

ABORIGINAL HERITAGE AMENDMENT BILL 2014

Restoration to Notice Paper — Motion

MR J.H.D. DAY (Kalamunda — Leader of the House) [9.20 am]: I move —

That the Aboriginal Heritage Amendment Bill 2014 be restored to the point it reached prior to its removal from the notice paper on Tuesday, 16 February 2016.

This bill addresses issues in the Aboriginal Heritage Act 1972, which was enacted 43 years ago and has been subject to only limited amendments since that time. Amendments are required to bring it up to date, in relation to those elements of the act that are no longer suitable for its purpose. The amendments will enhance the government's ability to increase the protection of the state's important Aboriginal heritage, and it is also critical that the government's approval processes provide greater clarity and certainty for the development sector, and that there are no undue delays for project proponents as a consequence of out-of-date government legislation, regulations and administrative processes. The bill is fully integrated into the government's policy to overhaul and streamline Western Australia's approval system for the betterment of the state's economic growth and activity into the future. For the same reason as the previous bill's restoration I just moved, this bill was not debated during 2015 to any significant extent and we are of the view that it should be restored to the notice paper.

MR B.S. WYATT (Victoria Park) [9.21 am]: I rise to make some comments about the government's intention to reinstate the amendments to the Aboriginal Heritage Act, which fell off the notice paper last week. The opposition will be opposing this motion of the government for a couple of reasons. In his reasoning the minister made the point, firstly, that the amendments allegedly increase the protection of Aboriginal heritage and, secondly, the amendments will provide greater clarity and certainty to the mining and resources sector. I understand that the debate is about whether it is reinstated, and I just want to deal with a couple of points that were raised by the minister.

Firstly, everybody agrees that the Aboriginal Heritage Act is old and needs to be updated, if not replaced. I do not think anybody disagrees with that, and the government went through a period of some consultation and had a number of proposals that were put to members of the Aboriginal community, none of which was then replicated, of course, in the legislation that was introduced in the last week—in fact, maybe in the last day—of Parliament 2014, and at no point since that time has this issue been debated, hence it fell off the notice paper. Of course, I have heard the comments from the Minister for Aboriginal Affairs and repeated by the leader of government business today that these amendments increase the protection of heritage, which of course they do not. What they do is take out any role for Aboriginal people, put it in the hands of the CEO of the Department of Aboriginal Affairs and allow that position to make every decision around heritage, including a decision that there is no Aboriginal heritage site on a particular area of land. The CEO can make that decision, if this legislation passes, without speaking to one Aboriginal person. It is not required.

Another reason the opposition opposes the comeback of this bill on the notice paper is the difference of position that has been put to the Aboriginal community between the Liberal Party and the National Party. Some members of the National Party have been running up hill and down dale throughout the Aboriginal community saying, "Don't worry; we oppose the government's proposed amendments. We won't be supporting those proposed amendments and we will be making our own amendments to that legislation." Indeed, a letter that has come to my attention from Hon Jacqui Boydell in response to the Aboriginal Heritage Action Alliance, dated 18 November 2014—I will not quote it all, states —

... The Nationals WA assert that amendment to the Act must be balanced and not limit Aboriginal people's rights to be heard on heritage matters.

By way of aside, the act takes away every right to be heard for Aboriginal people who currently exist in the current inadequate act. Secondly, Hon Jacqui Boydell went on to make this point —

Further, it is the view of The Nationals WA that it is imperative that notification and consultation requirements are enshrined in legislation to ensure that Aboriginal people have the right to participate in the heritage decision making process.

I want to emphasise that point: "imperative that notification and consultation requirements are enshrined in legislation". This is the point I have been making since this was introduced, and in my submission to the draft bill that was put out by the government: that any role for Aboriginal people has been removed from the 1972 act—an old inadequate act. Nowhere in the legislation is there a legislated, enshrined right for Aboriginal people to be notified and consulted—nowhere. The National Party is now writing to the Aboriginal Heritage Action Alliance with a very different position from the bill that the government has introduced, lapsed and now seeks to reinstate on the notice paper. What annoys me about this is that of course the proposed amendments to

the Aboriginal Heritage Act are causing great distress and anger amongst Aboriginal people throughout Western Australia. For many Aboriginal people, their sole responsibility and view in life within their cultural practice is protecting and enhancing Aboriginal heritage and Aboriginal culture. I listened with intent as the Minister for Environment talked about heritage listing the skate park in Albany, and he said—I wrote it down, “WA is again leading the nation in heritage management.” Yet when it comes to Aboriginal heritage management, the government wants to remove any right of, as I quote Jacqui Boydell, “notification and consultation” with Aboriginal people.

This legislation is going to fail. The government may force it through Parliament in both this house and the upper house with its numbers, but it will fail, because what will then happen is Aboriginal people will go back in the trench, fighting for rights around heritage rather than focusing on areas they should be focusing on: economic development, job opportunities and educational outcomes. We had this fight in the 1960s and the 1970s. Why do the Liberal Party and National Party want to revisit this fight? Interestingly, as Jacqui Boydell points out, there is nothing that should prevent the government from enshrining in legislation the right for Aboriginal people to be notified and consulted when it comes to heritage management—nothing. There is nothing to be feared of; it is in the current legislation. It is admittedly weak, but nothing to be feared of. This bill should not be brought back on the notice paper. The fact that the government has not debated it since the last week of 2014 suggests to me that the leader of government business knows there are some problems with this bill. He knows, we all know, and the member for Kalgoorlie knows, that there is no support in the Aboriginal community for this, which is unusual. Aboriginal people are not one amorphous blob. They do not agree or disagree; they have their own views and opinions. But nowhere will we find support for this from the Aboriginal community—zero. Which means you will fail. As I said, if the government forces it through and gets it enacted as law, it will cause a damaging rift in the relationship between government and Aboriginal people that will end up with Aboriginal people pursuing issues we should have resolved, to the detriment of the more focused issues that we all want to talk about, such as how we create opportunities for Aboriginal people going forward.

I will not go through each clause, as we will get the chance when the government brings it on for debate, because no doubt members opposite will all vote to have it put on the notice paper again and the opposition will lose. On this bill, one of the rare good news things that the government can announce under the amendments is, effectively, a conservation area, a protected area. When the government announces that, the legislation sets out that that announcement has to be advertised in Aboriginal and mainstream newspapers. It has to be published in the *Government Gazette*. Yet, when a decision is made that goes against Aboriginal people, for example the CEO decides that a vast area of land has not one Aboriginal site, do members think it has to be advertised or notified? No. This is a bad piece of legislation that is discriminatory against Aboriginal people and heritage and is very, very different from the heritage that the Minister for Environment was just talking about a minute ago in respect of the Albany skate park. I hope my National Party colleagues vote with the opposition on this, because I have a bunch of letters, not just written by National Party members, but also from members of the Aboriginal community back to the National Party, whereby the National Party has sought recognition for its position. I know what the National Party is doing. This is its chance to say to the Aboriginal community, “You know what, we don’t agree with this bill and we’re not going to allow it to come back onto the notice paper until there have been changes, there has been fair consultation and Aboriginal people have been heard properly.” Then it can be put back on the notice paper to allow debate. I do not believe in the idea that the legislation is the starting point and all the Aboriginal people can wait until it comes on for debate. That is not a fair outcome. This is the chance to address that. I hope the National Party will come with me on this. Voting against this motion will not see the defeat of the bill because the bill has fallen off the notice paper; it has lapsed. They are not going to cause the government any great embarrassment; all they are going to do is send a message to the government that the bill is inadequate. I have spoken to a few members opposite, including Liberal Party members—admittedly, none of those who are in the chamber at the moment—who understand that this is not a fair amendment to the Aboriginal Heritage Act. What frustrates me the most is that we started from a position in which every single person in the Aboriginal community agreed that the current act is old and flawed and needs to be modernised. Everyone agreed with that point. I think the original legislation came to the Parliament before I was born. What did the government then do? It gave every piece of power to the CEO of the day. When my dad was alive I told him what the bill said. Dad was a CEO of the Department of Aboriginal Affairs. He said, “My God, why would you do that?” We do not make decisions in the interests of people by giving one bureaucrat all the power to make all the decisions, particularly in sensitive areas like heritage.

The minister said that this would give greater clarity and certainty to the resources sector. I will go through this in much greater detail later when the legislation comes on because, as I said, no doubt the government will force this through on its numbers. I have gone through the Chamber of Minerals and Energy, the Australian Petroleum Production and Exploration Association, all the resource-related organisations, their annual reports, their state of the states and their future of resources—everything over the last five years and beyond when it is up on their website. Not once have I read in any of those documents complaints about the Aboriginal Heritage Act—not

once—so do not say to me that the process of dealing with Aboriginal people is causing uncertainty or great expense to the resources sector when the resources sector is not even bothering to mention that in their key documents. That is where the government will go. I know because I saw that when the government leaked to *The West* and it stuck the cost of heritage on its front page. I FOI-ed that and I wrote to Ernst and Young, who did that report for the government. Do members know what the greatest cost is? The greatest component of cost was the slow response time for the Department of Aboriginal Affairs. That is a resourcing issue; that is not a legislation issue or a problem with dealing with Aboriginal people. Most resource companies will tell you, if you speak to them, that they have a wonderful relationship with our Aboriginal traditional owners; they work hard at that relationship; they know who they deal with about heritage and things flow smoothly. This bill will stop all of that. The Aboriginal community has, despite a flawed heritage act, managed to be creative in the face of awful, abhorrent, old legislation and come out with something positive, because this is what Aboriginal people are good at doing. The Aboriginal community has done that well, as have those resource organisations that have chosen to do that. If the government goes down this path, all that is set aside because those Aboriginals will go back into the trench and say, “Hang on a minute; the government has taken away any rights that we had for consultation and notification.” Other than the CME and APPEA, I have not heard any individual company in the resources sector, other than one, say that this is good legislation, but I have heard them say that they are surprised the government has gone so far. They are worried about what this might do to their relationship with the traditional owners where they operate. I have had one letter from a company saying that this is good and it should be passed—one. I have not had a letter from the CME, although I have had one from APPEA, but I have seen the CME commentary in the media around this space.

As I said, this is not about the defeat or the success of legislation; this is simply putting the bill back on the notice paper. I know there are colleagues on that side of the house who agree with me that this legislation, these proposed amendments, are bad and that they should not come back on the notice paper, and we should go back to square one when it comes to negotiating with Aboriginal people and come up with a better model around their heritage and heritage management for Aboriginal people. That is only fair. I want to make sure that when ministers such as the Minister for Environment talk about the Albany skate park, that similar considerations that went into that skate park go into Aboriginal heritage—that is, community consultation and notification, and not simply having it stuck into the hands of one single bureaucrat. That is what this legislation seeks to do.

I hope, colleagues, that I get some support from the other side of the house because I need it to stop this bill coming back on the notice paper. I can guarantee one thing: if we in this house take the view that this should not go back on the notice paper, the government should have a proper round of consultation with Aboriginal people and should relook at this legislation and say, “You know what, we can make this better. We can make it involve Aboriginal people better. We know, as Hon Jacqui Boyde says, that it is imperative that notification and consultation requirements are enshrined in legislation.” The government might then be able to bring on a bill later in the year that gets my support and the support of Aboriginal people. I understand the current act is old and flawed and needs to be modernised. However, this is an opportunity to stop this process for a second. It will not embarrass the government. There is no clear priority on this legislation because it has not been debated since it was introduced in 2014. This would allow a period for the Aboriginal community to be spoken to and enable them to at least agree with the proposed amendments. I look forward to some support from the other side of the house.

DR A.D. BUTI (Armadale) [9.37 am]: I would like to add some comments to the outstanding contribution by the member for Victoria Park about the government’s attempt to restore to the notice paper the Aboriginal Heritage Amendment Bill. This amending bill, which is supposed to be about Aboriginal heritage, will silence the Aboriginal voice. How disgraceful can we be as a Parliament if we pass a piece of legislation that silences a race of people by way of their heritage? The Heritage of Western Australia Act 1990 provides that persons of any race may submit comment on plans to recognise the places of non-Aboriginal heritage significance. But, as the member for Victoria Park stated, the bill that the government seeks to bring back on for debate, the Aboriginal Heritage Amendment Bill, silences Aboriginal voices. There is no doubt that the 1972 act needs to be amended, because that act was passed when there was no recognition of native title. Of course we need a bill that does recognise native title. But what does this bill do? This bill actually silences Indigenous voices. I believe the government received about 150 submissions about this proposed bill and nearly all of those submissions were negative, but it did not take them into account. It did not change the original draft—if it did, it changed it very slightly—and it continues to not listen to Indigenous voices. Just think about this: can you imagine the heritage of any race of people whose voice is silenced, their voices do not need to be listened to? As the member for Victoria Park stated, this bill will give the CEO of the Department of Aboriginal Affairs enormous powers. A bureaucrat will have powers to basically wipe out, damage or destroy Aboriginal heritage. One individual, the CEO, with the stroke of a pen will be able to destroy and/or damage Aboriginal heritage.

The contrast is amazing. Before the Leader of the House rose to restore this bill, the Minister for Heritage spoke about the heritage of the skate park in Albany. That is probably an important heritage site, especially for the

people of Albany, but can you compare that with an Aboriginal sacred site that has been there for maybe 40 000 years? Aboriginal people are not going to have a voice. As I said, proposed section 18 gives the chief executive officer enormous power, and these are the sorts of things the CEO will be able to do: they will be able to make a declaration under proposed section 18C that there is no Aboriginal site on the land; they can grant a permit to do an act that might contravene proposed section 17 if they are satisfied the activity will not destroy, significantly damage or alter any Aboriginal site or object; or they can refer the application for the permit to the Aboriginal Cultural Material Committee if they are of the opinion that there is an Aboriginal site on the land. But, guess what, folks? The ACMC does not need to have Aboriginal representation. We have a committee that is looking into Aboriginal heritage that does not need to have Aboriginal membership. Is there any other committee in Western Australia dealing with a given matter that does not have representation of people who have knowledge of or interest in that matter? Would the Western Australian Football Commission be made up of water polo players? No, it would be made up of football people. This is absolutely amazing. We have an Aboriginal reference group, a committee, that does not need to have Aboriginal representation. We have a CEO who does not have to listen to Aboriginal voices, and this government wants to reintroduce this bill into this place in 2016.

The government is going to have its day in the sun when we debate the Land Administration (South West Native Title Settlement) Bill 2015, but it is also bringing in this bill. When the member for Victoria Park brought this bill to me, I actually thought it was a joke; I could not believe that a modern Western Australian government would introduce a bill that seeks to modernise a 1972 act but does not recognise native title holders—of course, in 1972 native title was not recognised—and actually silences Indigenous voices and gives absolute power to the CEO.

I will say only a couple more things because this bill unfortunately probably will come before the house to be debated. There is an appeal mechanism through the Western Australian State Administrative Tribunal on a decision of the CEO, but guess what, folks?

Mr B.S. Wyatt: Not for Aboriginal people.

Dr A.D. BUTI: No, exactly. The only people who can seek a review of the CEO's decision include a person who made an application for a declaration that was cancelled—we are talking about a declaration that there is no Aboriginal significance or that Aboriginal heritage will not be damaged—or a person who has made another relevant application or holds a permit. This is absolutely amazing. The CEO has absolute power to allow the destruction of Aboriginal heritage. The CEO can refer an issue to the Aboriginal Cultural Material Committee, which does not need to have Aboriginal representation. There is an appeal process through SAT, but Indigenous people cannot appeal. The people whose land is being destroyed cannot appeal.

I will be really interested to hear, when we debate this bill, the member for Southern River's position, because I am sure he has particular knowledge of the significance of religious sites and places of worship. Would we dare try to do this to a church? If you brought an application to destroy St Mary's Cathedral, would we dare say that the Catholic Church had no right to appeal the decision? Of course we would not.

The Leader of the House is an incredibly sensible man; surely he cannot be party to such a bill. In his speech he said this bill would help developers and the resources industry because we want to speed up the process. I think we heard this back when Mabo happened: Mabo was going to destroy the mining industry in Western Australia, but I believe we have just been through an incredible boom; that is what the Premier was talking about yesterday, so I do not know how native title destroyed the mining industry. This has always been the conservative way. Whenever a court decision has provided some rights to Indigenous people, the conservative side of politics—and sometimes the Labor side too—has said it will affect the economy and slow things down. Well, the mining industry has not been slowed down because of native title. In fact, it has resulted in improved relationships between many Indigenous people and the resources sector, so do not come to this house and say that this bill is needed because the resources sector requires it or has asked for it, because as the member for Victoria Park told this house, that appears not to be the case. All the good work that has come about as a result of the Mabo decision, the improvement in the relationship between the resources industry and Indigenous people, is going to be destroyed by this legislation. It is not only Aboriginal heritage that will be destroyed by this bill; the long-term improvement in the relationship between many Indigenous people and many people in the resources sector and the pastoral industry will also be destroyed. Please do not go ahead with this legislation, Leader of the House, because this is archaic. This is what one would have expected in the 1950s and 60s in Western Australia.

Mr J.H.D. Day: There is always the possibility of it being amended.

Dr A.D. BUTI: Let us hope so. Let us hope it is, but maybe the best way to do it is to not seek to restore this bill because it is completely flawed and contrary to modern day relationships between Aboriginal people and non-Indigenous people and the current legal status of Indigenous people in Australia. We will rue the day if we pass

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this piece of legislation; I do not want to be a member of this house when this bill goes through, because I think it will be one of the worst retrograde steps this Parliament will be known for in respect of Indigenous and non-Indigenous relationships in Western Australia.

MR B.J. GRYLLS (Pilbara) [9.47 am]: I wish to put to the Parliament my position on the restoration of the Aboriginal Heritage Amendment Bill 2014. I, like some of the previous speakers, have some concerns about the legislation before the house. We have worked closely with the Aboriginal traditional owners in the Pilbara and across the north of the state to look at the legislation before us, to hear their concerns and to look at how it might be amended and improved. Given the stage we are at in the parliamentary cycle, not restoring this bill would mean that it would not come back to Parliament before the next election and the issue would be lost, and the issue is too important to be lost. There is recognition from every traditional owner I have spoken to that the existing Aboriginal Heritage Act is outdated and flawed and does not reflect modern best practice. They tell me that it does not work, they tell me that the Aboriginal Cultural Material Committee is not representative and they tell me that they want it fixed. At the moment, they are not comfortable with what has been proposed by the Minister for Aboriginal Affairs, but we are a Parliament of legislators and we put issues before the Parliament and we do our best to make them reflective of the demands and wishes of the people of Western Australia, and that is actually what we should be doing here. Members opposite who are concerned with the bill have the opportunity in this Parliament to raise their concerns and to move amendments. I have told Minister Collier that I will be moving amendments to the Aboriginal Heritage Act, and he has those amendments with him at the moment. He is looking at them and considering them and weighing up his options as the minister to bring them forward. That to me is a good process.

Mr B.S. Wyatt: Can we get to see them so we can debate them?

Mr B.J. GRYLLS: At the moment, the legislation is still being considered to be brought forward; it is not —
Several members interjected.

The SPEAKER: Members!

Mr B.J. GRYLLS: I do not mind the grandstanding that is occurring at the moment on this bill, but if that grandstanding succeeds, it will mean that the Aboriginal Heritage Act will not be changed prior to the end of this Parliament, and that will be a lost opportunity.

Dr A.D. Buti interjected.

The SPEAKER: Member of Armadale!

Mr B.J. GRYLLS: This is a unique Parliament; for the first time in Western Australian history, we have recognised Aboriginal people in the Constitution, off the back of the member for Kimberley's bill. This Parliament will be remembered as a unique Parliament that finally righted some of the wrongs of our past. I think the notion that the Parliament that did that would not be able to amend the Aboriginal Heritage Act to make it a good outcome is wrong; I think it will. My position and that of my National Party colleagues is that we should restore the bill. We will be bringing forward amendments. We hope that Minister Collier and the department will accept the plans we have put to him, and he might move them as the minister; that still remains to be seen. Of course, there is the added complexity to the situation of the Robinson court case in Port Hedland.

Dr A.D. Buti interjected.

The SPEAKER: Member for Armadale!

Mr B.J. GRYLLS: This is important legislation. I, too, have concerns with it, but —

Dr A.D. Buti interjected.

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

Ms R. Saffioti interjected.

The SPEAKER: Member for West Swan, I call you to order for the first time. Everybody has been heard in silence; give the member a chance.

Mr B.J. GRYLLS: I spoke to Simon Hawkins last night. He had heard that this had some potential and this is exactly what I said to him: trying to see the bill scuttled means that nothing will happen. History has shown that members opposite talk about this in opposition, but do not do anything when they get into government. The opposition does not have a proposal to rewrite the Aboriginal Heritage Act; it just disappears. We have a piece of legislation before the Parliament. It is complex legislation. There are concerns from Aboriginal traditional owners. There is the added complexity of a Supreme Court case around heritage in the Port Hedland area that was won by the traditional owners. As a government, we need to reflect that. We need to reflect the wishes and desires of the constituents of the Aboriginal communities on Aboriginal heritage as well as the stakeholders—the mining sector and others who are interested.

Ms S.F. McGurk interjected.

The SPEAKER: Member for Fremantle.

Mr B.J. GRYLLS: Surely this Parliament, the same Parliament that recognised Aboriginal people in the Constitution for the first time in our history, is capable of making relevant, good changes to the Aboriginal Heritage Act to benefit all the different people who have an influence in it, and that is why the Nationals will support the reinstatement of this bill.

MR R.F. JOHNSON (Hillarys) [9.53 am]: I first of all say in relation to this debate to reinstate the Aboriginal Heritage Amendment Bill 2014 that I think the two people in this chamber who know more about Aboriginal culture than anybody else in this chamber would be the member for Victoria Park and the member for Kimberley. I take great store in and acknowledge and respect their knowledge and their understanding of Aboriginal people—the culture, sensitivities and the way of life that they want to endure.

I have concerns that I want to be consistent today. I will support the member for Victoria Park's later motion to reinstate very important legislation that we should be debating in this house. I want to be consistent: I think this bill should be reinstated because that is what they want to do. I believe that if the government had any integrity, it would simply then withdraw the legislation and come back with what is necessary—come back with what the Labor Party wants, what the National Party wants and what any reasonable, decent, thinking person would want for Aboriginal people in this state. I would support it. I would not support the bill as it stands at the moment, but if there are amendments that the National Party is putting forward, I say good on it.

This bill sat idle for over 12 months. This bill was introduced in the dying days of the Parliament in 2014. It sat there doing nothing. It was never brought on for debate, so nobody had an opportunity to amend that legislation. It is not the Leader of the House's fault; it is his master. The Leader of the House is the best foot soldier that the Emperor has in this place, I can assure members. He has to do what he is told. It is somebody else's decision to try to put this bill back on the notice paper. I would be very surprised if we ever dealt with this legislation during this final year of this Parliament. I think it is more likely to drop off the paper at the end of this year, never to see the light of day, unless the next government that comes in in 2017 decides something should be done in relation to Aboriginal heritage. That should absolutely happen. It could happen this year. If the government is serious, it should allow the bill to come back on and then withdraw the legislation. That is the simplest way to do it. Be consistent, withdraw the legislation and negotiate with members opposite who know more about this issue than any member on this side of the house. I know that the National Party knows a fair bit and some of our country members too, but most of our metropolitan members really have not got a great deal of knowledge of Aboriginal culture and the things that are so important to Aboriginal people. We have a general knowledge and that is important, too. I am sorry, but I cannot support the member for Victoria Park's position on this. I support him in many things that he says and I will support him in his motion to reinstate the other bills; I truly will. I will have a lot more to say when the member moves that motion, but I believe that the government has decided it wants to bring this bill back on for cosmetic purposes only, not because it is genuine in what it wants to do. I believe what the member for Victoria Park said today, together with the member for Armadale and indeed the member for Pilbara, makes the most sense in this chamber. I believe they have some serious concerns about the wellbeing of Aboriginal people, because they represent a lot of Aboriginal people in their constituencies and I respect them for that. It is one of the things I respect them for. I do not agree with everything they do, but I respect them for that. I think we have a duty to the first inhabitants of this land to take them seriously and to do what I believe they would want us to do as a responsible Parliament. I am sorry, member for Victoria Park, but I cannot support this. I am not supporting it only because I want to be consistent. The bill will get reinstated. As I said, I am certain the bill will not get debated, but I believe that the moment it gets reinstated, if the government is genuine about the concerns that the member for Victoria Park and others have raised, it should withdraw the bill, put in the amendments that various people want and negotiate with the members for Victoria Park and Kimberley, because both of them know more than anybody in this chamber about what should be in the Aboriginal Heritage Amendment Bill. In this way, I reluctantly support the government. I do not agree with the bill as it stands at all, but I wanted to explain to the house why I will support the government. I will support the member for Victoria Park and the motion he will move later on.

MR W.J. JOHNSTON (Cannington) [9.57 am]: I will not speak for very long, Leader of the House, but I want to make some points about this motion. The Aboriginal heritage legislation has been raised with me on a number of occasions by people in industry and I keep making the same point to them that I will make now. Of course, everybody understands that the existing legislation is deficient and the member for Victoria Park's excellent opinion piece in *The West Australian* outlined that. The fact that the bill could get to this house with the approval of the National Party, but without the approval of Indigenous people, is disgraceful. If the National Party and the Liberal Party could spend a long time consulting industry and come up with a plan that suited industry, why could they not have spent the same amount of time talking to the Indigenous community? It does not make sense. I am happy to say that I have talked to the business community and I will do so again this morning for breakfast. This afternoon I will also be talking to people in industry and those conversations will include

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questions about the amendments to the Aboriginal heritage legislation. How can the National Party and the Liberal Party bring this legislation to the chamber without having given the same opportunity for consultation to the Indigenous community? It is not fair. I want to remind the chamber about some words from *Hansard* in 2008. The first transcript I will quote is from 28 February 2008 and the debate was about rock art. The transcript states —

The issue of the rock art on the Burrup Peninsula is probably the most significant heritage issue that Western Australia has ever faced. This Parliament did not deal with it. It was not an easy issue; we just did not deal with it.

I also quote from *Hansard* of 12 June 2008 —

If it were acceptable—it may well be acceptable—to move those several hundred pieces of rock art to make way for the Pluto project, that would be fine. The point is that Parliament never considered that. At the end of the day, I may well have agreed, as the person who raised the issue in here, that that was an acceptable compromise to allow the Pluto project to go ahead. The point I make here is that Parliament, through an agreement act passed by both houses of Parliament, did not make the decision to move the rock art to allow the Pluto project to go ahead.

Who was the person chastising the government of Western Australia for not allowing the Parliament to make the specific decision about Aboriginal heritage? It was the now Premier. The Premier's criticism of the approval process of the Pluto project was not that the chief executive officer of the Department of Aboriginal Affairs got to make the decision, but that the Parliament of Western Australia did not get to make the decision. As outlined by other speakers, we now have legislation that gives one individual the right to make that decision—a decision that the Premier said should be exercised only by the Parliament as a whole. What hypocrisy! The National and Liberal Parties' attitude to this legislation is disgraceful. They should hang their heads in shame. I finish by making this point: whether this legislation is reinstated or new legislation is introduced following consultation with Indigenous people, the chance of it passing Parliament is identical. There is no advantage to the government in reinstating this legislation, other than to go to its supporters and donors in the business community and look at the list of mining companies that donate to the Liberal Party and say, "Oh, no; we haven't walked away from amendments to the Aboriginal Heritage Act." That is what this is about—satisfying Liberal Party donors. This legislation is not advantaged by this proposal today. This motion is only about the Liberal Party covering up for its deep dishonesty and for the National Party's duplicity and behaviour in this matter.

MR J.H.D. DAY (Kalamunda — Leader of the House) [10.04 am] — in reply: I thank members for their comments in the debate on the restoration of the Aboriginal Heritage Amendment Bill 2014. I acknowledge the issues that have been raised, but whether amendments need to be made to the bill will need to be further considered by the Minister for Aboriginal Affairs and cabinet and I encourage that to occur.

Division

Question put and a division taken, the Acting Speaker (Ms J.M. Freeman) casting her vote with the noes, with the following result —

Ayes (33)

Mr P. Abetz	Ms E. Evangel	Mr R.F. Johnson	Mr D.C. Nalder
Mr F.A. Alban	Mr J.M. Francis	Mr S.K. L'Estrange	Mr D.T. Redman
Mr I.C. Blayney	Mrs G.J. Godfrey	Mr R.S. Love	Mr A.J. Simpson
Mr I.M. Britza	Mr B.J. Grylls	Mr W.R. Marmion	Mr M.H. Taylor
Mr G.M. Castrilli	Dr K.D. Hames	Mr J.E. McGrath	Mr T.K. Waldron
Mr V.A. Catania	Mrs L.M. Harvey	Ms L. Mettam	Mr A. Krsticevic (<i>Teller</i>)
Ms M.J. Davies	Mr C.D. Hatton	Ms A.R. Mitchell	
Mr J.H.D. Day	Mr A.P. Jacob	Mr N.W. Morton	
Ms W.M. Duncan	Dr G.G. Jacobs	Dr M.D. Nahan	

Noes (20)

Ms L.L. Baker	Mr W.J. Johnston	Mr M.P. Murray	Ms R. Saffioti
Dr A.D. Buti	Mr D.J. Kelly	Mr P. Papalia	Mr C.J. Tallentire
Mr R.H. Cook	Mr F.M. Logan	Mr J.R. Quigley	Mr P.B. Watson
Ms J. Farrer	Mr M. McGowan	Ms M.M. Quirk	Mr B.S. Wyatt
Ms J.M. Freeman	Ms S.F. McGurk	Mrs M.H. Roberts	Mr D.A. Templeman (<i>Teller</i>)

Extract from *Hansard*

[ASSEMBLY — Thursday, 18 February 2016]

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Mr John Day; Mr Ben Wyatt; Dr A.D. Buti; Mr Brendon Grylls; Mr Rob Johnson; Mr Bill Johnston

Pair

Mr P.T. Miles

Mr P.C. Tinley

Question thus passed.