LAND AND PUBLIC WORKS LEGISLATION AMENDMENT BILL 2022

Committee

Resumed from an earlier stage of the sitting. The Chair of Committees (Hon Martin Aldridge) in the chair; Hon Jackie Jarvis (Minister for Agriculture and Food) in charge of the bill.

Clause 1: Short title —

Committee was interrupted after the clause had been partly considered.

Hon JACKIE JARVIS: I would like to provide a correction first, if I may, before I deal with members' questions. Earlier in my reply to the second reading speech when I was responding to points Hon Neil Thomson raised in relation to exclusive leases, I believe I misspoke when I referred to section 98 of the Land Administration Act rather than section 79, which is the correct reference. I would just like to correct that in regard to my reply to the second reading speech.

Hon Neil Thomson asked a question about the different uses of diversification leases. He asked a question earlier about horticulture, and I believe his last question was about irrigated fodder. Is that correct?

Hon Neil Thomson: Yes.

Hon JACKIE JARVIS: I will make a broad statement so that we do not keep going through a list of what diversification leases might be used for. Diversification leases will provide for non-exclusive uses of crown land. The bill has been drafted broadly to allow for a range of possible uses that exist now and may be proposed in the future. The bill does not have a precise definition of how broadscale a use needs to be for a diversification lease to be applicable. The Land Administration Act already provides for various types of access to land to suit different primary industries. For example, there are avenues for exclusive land tenure that may very well suit intensive horticulture or irrigated fodder. If someone is considering seeking land tenure for a proposed use, they will be able to consider whether the new diversification lease suits their proposed purpose.

Hon NEIL THOMSON: I thank the minister for the clarification. Is this non-exclusive use that we are dealing with purely about access, or is it about any changes to the land forms, like, for example, land clearing? I would not have thought that land clearing would impact on the exclusivity of use, so I assume, for clarification, that the minister is talking about only activity that would enable ongoing access particularly for traditional owners, for example.

Hon JACKIE JARVIS: I am not sure that I understand the question. As I said, anyone seeking land tenure for a proposed use would need to consider whether the new diversification lease suits their purpose or whether they want a different form of land tenure. Is the member asking about land clearing?

Hon Neil Thomson: I will clarify.

Hon JACKIE JARVIS: Yes, thank you.

Hon NEIL THOMSON: This test is all about exclusivity, and I think that it is very important to get this right. I note that there was some discussion in the other place on this matter, as well. I am not sure whether that has been clarified yet. Just for clarification, I will elaborate a bit so that the minister can get the context of what I am trying to ask about.

If someone were undertaking a renewable energy project, for example, I would have thought that a renewable energy project would involve the development of significant infrastructure on the land, and that there would certainly be cause for some restriction of access to some of that infrastructure; for example, a solar panel or an array of solar panels may require non-exclusivity. I am struggling to understand this and I am hoping to get a better explanation. One way we could go down this path could be to go through all the activities that might be allowable under that broadscale use. Clearly, a solar array would be broadscale. It has big potential. Clearly, wind turbines would be broadscale, but dry land fodder, for example, might not require the prohibition of persons on that land. It might be allowed for other uses—for example, someone travelling across the land for whatever purpose. That could be somewhat limited as well. But something like a solar array or a series of wind turbines would be limited.

I am trying to get clarity because the bill seems to be focused on non-exclusive use. I see some problems in that definition because I would have thought that there would be requirements for some exclusivity on all the uses that the minister listed earlier—even tourism, for example. To assist the minister to provide an answer, I will ask a series of separate questions. Is it being proposed that these diversification leaseholders will have to also, as an adjunct, take out some other form of tenure under section 79 of the Land Administration Act? I thank the minister for clarifying that point; I now understand it. Will they have to take out some other form of tenure under sections 79 or 83 in order to provide exclusive use for key infrastructure, or may those activities, notwithstanding that they are broadscale, require a level of exclusivity?

Hon JACKIE JARVIS: There is a lot in there. The diversification lease is described as non-exclusive to make it clear that this form of statutory lease is different from exclusive possession under proposed part 6A. Diversification leases are similar pastoral leases that are also non-exclusive. Pastoral leases and diversification leases can coexist

with other interests such as a solar array, mining tenements or native title interests, and also other interests, to the extent that they do not conflict with the rights of the lessee. Substantial key infrastructure such as a wind farm or a solar array, for example, will have buffer areas around them under the Mining Act.

Hon NEIL THOMSON: The minister referred to the Mining Act, so the Mining Act provisions will come into play on these diversification leases. That is what I heard the minister say; I thank her. I also heard the minister say that pastoral leases can coexist with other activities, and the minister said just then that they can coexist with activities such as solar arrays. If a pastoral station can operate pastoral activities and a solar array, will the pastoral station still be able to be utilised for the sorts of things that have been envisaged under the non-exclusive uses—those broadscale uses as provided for or envisaged under the diversification leases?

Hon JACKIE JARVIS: We are still a little confused about the question, and we might have confused matters a little. Currently, if someone wants to have a solar array, for whatever reason, they cannot do that under a pastoral lease. They cannot have a large-scale solar array. It depends what the member means by "solar array". Does the member mean a solar array for their own energy purposes or for large-scale production of power?

Hon Neil Thomson: By way of interjection, I thought I heard the member say that solar arrays can coexist under a pastoral lease, but maybe she meant to say something else, or, if I heard the minister wrongly, I apologise for that. I think that she referred to a —

The CHAIR: Order, members. There is a limit to interjections, and we cannot allow interjections while a member is on their feet. If the member wants to make a further statement, he needs to rise and seek the call, and then the minister will respond.

Hon JACKIE JARVIS: I was answering a question about what can coexist with a diversification lease. That is why we were talking about how a solar array can coexist with a diversification lease that is for mining purposes. Apologies if I answered the question incorrectly. Perhaps if we start again that might be the way to go.

Hon NEIL THOMSON: The purpose of my line of questioning is to provide certainty for proponents. I ask the minister to imagine for a moment a pastoralist who has been approached by a hydrogen producer who wants to take a third of their property in order to undertake that activity, and they agree on that proposal. My question is about the definition of "activity". How will proponents be able to ensure that an activity that could not be undertaken under a pastoral lease could be delivered under a diversification lease?

Hon JACKIE JARVIS: The member outlined the scenario of a pastoralist who is approached by a hydrogen producer. A pastoral lease must be used for pastoral lease activities and any ancillary uses related to pastoral activities. They would need to apply for a diversification lease in order to allow the hydrogen producer to construct whatever they need to construct to produce hydrogen, including a solar array. Was that the question? A pastoral lease can be used only for pastoral purposes, as I have said. Once the proponent, the hydrogen company, has obtained consent from the pastoralist, they would obviously need to negotiate native title, or an Indigenous land use agreement, and they could then make an application for a diversification lease. I hope I have answered the member's question.

Hon NEIL THOMSON: I am trying to ascertain the circumstances under which a pastoralist and a hydrogen producer, or for that matter a pastoralist and any other type of proponent, might consider themselves eligible to undertake those activities under a diversification lease. I will use another example in which the definitions might be a bit more grey. It does not really matter what proponent we are talking about; it is anyone who would consider themselves eligible. A carbon farming proponent might seek to excise some land from a pastoral lease. What guarantee and what support would that proponent and that pastoralist be given from the Department of Planning, Lands and Heritage to ensure that once they have gone through the process of excising an element from the pastoral lease, and have obtained an ILUA, which I would expect them to have, they will not be denied approval for a diversification lease because they are not deemed eligible under that broad-scale definition or because of any other regulatory barrier that might apply to the grant of a diversification lease?

Hon JACKIE JARVIS: I will try to answer the question about a hydrogen producer versus a pastoral lease. A pastoral lease and a diversification lease cannot coexist. A pastoral lease or a portion of a pastoral lease would need to be surrendered in order for a diversification lease to be granted. That is in the case of the hydrogen producer. The surrender of a pastoral lease is voluntary, so that would be by negotiation. The member also asked about carbon farming. Carbon farming is allowable under existing pastoral leases. It is an ancillary use of pastoral land. Carbon farming is completely unrelated to the need for a diversification lease. The member asked a supplementary question about what support will be given by the department. I am not sure which part of that the member is asking about.

Hon NEIL THOMSON: Let us focus on a hydrogen producer. If a pastoralist has entered into a negotiation with a native title body and a hydrogen proponent, and the surrender of the pastoral lease has occurred, will there be any guarantee for the issuance of a diversification lease?

Hon JACKIE JARVIS: An option to grant a diversification lease will need to meet certain conditions, such as negotiating an ILUA, and the surrender of the pastoral lease by the pastoral lessee. A diversification lease will not

be granted until all the conditions have been met. With regard to what support they will get, no-one will be forced to surrender their pastoral lease until all the conditions for the granting of a diversification lease have been met.

Hon NEIL THOMSON: The minister has answered that in the sense that an option would be provided. Just to clarify, if a pastoralist has an arrangement with a proponent, and they have negotiated a native title agreement and an ILUA, would those three entities—the pastoralist, the proponent and the native title body—be able to obtain what I think the minister said was an option that would be delivered by the Department of Planning, Lands and Heritage that would outline the terms and conditions for the issuance of the new diversification lease? I am happy for a simple "yes" answer. The minister is nodding.

Hon JACKIE JARVIS: Yes.

Hon NEIL THOMSON: For the sake of *Hansard*, the answer is yes; there will be a process by which they will be given that option. That is good step and it will ensure a level of certainty going forward. Obviously, they will have to meet the conditions, which will be transparent. I guess any smart pastoralist, proponent and native title body will check that the conditions can be readily met. They will obviously have their lawyers look over it. That is a good outcome.

I will touch on a matter that I mentioned in my second reading contribution. It does not appear in the bill but it relates to clause 1 in the broader sense. Section 83 of the Land Administration Act is a broad and powerful section insofar that it allows for the transfer of crown land to advance Aboriginal people. The objective of this bill is to do that. For the sake of *Hansard*, section 83(1) states —

> The Minister may for the purposes of advancing the interests of any Aboriginal person or persons —
>
> (a) transfer Crown land in fee simple; or
>
> (b) grant a lease of Crown land, whether for a fixed term or in perpetuity,
>
> to that person or those persons, or to an approved body corporate, on such conditions as the Minister thinks fit in the best interests of the person or persons concerned.

I will not read out the other subsections.

Hon Jackie Jarvis: Chair, if I may.

The CHAIR: Minister, you cannot seek the call —

Hon Jackie Jarvis: I am concerned about relevance.

The CHAIR: — until the member resumes his seat.

Hon NEIL THOMSON: On that interjection, there is a very strong link to relevance because of the purpose of the bill under clause 1, interrogation. Noting the extraordinary powers that the minister has under section 83 and the reluctance of the department to utilise section 83 in the issuance of leases, did the minister contemplate utilising section 83 for the purposes for which these diversification leases are now being contemplated?

Hon JACKIE JARVIS: Apologies for the earlier interjection, member. We are not amending section 83, which only exists to advance the interests of Aboriginal people. Section 83 is different from what we are trying to do with diversification leases. The bill does not amend section 83, which is relevant in that it seeks to advance the interests of Aboriginal people. Of course, Aboriginal people will be able to use a diversification lease for other purposes. I am not sure of the relevance.

Hon NEIL THOMSON: The minister has answered my question; that was not contemplated. It is a significant disappointment that section 83 is not utilised given its broad scope and potential to offer a whole range of subleases under that arrangement. We will move on.

I turn to section 91 licences. There was commentary in response to my comment. Hon Wilson Tucker, who is away on urgent parliamentary business, referred to the issuance of section 91 profit à prendre licences. The minister's response was that they are non-exclusive and therefore they are not a land grab. Have any section 91 licences been issued to competing renewable energy companies such that there are two section 91 licences on the same footprint of land?

Hon JACKIE JARVIS: I note that the bill does not amend section 91 licences. There is no reference to amending section 91 licences so I have no information to hand about who may or may not use section 91 of the Land Administration Act. We are not amending that section.

Hon NEIL THOMSON: I thank the minister for her answer and note that the bill does not amend section 91 licences. For the sake of *Hansard*, I want to make it clear that, in my opinion, the response to section 91 licences has not been sufficient. I make it clear that they are non-exclusive. I am yet to be informed of any situation in which a section 91

licence has been issued to competing renewable companies on the same curtilage of land. That leads to another point because it relates to the provision of diversification leases. Section 91 leases were issued at will and random almost and were certainly promoted by the former Minister for Regional Development. The number of leases issued by the Department of Planning, Lands and Heritage under the authority of section 91 was considerable. They allow for—this is pertinent to this bill—the collection of exploration and research data about wind velocity and solar radiation and other related data that might affect the viability of a future renewable energy plant. That leads to an application under section 79, as the minister outlined, for a diversification lease. This is very important. I have a question about the likelihood that those proponents who have been granted a section 91 licence for the purpose of research into renewable energy will be able to avail themselves—and exclusively avail themselves—of this is new provision. Is there any expectation that a holder of a section 91 licence is likely to avail themselves of a section 79 diversification lease?

Hon JACKIE JARVIS: Again, I am not sure how to answer the question. The member referred to section 91 licences and the collection of data that is pertinent to the bill before us, but the bill makes no changes to section 91. The member also mentioned section 79 and, again, the bill does not make any changes to section 79. The member asked whether matters relating to sections 91 and 79 are pertinent to this bill—the answer is no.

Hon NEIL THOMSON: Perhaps I misheard; I need to go back over *Hansard*. The collection of data is not pertinent to the act or the bill. The data collected relates to solar radiation and wind velocity, which then leads to something that is pertinent to this bill; that is, an application—I will not quote the section—for a diversification lease. Is there any likelihood of holders of section 91 licences being able to apply for a diversification lease with the advantage of having collected data on renewable energy?

Hon JACKIE JARVIS: Any proponent applying for a diversification lease would do their own due diligence, so someone who currently holds a section 91 licence could apply for a diversification lease. I do not know what data the member is discussing, but anyone applying for a diversification lease would do their own due diligence, whether or not it is about the amount of wind or sun, if we are talking about a renewable energy project.

Hon NEIL THOMSON: I think that will reassure the industry greatly. I hope the industry is watching this, particularly those who might feel somewhat left out in the cold, so to speak, after not having been granted a section 91 licence despite having a very good proposal to put forward for land over which some other competing proponent currently holds a section 91 licence. That is why we are having this debate—so that it is clear that there is no expectation from the government or proponents that currently have a section 91 licence that they will be in any way advantaged by any proposal to apply for a diversification lease. I appreciate the minister's response. I think it is very important for that to be maintained.

Given the relation to diversification leases, there is an issue of contestability, which is an issue I raised in my contribution to the second reading debate. If a section 91 licence holder who has a licence over a curtilage of land makes an application for a diversification lease, will there be scope for a competing partner to also apply within a reasonable time for the same curtilage of land in order to progress a diversification lease?

Hon JACKIE JARVIS: The member has asked about a "competing partner"—does he mean competing with the applicant for the diversification lease? I am not sure what the member means by "competing partner".

Hon Neil Thomson: I meant "party".

Hon JACKIE JARVIS: If there are competing interests, the successful applicant is the one that the pastoral lessee and the native title party agree to. The state does not deem who is successful.

Hon NEIL THOMSON: In the case of unallocated crown land or other tenures, except pastoral leases, would the proponent be required to have an Indigenous land use agreement, in which case it would then be the sole proponent for a diversification lease?

Hon JACKIE JARVIS: Is the member asking a question about a sole proponent needing an ILUA?

Hon NEIL THOMSON: I am asking about this situation because the minister responded to me in relation to pastoral leases that the proponent applying for a diversification lease would need to have the consent of the native title body, which is understandable. In the case of other lands—such as unallocated crown lands that are not encumbered by a mining permit and do not have any other interest except for native title—I am asking whether the condition of application for a diversification lease would simply be a requirement to have an ILUA?

Hon JACKIE JARVIS: In the case of unallocated crown land, a proponent would have to negotiate with native title holders for an ILUA before they could apply for a diversification lease.

Hon NEIL THOMSON: Just to clarify, to negotiate with a native title holder, they would have to have a signed ILUA in place—is that correct?

Hon Jackie Jarvis: By interjection, yes.

Hon NEIL THOMSON: I thank the minister; that has made that clear. Although it may have been a bit tortuous getting there, that helps us to understand the non-contestability component of diversification leases. I think it is important to note that the non-contestability is because a condition of an application would be to have a signed ILUA in place before the application can be made. I think that is very important.

I refer again to some of the comments made by the Minister for Lands in the other place as we go further into clause 1. I want to make a correction for the record. Minister Carey said that I had suggested in this chamber that pastoralists would be forced to do this; that certainly was never my suggestion, and the minister clarified that point—or rather, he clarified his perception of my perception that that would not be the case at all. There is no requirement for pastoralists to convert to this new form of tenure, and that has certainly always been my view. That is pretty clear. However, there is an issue worth giving some thought to. Maybe the minister misunderstood what I was trying to say in commentary that I may have made in the media or elsewhere, but I can only guess as to where the minister's perception of this came from. There is a long-term issue with the expiry of pastoral leases and whether there might be some pressure put on pastoralists not to renew them. In saying that, I know that there has been some very welcome news about the extension of pastoral leases, so we are talking about a fairly long-term impact, but I have a specific question on the renewal of pastoral leases because I think it is important. Upon the expiry of a pastoral lease would there be scope for a proponent—other than the pastoralist—who has an ILUA to effectively have exclusive negotiation rights for a diversification lease over land that had previously been a pastoral lease?

Hon JACKIE JARVIS: Before I answer that question, I will provide the member with a correction. I provided him with some incorrect information earlier; I misunderstood the advice given to me and I apologise. With regard to section 79 there are some minor consequential amendments, but no material changes. My apologies. Section 79 is amended consequentially to take into account the new part 6A, "Diversification leases". Clause 35 states, in part —

(1) In section 79(1) delete "Subject to Part 7, the" and insert:

The

(2) In section 79(4) delete "term of a lease, other than a pastoral lease, having effect under this Act or vary the provisions of such" and insert:

term, or vary the provisions, of

When I said there were minor consequential amendments to section 79, I meant that they are not material. It is just a change in some of the wording.

With regard to the member's question about expiring pastoral leases, he asked about situations in which the lessee is not renewing the lease. If the pastoral lease expires, land becomes unallocated crown land and therefore the answer I gave earlier applies—that pastoral lease renewal is at the discretion of the Minister for Lands, but if it becomes unallocated crown land, the previous answer applies with regard to native title negotiations.

Hon NEIL THOMSON: We are talking about a fair way into the future. I think it refers to an important point; maybe a misunderstanding Minister Carey had about my comments on being forced to change, which is certainly not the case. However, it raises an issue. What would happen upon expiry if a pastoralist applied for a renewal of their pastoral lease and at the same time there was a competing proposal by a proponent with an Indigenous land use agreement in hand for a diversification lease?

Hon JACKIE JARVIS: I am advised that discussions around the expiry of a pastoral lease start 11 years before the expiry date and that currently the minister must make a determination eight years before the expiry date. I appreciate that the member is trying to ascertain whether someone else could be negotiating an ILUA and sitting in the wings waiting for a pastoral lease to expire. I am advised that because of the very long process and that the decision is made eight years before expiry, that would be very unlikely to happen and the discussion would have started 11 years before.

Hon NEIL THOMSON: I appreciate that. It will provide some reassurance to the industry, and I think that is important. Will a condition of that 11-year discussion require a pastoralist to gain an ILUA in order to renew a pastoral lease?

Hon JACKIE JARVIS: The answer is no, and it is because section 24IC of the Native Title Act 1993 applies.

Hon NEIL THOMSON: Thank you, minister; I have learnt something there. That is good to know, and I am sure that will provide reassurance to the industry. There is a level of protection for pastoralists going forward. If pastoralists do not already know it, I certainly have been provided good advice here; I appreciate that. This is protection for the industry to ensure they can continue to proceed with pastoral activities as they have, given this considerable investment in the pastoral sector.

I return to matters of exclusivity that were raised in the other place that relate to the transition. It was clarified in the other place that the only interest standing was not really an interest but native title.

I want to follow up on the issues of resourcing. As I mentioned in my contribution to the second reading debate, in my opinion we do not invest enough in the regulatory management of crown land estate and we will see a considerable lift of activity because of this bill, assuming that the minister has achieved the goal that was set out when this legislation was framed. Has any additional resourcing been given to the department in order to deal with expected workload, which is likely to be derived from the passage of this bill?

Hon JACKIE JARVIS: I am advised that the department is adequately resourced to manage this.

Hon NEIL THOMSON: I take from that that no additional resourcing is being provided. Let us hope that the flood of applications does not slow to a grinding halt. It is important for members in the sector to know that and no doubt they will work very hard with the department to ensure their applications are facilitated in a timely way.

Another matter that was raised in the other place was the uses on pastoral leases. Minister Carey made it clear to Peter Rundle, MLA, who raised the matter around what kinds of operations would be allowed on pastoral land. Minister Carey made it clear in *Hansard*, obviously in line with what has been outlined, that the dominant use of any pastoral lease must be for pastoral purposes. There can be ancillary uses but it cannot be the dominant use. I point out for the record that from my experience, there are some properties where carbon farming has become the dominant use. Perhaps that is allowable as a pastoral use; maybe it is a matter of definition.

I have a general question of policy: further to the red tape reduction processes that are outlined in clause 93, which we welcome, was it considered by the government at any stage to look at expanding the potential land uses that might have been able to be delivered on a pastoral lease?

Hon JACKIE JARVIS: The member mentioned carbon farming. As I have previously stated in an answer, carbon farming is considered pastoral use. Pastoral leases and pastoral purposes are prescribed under section 108 of the Land Administration Act 1997. Pastoral purposes require a pastoralist to graze animals, which is why we are now creating diversification leases. If a pastoralist wanted to change pastoral purposes, it would be an invalid future act under the Native Title Act unless every native title claimant or holder agreed to change in a statewide ILUA.

Hon NEIL THOMSON: It is interesting the minister says that because Hon John Carey, MLA, made the comment —

> As we know, organisations that currently hold pastoral leases still have to have cattle, but their primary interest could be conservation.

Noting the time, I will ask on notice my question about the move by the minister to the use of freehold. Why has the Minister for Lands chosen to give himself powers when dealing with freehold?

Sitting suspended from 6.00 to 7.00 pm

Hon JACKIE JARVIS: I just want to provide some comments and corrections before we answer the last question, if that is okay. Earlier in response to a question from Hon Neil Thomson regarding the use of pastoral leases, I inadvertently referred to section 108 of the Land Administration Act instead of section 106, which was the correct section. My apologies to the chamber.

I also wanted to provide a response to some comments made by Minister Carey in the other place, just for clarity. Before dinner, Hon Neil Thomson made reference to comments that the Minister for Lands made about pastoral leases held by organisations with a main interest in conservation. To be clear, the minister's comments in the other place referred to the constraints in the current system. Currently, conservation groups that hold pastoral leases for the purpose of managing land may need to have livestock on the land even though that is not the reason they hold the lease. The diversification leases introduced by this bill will address this current issue because it will be possible to establish a diversification lease that is primarily for conservation purposes.

In answer to a question asked about the minister's powers for freehold, the minister currently has no powers to deal with land held in freehold. If any land is held by the state in freehold and requires transfer or contracting activities to be undertaken, that can be done only at significant cost and delay.

Hon NEIL THOMSON: That is an interesting response and thank you for the response. Although I can understand how a minister might want that power, the challenge I have is that I assume it means the minister's delegate—the department—cannot deal with freehold but only, say DevelopmentWA could work with freehold. I am trying to make the distinction. The question is, under the current legislation, can the Department of Planning, Lands and Heritage deal in freehold on behalf of the minister and along with DevelopmentWA and its agencies, but not the minister? Is that the correct way of describing the current situation?

Hon JACKIE JARVIS: The act will provide the minister with certain powers regarding crown land, but there is no specific power that will allow the minister to enter into contracts for the management of crown land. Currently, the minister has to personally execute related documents under his or her executive power as a minister of the state, which increases delays and is inefficient.

Hon NEIL THOMSON: I am curious about the cost and delay. Maybe the minister could explain what that involves, just for the observer. What is involved compared with what is being proposed? Can the minister give a summary of the new process that will be executed compared with the old process?

Hon JACKIE JARVIS: New sections 11A and 11B will mean that the freehold land does not have to be converted back to crown land in order to bring the land under the act.

Hon NEIL THOMSON: Is there any provision in other acts for the Minister for Lands to deal with freehold land?

Hon JACKIE JARVIS: It is worth noting that I am the representative minister. We are dealing with the act before us. I am not going to provide commentary on all the acts that fall under the remit of the Minister for Lands.

Hon NEIL THOMSON: I will make a comment in relation to that and raise the question of why we are saying there is a cost and delay. I am always a little cautious when a specific transactional role is brought directly under the remit of a minister. In normal circumstances, under the Western Australian Land Authority Act—the act that governed LandCorp—there are some very specific checks and balances and certain accountabilities that that particular government trading enterprise was subject to. I would suggest that under the Housing Authority Act we would see the provisions on freehold land dealings that would have enabled the Housing Authority agency to operate. These are important issues in respect of this bill because those provisions in a normal circumstance would ensure that the accountabilities that apply to state agencies, including the ability to raise concerns and complaints with the Ombudsman and the Public Sector Commissioner, would apply. I do not know whether this is relevant, but I think it is important to raise for clarification, because I certainly know that the provisions in the Planning and Development Act with which I am more familiar indicate that distance between the minister and decisions on specific transactions is critical. Only on very rare occasions would the minister intervene in planning decisions through call-in powers, for example. The analogy is that, in that situation, there is always a separation. When a minister does begin to deal in specific decisions that are of a transactional basis, it poses some risks for the minister. My question is: has the minister considered the risks associated with dealing in freehold land directly in the management of those contracts?

Hon JACKIE JARVIS: The member has not outlined the risks he is referring to, so I am not sure what the question relates to. The member has asked whether the minister has considered the risks; I am not sure what he is asking.

Hon NEIL THOMSON: I could outline the risks. When a minister deals in freehold land—let us be specific here—there will be certain obligations. We had a discussion earlier today about matters on the transaction of those lands, how they are transacted, and meeting requirements under the Real Estate and Business Agents Act. I am sure the minister would operate in accordance with requirements. My question is asked without being specific about the risks, other than to say that every transaction that a minister is directly involved in—I am talking about direct commercial transactions, not policy or the exercise of regulations—poses a commercial risk. It poses risks around probity and the management of those contracts in relation to the associated acts that govern those transactions. We are still dealing with clause 1. My question on this provision is: in a general sense, has a risk assessment been done by the department and advice provided to the minister on any potential risks that might be associated with direct commercial dealings in freehold land?

Hon JACKIE JARVIS: The member has referred to a number of different acts, none of which relates to the act that we are dealing with here. I would ask that we deal with the act before us. The processes contained in the principal act are processes that already happen. This bill will simply streamline the processes and how they can be done.

Hon NEIL THOMSON: Okay. I understand that I am not going to get an answer to the question of whether a risk analysis has been done on any potential risks that might be incurred by the minister and his ability to deal with land directly. I will ask a related question. Will the minister deal with freehold land directly, or will the minister delegate the role to his department?

Hon JACKIE JARVIS: The minister can delegate if he wishes.

Hon NEIL THOMSON: Thank you for the clarification. We hope that that will provide the protection required, and I trust that the assurances the minister has given simply reduce the costs and delays. The question remains as to why the provisions under the Western Australia Land Authority Act and others are not relevant in this case and why the capacity to deliver on freehold land is at an arm's length to the minister.

I would now like to clarify another matter, which again relates to the commentary by the minister in the other place. I want to make sure that I have the right interpretation of what the minister has said in representing the Minister for Lands. Peter Rundle made a comment on the excision of land. He said —

> … I understand the rationale behind excising land necessary for the purpose of public works, can the minister provide examples of when land would be excised in the public interest?

We have touched on this before, but I am still a little confused because of Minister Carey's comments. He said —

> To be very clear, I already have that power. It would be based on the considerations that it is a use that is in the best interests of the broader Western Australian state. It could be for a number of different uses. It is a good question. That is why we also have a number of public works that are clearly defined and have been modernised and that give a very clear intent about the type of public works.

This issue deserves clarification. I am seeking a really simple answer. Will the excising power, which will be modified by this bill, apply solely to public works, or will the excising power apply to other activities?

Hon JACKIE JARVIS: Member, I think we are getting confused about what is in the current act versus what is in this new bill. Under the current act, the minister may revoke the management order in the public interest. We are not talking about public works. The minister may currently revoke a management order in the public interest. There is some uncertainty as to what exactly is "in the public interest". The amendment makes the position more certain and removes the uncertainty around the public interest test and that is why we now refer to "public works".

Hon NEIL THOMSON: I want to remind the chamber what was actually said. I think the minister has just clarified it. In the question by Peter Rundle, MLA, he states —

> … the rationale behind excising land necessary for the purpose of public works,

He was referring to public works, and then the Minister for Lands said, "I already have that power." I think what Minister Jarvis has clarified is that in the bill the excision will be able to be done for any purpose, provided there is a public interest test. Is that correct?

Hon JACKIE JARVIS: The Minister for Lands can already excise land from a reserve for any reason via a boundary adjustment under section 51 of the Land Administration Act. However, he would require the consent of the management body.

Hon NEIL THOMSON: I need to clarify that this can be done without the consent of the management body. My question is related to that. I think that is the matter that we are dealing with.

Hon JACKIE JARVIS: I can provide some clarity. Consent will still be required from the management body unless the excision is in the public interest or for a public work, or comes under sections 42, 43 or 45 of the Land Administration Act; that is, A-class reserves or Conservation and Land Management Act reserves.

Hon NEIL THOMSON: The important word is "or"—public interest or for a public work. I thank the minister for persevering with my question and making that clear. My other question relates to an online document that has been put out about the Land and Public Works Legislation Amendment Bill 2022. That will finish my questions on clause 1, just so that the minister will know. In my opinion, the consultation on this bill was one of the better consultations that I have seen on bills that have come before this chamber. I would like that feedback to be given to the department. It has done an excellent job in getting out to the relevant parties and providing advice and information so that the bill can be understood. I refer to the heading in that document "Frequently Asked Questions". One of the questions is about what controls and permissions are in place for a diversification lease or sublease to be transferred to protect both the lessee and the sublessee. The answer was —

> Unlike a pastoral lease, a diversification lease can have multiple subleases to different sublessees for different purposes. For instance, if a diversification lease is issued for the purposes of grazing livestock and tourism, the lessee could have subleases to two different parties, one for grazing livestock and the other for tourism, over two different parts of the leased area or the lessee could carry on both uses itself.

I recall this from when I was working in Aboriginal affairs. We had negotiated a particular sublease on an Aboriginal pastoral station, and there was then a request from the traditional owners to provide additional subleases on that site for certain living areas. I understand that there might have been a special spot that was particularly important for that group, and they wanted that to be excised. That created some challenges because of that provision that has been expressed to the minister. This comes back to why we did not do a bit more work around pastoral leases. It would have been an excellent outcome if we could have provided greater flexibility within pastoral leases to enable subleases to be provided for different purposes. Was any consideration given to amending section 93 or the relevant sections relating to pastoral leases to provide more capacity for subleases on those pastoral leases to meet those different purposes when appropriate?

Hon JACKIE JARVIS: As mentioned before, the answer to the member's question is no; it would have implications for the Native Title Act.

Hon NEIL THOMSON: I thank the minister for that information.

My next question is listed as question 4 in the frequently asked questions and relates to the safeguards in place for diversity leases in relation to vegetation methodologies and sequestering the storage of carbon.

Hon Jackie Jarvis: We do not have the FAQs in front of us, so if you could perhaps articulate the question, it would assist us greatly. If you say it is number 4 of the FAQs, we do not have a list in front of us. Perhaps you could just ask the question.

The DEPUTY CHAIR (Hon Steve Martin): Perhaps the member could read the detail and ask the question and then the minister could respond.

Hon NEIL THOMSON: I will work through it slowly. The question was: what safeguards will be in place for diversity leases in relation to vegetation methodologies with the sequestering of storage of carbon, noting that the policy is yet to be written? How will we ensure the endemic species are not overrun? This is not a trick question; it is a genuine question. The response was that this may allow for the use of other vegetation methodologies for sequestering and storage of carbon and how the use of methodologies other than the already approved HIR—I cannot remember what the acronym stands for; that is the DPIRD policy for pastoral leases—will be subject to the development of state government policy and any requirements for the provision of its eligible interest holder consent. In a nutshell, we have not developed methodologies for sequestering carbon that relate to diversification leases but some methodologies might be developed that would expand on the existing HIR. I will ask one question and then I will ask the others as part of a series. Has there been work? Will new methodologies be provided so these diversification leases have a wider range of sequestering methodologies?

Hon JACKIE JARVIS: It is the role of the federal government to approve methodologies for carbon farming.

Hon NEIL THOMSON: That is intriguing. I appreciate the minister's response. The minister is saying that although it is approved for the pastoral lease arrangements, the sequestering of carbon within the HIR is the only methodology that is currently available. If the minister would indulge me for a moment, to make this easier, I will try to find out what HIR stands for. It is on the DPIRD website. I can find it right now. It is called the human-induced regeneration methodology, as set out on the Department of Primary Industries and Regional Development website. There is quite an extensive blurb on that. It refers to compensation for clearing of carbon estimation areas and eligible interest holder consent. There is a map that provides where it can be done and associated documents on carbon farming. There is a very comprehensive guide to carbon farming on the DPIRD website.

From what the minister said, it would appear that that is the governing system—the system approved by the commonwealth. I do not want to make this difficult, but I want to understand what new methodologies are being proposed to make diversification leases more attractive, other than the fact that the operator will not have to run stock on their property, which was the discussion we had before. Now that we have a bit of background on that, will any methodologies be developed, or are any methodologies in the process of being developed, that are likely to only apply to diversification leases, not pastoral leases?

Hon JACKIE JARVIS: I note that human-induced regeneration information is available on DPIRD's website, but it is the responsibility of the federal government to approve methodologies. When we talk about methodologies, we are talking about what methodologies may be approved in the future.

Hon NEIL THOMSON: It would be useful if the answer in the frequently asked questions section were adjusted. I go back to this comment, which is why I have gone down this path, that states that government's reasoning —

> … may allow for the use of other vegetation methodologies for the sequestering and storage of carbon. However, the use of methodologies other than the already approved HIR will be subject —

This is the important part —

> to the development of State Government policy and any requirements for the provision of its eligible interest holder …

I ask the minister to undertake to look at that and provide additional clarity about the role of the federal government. There does not seem to be an easy way for the state government to manage those adjustments in order to fit the new diversification leases.

Hon JACKIE JARVIS: I note that the member is referring to frequently asked questions. None of the advisers can see how this relates to a particular clause in the bill. The material in front of me relates to the content of the bill before us. As I mentioned, we do not have a copy of the frequently asked questions in front of us. If the member has a particular area of interest within the bill, I am more than happy to answer his questions.

Hon NEIL THOMSON: I am not trying to be difficult at all. I thank the minister for the advice. It is a general comment under clause 1. I want to ascertain whether there will be a specific disadvantage to a carbon farmer other than the necessity to run stock on a pastoral lease vis-a-vis a diversification lease? Will there be any disadvantage of having a pastoral lease? We can turn it around the other way and ask whether there will be any other advantage of having a diversification lease other than the absence of having to run stock in relation to those two forms of tenure?

Hon JACKIE JARVIS: Member, we are still not sure what the question is. Someone will apply for a diversification lease because they wish to diversify on a large scale. I am sorry; we are not clear what the question is.

Hon NEIL THOMSON: I believe this is an important point—hopefully, we will get there. Hon Wilson Tucker, who is away on urgent parliamentary business, raised this issue, and it is the same issue that has been raised with me by conservationists. Many of them—at least the ones with whom I have spoken—are quite comfortable with pastoral leases. As the minister rightly pointed out, no-one will be forced to get out of pastoral leases if they have already entered into an arrangement to undertake a carbon farming project. They will be able to operate that carbon farming project for the foreseeable future. But we have said that their primary business will still be required to be related to stock. I think there are quite a few pastoral leases in the Gascoyne region, but I think that might be stretching it a bit. I will not push the point, but it is important to note that there are a lot of properties out there that have effectively been destocked and are operating quite comfortably as a pastoral lease. Maybe some of those are not operating within the full context of the existing act.

The point is that we have to assess the demand for diversification leases. It has been promoted as an environmental initiative. It has also been promoted as a renewable energy initiative. It seems to me that the demand for new diversification leases to meet those requirements might be quite low in relation to the sequestration of carbon, given that there are perfectly good ways to operate within the pastoral lease system now. That is really what I am getting to. What advantage will a conservation group or a proponent seeking to sequester carbon gain from having a diversification lease instead of a pastoral lease?

Hon JACKIE JARVIS: Currently, a conservation group that holds a pastoral lease for the purpose of managing land may need to have livestock on the land under a pastoral lease even though this is not the reason it holds the lease. A diversification lease as introduced by this bill will address this current issue because it will be possible to establish a diversification lease that is primarily for conservation purposes.

Hon NEIL THOMSON: I am just going to circle back. We raised the issue about why we did not change the pastoral lease requirements because of native title. That was something that came up and that was the advice the minister received, and I understand that. I would posit in the debate that reducing the requirement to run stock would in no way impact on native title; in fact, if anything, it would probably improve any suppression that might already exist in relation to native title. In respect of this specific issue whereby a pastoralist might destock in order to operate under a pastoral lease with a program to sequester carbon, is the minister of the opinion that that would in any way be in breach of the Native Title Act?

Hon JACKIE JARVIS: I am not clear on the question. The member said "a pastoralist might destock in order to operate under a pastoral lease". As I have said, a pastoral lease may need to have livestock on the land. I do not understand the question. The question was about a pastoralist who chooses to destock in order to operate under a pastoral lease. I am not sure that I am clear on the question.

Hon NEIL THOMSON: Thank you for clarifying that; I appreciate that. Basically, I am saying that if a pastoralist wanted to operate primarily in the area of sequestration and destocked their property to varying degrees, including to zero—putting aside the requirements of the Pastoral Lands Board, which we will get to in a moment—would that pastoralist be in breach of the Native Title Act?

Hon JACKIE JARVIS: Member, I do not have notes on the Native Title Act; I am not the minister with responsibility for the Native Title Act. The member is asking me questions that do not seem to relate to the Land and Public Works Legislation Amendment Bill 2022. I feel I need to say again that if conservation groups or people who want to undertake conservation activities hold a pastoral lease for the purposes of managing land, they may need to have livestock. However, a diversification lease—as introduced by this bill—addresses this issue.

Hon NEIL THOMSON: I thank the minister. I understand everything she is saying with regard to that role. I suppose I am making a point, if she can just bear with me. My point is that maybe there might have been an opportunity for amendments to section 93 of the Land Administration Act to enable more seamless operations by conservation groups on pastoral leases. There may have been an opportunity to do that without falling foul of the Native Title Act. If anyone from the department would like to provide that information through the minister on another day, I would be very happy. The minister does not have to, but if she wants to it would be good, because I think it is an important point.

I suppose the issue comes back to the massive challenge for operators in the carbon sequestration space who might feel they have an obligation to move across to a diversification lease in order to comply with the relevant statutes and the Native Title Act, although I realise that that legislation is not within the minister's jurisdiction. However, it is a relevant matter, particularly given the cost and process challenges involved in moving across to a diversification lease. That is probably enough on that point; I have said my piece, but if the minister does not mind, I would appreciate some further advice at some point.

My last question relates to the frequently asked questions. There was a comment amongst the FAQs relating to subdividing, developing and improving freehold land. I will read out the question and then the answer. The question is: why does the minister need to have the ability to subdivide, develop and improve freehold land? There is then a comment that land was transferred to DevelopmentWA from the Department of Communities. Sorry, this is my comment, so I will leave that one out. This power is particularly relevant to current government policy around the sale of state assets. These provisions will enable the minister to obtain the highest value for state land, benefiting all Western Australians. I suppose that is a slight change from the reasoning given in the other point the minister made about cost reduction. How would a minister be able to create higher value than a land agency with all the requisite controls?

Hon JACKIE JARVIS: The member read out a frequently asked question and then read an answer, so that presumably has answered that part of the question. What was the member's subsequent question in relation to the bill?

Hon NEIL THOMSON: It was in relation to the power to deal in freehold land. How would the minister be able to obtain the highest value for state land when there is already a state agency with powers, delegations and controls dedicated to the process of actually achieving that goal?

Hon JACKIE JARVIS: The Minister for Lands was previously able to deal with freehold land required for public works under the Public Works Act 1902 and the Land Acquisition and Public Works Act 1902, but these provisions were not transferred across to the Land Administration Act 1997. Currently there is no general power for the minister to hold and deal with land in freehold. The power to deal with land under the Land Administration Act 1997 applies only to crown land; therefore, if any land is held by the state in freehold but requires land assembly actions to be undertaken on it, these can only be done at significant cost and with greatly extended time frames.

Clause put and passed.

Clause 2 put and passed.

Clause 3: Act amended —

Hon NEIL THOMSON: The terms are outlined here in clause 3. I am just picking up on one particular term. There is a deletion and insertion in section —

Hon Jackie Jarvis: Clause 4 deals with these.

Clause put and passed.

Clause 4: Section 3 amended —

Hon NEIL THOMSON: I thank the minister for the correction, I was getting ahead of myself. Clause 4 has the terms and we have some deletions, with some changes to the definitions. I also note the obvious challenges when there are significant deletions and insertions, and we do our best to make comparisons, particularly given that I have a blue bill in front of me and I am trying to manage that, too. Anyhow, the issue here is, and I quote —

> "***land***" means —
>
> …
>
> (e) … airspace …

There was a comparison, the previous use of "subsoil" related to "seabed", and previously "airspace" related to roads, and it was three-dimensional. These are the comments. It seems we have broadened the definition of "airspace", and I wonder about the definition of what land is. Maybe the minister could explain the purpose of that expansion of the definitions in amended section 3, specifically clause 4(3)(c), which amends section 3(1)(e). There was an amendment made.

Hon JACKIE JARVIS: The question is why the definition of "land" has been changed to include "airspace" and "subsoil". That is to enable the grant of different tenures over different layers of crown land. I have an example here: when the government has identified land adjacent to and above a sunken train line for the construction of a university campus. Only section 3(1)(a) makes it clear that the aboveground campus and any overhang into the adjoining transport reserves are owned by the university, while below-ground transport infrastructure is separately owned and spatially defined. Another example is underground lots, which include car parking areas, shopping areas beneath residential apartments and sunken rail line corridors.

Clause put and passed.

Clauses 5 to 8 put and passed.

Clause 9: Section 12 amended —

Hon NEIL THOMSON: Delegations are obviously very important and there has been quite a significant deletion again. I am just having to look at some of the deletions that have occurred in the blue bill. There have been significant changes —

Hon Jackie Jarvis: Member, can I just clarify that we are talking about clause 9?

Hon NEIL THOMSON: I am going to speak on clause 9. I do not know what I am going to talk about, but we are going to talk about clause 9. I missed clause 6 because of my slight disorganisation here. My apologies to the minister. I was going to come to a matter of delegation on clause 9. This clause states —

> … "The Minister must not exercise a power (other than a power conferred by section 50(1) or (2))" and insert:
>
> (1) The Minister must not exercise a power

What was the purpose of that deletion?

Hon JACKIE JARVIS: I think we have got the question. We basically reworded the section. The section is to be amended to clarify that consent is not required from a reserve management body in the circumstances set out in proposed section 12(2).

Clause put and passed.

Clause 10: Section 14 replaced —

Hon NEIL THOMSON: There was a little lesson in there about refreshing my PDF for the sake of the chamber here today. Just for the minister's information, I had questions with the clauses on them. I somehow pulled up the old PDF; it had not refreshed. That is why we missed clause 6. Anyhow, we will proceed on now that we are completely refreshed and I know what I am doing! I thank the minister for her indulgence. That is called technology. In future, I will maybe use a hard copy.

Clause 10 provides a definition of consultation. It refers to the 42-day period needed. Previously, there was no definition. I assume that that was a problem for the state. I know that the minister mentioned the need for the process of 42 days in her second reading speech as it will give councils one meeting cycle. Did the minister get any concerns raised by any local governments with respect to the time frames around this?

Hon JACKIE JARVIS: Yes. As the member said, there is currently no indication of the time frame for consultation. A statutory time frame is to be introduced to streamline the referral process. The 42-day time frame was adopted in consultation with the Western Australian Local Government Association.

Hon NEIL THOMSON: I deal with a lot of smaller local governments, particularly those surrounded by crown land, that might have an issue around timing. Would there be any scope within the legislation for the local government to seek an extension —

Hon Jackie Jarvis: By way of interjection, yes.

Hon NEIL THOMSON: There would be an opportunity. What would be the process by which a local government could seek an extension?

Hon JACKIE JARVIS: When a local government has good reason for not being able to respond within 42 days, it could simply request an extension of the minister.

Hon NEIL THOMSON: Would that be routine, or considered an exception?

Hon Jackie Jarvis: Sorry, member, could you repeat the question?

Hon NEIL THOMSON: Is that something that would be considered as an exception, or could all local governments simply make that application as routine?

Hon JACKIE JARVIS: I am advised that local governments could simply ask the minister.

Clause put and passed.

Clauses 11 to 13 put and passed.

Clause 14: Section 27 amended —

Hon NEIL THOMSON: This is coming to the specifics of subdivision and the development of crown land. Currently, the minister requires the consent of a person having an interest or right over crown land. The bill is now silent on consent and extinguishment of that interest. What is the reason for that particular change?

Hon Jackie Jarvis: Member, could you clarify the question? Apologies.

Hon NEIL THOMSON: My reading of clause 14, which the advisers might be able to focus on, is that currently, the minister requires the consent of each person having an interest or right or power over crown land that is relevant. The bill is now silent on consent and extinguishment of that interest. Maybe that matter is picked up somewhere else in the bill, but are the advisers are able to provide through the minister any advice about why that was done?

Hon JACKIE JARVIS: Interests will be able to be continued on crown land that is subdivided under proposed section 27. The lots will be subdivided on a plan and any existing interests will be able to be continued via a ministerial order.

Clause put and passed.

Clauses 15 and 16 put and passed.

Clause 17: Section 30 amended —

Hon NEIL THOMSON: The definition of "public authority" in section 30, "Authorised land officers, appointing etc.", currently states —

> (b) a body, whether corporate or unincorporate, established for a public purpose under a written law.

That will be replaced with —

> (b) an organisation as defined in the *Public Sector Management Act* …

It appears that this amendment will change the scope of that section. How will that impact the operation of that section within the act?

Hon JACKIE JARVIS: Member, that wording has been changed simply to modernise the terminology.

Hon NEIL THOMSON: Is the minister saying that there is no change?

Hon Jackie Jarvis: By interjection, no.

Hon NEIL THOMSON: Okay.

Clause put and passed.

Clause 18: Section 35 amended —

Hon NEIL THOMSON: Section 35 is headed "Breach of condition or covenant applying to Crown or freehold land, Minister's powers in case of". The minister will hold land forfeited in the name of the state until the termination of the leasehold scheme. Will the minister honour any arrangements in place in relation to a sublease that might be in operation within the terms and conditions of the lease? This is where we have these complex arrangements—not so complex, actually. A lease might be terminated. This comes up quite regularly in terms of the transition arrangements to whatever new tenure it might be. I am thinking in particular of some of the case studies that I have dealt with in relation to Aboriginal lands.

Hon JACKIE JARVIS: The section is being amended to modernise the terminology and enable the Minister for Lands to elect to retain forfeited conditional tenure land in freehold. This section will operate with proposed section 11A. I can provide an example, if that might assist.

Hon Neil Thomson: Yes, thank you.

Hon JACKIE JARVIS: For example, a parcel of land is set aside as conditional tenure land for the purpose of disability and health services. The service provider has ceased operating and is in breach of the conditions of the grant, and there is no-one who can legally make a decision to transfer or surrender the land. The minister has identified an alternative service provider to take on the site for the same purpose. The minister undertakes forfeiture action. Currently, instead of being able to simply transfer the land to the alternative service provider as is, the land reverts to unallocated crown land and the minister then has to reconvert it to conditional freehold. Under the amended section, the minister will have the option to leave the forfeited land as freehold and transfer it directly to the new service provider, thus saving time.

Clause put and passed.

Clauses 19 to 21 put and passed.

Clause 22: Section 46A inserted —

Hon NEIL THOMSON: This relates to consultation with the management body. I think it is worth spending a little bit of time on this one. We have discussed it in broad terms, so I will try not to repeat myself. The consultation management body is obviously important; it is important to have consultation. We have had some discussion around the time frame of that already. We will be dealing with not only local governments but also a range of potential management bodies. They can be wide and varied. Some statutory bodies, such as the Aboriginal Lands Trust, have management orders. On this matter, I need to clarify: will the consultation apply to all management bodies including statutory authorities? That is my first question, just so I am clear, before we get into the notice.

Hon JACKIE JARVIS: Yes.

Hon NEIL THOMSON: Again, management bodies, for people who may not be familiar with the Land Administration Act, can include not-for-profit groups and all sorts of community groups. I think there are some cases in which a management body is a community group; I want to clarify whether that is the case.

Hon JACKIE JARVIS: The answer is yes.

Hon NEIL THOMSON: We have focused on local government up to now. Under this legislation there will be a 42-day requirement for the purposes of consultation. In the development of this clause to amend section 46A, has the department consulted all the management bodies that are in existence and hold land?

Hon JACKIE JARVIS: The 42 days was chosen to be consistent with changes in section 14.

Clause put and passed.

Clause 23: Section 50 amended —

Hon NEIL THOMSON: Clause 23 will amend section 50, which deals with the revocation of management orders. We have talked again on that at length so I will not repeat. When a management order can be revoked but the interest will continue—please give me a moment as I identify the specific elements. I want some clarification of what is meant by —

> … an interest in, or caveat in respect of, the reserve to which the management order applied continues, subject to this Act, if the order revoking the management order specifies that the interest or caveat continues.

Could the minister please provide an explanation of what that means? When a revocation of a management order occurs, what are those interests that continue?

Hon JACKIE JARVIS: I can answer the first part of the member's question, but I am not sure about the second part. An interest holder whose interest is extinguished by the revocation of a management order will be entitled to compensation—no, that was not the question. I will sit down and ask the member to ask the question again.

Hon NEIL THOMSON: I do not know whether it is helping. I am looking at clause 23(3), which states —

> Despite the revocation of a management order under subsection (1) or (2), an interest in, or caveat in respect of, the reserve to which the management order applied continues …

I suspect this is about —

Hon Jackie Jarvis interjected.

Hon NEIL THOMSON: Thank you. Could the minister maybe explain the range of types of interests and what the caveats might be and how that will work?

Hon JACKIE JARVIS: Subsection (3) is amended to confirm that the minister may preserve any registered interests or caveats in the revocation order—that is, a lease or an easement, for example.

Hon NEIL THOMSON: This might be where I was going with my previous questioning on one of the earlier clauses. This is the part that is important. It is a very important provision and it is relevant to the issuance of leases by management bodies. I will again use an example from my own experience. I had a degree of resistance when dealing with trying to establish leases on a management order. There was concern about how those leases might get caught up with the management order. I again refer to particularly those management orders held by the Aboriginal Lands Trust. For example, one of the excuses—"excuse" is probably a harsh word. At times, one of the concerns put by officers when I talked to them as part of the negotiations around putting a lease in place was that in the long term they would be in a situation in which they had a divestment, for example, of that management order or even that the management order might be revoked and a different kind of tenure put in place. Is this provision a way to remedy that problem in terms of the potential to ensure that we can continue to get on with the business of doing things like imposing caveats and leases on management orders without any risk or is that not in any way relevant to this discussion?

Hon JACKIE JARVIS: I am loath to get into dealing with hypothetical scenarios because, as I said, I am the representing minister. The member has given me a scenario that I am not going to provide comment on other than to say that subsection (3) will be amended to confirm the minister may preserve any registered interest caveats, and I did mention leases.

Clause put and passed.

Clause 24 put and passed.

Clause 25: Section 51AA inserted —

Hon NEIL THOMSON: This clause relates to compensation provisions. I think it is important and it relates to some of the comments I made in my contribution to the second reading debate about when there is a revocation of a management order and it ties in with risk management for local governments particularly but other management bodies as well. How will this provision work and to what extent will it be applied? Proposed section 51AA is titled "Compensation provisions". Proposed subsection (2) states —

> On the registration of an excision order in relation to a reserve, the management body of the reserve may, unless it is a State instrumentality, claim compensation under section 204(1) for any structure erected or improvement made …

There is the caveat in the bill that states "in accordance with the terms of the management order". One would expect that if it was done outside the terms of the management order, it would not be compensable. That seems fair enough. I just want to clarify whether "improvement made" means made by the existing management body or whether an assessment of that improvement might be made if a management body had been transferred at some point in time. I am thinking of a local government, for example. I referred to a case earlier of a property developer who puts in some significant park infrastructure that is maintained by the shire for 20 years but then an excision order is made. I want to make sure that that local government, if we use that example, would be compensated for the value of that improvement and that when we say "improvement made", we are not defining it as the improvements that were made by the management order holder.

Hon JACKIE JARVIS: As long as it was a lawful improvement, compensation is to be provided to the management body at the depreciated value of the improvement of the structure, essentially.

Hon NEIL THOMSON: In that case, we can confirm that any improvement made by any party would be compensable, which I think would give some comfort to local government, particularly if a community facility had been removed and had to be rebuilt in another location.

Proposed section 51AA(3), of the same compensation provisions, states —

> On the registration of a revocation order in relation to a reserve, the former management body of the reserve may, unless it is a State instrumentality, claim compensation … for any structure erected or improvement made, in accordance with the terms of the revoked management order, by the former management body on the reserve, as if the revocation order were a taking order under Part 9.

Members will have to excuse me. I am actually struggling to know why that is different from proposed section 51AA(2). Maybe the minister could clarify why that specific requirement is in there.

Hon JACKIE JARVIS: Proposed section 51AA(2) deals with an excision and proposed section 51AA(3) deals with a revocation.

Hon NEIL THOMSON: How is the compensation calculated? Maybe I can help by explaining why I am asking this question. The bill talks about structures. Sometimes there is more to operations than a reserve. For example, I know of a community store with a management order. Hypothetically, if that was excised by the minister, compensation could be payable for the structure, but there are a whole range of ancillary economic opportunities. Would that be compensable beyond the value of the structure?

Hon JACKIE JARVIS: Again, member, I am not going to get into hypothetical scenarios. I can tell the member that the process and the time frames for compensation are outlined in part 10 of the existing act and there will be no change to that.

Clause put and passed.

Clauses 26 and 27 put and passed.

Clause 28: Section 56 amended —

Hon NEIL THOMSON: I want to have some discussion around the closure of roads at the request of local government and the closure of roads on the minister's own initiative. I hope I am on the right clause; I am not. My apologies. Chair, I will let clause 28 go and come back to clause 30.

Clause put and passed.

Clause 29 put and passed.

Clause 30: Section 58 replaced —

Hon NEIL THOMSON: Clause 30 will delete section 58 and insert a new section, which is about the closure of roads at the request of local government. Getting to the one I was jumping ahead of myself on, there is also a new section on the closure of a road on the minister's own initiative. This is quite a substantial change. We will have the "Closure of road at request of local government". What will be removed is —

> A local government must not resolve to make a request under subsection (1) until a period of 35 days has elapsed …

There is a section in the existing act on the closure of roads. The new provision reads —

> If a local government considers that a road in its district should be closed permanently, the local government may, in accordance with the regulations, request the Minister to close the road.

The question is about that the local government "may, in accordance with the regulations, request the minister". I assume there is no other mechanism. I wonder why we are putting in "may". Is there anything else in that? The simple question is whether "may" is there for any purpose? I would have thought that if the local government considered the road should be closed permanently, the local government would, in accordance with regulations, request the minister close the road. It seems to be a drafting issue. Why is "may" in there? There might be some other reason.

Hon JACKIE JARVIS: I am not sure that I understand the question. A local government may ask for the road to be closed; it also may not ask for the road to be closed. I do not see it as a drafting issue. I am not sure that I understand the member's question as to his concerns about "may".

Hon NEIL THOMSON: I am sorry to be pedantic here; I guess that if a local government wanted to close a road, it would have to request that the minister close the road, but I will let that one alone. Maybe I am getting too pedantic on that. Proposed section 58(2) states —

> After receiving a request under subsection (1), the Minister may —
>
> (a) by order grant the request; or
>
> (b) direct the local government to reconsider the request …

There is an option for the minister not to close the road, so that is fine. Proposed subsection (3) states —

> If the Minister makes an order under subsection (2)(a) in relation to a road —
>
> (a) the road is closed on and from the day on which the order is registered; and
>
> (b) any rights suspended under section 55(3)(a) cease to be so suspended.

Can the minister explain what proposed subsection (b) means, "any rights suspended under section 55(3)(a) cease to be so suspended"? Again, I am being a bit pedantic, but it seems an unusual drafting.

Hon JACKIE JARVIS: My understanding is that there has been no change to that subsection. Unless the member has something different on the blue bill before him, that is my understanding. I am not sure what the question is, because I do not believe there has been a change to that section.

Hon NEIL THOMSON: The bill provides for the deletion of current section 58 and the insertion of proposed section 58, unless there has just been a complete insertion of the same provision, but it is unusual to have a deletion and insertion without a change.

Hon JACKIE JARVIS: Apologies if I was not clear. Essentially, a section was deleted, but it is exactly the same wording. It is a drafting issue. It is not a drafting problem; it is just the numbering of the clauses. It is exactly the same words as in the current bill.

Clause put and passed.

Clauses 31 to 33 put and passed.

Clause 34: Section 75 amended —

Hon NEIL THOMSON: This clause relates to the matter of freehold in conditional tenure. Would it be fair to say that we do not have a lot of conditional tenure freehold properties? Is that a fair assumption? Maybe the minister could give me some background on that.

Hon JACKIE JARVIS: I do not have information about the number of conditional tenure freehold properties.

Hon NEIL THOMSON: Again, it may not be important. My understanding is that conditional tenure on freehold land was not really favoured by the state, but it seems to be an issue that is being inserted here, after section 75, and it lays out —

> If the holder of the freehold in conditional tenure land fails to use that land for the specified use and the Minister considers that the failure is unreasonable in all the circumstances, subsection (4) applies …

Section 75(4) deals with the forfeiture of that land, just jumping down here. It states that —

> … subsection (4) applies as if the failure were a breach of the conditions concerning the specified use of that land.

Are there any rights to appeal that provision?

Hon JACKIE JARVIS: I want to confirm that clause 34 deals with the situation in which a conditional freehold ceases operation and the facilities have deteriorated—for example, at a youth camp. The member's question was: without undertaking a complicated legal procedure, would the holder of that land have a right of appeal? That is already dealt with in section 35 of the act.

Hon NEIL THOMSON: I am scrolling through section 35 of the act. Section 35 of the act outlines the fee simple conditional tenure and that land may be transferred under this at a normal price. The act states that a conditional tenure cannot be subdivided. All those elements are within the blue bill. I will summarise. All the conditional tenure provisions are retained in the bill. The bill intends to add proposed section 75(4A), which is a potent provision. As we have scrolled through the act, we have had a bit of discussion on some things that I am probably being a bit pedantic about that I have put on the table. But, at the end of the day, this is quite an important provision, and I want to know why it was put in. Can the minister describe "conditional tenure" and, as she mentioned, the youth camps? I assume the minister was talking about community groups. I would like the minister to explain, if she can, who does the government have its sights set on in this issue?

Hon JACKIE JARVIS: I did not hear the last little bit of the question, but I can tell the member that currently it is uncertain whether a failure to use the land for the specified use is a breach of conditions. The minister will be authorised to forfeit conditional tenure land when the land is being used in a breach of any condition concerning the specified use. With regard to what the minister might consider unreasonable, the minister in all the circumstances would consider the conditions concerning the use of the land and the relevant factors. For example, the minister could weigh up whether external circumstances such as extreme weather conditions or a pandemic contributed to the failure of the use of the land or whether the improvements have started to deteriorate and the registered proprietor has minimal resources to manage the land. I hope that answers the question.

Hon NEIL THOMSON: Who was the minister or his advisers thinking of when this provision was drafted? It obviously was not just popped into the bill for no reason. Are there currently any landholders out there who have conditional tenure and who will be finding out that after this provision has passed that their land will be forfeited?

Hon JACKIE JARVIS: Obviously when acts are reviewed, there is a process that looks at areas where there is no clarity. Currently, it is uncertain whether a failure to use the land for the specified purpose of use is a breach of conditions. We simply want to modernise the act to make it clearer.

Hon NEIL THOMSON: I will give an example; there are probably a couple of examples. I wonder whether any of the youth camps—I invite the minister to contradict me if this is not right—for example on the Busselton strip, might be in the minister's sights in relation to this provision. It is obviously a very potent provision. I am not suggesting that they are in the minister's sights, but I am just asking whether they might be. I want to help the minister think about why this provision might be here.

Another example that I have experienced is an Aboriginal corporation that had received a number of conditional freehold titles in anticipation that it would become a prescribed body corporate. I will not go into the details of what that particular corporation was, but it ended up not becoming a prescribed body corporate, and there was then a challenge about the assets that had been transferred to the prescribed body corporate and the issue of compensation for costs and so forth, and it became quite complex. Things can become really difficult in the lands space. Having given that background, I want to go back to the provision —

> If the holder of the freehold in conditional tenure land —

It seems to apply only to conditional tenure —

> fails to use that land for the specified use and the Minister considers that the failure is unreasonable in all the circumstances, subsection (4) applies as if the failure were a breach of the conditions concerning the specified use of that land.

Can the minister shine any more light on who is in the sights of the Minister for Lands—this is the bit that the minister did not hear me say properly—with this additional provision in the bill?

Hon JACKIE JARVIS: No-one is in the sights of the minister. Conditional freehold is granted because the use of that land will provide a community benefit. As I have stated, if the land is not used and the community benefit is lost, under the current act it is uncertain whether failure to use the land for that community benefit is a breach. I think the member is looking for conspiracies where perhaps there are none.

Hon NEIL THOMSON: Will there be any supporting policies that might help define for the minister what is "unreasonable," or will that be completely at the discretion of the minister?

Hon JACKIE JARVIS: The minister will consider the conditions concerning the use of the land and the relevant factors. It is "unreasonable in all the circumstances". I gave the example of extreme weather conditions or a pandemic that contributed to the failure to use the land for the specified purpose, as opposed to when the improvements have deteriorated and the proprietor is not able to manage or maintain the land, as I have said.

Clause put and passed.

Clause 35: Section 79 amended —

Hon NEIL THOMSON: This clause seeks to amend section 79 of the Land Administration Act, which deals with the powers of the Minister for Lands to lease crown land. This is an important provision and one that we support. Subclause (2) states —

> In section 79(4) delete "term of a lease, other than a pastoral lease, having effect under this Act or vary the provisions of such" and insert:
>
> term, or vary the provisions, of

That is the proposed change. Just to clarify, is that the provision that will enable the minister to extend pastoral leases?

Hon JACKIE JARVIS: Yes.

Clause put and passed.

Clause 36 put and passed.

Clauses 37 to 39 put and passed.

Clause 40: Section 92 amended —

Hon NEIL THOMSON: Section 92A relates to diversification leases. I refer to proposed division 3, "Conditions of diversification lease" under the broad heading "Diversification leases". It is about provisions that can be included in a diversification lease. Earlier we discussed the fact that, for example, conditional approval could be granted before a pastoralist had excised part of the pastoral lease. That was a good discussion in terms of understanding the process and clarifying that. The minister may include in a diversification lease any terms, reservations, conditions or penalties not inconsistent with the act. That provision is fairly broad because it refers to any conditions. Proposed section 92C(3) states —

> A diversification lease cannot include an option to purchase the fee simple of the Crown land leased.

It does have an option to purchase.

Hon Jackie Jarvis: Can I clarify that we are dealing with clause 40? I think you are asking a question related to clause 41. Are we on clause 40?

Hon NEIL THOMSON: Sorry, I will go back to clause 40. Yes, I had jumped ahead. It relates to the lease conditions. I have notes that I am trying to marry up. There is a lot of detail here. Clause 40(2) states —

> (2) Subsection (1) does not apply to a lease if —
>
> (a) the lease is a pastoral lease; or
>
> (b) the lease contains express provision to the contrary;

My notes relate to the variation of a lease; I cannot find it. It may relate to another clause. I will defer to the deputy chair and let clause 40 go to the keeper.

Clause put and passed.

Clause 41: Part 6A inserted —

Hon NEIL THOMSON: Hopefully, we got to the variation part. I refer to proposed section 92C, "Provisions that can be included in diversification lease". I was on the wrong clause. My apologies, minister.

What controls are in place for the variation of provisions in a diversification lease and is there any scope for those leases to be varied at some point in the future? Let me ask two different questions. First, what scope is there for the variation of lease provisions?

Hon JACKIE JARVIS: The general leasing powers of the Minister for Lands will apply to diversification leases, as they do for leases granted under part 6 of the act, save for some limitations set out in part 6A and section 16 of the Mining Act 1978. For example, variation of a diversification lease purpose requires the approval of the minister for mines, whereas variations of other leases do not.

Hon NEIL THOMSON: Will the process of variation be unique to diversification leases or is it a normal provision in the section 79 and 93 provisions for pastoral lease arrangements?

Hon JACKIE JARVIS: The passing of this bill will ensure that all leases under the Land Administration Act 1997 can be varied.

Hon NEIL THOMSON: That is interesting and sounds positive. Is it the case that lease provisions cannot be varied?

Hon JACKIE JARVIS: Currently, all leases granted under the act can be varied except pastoral leases. Given that the power to extend pastoral lease terms up to 50 years has been enacted, the minister needs the power to vary pastoral leases without terminating and granting them again.

Hon NEIL THOMSON: This is a very positive development; I was not aware of that. To my honourable colleagues who are sitting here listening to this rather droll discussion, I hope something valuable comes out of it because it is important.

Hon Darren West: It is forlorn.

Hon NEIL THOMSON: A forlorn hope! We will always live in hope. The minister mentioned the variation of the term of a pastoral lease. Will this provision enable variations of other conditions if they meet other requirements? For example, I again refer to the Native Title Act 1993.

Hon JACKIE JARVIS: Member, I never said that it allows for the variation of the term. What I said is that given that the term is 50 years, we need the opportunity to vary the lease conditions.

Hon NEIL THOMSON: I apologise if I happen to forget something. Can the minister clarify why the minister has to have the power to vary pastoral leases?

Hon JACKIE JARVIS: Currently, all leases under the act can be varied except pastoral leases. The act now allows the varying of pastoral leases as required. Because pastoral leases are for 50 years, the minister needs to vary them without terminating and granting them again when a condition needs to be changed.

Hon NEIL THOMSON: I might have expressed myself in the wrong terms. It will fundamentally give effect to the extension of the lease term.

Hon JACKIE JARVIS: I am confused. Is the member asking about the term or the clause of a pastoral lease? I have been referring to the clauses of a pastoral lease. Given that there is the power to extend pastoral leases up to 50 years, the minister needs to be able to vary clauses within a pastoral lease rather than terminating the lease and granting it again. Was the member asking a question about the term? I am not sure about the question.

Hon NEIL THOMSON: I think we are saying the same thing. I used the terminology "give effect to" the extension of the lease. It will not actually extend the lease; it will enable the extension of the lease. It is a bit of a nuance but I think we are saying the same thing.

Hon Jackie Jarvis: The extension of pastoral leases is dealt with in clause 49, which has caused some confusion. Can the member restate his question about this clause?

Hon NEIL THOMSON: I will put it in the negative. Without this clause, the pastoral lease would not be able to be extended; is that correct?

Hon JACKIE JARVIS: Currently, we cannot vary a pastoral lease at all. It needs to be terminated and re-granted. The combination of clauses that we are talking about—that is, this clause and clause 49—means that the minister will be able to vary a pastoral lease.

Hon NEIL THOMSON: Just to circle back one more time, but not specifically on that issue, will this clause enable the variation of the pastoral lease for any other purpose without enabling—I am trying to find the right word—the termination extension? Are there any other matters by which this clause will give effect to the variation of a pastoral lease? If that is possible to answer, it would be good.

Hon JACKIE JARVIS: The confusion is that we are dealing with clause 41, which deals specifically with diversification leases, but the member is asking questions about pastoral leases. We are doing our best to answer the question, but in the context of clause 41, the member's questions will have to relate to clause 41, which is specifically about diversification leases.

Hon NEIL THOMSON: I think that conversation was useful in relation to the effect on the pastoral lease, notwithstanding that we are dealing with clause 41. There is another aspect of clause 41 that I would like to raise, and that is to do with proposed section 92E, "Reservation in favour of Aboriginal persons", which states —

> Aboriginal persons may at all times enter upon any unenclosed and unimproved parts of the land under a diversification lease to seek their sustenance in their accustomed manner.

This seems like a pretty normal clause. Would it be fair to say that these are the same rights that people enjoy in relation to a pastoral lease, for example?

Hon JACKIE JARVIS: Proposed section 92E echoes the current section 104, which applies to pastoral leases. The rights of entry of Aboriginal people under those sections are separate from the rights of native title parties. Native title parties are free to negotiate access rights as part of their Indigenous land use agreement.

Hon NEIL THOMSON: I think it is important to make that distinction. I thank the minister for that clarification because that would probably play into the non-exclusive position component, noting that there will be some elements that are enclosed and improved parts that might be subject to some restrictions. Can we make sure we have a regional provision there in terms of not being too restrictive? When it is defined as "unenclosed and unimproved", how is that defined? I know it is an issue that has created some concern amongst Aboriginal people in relation to some

pastoral leases—for example, when there are gates that are locked. In 99 per cent of cases I think an accommodation is reached that is suitable for all parties, but occasionally things do not work out. I just wonder whether there is any standard definition of "unenclosed and unimproved" for a seamless and collaborative approach to access.

Hon JACKIE JARVIS: The member asked for a definition of "unenclosed and unimproved". It has been determined by court decisions.

Clause put and passed.

Clauses 42 to 51 put and passed.

Clause 52: Sections 108A to 108C inserted —

Hon NEIL THOMSON: This clause relates to pastoral lessees submitting management plans. I have had conversations with people in the pastoral industry, including peak bodies, and although the Pastoralists and Graziers Association was supportive, in a broad sense, of the legislation and all the good things that are being delivered through red-tape reduction, there is probably some interest in management plans. From time to time the Department of Primary Industries and Regional Development has funded the development of pastoral improvement plans for Aboriginal pastoral stations; that is something that I was involved with in a past career, and some good work has been done by DPIRD on that front. The management of pastoral leases is important, and although this ties in, to some extent, with accreditation to ensure that there is consistent management of pastoral leases across the state, there is a little disquiet amongst some in the industry. The comments I have heard are that it is all very well to have a bureaucratic plan, depending on how prescriptive it is, but often these things can become bits of red tape that do not really apply to the operation of pastoral leases.

I pick up on some of the comments made by my colleague Hon Dr Steve Thomas about being more open-slather in relation to what they can do. I am not suggesting that we should have completely unrestricted use, but it is important that we have an outcomes-based approach as opposed to a planned approach. I think that is probably where things operate. Clause 52 deals with the submission, approval and implementation of the management plans, and the board may, with the agreement of the lessee, approve amendments to management plans. I suppose there is an element of concern here about how that will function in practice. There is probably some need for the board to have purview over the operations on the rangelands to make sure outcomes of sustainable rangelands management are maintained and also to maintain an understanding of what other activities are ongoing and that they comply with the terms of the lease. I want to focus on this proposed section as it applies. As part of clause 52, proposed section 108A(2) states —

> If this section applies, the Board may give a written direction to the lessee to submit to the Board a plan (a ***management plan***) in relation to any of the following …

Is it the intention of the state to ensure all pastoral leases have a management plan; that is, there is a management plan for every single pastoral lease operating in the state?

Hon JACKIE JARVIS: No. This proposed section is inserted to enable the board to direct a pastoral lessee to provide a comprehensive management plan to address land conditions or other issues associated with the pastoral lessee's obligations, so the short answer is no.

Hon NEIL THOMSON: I think that is good. It is important that it is targeted and that those management plans only apply where the need is. Would the board at its own discretion make an assessment that a plan is required, and under what conditions might it decide to apply a direction to a pastoralist to provide a management plan?

Hon JACKIE JARVIS: When issues are identified in relation to the land condition.

Hon NEIL THOMSON: Over the years, we have seen a change—I am trying to think of the terminology used, but it is a land condition report—and in times gone by my understanding is that there used to be quite a big directorate of people in the Department of Lands who used to do rangelands assessments, which included assessing biomass, stocking rates and the potential condition of water points and fences. I understand quite a large directorate used to exist. Does the government propose to provide any support for the department and the board to execute this provision of the legislation?

Hon JACKIE JARVIS: It does not relate to this portfolio, but as the minister responsible for the Soil and Land Conservation Council, I can assure the member that these duties fall under the role of the Soil and Land Conservation Council, so not under the Department of Planning, Lands and Heritage.

Hon NEIL THOMSON: Maybe I will need to clarify. My understanding is that those inspectors were based in the old Department of Agriculture and Food, which is now the Department of Primary Industries and Regional Development. I think that is how it operated. It reported back to the board. I think that is how it worked. It seems a little odd that we will provide powers to the board to do management plans without an expressed process of enabling the board to then make an assessment of those management plans. What process will the board use to make an assessment of the compliance of those plans?

Hon JACKIE JARVIS: Just to clarify, the Commissioner of Soil and Land Conservation reports to me as the Minister for Agriculture and Food. They provide advice to the Pastoral Lands Board. The Pastoral Lands Board may request a management plan that includes things such as financial management, grazing management, infrastructure, diversification permits and broader questions of land management, including weed and feral animal management as well as landscape rehydration and rehabilitation when relevant, and then the Pastoral Lands Board has a compliance policy that slowly escalates to the minister. If a pastoralist breaches a condition, the Pastoral Lands Board would be able to serve a default notice.

Hon NEIL THOMSON: Within clause 52—I hope I am in the right clause—are penalties under proposed section 108C, "Board may direct pastoral lessee to monitor and report land condition". Notwithstanding the commentary we just had, the board will have to be satisfied that a pastoral lessee is not managing the land under the lease, so there is obviously a process whereby the board will be advised. I am not as familiar with soil and land conservation processes as the minister and the commissioner, so I have a couple of questions. By what process will the board be informed in order to make a decision to then proceed? For example, proposed section 108C(2) states that "if this section applies, the Board may give a written direction to the lessee" to do certain things and submit to the board by a certain date. What process will be applied and how will the board be equipped to ensure it has the adequate information? Will that be a process through the Commissioner of Soil and Land Conservation or through other parties?

Hon JACKIE JARVIS: The Soil and Land Conservation Commission can do a rangeland condition assessment that would alert the Pastoral Lands Board to an issue. Currently, the Pastoral Lands Board has no head of power to acquire pastoral lessees to undertake monitoring or reporting of their leases. This amendment will provide the board with a power when those issues are identified in relation to land condition. Proposed section 108C has been inserted to enable the Pastoral Lands Board to direct the pastoral lessees to monitor and assess the condition of the land under its pastoral lease and submit a report on the land condition to the board. The regulation will prescribe the monitoring and assessing activities that the pastoral lessee may be required to undertake.

Hon NEIL THOMSON: That is certainly a significant provision that will give additional powers to the board. During my preamble when I began talking on clause 52, I spoke about my concerns that a level of bureaucratic creep might be going into this. I guess this really comes down to how the board functions and, I suppose, the appointments to the board. The pastoral industry is in the hands of the board to a large extent in relation to this. There are significant penalties in this proposed section. We are not talking about penalties for any damage or harm that might occur; we are talking about real damage and harm that occurs in relation to the activities of a pastoralist on the rangelands. I understand the need to have quite severe penalties for damage and harm in real terms to the physical environment or persons—in this case, it is to the physical environment—but the penalty under proposed section 108C(6) is imprisonment for 12 months for not providing information. It states —

> A pastoral lessee must not provide information in a report referred to in subsection (2)(b) knowing the information to be false or misleading in a material particular.

That is obviously legal jargon. I assume that it is just in a real way. I do not want to quibble too much about this penalty but we seem to go pretty quickly to the jugular with penalties involving imprisonment. A recent case was reported in the press about a member of the public who seemed to be in contravention of the Aboriginal Heritage Act—the old act, which is still in play—and is now facing court on the matter. We will see how that plays out. My concern here, I suppose, is about the nature of the penalties. Notwithstanding that it is not the right thing to do to provide misleading information, I thought there might be other ways that the Pastoral Lands Board could deal with someone who provides misleading information, given the power the minister has over the lease. My question is: how was the penalty of imprisonment for 12 months determined, and is it proportionate to other provisions relating to providing information to a board on a management plan?

Hon JACKIE JARVIS: The member has pointed out the most onerous of the penalties. I note that the penalty the member is referring to is for false or misleading information. Let us be clear: the penalty of imprisonment or a fine is for when false or misleading information is given. The penalty is the same for not reporting or falsely reporting in annual returns.

Hon NEIL THOMSON: I thank the minister for clarifying that. The minister said that this penalty is equivalent to the provision already in the act on annual returns, so that is something the industry is familiar with. I guess I am prepared to accept that it is proportionate in the sense that a similar provision is already in the act. I am prepared to move to the next clause.

Clause put and passed.

The DEPUTY CHAIR (Hon Dr Sally Talbot): I draw members' attention to the fact that the amendments on supplementary notice paper 1 have been withdrawn.

Clauses 53 to 55 put and passed.

Clause 56: Section 113 replaced —

Hon NEIL THOMSON: This clause inserts proposed section 112A, "Effect on rent if reduction in stock numbers". I will try to stick to the blue bill because it shows what will be taken out and what will be put in. There is a provision now—maybe I will just clarify and ask questions. Will proposed section 112 enable a new ability to reduce rent when there is a soil conservation notice that might not otherwise have been there? Is that a reform?

Hon JACKIE JARVIS: Yes. The proposed section will enable the Minister for Lands to reduce the rent for pastoral leases in proportion to the reduction in permitted stock in the circumstances specified on the advice of the Pastoral Lands Board, and indeed that includes by a soil conservation notice.

Hon NEIL THOMSON: I think we should give credit where credit is due. I think that is a sensible amendment and we support it. It is a good change because I know that sometimes when drought conditions apply in a region and there is erosion and vegetation loss over a period of time, a notice has to be supplied, and I think it is important that the legislation allows for a reduction in the rental position. I think that is probably one of the reasons why the change was supported by the Pastoralists and Graziers Association. It is something we certainly endorse.

Proposed section 113(3) states —

> The return must be in an approved form and contain the following information —

It lists the requirements from (a) to (d), including —

> (a) permitted stock numbers on the return end date;
>
> (b) full particulars —

These provisions are probably reflective of some of the ones that are there now. The last one is —

> (d) any other information the form requires.

I have some standard questions on proposed section 113(3)(d). Was that there before? Will it allow for flexibility in relation to the returns? How expansive might that be? Will there be a limit on what can be provided?

Hon JACKIE JARVIS: I am not sure I understand the question. I can let the member know that changing the date by which the annual returns are required was done to better align with pastoral business practices to give more accurate and useful reporting of stock numbers, particularly an indication of stock numbers that have been carried over the wet season in the north of the state and over summer in the south of the state. I am not sure whether that answers the member's question, but it was done in consultation with industry to recognise that there are fewer stock movements during that time of year.

Clause put and passed.

Clauses 57 and 58 put and passed.

Clause 59: Sections 122B to 122F inserted —

Hon NEIL THOMSON: This is in relation to permits. Is this the diversification permits section, just to be clear?

Hon Jackie Jarvis: Yes.

Hon NEIL THOMSON: Thank you. Proposed section 122B states —

> The Board may, with the consent of the permit holder, amend the terms and conditions of a permit issued under this Division.

Again, my apologies; I am trying to keep track of the blue bill. Is that provision more expansive than the current provision?

Hon JACKIE JARVIS: Proposed section 122B, "Board's power to amend permit", is to be inserted to enable the Pastoral Lands Board, with the consent of the diversification permit holder, to amend the terms and conditions of the diversification permit that is issued.

Hon NEIL THOMSON: What types of changes will that enable with respect to the existing permit provisions?

Hon JACKIE JARVIS: This provision will allow for administration effectiveness; for example, to vary the insurance amounts for public liability in line with industry practice, without going through the lengthy re-consultation process on a settled permit condition.

Hon NEIL THOMSON: I assume that is a positive. It seems to be something that we would support. It is fairly open-ended in terms of how that would apply, but I assume it will be a positive because it will operate with the consent of the permit holder. That is a positive amendment.

Is the renewal provision at proposed section 122C the relevant part of the bill that will determine the potential portability of the permit? I see that it also relates to the expiry of the permit, which is important as well. Does this provision at proposed section 122C relate to the portability component?

Hon JACKIE JARVIS: It is not the transfer provision, member. Currently, permits cannot be renewed. This proposed section is being inserted to provide the power to renew diversification permits.

Hon NEIL THOMSON: Could they not be renewed prior to the introduction of this provision?

Hon Jackie Jarvis: That is correct.

Hon NEIL THOMSON: I would also like to support that. That is a good outcome. We will enable that and the transfer, so I think we can move on.

Clause put and passed.

Clauses 60 to 68 put and passed.

Clause 69: Section 134A inserted —

Hon NEIL THOMSON: This is about the transfer component. We are looking at the provision of permits in this proposed section. It reads —

> (a) the Minister approves the transfer of a pastoral lessee's interest in a pastoral lease to another person … under section 134 …

It requires —

> (c) the transferee has written to the Board to request that the permit be transferred to the transferee …

The question I have is whether the permit is conditional on the transfer of the pastoral lease. I think that might be explained in proposed subsection (2), which reads, "If this section applies, the Board must transfer the permit", but I am not sure.

Hon Jackie Jarvis: By interjection, yes.

Hon NEIL THOMSON: The answer is yes, so, basically, proposed section 134A(1) can apply only if the lease has been transferred.

Hon Jackie Jarvis: By interjection, yes.

Clause put and passed.

Clauses 70 to 151 put and passed.

Title put and passed.

Report

Bill reported, without amendment, and the report adopted.

Third Reading

HON JACKIE JARVIS (South West — Minister for Agriculture and Food) [9.27 pm]: I move —

> That the bill be now read a third time.

HON NEIL THOMSON (Mining and Pastoral) [9.28 pm]: I want to make some concluding comments. I think going through the process of the Committee of the Whole has been very useful and provided a little bit more enlightenment of some of the challenges and opportunities that exist from the legislative amendments. Although there might be times I skipped a clause by accident on delegations, which I am sure we will survive, it is very important that commentary is made. I appreciate the interaction I had with the minister on matters such as the open process that will be available to proponents, particularly those ones that will be proposing renewable energy. We saw that for renewable energy, for example, companies could put a proposal forward for a diversification lease, even though another renewable company might have a section 91 licence in place. I think that is very important. The minister clarified the capacity for those companies to negotiate an Indigenous land use agreement, and if they did have an ILUA in place, they could then put forward a proposal for a diversification lease. I think that is vital. One of the concerns that I had—I mentioned this in my second reading contribution—was the lack of contestability. I talked about the fact that I did not see the appropriateness of contestability in situations in which a native title body, for example, was seeking a diversification lease, but I think it has been clarified that the process of negotiating an ILUA will enable any party to put forward to the government a proposal for a diversification lease. In effect, that gives a level of contestability, because it means that the government will not be picking the winners in this process; that contestability will be in the marketplace, particularly with the engagement with traditional owners. That is something I support. As part of the process, as we unpack the detail, sometimes those things are not necessarily picked up in the briefings that we get from the department. I offer support to that process.

There are also significant improvements in the reduction of red tape for pastoralists. That is very apparent from the detailed discussions we had about the changes that are being proposed and the opportunities particularly

with diversification permits for portability, extension and amendment. Those are significant and long overdue improvements, and I also support them.

In the discussions that we have had, I cannot say that some of the matters relating to management orders and excision without consent have necessarily been resolved, in my mind, at least. That is why, although the opposition has broad support for many aspects of this bill, there are probably still some missed opportunities. Maybe that is for another day. This is certainly a step in the right direction. I think that the Minister for Lands can take ownership of this, and that is good. I think there are still some concerning aspects relating to the general shift and trend that we are seeing particularly with those local authorities that I mentioned in my second reading contribution. The discussion during the Committee of the Whole stage did not necessarily provide further comfort on that.

I want to wrap-up my comments there. In summary, I think that the government has delivered a lot of detail on pastoral leases. The uptake of these diversification leases remains to be seen, and I think the challenge will be how efficiently the government agency, namely the Department of Planning, Lands and Heritage, can process those applications. We had a revealing discussion again in the Committee of the Whole stage that there has not been any additional resourcing provided to that agency to deliver the reform. That is another matter that I think will be a question mark over the efficacy of this reform going forward.

I think the benefit of the doubt should be bestowed upon the government going forward, and we will see how that plays out in the next year or two. The outcomes in two years' time for the number of diversification leases and how they are being applied across the state will be very much a point of assessment that will be made by the opposition as we proceed into the next round of the election cycle.

On that point, I would like to commend the Minister for Agriculture and Food for her cooperation in the process that we have just undertaken, and reiterate my thanks for the support that we received from the office of the Minister for Lands in its briefings on this bill. Thank you.

Question put and passed.

Bill read a third time and passed.