aboriginal cultural heritage services via the Aboriginal Cultural Heritage Directory. But it is also intended that stakeholder input be sought and further consultation be undertaken for the design and function of the Aboriginal Cultural Heritage Directory.

**Hon NEIL THOMSON**: I strongly support this area. Aboriginal groups will now have an opportunity to participate with the use of technology and geographic information systems, which are now widely available. A range of

opportunities will be provided that go beyond the punitive aspects of the legislation and more information will be provided. I hope that the identification of sites and the provision of information for all stakeholders and all Western Australian citizens will be emphasised, given the incredible value of Aboriginal cultural heritage to our community. I commend the minister for putting this element in the bill because there is a need for it, but it is also vital in achieving clarity of the objects that we have a very efficient, well-resourced and accurate directory. I have probably said enough, but they are my comments on this matter.

**Clause put and passed.**

**Clause 212 put and passed.**

**Clause 213: Information and documents on ACH Directory —**

**Hon Dr BRAD PETTITT**: My question follows up on the directory. Will the ACH directory include information on the current status of what Aboriginal heritage has been harmed and to what level, and the impact on its value?

**Hon STEPHEN DAWSON**: The clause provides the type of information and documents that can be included in the directory. The ACH directory will contain information specified in the regulations in relation to a protected area; a local ACH service for an area; a native party title for an area; the knowledge holders for a particular area and particular Aboriginal cultural heritage; an ACH protection agreement endorsed under part 8; an ACH permit; and an approved or authorised ACH management plan. A determination of Aboriginal cultural heritage is of state significance for the purposes of the act and a part 7 order.

The ACH directory will hold information about the Aboriginal cultural heritage of the state, including a description of the characteristics and location of that heritage. An Aboriginal object and intangible Aboriginal cultural heritage includes a description of where it is thought to have originated from or any type of recording, particularly in relation to intangible Aboriginal cultural heritage. The ACH directory can also hold any other information or documents relevant to Aboriginal cultural heritage and prescribed in the regulations, either at the request of another person or when the ACH council considers it appropriate to include that in the directory. For Aboriginal cultural heritage to be added to the ACH directory, it will need to be supported by a knowledge holder for that heritage. It is proposed that minimum recording standards will need to be met before Aboriginal cultural heritage is added to the directory. The purpose of the minimum recording standards is to ensure that sufficient information is captured about why and to whom the heritage is important. Unlike under the Aboriginal Heritage Act, there will be no statutory body responsible for determining whether Aboriginal cultural heritage is important to an Aboriginal person.

**Hon Dr BRAD PETTITT**: That is very helpful. I am trying to understand whether it will capture information that gives context for some of that Aboriginal cultural heritage. One key thing that comes to mind is cumulative impacts in an area that might have an adverse impact on the Aboriginal cultural heritage over time. Is there a way that that could be captured in the directory?

**Hon STEPHEN DAWSON**: It will capture plans and permits. It is not like the environment necessarily whereby there is a cumulative impact if there is a project on top of another project and it creates more of an issue. The issue with our act is that Aboriginal heritage is discrete, so it is probably harmed only once; it cannot really be harmed again unless chunks are being taken off it. It is very different from the cumulative impacts that feature in the Environmental Protection Act, for example. Certainly, those things that the member has suggested will likely be in management plans and permits. That information absolutely will be captured in the directory.

**Hon Dr BRAD PETTITT**: It is an interesting one. It is not quite as discrete as built heritage. I am thinking about the Heritage Act, which, I agree, is probably as the minister described it, although it is not as fluid—perhaps "interconnected" is a better word—as some of the things that might be captured under the environmental acts. I feel that there can be cumulative impacts on Aboriginal heritage. One element of intrusion by itself might not impact on those values, but I could imagine it if a series of things were happening in an area. If it cannot be captured, it cannot be captured. Often, it is not as simple as a building. I wonder whether some of that information could be captured, because I think it would be important for future approvals and future decision-making.

**Hon Stephen Dawson**: I will take that as a comment, honourable member.

**Clause put and passed.**

**Clauses 214 to 223 put and passed.**

**Clause 224: Inspectors —**

**Hon Dr STEVE THOMAS**: I have similar questions about clauses 224 and 225. This relates to the appointment of inspectors. Can the minister give us an indication of the intended qualifications and training of inspectors? I said in my contribution to the second reading debate that the government has a bit of a trend of appointing inspectors under a range of legislation, not just this one. It wants animal welfare inspectors. It wants inspectors in all sorts of areas. I think this is particularly sensitive, though, so can the minister give us an indication of the qualifications that will be required? Clause 224 refers to public service officers who might be inspectors, including police officers potentially, but also maybe he can cover clause 225, which refers to Aboriginal persons who might become inspectors. What qualifications will they have to have and what training will be given to them?

**Hon STEPHEN DAWSON**: Any inspectors who are hired by the department will receive training and be suitably qualified. There is a compliance unit within the Department of Planning, Lands and Heritage and its compliance officers are ex–police officers, but it would not be appropriate or practical for the police to be the only inspectors. Obviously, police have a lot of duties and demands on their time, so the CEO of the department will have responsibility for the designation of a public service officer or a person employed or engaged by the department under section 100 of the Public Sector Management Act as an inspector for the purposes of the act.

This is similar to the provisions in a number of other acts. Under the Environmental Protection Act 1986, the CEO may appoint a person or members of classes of persons to be authorised persons for the purposes of the act, and the CEO may limit the powers conferred on those persons. Under the Heritage Act 2018, the minister may appoint a person to be an inspector for the purposes of the act, and the functions of an inspector under that act are subject to any limitations or conditions specified in the instrument of appointment; and so too under the Biodiversity Conservation Act 2016. Clause 45 of the Conservation and Land Management Act states that wildlife officers act as inspectors and are officers of the department designated by the CEO. I make the point that it is in a number of different acts that have passed through this Parliament under a number of different administrations.

**Hon Dr Steve Thomas**: The government does love having inspectors out there!

**Hon STEPHEN DAWSON**: It is not a red or a blue thing, it is an across-the-board thing.

The member asked a question about clause 225 and Aboriginal people, which I will answer now. The CEO of the department may appoint an Aboriginal person to be an Aboriginal inspector for an area of the state. Before appointing an Aboriginal inspector for a specified area for which a LACH service is designated, the CEO must notify the relevant LACH service of the proposed appointment and provide the LACH service with an opportunity to make a submission. An Aboriginal inspector will have, in respect of the area appointed, the powers conferred by or under the proposed act.

**Hon Dr Steve Thomas**: In clauses 224 and 225, will effectively the training, the support network and the oversight be the same?

**Hon STEPHEN DAWSON**: Yes.

**Clause put and passed.**

**Clause 225: Aboriginal inspectors —**

**Hon NEIL THOMSON**: I am interested in the accountabilities that will relate to Aboriginal inspectors. Those are quite clearly defined in the previous clause. I am wondering whether the accountability or integrity framework that is applied to public servants under the Public Sector Commissioner would be applied through the ACH council to Aboriginal inspectors.

**Hon STEPHEN DAWSON**: They would not be captured by the Public Sector Management Act, because they are not public servants. They would have only the powers essentially given to them by the CEO, and those powers would be fairly limited. No, they would not be captured by the PSM act.

**Hon NEIL THOMSON**: That is another matter of concern. We have talked about similar concerns around the accountabilities of the local Aboriginal cultural heritage services. Would these Aboriginal inspectors be subject to complaints to the Corruption and Crime Commission?

**Hon STEPHEN DAWSON**: Lots of people are scurrying to try to get the information. I do not believe they would be. Aboriginal inspectors who are not public servants are unlikely to be given the same range of powers as departmental inspectors because they are not public servants. The CEO could revoke the appointment of an inspector.

**Hon NEIL THOMSON**: From the minister's response, I assume the answer to my question is no, given that I asked whether the Corruption and Crime Commission —

**Hon Stephen Dawson**: I did say the answer is they are not.

**Hon NEIL THOMSON**: They are not, okay. Thank you for clarifying. Again, I am having trouble hearing.

**Hon Stephen Dawson**: The sound in here is not great.

**Hon NEIL THOMSON**: Insofar as the CEO had appointed these persons, if there were some form of misconduct complaint, would the CEO be responsible for their conduct and subject to the complaint? Would the CEO effectively be responsible for the conduct of these Aboriginal inspectors if an Aboriginal inspector acted outside the scope of their mandate and/or in a way that was not in accordance with the integrity framework of Western Australia?

**Hon STEPHEN DAWSON**: I am trying to get to the crux of the member's question. Was he asking whether the CEO could be reported to the CCC, for example, by virtue of one of these inspectors not doing the right thing?

**Hon Neil Thomson**: That is correct.

**Hon STEPHEN DAWSON**: The answer is no, but the same answer stands in that the CEO could revoke their appointment at any stage if there were reason to do so.

**Hon NEIL THOMSON**: What recourse would a person have if someone acted unlawfully and they were an Aboriginal inspector, apart from the CEO revoking their licence to inspect or appointment as an inspector?

**Hon STEPHEN DAWSON**: If anyone ever acts unlawfully, I would encourage their actions to be reported to police.

**Hon NEIL THOMSON**: That is part of the problem. Over the course of many decades in Western Australia, we have had the simple mechanism of reporting to police—after all, every citizen of Western Australia has the capacity to report the conduct of any person to police. Bodies such as the Ombudsman, the Public Sector Commissioner and the CCC are for a purpose; they have a specific role. They have wider powers to deal with issues of misconduct. They might not pass the test of criminal culpability, but they might be deemed to be inappropriate for an officer who has certain powers vested by the Crown of Western Australia. I think this is a very important matter. I think this is a huge blind spot in the bill. We have no level of accountability when a complaint is raised. I think it is unfair for Western Australians to be required to report these matters to police. I would have thought—I am sure this matter will be tested in law at some stage—that if the CEO has appointed an Aboriginal person to be an inspector and there is no other recourse, the CEO might be responsible for the actions of that individual. I am not a lawyer and I am only assuming this, as we try to work through this bill in a rather short time in terms of some of the challenges that we face. I will ask again whether any mechanism might be put in place. To give the minister some guidance, would there be any scope for the Aboriginal Cultural Heritage Council, for example, to provide some sort of oversight and accountability for the conduct of Aboriginal inspectors?

**Hon STEPHEN DAWSON**: It is administered by the department through the CEO, so it is the CEO who can appoint and revoke these positions. I do not think it is unfair for anybody to have the opportunity to report anything to police. I think we should be very proud of our democracy in Western Australia and the fact that the state government is making a continued investment into new police officers across the state. I am confident that, should a crime need to be reported to police, they would have the resources to be able to investigate properly.

**Hon NEIL THOMSON**: That is a complete misrepresentation of my comments, quite frankly.

**Hon Stephen Dawson**: Honourable member, I did not say that you uttered any words, so you can't say it is a misrepresentation of your words.

**Hon NEIL THOMSON**: I will clarify what I said for the minister's benefit so that there is no misunderstanding. Public servants can misbehave. It may not achieve the threshold of —

**Hon Stephen Dawson**: I hope you're not speaking from experience, honourable member.

**Hon NEIL THOMSON**: I speak from the experience of a senior public servant who has had to deal with misbehaviour in the public service. I can assure the minister that at times, persons —

**Hon Kyle McGinn**: Did you report it to the police?

**Hon NEIL THOMSON**: If the member would just listen, I will explain. This would not meet the test of a criminal matter that would necessarily be reported to the police. I could give a very high profile example of a person who was the chair of a statutory body, which I will not name in this place because of decorum. It was dismissed on the basis of misbehaviour; it was not considered criminal conduct. It is a very important provision to have within our public sector management arrangements. There is ample opportunity for an inspector to misbehave and not be subject to a police inquiry. I believe that is a major shortcoming in this bill. We need more accountability in relation to these persons who will be given powers to do a whole range of things within the remit of their role. As I said earlier, this is the minister's bill and these will be the minister's people. I say to the CEO, these persons will be undertaking the duties on behalf of the CEO and I strongly suggest a level of reconsideration of what accountabilities will be put in place to protect the people of Western Australia from any unlawful—not even unlawful—matters that are not appropriate behaviours for somebody who is carrying an identity card and working on behalf of the Crown. That is my point.

**Hon STEPHEN DAWSON**: The honourable member made his point. I hope that people are not suggesting for a second that just because Aboriginal people will be in these roles, they will somehow be more prone to doing things wrong, because that would be wrong. This is about Aboriginal empowerment.

**Hon Neil Thomson** interjected.

**Hon STEPHEN DAWSON**: I am talking.

**Hon Neil Thomson** interjected.

**The DEPUTY CHAIR (Hon Steve Martin)**: Member! The minister has the call.

**Hon STEPHEN DAWSON**: There will be limited powers as determined by the CEO of the agency. There will be oversight by the CEO. The CEO will be able to revoke the appointment of inspectors.

**Hon NEIL THOMSON**: For the sake of *Hansard* and those watching—I know that people are watching—the imputation that I said that Aboriginal people would be more prone to misbehaviour is simply not correct. I find that offensive.

**Hon Stephen Dawson**: I am glad that the member corrected that for the record.

**Hon NEIL THOMSON**: You were the one who said it.

Several members interjected.

**The DEPUTY CHAIR**: Members! Hon Neil Thomson has the call.

**Hon NEIL THOMSON**: I am saying that there are quite different powers of accountability. People of Aboriginal descent are no less prone than people of non-Aboriginal descent to the issues that need to be considered. A level of accountability should be applied to all inspectors commensurate to the powers that they will be given by the Crown. That was my point and that is where I leave it.

**Clause put and passed.**

**Clauses 226 to 233 put and passed.**

**Clause 234: Power to stop and enter vehicles, and ancillary powers —**

**Hon Dr STEVE THOMAS**: With regard to the powers of the inspectors, whether they are inspectors under clause 224 or 225, they basically will not have the power to access dwellings. They can have access to dwellings if there is informed consent, and they can enter other places if they have an entry warrant. Under clause 234, they will basically have the power to stop a vehicle, other than a mobile home, at any time. They will also have the power to detain a vehicle and move it to another spot. I raised this issue in my contribution to the second reading debate. The minister may not yet have this in written form, but I assume that there will be some guidelines for when it will be appropriate to use that power, regardless of which inspector it applies to. If those rules are not yet written and we do not yet have an indication of them, can the minister give a commitment that when they are made, he will provide the chamber with an indication of when those powers might be applied? I imagine it would be quite confronting to be pulled over by an inspector who might not be a police officer and have your car impounded if you have picked up a rock. You may have picked it up inappropriately, but I think the appropriate use of these powers will be the critical thing. The minister will undoubtedly at some point have guidelines. Can he give us an indication of whether they exist yet, or inform us of when they will exist?

**Hon STEPHEN DAWSON**: Those guidelines do not exist yet, but it is the government's intention to have guidelines around that issue. I make the point that similar provisions exist under the Biodiversity Conservation Act 2016, and there are really strong provisions under the Fish Resources Management Act. Under the Environmental Protection Act, an inspector or an authorised person may at any time stop, enter, search and inspect any vehicle. The same provision exists in other legislation, but certainly with regard to the legislation before us, the intention is to have guidelines around it.

**Hon Dr Steve Thomas**: Are you happy to let us know when those guidelines are around, and what they look like?

**Hon STEPHEN DAWSON**: Sure. I know that honourable members in this place have a great deal of interest in this legislation. I am happy to ensure that, when appropriate during the next consultation phase, honourable members are provided with a briefing about how the co-design process is going. If information sessions are happening, honourable members may well be invited along to some of them, when appropriate. It might not be appropriate, for example, for information sessions organised out on country, but I am happy to generally make the commitment to engage with members as we proceed.

**Clause put and passed.**

**Clauses 235 to 276 put and passed.**

**Clause 277: Review of certain decisions —**

**Hon NEIL THOMSON**: Clause 277 outlines a number of matters that are reviewable. Concerns have been raised by the Kimberley Land Council in relation to, in its words, the unequal nature of those reviewable decisions. It is claimed that the bill will remove the right to review a decision of the minister to approve or refuse an Aboriginal cultural heritage management plan. Submissions made by Aboriginal groups almost universally oppose this. Why were reviewable decisions limited?

**Hon STEPHEN DAWSON**: I know it is not question time, but I will ask the member's own opinion on this later on. The bill establishes a mediation and dispute resolution process via the Aboriginal Cultural Heritage Council when parties cannot agree. The bill also ensures that one of the very first things proponents will do when contemplating a new project is go and speak with the right traditional owners so that they can work through issues as partners in the process. In the rare instance that the outcomes of mediation and arbitration through the ACH council are still disputed, the ACH council will make a public recommendation to the minister and the minister will make a decision on behalf of the government in the interests of the state. Making decisions on contentious issues is the job of the elected government. The bill will improve the openness and transparency of the decisions, the reasons for the decisions will be published and the Aboriginal parties and proponents will be informed of the minister's decision. That is not a requirement of the current act.

The concerns raised about the minister's final approval on an Aboriginal cultural heritage management plan cannot be compared with the minister's approval of a section 18 consent under the 1972 act. They are completely different tools. The considerations when making a decision about a section 18 consent are not comparable. Decisions on

ACH management plans do not come to the minister for authorisation except as a last resort. The Northern Territory has a similar dispute resolution mechanism. Since 1989, there has been a need for ministerial decision-making only four times. I also highlight that under the Northern Territory Aboriginal Sacred Sites Act, there is no right of review to a tribunal of the minister's final decision. Ministerial decision-making will occur only when the parties cannot reach agreement and after the council has attempted to mediate an agreement between both parties. The council can recommend the authorisation of a plan to the minister only if the plan provides that the proposed activity will be managed to avoid or minimise harm to Aboriginal heritage. The minister's decision to approve a plan must be made on the same grounds as well as what is in the interests of the state, which includes the social and economic benefit to Aboriginal people and the interests of future generations. Whereas currently section 18 consent can consent only to destroy or impact Aboriginal cultural heritage, there is no requirement to avoid or minimise the harm to Aboriginal heritage.

**Hon NEIL THOMSON**: The consultation draft included a provision that provided a right of review for native title holders, as opposed to the destruction of their cultural heritage. That is the information that has been provided to me. My question is: why was this provision removed?

**Hon STEPHEN DAWSON**: A decision was made by government that in the best interests of governing this state, the minister's decision should be final.

**Hon Dr BRAD PETTITT**: Once again, I flag that I have given notice on the supplementary notice paper that I will move an amendment to this clause. Before I move it, I want to follow the line of questioning Hon Neil Thomson started, because for many stakeholders this is probably the fundamental line at which this bill has lost the support of many. As many of us said during the second reading debate, this is not about this minister. I want to understand how this clause might play out. A ministerial decision could be misused in a way that would see Aboriginal cultural heritage destroyed. I am thinking 10 years into the future when the minister finally steps down, having been a very long serving Minister for Aboriginal Affairs, and a new company called Crushed Rocks Inc decides to put forward a plan at a site of Aboriginal heritage significance. Unfortunately, the new minister is not as caring as this minister and he is all for Crushed Rocks, no matter what form it is. That is what drives him. Crushed Rocks will go through the charade of having a management plan and, ultimately, the Aboriginal heritage council will not recommend the management plan but will say that the council could not agree on one, so a recommendation will go to the minister, as I understand it. I am happy for the minister to correct me about the process. What will stop the minister from saying, "I like Crushed Rocks and I will approve the project, despite the site's state significance"? The company will not work hard to come to a mediated solution because why would it? It will meet with the minister and will know what the minister's position is, which is that, ultimately, he will come down on the side of Crushed Rocks. For me, this is a real concern. As I have said, it is not something we do in the planning world anymore. There is a parallel with local governments. Local governments used to make these decisions and if they could not agree, they could appeal to the minister, who would make the call. But now, of course, they do not. The matter goes to the State Administrative Tribunal, quite rationally. I want to ask what will stop a scenario from happening in which the mediation is not done in good faith because it is known that the minister likes Crushed Rocks and, ultimately, what the Aboriginal cultural heritage decision will be?

**Hon STEPHEN DAWSON**: I think the member is presupposing that this is all about the proponents, but members need to take into consideration that it might not be the proponent's plan that the minister authorises. It could be the council's plan or the Aboriginal party's plan. My belief is that proponents will be most likely to use the State Administrative Tribunal. That is to do with my experience as the minister; proponents bring applications before SAT in relation to decisions that have been made. The authorisation process is not one that proponents will want to go through. It will be a long and drawn-out process. The council will do the mediation. That is built into the process early on. Mediation will happen early on. But if it gets to the minister in this state—I have given the example of the Northern Territory, where four decisions have reached the minister over a 30-year period—the minister must consider whether the plan provides for the activity to be managed to avoid or minimise risk of harm being caused to Aboriginal cultural heritage, as well as what is in the interests of the state. "In the interests of the State" is defined as —

> (a) for the social or economic benefit of the State, including for the social or economic benefit of Aboriginal people; and
>
> (b) the interests of future generations;

The minister's decisions and the reasons for those decisions will be published, and that level of transparency does not exist now. It will be open to proponents to seek a judicial review of the minister's decision. If the minister has not followed the act or the best endeavours of the act, including the one that refers to the interests of the state, a proponent can take a decision to court. That happens currently, for example, under the Environmental Protection Act. My decisions as the Minister for Environment were often taken to court by the conservation movement and by the Environmental Defender's Office. That happens currently. The court can make a decision that a minister has not followed the proper process. That can happen here. I am fine with SAT looking at local government decisions, quite frankly. This is bigger than planning decisions. This is about state significance. I am firmly of the view that SAT would not add to this bill. As I said, a decision was made by government that a minister's decision will be final.

**Hon NEIL THOMSON**: The information provided by the agency on the amendment to the review provisions and the removal of the right of review to SAT states that the right of review of a ministerial decision has been removed from clause 258, which was the clause in the previous bill. That relates to clause 277. It stated that it was to reflect accepted principles of modern government, public administration and responsible elected government of the day. What are those principles and how are they offended by the right of review to SAT?

**Hon STEPHEN DAWSON**: I am not sure I have more to add to this. It has, quite simply, been a decision of government that the decision, at the end of the day, will rest with the minister. The minister will make a decision in the best interests of the state, taking into consideration those things I said otherwise. Yes, it was in a draft bill. It was consulted on. I think I have made the point that over 100 changes were made since that consultation process. This is one of them. This is one that the government stands by, and I am probably going to leave it there.

**Hon Dr BRAD PETTITT**: I will come back to that amendment shortly. Before I do so, I also want to come back to an issue that was raised earlier in the debate. I quoted from an article in *The Conversation* by Joe Dortch and a range of others, including Kado Muir, Jo Thomson and Anne Poelina. In this article, they state —

> However the developer can appeal to the state administrative tribunal over ministerial decisions they don't like. The Aboriginal custodians for that area will not have an equivalent right of appeal.

*Hansard* records that the minister pushed back quite hard on that. I was copied into an email that the minister would have received from Joe Dortch on Friday, 10 December, at 4.11 pm. I do not know whether the minister has that in front of him. He does. This is an important email that I want to unpack because it is about this clause. Joe Dortch states —

> As a co-author of the article referenced, I think the original claim stands. Please be assured, we read the final Bill, despite the limited time made available. To show our reasoning, I have added a column to table in s227 of the ACH Bill …

I will table this email as it will be useful for other members. The authors make a clear argument based on a review of decisions that the proponent is the person who will benefit in all six cases and the LACHS in only one case. Does that coincide with the minister's reading of the bill? I seek leave to table this email.

[Leave granted. See paper 990.]

**Hon STEPHEN DAWSON**: Item 1 in that email is not right. The affected person is any party to the ACH management plan, so it could be the proponent or Aboriginal people.

**Hon Dr BRAD PETTITT**: The conclusion of Joe Dortch and others who wrote that article is clear: LACHS or any Aboriginal person "will not have an equivalent right of appeal" available to them as that which will be available to a proponent. Certainly, their view is that this imbalance will endanger the principles of free and prior informed consent. I hope the minister will respond to that, but I would be surprised if that was the intent of this clause.

**Hon STEPHEN DAWSON**: I disagree with the view of Mr Dortch.

**Hon Dr BRAD PETTITT**: I will move on, but it was important to table that email. I appreciate that the minister disagrees with the authors of that email, but I acknowledge their expertise and that of the minister. However, the views expressed in that email are concerning.

I refer now to the amendment standing in my name on the supplementary notice paper, which in my view is the most important amendment of the night. It seeks to rectify what is for many the most disappointing part of this bill. There was comfort in the 2020 version of the bill, which provided for a wider range of issues to be referred to SAT. I move —

> Page 204, line 19, in the table — To insert after item 1 —

| | | |
|---|---|---|
| 1A. | A decision of the Minister under section 165(1) to authorise or refuse to authorise an ACH management plan | The applicant for the ACH management plan to be approved under section 147(1) if the plan is found to relate to Aboriginal heritage of State significance<br>The applicant for the ACH management plan to be authorised under section 157(1)<br>A person who is, or would be, an Aboriginal party in relation to the ACH management plan |
| 1B. | A decision by the Minister under section 165(1) (as read with section 170) to authorise or refuse to authorise an amended ACH management plan | A party to the ACH management plan |

**Hon STEPHEN DAWSON**: The government will not be supporting this amendment. I want to make it clear that the review rights for management plans will be the same. For approved plans, both the Aboriginal party and the proponent will be able to seek a review. For authorised plans, no party will be able to seek a review. The government believes that where it has landed on this clause is the right course of action, and we will not support the amendment.

**Hon NEIL THOMSON**: On behalf of the opposition, I indicate that we will not support the amendment. I want to make a comment about a question posed by the minister. I would go so far as to say that, given the importance of this issue—it has been a lightning rod for much debate—this area might have warranted further discussion, particularly given some of the other elements of challenge within the bill that relate to matters that are not subject to this provision. As clear as I can be about that, I say that this is the government's bill, it is the government's challenge and I think the government is going to have to live with the consequences of it.

**Hon Dr STEVE THOMAS**: At some point, the government has to be allowed to govern. I put to members that the State Administrative Tribunal and legal review do not always get it right. There is no ultimate public review of those court decisions. However, it is absolutely the case that a minister who makes what is deemed to be a poor decision and does not examine the triple bottom line, and that includes the economic one, faces the people every four years. That does not happen to any legal jurisdiction. The opposition is more than happy to make sure that the government faces the wrath of the people if it gets this wrong. The people have the opportunity to remove a minister or a government, and the opposition is certainly happy to empower that to the best of its ability.

**Hon Dr BRAD PETTITT**: I want to respond partly to that. I have not heard anyone come back to my analogy of seeking to remove SAT from planning decisions and giving them back to the minister. We saw some unfortunate outcomes when that was the case. There are certainly downsides when all the power lies with the minister. Unfortunately, that applies here. I also want to make the point that I am not the only one who thinks this amendment should be inserted in the bill. It would be fair to say that this is supported by a number of stakeholders. I note that when the Law Society of Western Australia wrote to the minister—I think it copied each of us in—it requested a very similar review. I think there are plenty of rational reasons to do this, and that is why I commend the amendment to the chamber.

**Amendment put and negatived.**

**Clause put and passed.**

**Clauses 278 to 353 put and passed.**

**Title put and passed.**

## ABORIGINAL CULTURAL HERITAGE AMENDMENT BILL 2021

*Committee*

Bill proceeded through committee without debate.

## ABORIGINAL CULTURAL HERITAGE BILL 2021
## ABORIGINAL CULTURAL HERITAGE AMENDMENT BILL 2021

*Report*

Bills reported, without amendment, and the reports adopted.

*Third Reading — Cognate Debate*

**HON STEPHEN DAWSON (Mining and Pastoral — Minister for Aboriginal Affairs)** [9.27 pm]: I move —

That the bills be now read a third time.

**The PRESIDENT**: Members, the Minister for Aboriginal Affairs has moved that the bills be now read a third time. The house has granted leave under standing order 127 to deal with these bills cognately at the second and third reading stage. I will put the question of the third reading on the principal bill, allowing a cognate debate on both bills should any member wish to speak at the third reading. In relation to the Aboriginal Cultural Heritage Bill 2021, I have received from the Deputy Chair of Committees a true copy of the bill as agreed to in the Committee of the Whole House and reported, and the question is that the bill now be read a third time.

**HON NEIL THOMSON (Mining and Pastoral)** [9.28 pm]: The Committee of the Whole House debate of the Aboriginal Cultural Heritage Bill 2021 highlighted a number of strengths and weaknesses in the bill. It confirms the position that we took in the earlier stage of the bill, at the second reading debate, to not oppose the bill but put on record, for the sake of *Hansard* and posterity into the future, the concerns the opposition has about the application of this bill. In clause 1 of the debate, new information in the form of letters arose from some of the stakeholders that confirmed our position earlier in the debate to provide more room for discussion and consideration. Obviously, the decision was made by this house not to do so. I think it is important to note that a number of stakeholders took it upon themselves to provide information and effectively lobby members of the crossbench and the opposition about their concerns. I think those concerns are very worthy and I trust that in the next stage of regulation-making and co-design, the minister will do his utmost to consider the matters that have been raised.

I think that, in a nutshell, the clause-by-clause Committee of the Whole debate has highlighted the importance of the development of the local Aboriginal cultural heritage services and the potential risks imposed on the community if those services do not operate efficiently. We had considerable discussion at all levels on those services' accountability to meet what I would describe as matters of good function in a regulatory environment. I think a number of concerns remain. Again, I hope that the minister will consider those to the greatest extent possible within the constraints of this bill, which is about to pass, to ensure that, to the greatest extent, the Aboriginal Cultural Heritage Council can provide some degree of oversight to the operation of this process, and that the minister, in his very important role in this legislation, can provide that oversight as well.

Although there are a number of shortcomings within the bill, which have been debated at length during the committee stage, a number of positive things will also come out of this legislation. Without repeating any comments made in the second reading debate, I think we can all agree that the requirement for the replacement of the Aboriginal Heritage Act is long overdue, and that reform is a credit to the minister here today. Specifically, some of these matters such as the establishment of a more defined Aboriginal Cultural Heritage Directory are very important, and the potential for the Aboriginal Cultural Heritage Council to provide input and support to proponents and those who may not be aware of the issues relating to Aboriginal cultural heritage will be important going forward.

There has been ongoing debate on the matters of review that I think will last well beyond the debate within this chamber. In the clause-by-clause discussion, we have just discussed the opportunities for review and the nuances around that. Again, I think the opposition supports the role of government to retain a certain degree of control, acknowledging that this is probably going to be most important for the large tier 3 projects and their operations. I think there remains the hugely unanswered question of how this bill will function for those activities that are regarded as tier 1 and tier 2, particularly when there might be regional disparities in the function of the regulatory framework into the future.

Although the opposition has a number of reservations, which are now on the record, we have not opposed this bill. This bill is the responsibility of the government. It has pushed this bill through. To all extents possible, the opposition has cooperated with the government on the agreed time frames, and I can say, from a personal perspective, that it has not been something I have warmly embraced, but I understood that the agreement was made in order to achieve these outcomes. As we stand here tonight on the cusp of finalising this matter, we have achieved the goal we set out and agreed with the government. However, we clearly place the responsibility on government for the trashing of the conventions of this place by not allowing for proper consideration in detail, clause by clause, as would otherwise have happened if the debate had been spaced over a number of days. As I say again, this is the responsibility of the government going forward and all I can ask and implore is that the minister take extreme care and do a much better job in the development of the regulations.

**HON WILSON TUCKER (Mining and Pastoral)** [9.35 pm]: I rise to provide a brief contribution on the Aboriginal Cultural Heritage Bill 2021. I would like to acknowledge the government's effort in the creation of this bill. I certainly do not question the motives and intentions of the bill and the problem it is trying to solve of protecting Indigenous cultural heritage in WA. As we all know, this bill was born out of attempts to prevent another tragedy such as Juukan Gorge from occurring, and I commend the government for its response to that incident.

I will be honest and say that I have changed my mind several times on the contentious parts of this bill, specifically the lack of capacity to appeal via the State Administrative Tribunal and the final decision resting with the minister. Given the late hour and that all sides have articulated both sides of the argument very well over the past few sessions, I am not planning on raising them again here. However, the concern that I have been consistent about throughout this process is the rushed nature of the passage of the bill in pushing it through the other place at light speed to bring it to a vote in the final extended sitting week. The biggest concern I have is the concern of the Indigenous communities and strong outreach we have heard from the prescribed bodies corporate and traditional owners that they feel left out of the consultation and drafting processes and were not included in a true co-design process.

As we have seen during the Committee of the Whole stage, this bill sets out the framework, as do all bills, and the depth is in the detail and the regulations. A huge number of details are still to come with the regulations to be finalised. I think everyone here can agree that the regulations are incredibly important because they will dictate how this bill will function in reality and how effective it will be in achieving its primary function of preserving Indigenous heritage in this state for future generations.

Given the strong adverse reaction by Indigenous groups to this bill, it can be argued and has been supported by evidence presented in this chamber, that the government has missed the mark in the initial consultation phrase. However, the government has the opportunity to bring Indigenous groups along and make sure that they feel heard as part of the regulation design process, which, arguably, is as important as the bill. As has already been pointed out by several members, appeasing all groups with the outcomes in the clauses in this bill is next to impossible. However, there is an opportunity to ensure that due process is followed to help appease Indigenous groups to ensure that they feel that they have a voice during the design of the regulations. Dare I say, it is extremely likely that the bill will pass tonight, and, moving forward, I urge the government to take a balanced approach in the design of the regulations and attempt to adopt a true co-design process and framework, as the Yamatji Marlpa Aboriginal Corporation is attempting to do by hosting the Aboriginal cultural heritage protection strategy workshop next month.

I said previously that the majority of the primary stakeholders, whose heritage this bill seeks to protect, do not support the bill, and I think this is testament to the bill's success up to this point. Ignoring my own views on the specifics of the bill, given the fact that Indigenous groups in Kalgoorlie, the Pilbara, the Kimberley, the north west, and, indeed, elsewhere around WA spoke resoundingly against this bill, I cannot support this bill tonight.

**HON DR BRIAN WALKER (East Metropolitan)** [9.39 pm]: I have previously in this chamber spoken words of praise for the government on the Aboriginal Cultural Heritage Bill 2021 and the Aboriginal Cultural Heritage Amendment Bill 2021. The legislation is long overdue and redresses the wrongs of the past. The bills have been well thought out and well executed, so congratulations to the government.

However, as has been ably pointed out by my colleagues on the crossbench, there remain significant doubts about the legislation and I am concerned that we will be perpetrating a possible injustice here. I take on board that it is complex legislation. I ask that we also take note that the need for urgency—the rush—was not presented in a cogent form. This bill has been hurried through and it does not deserve to be hurried. On the contrary, it demands of us that we take our time and do the best we can for all whom we purport to represent. This, clearly, has not occurred, at least not to the satisfaction of substantial portions of the Indigenous population whom we should also be representing.

If we are looking at regulations and how to manage Aboriginal cultural heritage in the future, with an excellent minister who has committed his good skills to ensuring that any questions that remain open will be dealt with, are we not in the same breath also saying that the current legislation is not perfect? We might say that we should not let the perfect stand in the way of the good happening, and I would agree with that, but this legislation has been put through Parliament with unseemly haste. Even this morning, I received representations from Indigenous communities asking, begging, that we do not allow this bill to pass in its current form. We cannot actually do that; we are four voices in the chamber.

I am going to scold the opposition because —

**Hon Dr Steve Thomas** interjected.

**Hon Dr BRIAN WALKER**: I know; it is time.

We have an agreement from the opposition to pass legislation that it disagrees with. It is doing it for the greater good, and I understand that, but in my mind it is a little bit like —

**Hon Dr Steve Thomas**: We never actually said we disagree with the legislation.

**Hon Dr BRIAN WALKER**: Very good.

It is a little bit like washing your hands and letting someone else look after the problems.

**Hon Dr Steve Thomas**: That's not what we said. You're misrepresenting what we said. Our position is not to oppose the legislation.

**The PRESIDENT**: Order!

**Hon Dr BRIAN WALKER**: Very good.

From our point of view, having listened carefully to many representations from the Indigenous population, I stand here to tell members that I also will be unable to support this bill and I shall be voting against it.

**HON DR BRAD PETTITT (South Metropolitan)** [9.42 pm]: I stand with my crossbench colleagues on the Aboriginal Cultural Heritage Bill 2021 and the Aboriginal Cultural Heritage Amendment Bill 2021. In some ways I feel disappointed, but it is important that the many voices of those who I think are feeling far more disappointed than we are have at least been heard in this process in this chamber.

I have to agree with my crossbench colleagues that amongst stakeholders there is a sense that this bill has been unduly rushed through Parliament. Certainly, the heart of this issue is around trust and collaboration to protect some of the most important heritage in this state. I think that is a real disappointment. There was no need to rush through this legislation this year, especially in the way it was dealt with in the lower house, when key stakeholders did not get to see the legislation before it was introduced. That is not the way to build trust and move on to a process of co-design; it actually deeply undermines those things.

Unfortunately, we have had wide range of people—from the United Nations to the Law Society of Western Australia, Aboriginal groups, traditional owners and prescribed bodies corporate—writing to us to indicate that they are not happy with this legislation in its current form. It is a lost opportunity, because if the legislation had not been rushed through, if it had been referred to the Standing Committee on Legislation and we had taken more time, there would have been an opportunity to bring everyone with us on this. We get the chance to change legislation of this kind only once in a generation. Although this legislation is an improvement on the 1972 legislation, it is not an improvement on the scale that is needed at this point; it is an improvement that is too much of an incremental step from a generation ago. There was an opportunity for us to go well beyond that and to have world-leading legislation in this space. Unfortunately, that opportunity has been lost.

But there will be some hope in the co-design process. Like my crossbench colleague Hon Wilson Tucker said, I know that there has been talk of co-design. I have spoken to some of the people who were involved in that early design, and there was actually some good work in that. But for co-design to be true co-design, we have to take the recommendations and make sure that we are moving forward. Just capturing those ideas and putting them to one side and going on with what the government wants is not co-design; it is just getting good ideas and ignoring them. I hope that the next stage of co-design is real co-design—that is, capturing the many good ideas that I know are out there among an amazingly engaged community on this issue and making sure that they flow through to regulations. The hope for this legislation lies in making what is largely a disappointing bill into something far better.

I want to finish by quoting a letter from Senator Dorinda Cox, who has been stuck in quarantine this week and has been feeling down as she watched these bills go through this place while there was not much that she or any of us could do about it. I would be happy to table this letter. She writes —

> I write regarding the Aboriginal Cultural Heritage Bill 2021 in anticipation of its potential passage through the Parliament … this week.
>
> This Bill was never going to have broad support from First Nations people because it is not centered around the importance of protecting Country and heritage. It continues to embed a racist and capitalist approach focused on protecting industry, rather than a cultural values based approach that's linked to our identity as First Nations people.
>
> The McGowan Government has misrepresented the way in which consultation has occurred throughout the drafting of this Bill. The so-called consultation process has not been centered on cultural based protocols. Consultation was not undertaken in language and was not linked to elements of our culture. Furthermore, this Bill relies on legal jargon and foreign terms—tools which are actively used to enable the continuation of mining and the destruction of cultural heritage.
>
> First Nations people have not provided permission for this legislation to proceed.
>
> In the drafting of this Bill, the McGowan Government gave First Nations people a loaded choice between remaining in a place of marginalisation and disparity or having access to money through mining royalties. This is an example of manufactured consent …
>
> Moving forward, I want to see a co-production of the regulations and guidelines. The Government must now consider where it positions its power, given the capital it has used to fast-track the bill. It is now time for the Government to listen to the voices of First Nations people that have not been heard and to put those voices first. The Aboriginal Cultural Heritage Act Workshops occurring in January 2022 provide the McGowan Government with an opportunity to reset its relationship with First Nations people in Western Australia.
>
> Yours sincerely
>
> Dorinda Cox
> Senator for Western Australia

That is where I want to end. I appreciate that we have had a robust discussion in here, but no changes to the legislation were entertained. This legislation was take-it-or-leave-it legislation. I think that is pretty disappointing for not only those of us in the chamber who wanted to make it better, but also the many stakeholders who have been actively engaged in the process. Following on from Senator Cox's words, I do hope that the process going forward is one of true co-design, true collaboration and one that builds on reconciliation.

*Division*

Question put and a division taken with the following result —

Ayes (22)

| | | | |
|---|---|---|---|
| Hon Klara Andric | Hon Sue Ellery | Hon Kyle McGinn | Hon Dr Sally Talbot |
| Hon Sandra Carr | Hon Peter Foster | Hon Shelley Payne | Hon Dr Steve Thomas |
| Hon Peter Collier | Hon Lorna Harper | Hon Stephen Pratt | Hon Neil Thomson |
| Hon Stephen Dawson | Hon Jackie Jarvis | Hon Martin Pritchard | Hon Pierre Yang *(Teller)* |
| Hon Colin de Grussa | Hon Ayor Makur Chuot | Hon Tjorn Sibma | |
| Hon Kate Doust | Hon Steve Martin | Hon Matthew Swinbourn | |

Noes (4)

| | | | |
|---|---|---|---|
| Hon Sophia Moermond | Hon Dr Brad Pettitt | Hon Wilson Tucker | Hon Dr Brian Walker *(Teller)* |

Question thus passed; bill (Aboriginal Cultural Heritage Bill 2021) read a third time and passed.

Bill (Aboriginal Cultural Heritage Amendment Bill 2021) read a third time and passed.

## MARK HUTCHINGS

*Statement*

**HON PETER COLLIER (North Metropolitan)** [9.53 pm]: I stand tonight to recognise the achievements of a very special young man. Some members may remember that I spoke of this young man about a decade ago. The then coach of the mighty West Perth Falcons, Bill Monaghan, had requested that I speak with him. He had been struggling somewhat, having been delisted from the St Kilda Football Club after being drafted just one year prior. What was most confusing for him was the lack of clarity around his delisting. Understandably, this young man was devastated. Considering the fact that I had previously coached and worked with a number of elite athletes, particularly tennis players, Bill would frequently ask me to speak with various players, as the variable for success at the elite level transcends all sporting disciplines. On this occasion, as always, I was delighted to assist.

The name of this young man is Mark Hutchings. I brought Mark to Parliament for lunch at our first meeting. I was immediately impressed by his sincere nature and raw honesty. He was still struggling from his delisting from St Kilda; however, he was genuinely motivated at the prospect of playing for the Falcons. I vividly remember asking him what he intended to do with his football career into the future. He responded that he was going to enjoy his time at the Falcons with his mates and was not seriously contemplating another crack at the Australian Football League given the fact that St Kilda had indicated that he would not make the grade. I strongly refuted the value judgement provided to him by St Kilda and recommended that he should never allow the negative views of others to determine his destiny. I reminded him that if he has the capacity to compete at a particular level, he most definitely has the ability to succeed at that level. He had shown that he had the ability to be drafted into an AFL team, and that should not change as a result of the view of one coach from one team, particularly a Victorian team. His response was phenomenal. It was evident to me that he still desperately wanted to play at the AFL level and that he would commit to doing whatever was required to achieve this goal.

In essence, there was simply no reason that he could not make it at the elite level. He was an extremely skilled footballer and talented athlete; he was strong, highly disciplined and self-motivated. This is a rich tapestry of the ingredients required for success at the elite level of sport. In addition, he has an extremely strong and supportive family fabric, with his father, Warren; mother, Kathryn; and brother, Michael. His father in particular was extremely supportive and has attended almost every training session of Mark's entire career. And the rest, as they say, is history.

In summary, at the age of 18, Mark was overlooked at the national draft in November 2009; however, he was selected by St Kilda Football Club with the twentieth pick in the following month's rookie draft. He spent most of the season playing for Sandringham Football Club, St Kilda's Victorian Football League's affiliate, playing 12 games and kicking three goals. However, he was delisted by St Kilda at the end of the 2010 season, without having played a senior match for the club.

After returning to Western Australia, Mark was recruited by the mighty West Perth Football Club, the Falcons. He made his senior debut for the Falcons in the second round of the 2011 season and was outstanding early in the season. West Perth was undefeated in its first eight games, and Mark was the leader of the Western Australian Footballer of the Year competition after nine rounds. He finished the season with 21 games for West Perth, and polled 21 votes to finish fourteenth in the Sandover Medal.

Following on from his form for West Perth, Mark nominated for the 2011 AFL draft, but was again overlooked, despite having excelled at both West Australian Football League and AFL-run draft combines. His excellent form during the 2012 season led to his selection in the state team to play against South Australia, where he was the youngest player in the side. He played another 20 games for West Perth during the season, and was awarded the Breckler Medal as the club's best and fairest player. In the Sandover Medal, he polled 51 votes to finish second behind Claremont's Kane Mitchell, the highest number of votes ever polled by a West Perth player. To put it mildly, Mark had a stellar year.

In the 2012 national draft, Mark was rewarded for his outstanding form and was selected by the West Coast Eagles with the sixtieth pick overall. What a wonderful tribute for this impressive young man. He is a living, breathing manifestation of facing adversity with strength. Mark was drafted by the Eagles exclusively due to his performance, his attitude and his potential. He was not motivated by proving St Kilda wrong; rather, to be the best that he could be. His drafting into the Eagles was reward for effort.

Mark began the 2013 season with West Perth, and after several 25-plus disposal games, he was named to make his senior debut for the Eagles against the Brisbane Lions, and recorded 15 disposals. He played most of the remainder of the season for West Coast, filling a midfield role after a run of injuries to other players, with a high of 26 disposals against the Western Bulldogs. Against Fremantle, he recorded 16 tackles, which was both a club record and an overall season record, as well as the equal third-highest tackle count since the statistic was first recorded in 1987. At the conclusion of West Coast's AFL season, Mark returned to West Perth to play in the WAFL finals. West Perth went on to win the Grand Final by 49 points, and he was awarded the Simpson Medal for best afield with 29 disposals and three goals.

In his second season with the Eagles, Mark became a regular member of the side. After a delayed start to the year due to a back injury and a couple of games at the Eagles affiliate WAFL club, East Perth, he broke into the side in

round five and became an important part of the midfield rotation. In the second half of the year, he was used in a tagging role to good effect. Over the next couple of years, Mark slowly worked his way into the midfield rotation and became one of the league's most potent taggers. In 2017, after spending some time at the Eagles WAFL team, East Perth, in the first half of the season and regularly getting tagging roles against one of the opposition's more dangerous players such as Gary Ablett Jr and Patrick Dangerfield, Mark was named Best Clubman at the end of year awards.

President, 2018 was a sensational year in Mark's football career, most notably his performance in the 2018 grand final, in which he kept Collingwood champion Steele Sidebottom to 14 disposals after Sidebottom had 41 disposals in the preliminary final the week prior. Mark had 15 disposals and kicked a goal himself in that game. West Coast won the game by five points, making Mark a premiership player—the pinnacle for any AFL career. In addition to his premiership medal he was rewarded with a maiden top-10 finish in the John Worsfold Medal count. Over the next couple of years, Mark continued to perform consistently well in a number of roles, including wingman and defensive forward. However, a number of injuries plagued him throughout 2020, with a knee injury keeping him out of the side until deep into the season. He also injured a hamstring in his third match and ultimately could not force his way back in for the club's losing elimination final.

After 120 games, his contract with the West Coast Eagles concluded at the end of the 2021 season—the end of a genuinely magnificent AFL career. Although I am disappointed that I will not be able to watch Mark run out with the Eagles, I am delighted that he will be pulling on the number 8 for the mighty Falcons in 2022; he is coming home.

Mark is an exceptional young man in all respects. To succeed at the elite level of any sporting discipline you evidently need to have ability and skill. However, the single most significant variable that determines ultimate success is the mental component. History is littered with unfulfilled potential in the sporting field—not due to a lack of ability, but rather, a lack of commitment to developing the appropriate mindset. To succeed at the elite level, the athlete must commit to a disciplined process, mindful that this will elicit a positive outcome. In addition, they must wake up every single day with an insatiable desire to improve, with no excuses. Mark Hutchings most definitely met these criteria and the outcome took care of itself. He can reflect upon his AFL career with tremendous pride and with no regrets. He can reflect on it and know, with complete confidence that without exception, he made the commitment to be the best that he could be, every single day.

Personally, over the past decade, Mark and I have been through a lot together, particularly over the past two years. Countless dinners, phone calls, catch ups, extraordinary highs and devastating and sometimes debilitating lows. I am in no doubt that Mark will continue to succeed in all that he pursues post his AFL career. He has set himself up financially, bought a home and secured an exercise and sports science degree. In addition, he has established his own business, Complete Athlete Australia. He will use his new venture to assist others by utilising the wisdom and experience that he has established while competing at the elite level of football.

I congratulate Mark on his truly remarkable football career and for all that he has achieved. I am so very proud of him. He is a special young man. He is my special young friend and I am extremely confident that for him, this is just the start. The best is yet to come.

## CANNABIS — CRIMINALISATION

*Statement*

**HON SOPHIA MOERMOND (South West)** [10.02 pm]: Tonight I will be talking about the war on drugs, or, more accurately, the failure of the war on drugs. Much money has been spent on policing drugs and drug use and I have no doubt that much money has gone to the coffers of organised crime and used as a basis for further organised crime. The war on drugs has not reduced use, has not reduced crime and has not reduced harm. With that in mind, I think it is fair to state that it was more of a war on people.

We already know that prohibition does not work. We have a very clear example with alcohol, particularly in the United States. It showed that prohibition basically supported crime syndicates. Alcohol is addictive, whereas cannabis and various other psychoactives are not. Contrary to popular belief and statistics that state that about 25 per cent of people use cannabis, it more likely sits between 60 to 75 per cent of people who have tried cannabis and use it regularly.

It is interesting that a drug like alcohol is legal—it definitely is a drug that is addictive but legal—although cannabis, which is not addictive, is illegal. If current drug laws are designed to protect people, why is an addictive drug that has been shown to cause much damage to society legal, versus other less harmful substances? It does not appear logical. Although many people do still believe that cannabis is addictive, science does not support that theory. The issues around addiction are complicated. Whenever I come across people with addictive-style behavioural patterns, I mostly see trauma. It is trauma that has not been addressed, acknowledged or treated. Addiction is a symptom of a society not functioning right. Prohibition does not fix that; rather, it adds to the stress and trauma and that is why the war on drugs is a war on people.

*House adjourned at 10.04 pm*

## QUESTIONS ON NOTICE

Questions and answers are as supplied to Hansard.

### FAMILY COURT — WAIT TIMES

**366. Hon James Hayward to the parliamentary secretary representing the Attorney General:**

I refer to Family Court operations, and I ask:

(a) what was the average wait time for a family court case to come before a judge in Bunbury;

(b) has the Attorney General received any complaints in relation to the time it takes until a case can be heard by the Family Court in Western Australia;

(c) is the Attorney General concerned that delays in Family Court matters can have significant impacts on the lives of affected parties; and

(d) are there any plans to increase funding for the Family Court with the view to reducing wait times?

**Hon Matthew Swinbourn replied:**

(a) From 1 October 2020 to 1 October 2021 (the past year) the median wait time for a matter to come before a Judicial Officer from the time of lodging until the first court event in Bunbury was 12 weeks.

(b)–(c) The Attorney General appreciates both the emotional and financial effects that family law proceedings can have on families. The Attorney General considers that it is in the best interests of all parties to legal matters that they be resolved as soon as practicable Parties to such proceedings raise concerns with the Attorney General from time-to-time.

(d) Funding to the Family Court of Western Australia for Judicial resources is the responsibility of the Commonwealth Government.

### POLICE — VACANCIES — WHEATBELT

**403. Hon Colin de Grussa to the minister representing the Minister for Police:**

What are the number of sworn police officer FTE vacancies in the Wheatbelt Police District, as at 9 November 2021?

**Hon Stephen Dawson replied:**

The McGowan Government is delivering 950 extra police officers over four years, the single largest increase in police officer numbers. Over 400 new officers will have graduated this year.

FTE are deployed by the Commissioner of Police to address areas of greatest operational need. To enable this, vacancies are carefully managed across the Western Australia Police Force.

The Western Australian Police Force advise:

Data identifying officer numbers can vary daily due to a number of factors, including; natural attrition, leave without pay, and transfers between districts, and officers being attached to specific operations. The data includes all positions which are not substantively filled (ie; internal vacancy) and which are still subject to advertisement/selection process. The Police Officer Deployment Unit issue transfer notices to successful applicants, following which an officer's physical arrival in a new position can take up to six weeks in Regional Western Australia. The data does not reflect officer numbers undertaking operations, or for those providing support functions, nor targeted deployments, which regularly boost local capacity.

As of 30 November 2021, there are 158.4 FTE police officers employed in the Wheatbelt Police District. This is an increase of 14 from 30 June 2016. As at 9 November 2021 there is currently 13 FTE vacancies in the district, which will grow the workforce to a record high of 171 FTE.

### FIONA STANLEY HOSPITAL — CARDIOLOGY SERVICES

**404. Hon Neil Thomson to the minister representing the Minister for Health:**

I refer to cardiology services at Fiona Stanley Hospital, and ask:

(a) what is the median wait time to receive an appointment with a cardiologist at Fiona Stanley Hospital;

(b) what is the current approved staffing level for FTE cardiologists at Fiona Stanley Hospital;

(c) how many FTE cardiologists are currently employed at Fiona Stanley Hospital; and

(d) how many times were cardiologist appointments cancelled or rescheduled at Fiona Stanley Hospital since 1 July 2021?

**Hon Stephen Dawson replied:**

I am advised:

(a) Category 1 – 21 days, which is within the clinically recommended timeframe of 30 days.

Category 2 – 79 days, which is within the clinically recommended timeframe of 90 days.

Category 3 – 122 days, which is within the clinically recommended timeframe of 365 days.

(b) 14.5 FTE

(c) 15.2 FTE

(d) There are many reasons why cardiologists appointments are cancelled or rescheduled at tertiary hospitals in Australia. These reasons include patient convenience/preference, treatment no longer clinically appropriate, patient moved away or uncontactable.

WA COUNTRY HEALTH SERVICE — KIMBERLEY — NURSES

**405. Hon Wilson Tucker to the minister representing the Minister for Health:**

Can the Minister please advise:

(a) what is the benchmark for nursing hours per patient day for each WA Country Health Service facility in the Kimberley region;

(b) what is the recommended FTE nursing staff for each WA Country Health Service facility in the Kimberley region; and

(c) when will the *Nursing Hours per Patient Day Annual Report for 2020–21* be published?

**Hon Stephen Dawson replied:**

I am advised:

(a)

| **Nursing Hours per Patient Day** | |
|---|---|
| **Broome Hospital** | |
| General/Maternity | 6.33 |
| Acute Psychiatric Unit | 10.38 |
| **Derby Hospital** | |
| General/Maternity/Paediatrics | 5.34 |
| **Fitzroy Crossing Hospital** | |
| General | 5.27 |
| **Halls Creek Hospital** | |
| General | 5.24 |
| **Kununurra Hospital** | |
| General | 5.32 |

(b)

| **Location** | **FTE** |
|---|---|
| Broome Hospital | 156 |
| Derby Hospital | 54 |
| Fitzroy Crossing Hospital | 25 |
| Halls Creek Hospital | 20 |
| Kununurra Hospital | 68 |
| Wyndham Hospital | 10 |

(c) The report is on the WA Department of Health website.

BANNED DRINKERS REGISTER

**406. Hon Neil Thomson to the minister representing the Minister for Police:**

(1) How many incidents involving alcohol affected people that resulted in reports being created occurred during the following months of 2021:

(a) July;

(b) August;

(c) September; and

(d) October?

(2) Of the individuals involved in these incidents, how many have been added to the Banned Drinkers Register?

(3) Is there a mechanism available to magistrates to place offenders on the Banned Drinkers Register?

**Hon Stephen Dawson replied:**

The Western Australian Police Force advise:

(1) Throughout Western Australia; July – 1552, August – 1509; September – 1572; October – 1538.

(2) The Banned Drinkers Register is overseen by the Department of Local Government, Sport and Cultural Industries and operates in the Kimberley and Pilbara, and is being expanded to Kalgoorlie.

(3) No.

***Notes***

*(1) Statistics are provisional and subject to revision.*

*(2) An incident may be flagged as alcohol-related in the Incident Management System (IMS) if the attending officer is of the opinion that alcohol was related in any way to the incident. These include but are not limited to the offender or victim's level(s) of intoxication at the time of the incident and may include circumstances such as identifying open or used alcohol receptacles, smelling alcohol at the scene, observing an individual affected by alcohol or receiving alcohol-related information from victims, offenders or a third party, such as witnesses. The absence of any of these circumstances does not necessarily preclude that alcohol was a contributing factor to the incident.*

*(3) The statistics include incidents whether or not an offender has been recorded. Where an offender has not been recorded against an incident, that incident will not be considered in the response for question 2.*

HOSPITALS — ELECTIVE SURGERY — CANCELLATIONS

**407. Hon Martin Aldridge to the minister representing the Minister for Health:**

I refer to all public hospitals, including public hospitals with private operators, and I ask:

(a) how many elective surgeries were cancelled in:

(i) September 2021; and

(ii) October 2021;

(b) for each month in (a), what was the total number of cancelled elective surgeries by area health service;

(c) are there currently any restrictions on elective surgeries; and

(d) if yes to (c), which surgery categories are under restriction and in what locations?

**Hon Stephen Dawson replied:**

I am advised:

(a) (i) Elective surgeries can be cancelled for a variety of patient-initiated and hospital-initiated reasons. In September 2021, 2456 elective surgeries were cancelled with only a very small portion of these due to demand pressures and the vast majority cancelled for reasons which include patient initiated, waitlist removal, patient unfit for surgery and clinical review required.

(ii) In October 2021, 2213 elective surgeries were cancelled, with only a very small portion of these due to demand pressures and the vast majority cancelled for reasons which include patient initiated, waitlist removal, patient unfit for surgery and clinical review required.

(b) (i) September cancellations by HSP

182 Child and Adolescent Health Service (CAHS),
892 East Metropolitan Health Service (EMHS)
577 North Metropolitan Health Service (NMHS)
246 South Metropolitan Health Service (SMHS)
559 WA Country Health Service (WACHS).

(ii) October cancellations by HSP

168 Child and Adolescent Health Service (CAHS),
727 East Metropolitan Health Service (EMHS)
444 North Metropolitan Health Service (NMHS)
277 South Metropolitan Health Service (SMHS)
597 WA Country Health Service (WACHS).

(c) No.

(d) Not applicable.